

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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## PREFACE

The 1934 Supplement to Mason's Minnesota Statutes makes its appearance to simplify the work of the Minnesota lawyer in his use of the Minnesota Statutes. Mason's Minnesota Statutes, 1927, in two volumes and this Supplement, constitute a complete presentation of the Minnesota law down to March, 1934.

This Supplement obviates the use of the 1929, 1931, 1933 and 1933-34 Session Laws by combining, under one cover, four session laws, seven years of annotation pamphlets, court rules, and a complete set of conveyancing forms.

The annotations cover the period which has elapsed since the publication of Mason's Minnesota Statutes, 1927, and are derived from the U. S. Supreme Court Reports, the Federal Reporter, the Minnesota Reports and the Opinions of the Attorney General.

The ninety-three standard conveyancing forms provided by Laws 1931, Chap. 272, have been incorporated in this Supplement as Appendix No. 1.

Laws of a temporary or local nature, as well as City Charters and Municipal Ordinances, which could not be properly included in a general statute but which are the subject of litigation, are annotated in Appendices Nos. 2 and 3.

The Rules of the Minnesota Supreme Court and the District courts are brought to date in Appendix No. 4.

Stalland's Minnesota Curative Acts is brought to date by Appendix No. 5.

The table of Statutes indicates the disposition of the various laws contained in this Supplement.

By means of this Supplement and the quarterly continuation service Dunnell's Digest is kept to date. This is accomplished by annotating each current decision to the digest. If you have no current decision in mind turn to the "Table of References to Dunnell's Digest" beginning on page 808, and that table will direct you from any given Dunnell section to the section of this Supplement where later cases are to be found.

The index is complete in its scope, not only directing you to the subject matter of the statutes contained herein, but also to the common law decisions which have been set forth at the end of appropriate chapters.

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# United States Constitution

## Article I.—CONGRESS AND THE STATES.

### 4. Election of members, sessions.

In making a congressional appointment, the state legislature acts exclusively under U. S. Const., article 1, §4, and does not act strictly in the discharge of legislative duties as a lawmaking body, but as an agency responding to a federal mandate. *State v. Holm*, 184M 228, 238NW494. See Dun. Dig. 1587.

## Article IV.—RELATIONS BETWEEN STATES.

### 2. Privileges and Immunities.

#### Cl. 1.

A law providing for the sale of products of Minnesota state prison to residents of Minnesota at a lower price than to residents of another state does not contravene this clause. *Op. Atty. Gen.*, Feb. 10, 1933.

#### Cl. 2.

The statute of limitations is a defense, and must be asserted on the trial by the defendant in criminal cases in the courts of the state where the offense is alleged to have been committed. *State v. Johnson*, 184M309, 238 NW490. See Dun. Dig. 3713.

When the extradition papers are in proper form and properly authenticated, substantially charging the person demanded with a crime, the only question for consideration on habeas corpus hearing is whether or not the accused was within the demanding state when the crime is alleged to have been committed. *State v. Johnson*, 184M309, 238NW490. See Dun. Dig. 3713.

## AMENDMENTS

## Article XIV.—CITIZENSHIP, DUE PROCESS AND EQUAL PROTECTION.

### 1. Privileges, due process, equal protection.

An order of state court ordering defendant railroad in action under Federal Employers' Liability Act to dismiss injunction suit in another state did not deny due process or equal protection. *Peterson v. C.*, 187 M228, 244NW823.

Law providing for sale of products of Minnesota state prison to residents of Minnesota at a lower price than to residents of another state does not contravene the privileges and immunities clause of the federal constitution. *Op. Atty. Gen.*, Feb. 10, 1933.

Laws 1931, c. 212, amending Mason's Minn. Stat., 1927, §10305, by permitting members of village or city councils, town or school boards to designate banks in which they are interested as public depositaries, contravenes this section. *Op. Atty. Gen.*, Mar. 23, 1933.

## Article XVIII.—PROHIBITION.

Repeal of this amendment proclaimed. See Const. Am. 21, post.

## Article XX.—TERM OF PRESIDENT AND VICE PRESIDENT, SESSIONS OF CONGRESS, AND VACANCY IN OFFICE OF PRESIDENT-ELECT.

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall

have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Adoption proclaimed Feb. 6, 1933, 47 Stat. 2569.

## Article XXI.—REPEAL OF EIGHTEENTH AMENDMENT; TRANSPORTATION INTO STATES CONTRARY TO LAWS THEREOF.

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Adoption proclaimed Dec. 5, 1933, that being the date of the completion of ratification of the amendment by 36 states.

## Article XXII.—CHILD LABOR.

Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

Sec. 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

The above amendment has been proposed by Congress to the states. It has not yet been ratified by the requisite number of states. It has been ratified by the Minnesota legislature. Joint Res. No. 2, approved Dec. 14, 1933, Ex. Ses.

## Northwest Territorial Government (ORDINANCE OF 1787)

### Art. 4.

Federal court, held not to have jurisdiction of suit by riparian owner to restrain filling of navigable water. *Leitch v. Chicago*, (CCA7), 41F(2d)728. See Dun. Dig. 3744. Certiorari denied. 51SCR106.

Village ordinance providing fee of one dollar for privilege of anchoring in navigable lake channel is void as an obstruction to a common highway. *Op. Atty. Gen.*, (Mich), Aug. 13, 1931. See Dun. Dig. 6936.

# Act Authorizing a State Government

<sup>82.</sup> The taking of muskrats in the waters of a lake forming the boundary between Minnesota and South Dakota within the closed season established by the laws of Minnesota is an offense against the laws of Minnesota irrespective of the location of the boundary line. Op. Atty. Gen., Jan. 6, 1930.

## Constitution of the State of Minnesota

### PREAMBLE

The test of the constitutionality of a statute is not what has been, but what may be done pursuant to its authority. State ex rel. v. Rural Credits Bureau, 182M 565, 235NW380. See Dun. Dig. 1576(48).

There must be resort to construction whenever a constitutional provision, plain on its face, becomes ambiguous when applied to its subject matter. State v. Finnegan, 246NW521. See Dun. Dig. 1576.

### Article 1.—BILL OF RIGHTS.

#### 1. Object of government.

A county board has no authority to purchase on behalf of the county shares of stock in a private hospital association. Op. Atty. Gen., Dec. 16, 1931.

A school district maintaining and operating a greenhouse in connection with its school gardens cannot raise plants for sale to the public, though it may sell any surplus it has. Op. Atty. Gen., Dec. 17, 1931.

A village may purchase electricity at wholesale and resell to its inhabitants at a profit if the amount charged is fair and reasonable and without discrimination. Op. Atty. Gen., Feb. 15, 1932.

#### 2. Rights and privileges of citizens.

G. S. 1923, §1614, and ordinances passed thereunder, zoning cities, is valid. 21F(2d)440.

State banking corporations are properly placed in a class by themselves for the purposes of legislation, and Laws 1925, c. 38, is not class or special legislation. 174 M36, 218NW238.

Laws 1925, c. 185 (Mason's Minn. Stat., 1927, §§5015-1 to 5015-19), is valid. 174M331, 219NW167.

A city ordinance requiring licenses for open-air automobile parking places was not invalid because it did not extend to parking places for less than ten cars. 175M386, 221NW423.

Laws 1925, c. 407, known as the Forestry Act [4031-1 to 4031-35] does not offend the equality provisions of the Constitution. 176M472, 223NW912.

It was competent for the Legislature to classify counties and to impose more drastic regulations for prevention of fires in certain counties than in others. 176M472, 223NW912.

Provisions of city charter of St. Paul authorizing city council to fix and affirm amount of damages for taking of land in a condemnation proceeding with right of appeal to the district court do not violate this section. 177M146, 225NW86.

Provision of land owner to give a bond for costs in order to perfect an appeal could be held nugatory without affecting other provisions. 177M146, 225NW86.

Laws 1929, c. 267, 424, admitting disabled veterans and court reporters to the practice of law without examination, violate this section. 178M331, 227NW179; 178 M335, 227NW180.

Basic Science Act (Mason's Minn. St. §5705-1 et seq.), held not invalid because it exempts certain practitioners from its operation. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

A complaint, charging that the plaintiff, on entering a cafeteria for the purpose of being served food, was told that he was too dirty to be served and would have to get out, and was refused service, when in fact his clothing and person were clean, does not state a cause of action either for slander or for deprivation of any civil rights. Larson v. R., 183M393, 235NW393. See Dun. Dig. 4509.

A city selling electricity to persons outside its limits under contract may discriminate in favor of residents of the city. Guth v. Staples, 183M552, 237NW411.

Soldiers' Preference Law, (Stat., 1927, §§4363, 4369; Laws 1929, c. 57, Laws 1931, c. 347, does not deny equal protection of laws. State v. McDonald, 246NW900. See Dun. Dig. 6560.

A child removing with parents to Canada, where father was naturalized but returned to this country

while child was still a minor, remained a citizen of Canada after father's death in this country. Koppe v. P., 247NW41. See Dun. Dig. 1487.

An American who served in a Canadian army during the World War, and presumably swore allegiance to the King, is permitted to resume his citizenship, by taking the oath of allegiance of the United States, without submitting to the usual process of naturalization. Op. Atty. Gen., July 6, 1931.

Minimum wage laws for groups of municipal employees would be constitutional. Op. Atty. Gen., Feb. 9, 1933.

An act providing that personal property taxes should not become delinquent in counties having limited valuation, is unconstitutional. Op. Atty. Gen., Feb. 27, 1933.

A proposed law relating to limitations in criminal cases containing provision that it shall be "applicable to any case wherein the complaint was made after January 1st, 1931" is an ex post facto law. Op. Atty. Gen., Apr. 6, 1933.

Though, to a limited extent impairing the obligation of contracts and depriving persons of property without due process, the mortgage Moratorium Act is a justifiable exercise of the police power in the present emergency. Op. Atty. Gen., Apr. 7, 1933.

#### 3. Liberty of the press.

Mason's Minn. Stat., §§10123-1 to 10123-3, are valid. 174M457, 219NW770.

Mason's Minn. Stat., §§10123-1 to 10123-3, providing for abatement as nuisance of obscene publication, held valid. 179M40, 228NW326. Rev'd, 51SCR625.

#### 4. Trial by jury.

Mason's Minn. Stat., §§10123-1 to 10123-3, are valid. 174M457, 219NW770.

On appeal from order admitting will to probate there is no right to trial by jury, such a trial being discretionary. 180M256, 230NW781.

The provision in the Minnesota standard policy for arbitration or appraisal in case of disagreement as to loss is not violative of article 1, §§4 and 7, of the State Constitution or of the Fourteenth Amendment of the Federal Constitution. 181M518, 233NW310. See Dun. Dig. 1646, 4793(85), 5227.

Where defendant admitted facts showing he was guilty, instruction failing to tell jury that they could find him not guilty was harmless. State v. Corey, 182M 48, 233NW590. See Dun. Dig. 2490(44).

It was error to charge the jury that the only issue was whether defendant was guilty of robbery in the first degree or of an attempt to commit such robbery, for in any criminal prosecution the jury has the power to return a verdict of not guilty, even though contrary to the law and the evidence. State v. Corey, 182M48, 233NW590. See Dun. Dig. 5236.

Denial of jury trial is prejudicial where issue of fact might have been differently determined by jury. Willcox v. H., 185M1, 239NW763. See Dun. Dig. 5227, 7074.

#### 6. Rights of accused.

Where defendant admitted facts showing he was guilty, instruction failing to tell jury that they could find him not guilty was harmless. State v. Corey, 182 M48, 233NW590. See Dun. Dig. 2490(55).

It was error to charge the jury that the only issue was whether defendant was guilty of robbery in the first degree or of an attempt to commit such robbery, for in any criminal prosecution the jury has the power to return a verdict of not guilty, even though contrary to the law and the evidence. State v. Corey, 182M48, 233NW 590. See Dun. Dig. 79, 5235(39).

Right of defendant to appeal after plea of guilty in municipal court. Op. Atty. Gen., Dec. 9, 1930.

Discovery of crime and procuring of evidence by deception is not prohibited in this state. City of Duluth v. V., 186M393, 243NW394. See Dun. Dig. 2448b.

**1. Speedy and public trial.**

Bastardy proceeding. *State v. Hanson*, 187M235, 244 NW809.

Defendant's silence, in the face of numerous continuances and long delay, waives right to a speedy trial. 173M153, 216NW787.

**2. To be informed of nature of accusation.**

Information alleging the stealing of men's clothing in the nighttime, without alleging that it was taken from a building, charged second degree and not first degree grand larceny. 172M139, 214NW785.

Mason's Statutes, §5547, relating to possession of raw skins of fur-bearing animals and burden of proof, does not violate this section. 177M398, 225NW435.

Indictment charging that defendant did "ask, agree to receive, and receive" a bribe was not duplicitous or repugnant. 178M437, 227NW497.

**3. To be confronted by witnesses.**

Mason's Statutes, §5547, relating to possession of raw skins of fur-bearing animals and burden of proof, does not violate this section. 177M398, 225NW435.

**7. Same—Due process of law—Bail—Habeas corpus.****1/4. In General.**

Mason's Minn. Stat., §§10123-1 to 10123-3, providing for abatement as nuisance of obscene publication, held valid. 179M40, 228NW326. Rev'd 51SCR625.

The provision in the Minnesota standard policy for arbitration or appraisal in case of disagreement as to loss is not violative of article 1, §§4 and 7, of the State Constitution or of the Fourteenth Amendment of the Federal Constitution. 181M518, 233NW310. See Dun. Dig. 1646, 4793(85), 5227.

Pharmacy law (§§5797 to 5816), regulating sale of medicines, is not arbitrary or discriminatory. *State v. F. W. Woolworth Co.*, 184M51, 237NW817. See Dun. Dig. 1671(39).

Mason's Stat., §§7688, 7689, are not unconstitutional as attempting to deprive a bank or its stockholders of property without due process of law. *American State Bank of Minneapolis v. J.*, 184M498, 239NW144.

Though a railroad company has constitutional right to abandon its road for reason it can be operated only at a loss, legislature has not given railroad and warehouse commission power to authorize an abandonment on that ground. *Minneapolis & St. Paul Sub. R. Co. v. V.*, 186M563, 244NW57. See Dun. Dig. 8078(23), 8088c.

*State v. Stanley*, 247NW509, note under §2554.

Any rate for switching services between telephone companies is confiscatory if insufficient to constitute reasonable return on value of property used and services required. *Western Buse Telephone Co. v. N.*, 248NW220.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. *Id.*

**1. Twice in jeopardy.**

The same acts may constitute an offense against a statute and also a violation of a city ordinance, in which case a conviction under one is no bar to a prosecution under the other. 171M506, 214NW479.

The procedure prescribed in Laws 1927, c. 236 (§§9931 to 9931-4), does not place the defendant twice in jeopardy. 175M508, 221NW900.

The doctrine of double jeopardy has no application in proceedings to punish for contempt, and each succeeding refusal to answer the same questions will ordinarily be a new offense. 177M200, 224NW838.

Offenses under Mason's Minn. Stat., §§10135, 10136, are continuing and former conviction does not preclude prosecution for subsequent offense. 179M32, 228NW337.

A city ordinance regulating the licensing and operating of taxicabs and providing for revocation at any time for cause, after hearing, is valid, though the charter provides in general terms that such license may be revoked at any time. *National Cab. Co. v. K.*, 182M152, 233NW838. See Dun. Dig. 1646.

Prosecution for a sale to be given person in one county is not a bar to a prosecution for a sale to another person in a different county on a different date. *State v. Robbins*, 185M202, 240NW456. See Dun. Dig. 2426.

Where municipal court exceeded its jurisdiction and convicted one of unlawfully killing a deer, and on his failing to pay fine confined him in jail, and conviction was held void on habeas corpus, he could be tried again for the offense with which he was charged. *Op. Atty. Gen.*, Feb. 20, 1931.

If state accepts plea of guilty to charge of assault with intent to kill, it is barred from filing a murder charge if wounded person dies. *Op. Atty. Gen.*, Feb. 18, 1933.

An accused brought before one justice of the peace could not be brought before another justice after district dismissed original action. *Op. Atty. Gen.*, Aug. 12, 1933.

**2. Self-incrimination.**

Defendant cannot complain merely because he was called before the grand jury which indicted him, where he was not compelled to testify. 171M429, 214NW270.

Production of books and papers under Blue Sky Law. 172M328, 215NW168.

While a witness for state may not testify to a part of a transaction and then successfully claim his privilege against self incrimination to avoid giving the whole of

it, a defendant cannot claim prejudice where the whole transaction was ultimately gone into by other witnesses. 173M391, 217NW343.

In proceeding to remove, held that defendant officer was deprived of his constitutional rights against self incrimination. 173M512, 217NW935.

Refusal to testify upon ground that testimony might incriminate did not justify inference of guilt. 173M512, 217NW935.

Section 9932, providing that no person shall be excused from testifying in a prosecution for bribery, etc., does not violate this section. 176M308, 223NW144.

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.

Person accused of arson was denied constitutional guaranty against self incrimination where he was subpoenaed by the fire marshal and compelled to testify as to the charge against him. 180M573, 231NW217.

The disclosure in proceedings supplementary to execution cannot be used in a criminal proceeding against the judgment debtor; but a fact shown in it may be considered in determining want of probable cause. *Krienke v. C.*, 182M549, 235NW24. See Dun. Dig. 10389.

While a deputy public examiner should not have been interrogated as a witness for the state on direct examination concerning statements made by defendant in response to a subpoena, the examination did not go far enough along that line to prejudice defendant, both the statements in question and their truth having been established by other evidence. *State v. Stearns*, 184M452, 238NW895. See Dun. Dig. 10337-10343.

A bastardy proceeding is a civil proceeding, not a criminal action, and defendant may be called by prosecution for cross-examination. *State v. Jeffrey*, 247NW692. See Dun. Dig. 10337(80).

**4. Due process of law defined.**

Constitutional provisions for due process and equal protection of the law yield to the police power. 175M73, 220NW425.

House File No. 790, making it an offense to advertise tobacco, cigars or cigarettes by depicting the likeness of any female person, would be unconstitutional if passed. *Op. Atty. Gen.*, Mar. 26, 1931.

**5. Held due process of law.**

§5630(6), authorizing game and fish commissioner to set aside waters for fish propagation, is valid. 172M179, 215NW215.

An assessment greatly in excess of special benefit is invalid, and while the test of benefit is the increase in market value of the property after the improvement is made, the Supreme Court cannot review the matter of special benefit where the evidence is not in the record, the conclusion of the municipal authorities being prima facie correct, and the burden of proof being on the objector. 172M554, 216NW318.

Denial of registration of corporate stock for sale under §3996-5 was not without due process. 174M200, 219 NW81.

Laws 1925, c. 185 (Mason's Minn. Stat., 1927, §§5015-1 to 5015-19), is valid. 174M331, 219NW167.

Laws 1927, c. 288 (Mason's Minn. Stat., 1927, §§2558-1 to 2558-4), is valid. 174M305, 219NW172.

G. S. 1923, §3512, is constitutional, following *Abramowitz v. Continental Ins. Co.*, 170M215, 212NW449; 175M73, 220NW425.

Tax imposed by Laws 1923, c. 226, not invalid. 175M305, 221NW13.

G. S. 1923, §6717-2, provided due process in proceedings to assess the cost of improving and repairing a county ditch. 177M598, 255NW909.

Mason's Minn. Stat., 1927, §2292, Subd. 5, imposing inheritance tax on property subject to a power of appointment, held valid, though instrument was executed prior to passage of statute. 181M262, 232NW331. See Dun. Dig. 9571.

Basic Science Act (Mason's Minn. Stat., §5705-1 et seq.), held not invalid because it exempts certain practitioners from its operation. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Rochester City Ordinance No. 145, regulating pawnbrokers and junk dealers, held valid. 181M596, 233NW862. See Dun. Dig. 1646, 7436.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor is valid. *State v. Hughes*, 182M144, 233NW874. See Dun. Dig. 1646.

Classification for taxation of gifts taking effect in possession after death with those testamentary causa mortis and in contemplation of death is not denial of due process. *Rising's Estate v. S.*, 186M56, 242NW459. See Dun. Dig. 1639.

Under police power legislature may reasonably regulate assignment of unearned wages or salary. *Murphy v. C.*, 187M65, 244NW335. See Dun. Dig. 566.

State is not legally liable to refund inheritance taxes levied and voluntarily paid by estates of nonresidents holding stock in Minnesota corporations, though such taxes are unconstitutional. *Op. Atty. Gen.*, Jan. 25, 1933.

Minimum wage laws for groups of municipal employes would be constitutional. Op. Atty. Gen., Feb. 9, 1933.

A bill to preserve shore lines, rapids, water falls, beaches and other natural features in an unmodified state of nature by regulating construction of dams in Cook, Lake and St. Louis Counties would not violate this section. Op. Atty. Gen., Mar. 6, 1933.

Though, to a limited extent impairing the obligation of contracts and depriving persons of property without due process, the Mortgage Moratorium Act is a justifiable exercise of the police power in the present emergency. Op. Atty. Gen., Apr. 7, 1933.

#### 6. Held not due process of law.

Minneapolis ordinance imposing liability on adjoining owners to sheath-pile in making excavation so as to protect walls on the adjoining property held invalid. 172M428, 215NW840.

The venue statute as to foreign corporations (§9214, Mason's Minn. Stat., 1927) must be construed so as to place such corporations within the equal protection clause of the Fourteenth Amendment of the federal Constitution, as held in Power Mfg. Co. v. Saunders, 274US 490, 47SC678, 71LEd1165. Olson v. Osborne & Co., 30M 444, 15NW876, and Eickhoff v. Fidelity & Casualty Co., 74M139, 76NW1030, being in conflict with the decision of the Supreme Court of the United States, are overruled. 178M19, 225NW915.

Laws 1929, c. 361, imposing on express companies license tax on vehicles in addition to gross earnings tax, held invalid. 180M268, 230NW815.

A railroad cannot be compelled to keep in operation at a permanent net loss. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 1647.

As against fee owner of real property, in possession thereof at time of its enactment, chapter 378, Laws 1929 [Mason's 1931 Supp., §9633, note], purporting to validate a prior void foreclosure sale of property, is unconstitutional. Fuller v. M., 187M447, 245NW617. See Dun. Dig. 1651.

A city ordinance prohibiting sale of non-intoxicating malt liquors to students over 21 years of age would be invalid. Op. Atty. Gen., Apr. 11, 1933.

#### 8. Remedies for wrongs.

State v. Stanley, 247NW509; note under §2554.

Nelson v. B., 248NW49; note under §2554.

Certiorari is a proper remedy to review the judgment of the municipal court of Minneapolis rendered on removal from conciliation court though statute says that there shall be no appeal and that judgment shall be final; there being under constitution a right of review of a judicial determination by trial court. Ridgway v. V., 246 NW115. See Dun. Dig. 1394, 6906.

#### 10. Unreasonable searches and seizures.

Production of books and papers under Blue Sky Law. 172M328, 215NW186.

It would not have been prejudicial error to permit liquor seized without a warrant to be introduced in evidence. 172M130, 214NW778.

#### 11. Attainder—Ex post facto laws—Impairment of contracts.

##### 1. Ex post facto laws.

Laws 1927, c. 236 (§§9931 to 9931-4), is constitutional. 175M508, 221NW900.

##### 2. Held to impair contract.

Workmen's Compensation Act establishes a contractual relationship between the employer, insurer and employee, and obligations cannot be changed by legislation subsequent to a husband's death. Warner v. Z., 184M598, 239 NW761. See Dun. Dig. 10388(24), 10391.

##### 3. Held not to impair contract.

Laws 1925, c. 38, does not tend to impair obligation of contract. 174M36, 218NW238.

Valid laws in force at the time a contract is made cannot be said unconstitutionally to impair the obligation of the contract. 174M36, 218NW238.

Mason's Minn. Stat., 1927, §2292, Subd. 5, imposing inheritance tax on property subject to a power of appointment, held valid, though instrument was executed prior to passage of statute. 181M262, 232NW331. See Dun. Dig. 9571.

Laws 1933, c. 44, authorizing sheriff to adjourn mortgage foreclosure sales, is valid. State v. Moeller, 249 NW330. See Dun. Dig. 207 to 209, 1628.

Laws 1933, c. 339, extending time for redemption from mortgage foreclosure sales, impairs obligation of contract but is valid in view of economic emergency. Blaisdell v. H., 249NW334. See Dun. Dig. 1605, 8931.

Laws 1933, c. 339, extending period of redemption under mortgage foreclosure on land not homestead, is constitutional. Grace v. L., 249NW672. See Dun. Dig. 1628.

A public officer has no constitutional right to a continuance of the salary specified at the beginning of his official term, but the legislature is free to reduce it if it sees fit to do so. Op. Atty. Gen., June 23, 1931.

Though, to a limited extent impairing the obligation of contracts and depriving persons of property without due process, the Mortgage Moratorium Act is a justifiable exercise of the police power in the present emergency. Op. Atty. Gen., Apr. 7, 1933.

#### 12. Imprisonment for debt—Exemption from execution.

##### 1. Imprisonment for debt.

A proceeding to coerce payment of money is for a civil contempt. Imprisonment cannot be imposed on one who is unable to pay. 173M100, 216NW606.

##### 2. Exemption of property.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185M347, 241NW388. See Dun. Dig. 4207.

##### 3. —Proviso.

The provision making a homestead non-exempt from debts incurred for work or materials used in construction, repair, or improvement thereof, is self executing. A claim for such debts does not amount to a lien until proceedings or steps are taken to make it a lien. 172M 198, 215NW197.

The right to pursue the homestead is lost by not reducing the claim to a lien prior to debtor's discharge in bankruptcy, under Mason's U. S. Code, Tit. 11, §§35, 103. 172M198, 215NW197.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meanings of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221NW534.

Order directing special execution on judgment constituting lien against homestead, held proper. 179M30, 228NW168.

A mechanic's lien established by judgment a month prior to filing of voluntary petition in bankruptcy is not affected and may be enforced by special or general execution. Nadeau v. Ball, 176M6, 228NW168.

One furnishing material for improvement on farm lands may resort to the farm for payment though it is a homestead. Steinke-Seidl Lbr. Co. v. N., 183M491, 237 NW194. See Dun. Dig. 4209.

#### 13. Private property for public use.

State v. Stanley, 247NW509; note under §2554.

G. S. 1923, §1614, relating to the zoning of cities, and ordinances passed thereunder, held valid. 21F(2d)440.

Setback lines in zoning ordinances, originating from the police power, and not from contract or eminent domain, may cast an uncompensated burden on property. 171M231, 213NW907.

Property may not be taken in a condemnation proceeding without compensation, or land of another assessed for benefits without a judicial hearing. 171M297, 214NW30.

The amount of traffic on a highway is an element to be considered as bearing upon loss of time and inconvenience to one whose land is divided by such highway. 171M369, 214NW653.

Land taken for a public cartway is taken for a public purpose although the one to whose land the cartway extends has other access to a public highway. 175M395, 221NW527.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226NW398.

Where lease provided that it should terminate on taking of property under power of eminent domain the lessee could not recover for the unexpired term on condemnation of the entire property by the city. 178M562, 623, 228NW162.

Relief by injunction against the laying out of a public street, where nothing has been done except the adoption by the city council of a preliminary resolution appointing commissioners to view the premises and assess benefits and damages, is premature. Heller v. S., 182M353, 234NW461. See Dun. Dig. 4480.

While the measure of damage in a highway condemnation case is difference between fair market value before and after taking, presence of a valuable deposit of sand and gravel is relevant. State v. Horman, 247NW4. See Dun. Dig. 3054.

Where commissioner of highways, trespasses upon or appropriates land outside right of way, he becomes liable to owner thereof for damage thereto. Nelson v. B., 248NW49; note under §2554.

Filling station owner was entitled to damages where state highway department made substantial change in highway in such manner as to require such owner to reconstruct filling station and driveway. Apitz v. C., 248NW733. See Dun. Dig. 3049.

City could not require railroad, without compensation, to open up street across its right of way. Op. Atty. Gen., Oct. 31, 1930.

A village is liable to the owner of private property for any damage resulting from the improvement of a street. Op. Atty. Gen., June 5, 1931.

Charter provisions of the City of Ely with respect to condemnation of land outside city are valid. Op. Atty. Gen., June 15, 1931.

County engineer cannot take surplus materials used in the improvement of a county road and use them on another county highway without compensating the abutting owner for the dirt taken. Op. Atty. Gen., Oct. 6, 1931.

A bill to preserve shore lines, rapids, water falls, beaches and other natural features in an unmodified state of nature by regulating construction of dams in Cook, Lake and St. Louis Counties would not violate this section. Op. Atty. Gen., Mar. 6, 1933.

#### 15. Tenure of lands.

Provision in Laws 1933, c. 412, permitting perpetual lease of water dam rights is invalid. Op. Atty. Gen., Aug. 7, 1933.

#### 16. Rights reserved—Religious freedom.

Requiring the reading of the Old Testament in every school room, but permitting pupils to leave, during the reading, infringes no constitutional provision. 171M142, 214NW18.

#### 18. No license to peddle.

Municipality may inspect milk of both producers and dealers in milk and require payment of inspection fee. Op. Atty. Gen., Dec. 11, 1929.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. Op. Atty. Gen., Oct. 23, 1931.

### Article 3.—DISTRIBUTION OF THE POWERS OF GOVERNMENT.

#### 1. Departments of the Government.

Laws 1927, c. 288 (Mason's Minn. Stat. 1927, §§2558-1 to 2558-4) is valid. 174M305, 219NW172.

Laws 1921, c. 518 (M. S. §1061), does not violate this section. 174M583, 219NW916.

It is no objection to an ordinance for the licensing of open-air automobile parking places that it does not prescribe any standards to control the granting and refusing of licenses. 175M386, 221NW423.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177M146, 225NW86.

Laws 1929, cc. 267, 424, admitting certain disabled veterans and court reporters to the practice of law without examination, violate this article. 178M331, 227NW179; 178M335, 227NW180.

Mason's Stat., §§7688 and 7689, are not unconstitutional as attempting to delegate judicial power to the commissioner of banks. American State Bank of Minneapolis v. J., 184M498, 239NW144.

A statute which attempts to give to the court administrative or legislative powers is unconstitutional. Chicago, M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430. See Dun. Dig. 1592.

Laws 1931, c. 364 (Mason's Minn. Stat., §10723, relating to release of insane, is not invalid for imposing administrative duties upon court. State v. District Court, 185M396, 241NW39. See Dun. Dig. 1592.

Laws 1931, c. 360 (§§5416-5418), relating to bovine tuberculosis testing, does not delegate legislative power in commanding its enforcement by county boards only upon condition of petition from cattle owners. State v. Board of Com'rs, 186M524, 243NW851. See Dun. Dig. 1599.

Rate making is a legislative and not a judicial function. Western Buse Tel. Co. v. N., 248NW220.

Court authorized to admit attorneys to practice has inherent jurisdiction to suspend or disbar them, which power may not be defeated by legislative or executive department. Greathouse, 248NW735. See Dun. Dig. 666, 1587.

Power to admit applicants to practice law is judicial and not legislative, and is vested in courts only, but courts have acquiesced in all reasonable provisions relating to qualifications enacted by legislatures. Greathouse, 248NW735. See Dun. Dig. 1589.

Executive order issued by Governor directing sheriffs to refrain from conducting mortgage foreclosure sales was an attempt to exercise legislative power and not within his power. State v. Moeller, 249NW330.

### Article 4.—THE LEGISLATIVE DEPARTMENT.

#### 1. Two houses—Sessions.

A congressional apportionment act must be submitted to the Governor for his approval. Smiley v. Holm, 285 US355, 52SCR397, rev'g 238NW494. See Dun. Dig. 8901.

In making a congressional apportionment, the state legislature acts exclusively under the U. S. Const. art. 1, §4, and does not act strictly in the discharge of legislative duties as a lawmaking body, but as an agency responding to a federal mandate. State v. Holm, 184M228, 238NW494. See Dun. Dig. 1587.

The majority vote of the Senate and House of Representatives in redistricting the state for congressional purposes under U. S. Const. art. 1, §4, was effectual, though the matter was put in the form of a bill, in

the form of a law. State v. Holm, 184M228, 238NW494. See Dun. Dig. 1587.

Parol evidence is inadmissible to show that a legislative bill was passed at a time other than that stated in the legislative journals. Op. Atty. Gen., May 1, 1931.

March 25, 1933, is the last date for introduction of new bills in either house except on written request of Governor. Op. Atty. Gen., Feb. 16, 1933.

April 19, 1933, is last date to which session of legislature may continue. Op. Atty. Gen., Feb. 16, 1933.

#### 6. Adjournments.

Legal holidays are to be included in computing the three-day period. Op. Atty. Gen., Feb. 9, 1931.

House of Representatives could not legally adjourn in the afternoon of Feb. 11, 1931, until the forenoon of Feb. 16, 1931, without the consent of the Senate, it being immaterial that February 12 is holiday. Op. Atty. Gen., Feb. 10, 1931.

#### 9. Members not to hold certain offices.

State senator cannot hold office of county commissioner, and art. 7, §7, is merely the general rule to which this section creates an exception. 180M246, 230NW637.

Member of legislature cannot occupy position as member of civil service board of Minneapolis. Op. Atty. Gen., June 25, 1929.

A member of the legislature may be appointed as a local appraiser for the department of rural credit. Op. Atty. Gen., Jan. 21, 1930.

State may enter into contracts with members of the legislature for architectural service, consulting engineering service, and construction work. Op. Atty. Gen., May 12, 1931, and May 8, 1931.

Member of the legislature appointed to an office to which he is eligible may become a de facto officer, but does not become a de jure officer upon the termination of his disqualification. Op. Atty. Gen., June 5, 1931.

The office of a member of the 1929 legislature did not terminate until January 1, 1931, and he cannot be eligible to serve as a member of the state building commission created by Laws 1929, c. 301, until January 1, 1932. Op. Atty. Gen., June 5, 1931.

Members of the state legislature are not eligible to serve as members of the state building commission. Op. Atty. Gen., June 5, 1931.

Offices of village attorney and state representative are incompatible. Op. Atty. Gen., Dec. 4, 1931.

Op. Atty. Gen., Apr. 1, 1932; note under §481, statutes.

Member of legislature cannot hold office of director of school board. Op. Atty. Gen., Feb. 27, 1933.

Member of legislature may not be delegated to convention to ratify or revoke Eighteenth Amendment. Op. Atty. Gen., May 5, 1933.

#### 10. Revenue bills to originate in house.

Laws 1933, c. 389, is not unconstitutional as a revenue act originating in senate, though it provides for levy of tax. Op. Atty. Gen., June 7, 1933.

#### 11. Approval of bills by governor—Veto power.

Smiley v. Holm, 285US355, 52SCR397, rev'g 184M228, 238NW494.

In computing the three-day period in which a bill must be returned, Sunday—not holidays—is the only day to be excluded. 172M162, 215NW200.

The requirement that the bill be returned to the house in which it originated does not mean that it must be returned while such house is in session, but the return may be made to the presiding officer, secretary, clerk or to any member of such house. 172M162, 215NW200.

#### 12. Appropriations, how made.

Act appropriating money for conservation, for establishment, maintenance and improvement of state and semi-state activities. Laws 1931, c. 395.

#### 15. Exclusion of convicts from civil rights.

Secretary of state cannot refuse to place name of candidate upon ballot where he files usual affidavit, though he has been advised that candidate served term in federal prison and has not been restored to civil rights. Op. Atty. Gen., May 5, 1932.

#### 17. Vacancies—Contested elections.

Governor may not fill vacancy by appointment. Op. Atty. Gen., Feb. 18, 1933.

#### 22. Bills not to pass on last day of session.

Parol evidence is inadmissible to show that a legislative bill was passed at a time other than that stated in the legislative journals. Op. Atty. Gen., May 1, 1931.

April 18, 1933, is last date upon which bills may be passed by either house. Op. Atty. Gen., Feb. 16, 1933.

If session of legislature is held on Good Friday last day upon which a bill could be passed was April 17, 1933. Op. Atty. Gen., Apr. 12, 1933.

#### 23. Census—Apportionment.

Smiley v. Holm, 285US355, 52SCR397, rev'g 184M228, 238NW494.

The alteration of ward lines in a city by the city council cannot affect the boundaries of legislative districts. Op. Atty. Gen., Mar. 20, 1931.

While the legislature may not undertake to reapportion a part of the state without dealing with the rest of the state, still it may change the boundaries of certain particular legislative districts. Op. Atty. Gen., Mar. 20, 1931.

### 25. Qualifications of members.

One not a resident of a legislative district was not eligible to be elected as a representative from that district. 175M393, 221NW245.

### 27. Laws to embrace but one subject.

The title to the Blue Sky Law (Laws 1925, c. 192) satisfies requirement of this section. 171M191, 213NW904.

The title of Laws 1925, c. 426, "An act in relation to the organization of the state government," satisfies constitutional requirements. 171M191, 213NW904.

Title of Laws 1927, c. 394, does not express the subject of the act in so far as it refers to change of age of consent, and act is ineffective to that extent. 173M221, 217NW108.

Title of Laws 1925, c. 339, is not defective. 173M322, 217NW342.

Laws 1923, c. 226, is properly entitled and does not offend Const. art. 4, §27. 175M305, 221NW113.

Section 10132 applies only to conduct toward male and female persons under 14 years of age, as the amendment of 1927 was invalid as far as it attempted to change ages, in view of insufficiency of title. 176M234, 249, 223 NW98.

The subject of chapter 407, Laws 1925, known as the Forestry Act, is sufficiently expressed in its title. 176 M472, 223NW912.

Mason's Stats., §5547, imposing burden of proof upon possessor of furs of fur-bearing animals did not violate this section. 177M398, 225NW435.

Laws 1929, c. 258, does not embrace more than one subject. 178M244, 226NW842.

The classification of counties by chapter 365, Laws 1929, is sufficiently germane to the object of the act to sustain its constitutionality. *Tousley v. H.*, 182M447, 234NW673. See Dun. Dig. 8920.

"An ordinance relating to disorderly houses and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. *State v. McDow*, 183M115, 235NW637. See Dun. Dig. 6783 (33).

The purpose of Laws 1931, c. 306, §7, is sufficiently indicated in the title of the act. *State v. King*, 184M250, 238NW334. See Dun. Dig. 8920.

Special Laws 1885, c. 175, relating to construction and maintenance of bridges in Mower County, held to have a sufficient title. *State v. County of Mower*, 185M390, 241NW60. See Dun. Dig. 8920.

The police civil service commission law (Laws 1929, c. 299 §§1933-48 to 1933-63) is valid. *Naeseth v. V.*, 185 M526, 242NW6. See Dun. Dig. 8920.

Title to Laws 1931, c. 360, amending Laws 1923, c. 269, held germane to subject-matter. *State v. Board of Com'rs*, 186M524, 243NW851. See Dun. Dig. 8920.

Laws 1931, c. 322 (§§7035-2, 7035-3), attempting by amendment of statute relating to weight, to require sanitary wrapping of bread, violated this section. *Egkevist Bakeries v. B.*, 186M520, 243NW853. See Dun. Dig. 8921.

Mason's Stat., §§4135 to 4137, are not unconstitutional because they apply to both wages and salaries, regulating assignment thereof. *Murphy v. C.*, 187M65, 244NW335. See Dun. Dig. 566, 8920.

Stats., 1927, §§1726-6 to 1726-12, relating to detachment of territory from cities of fourth class, is valid though all of its provisions are not applicable to same cities. *Wesley*, 246NW905. See Dun. Dig. 8910.

To constitute duplicity of subjects, an act must embrace two or more dissimilar and discordant subjects that by no intention can be considered as having any legitimate connection with or relation to each other. *Wesley*, 246NW905. See Dun. Dig. 8910.

Beauty culturists act (§§5846-27 to 5846-47) embraces only one subject. *Luzier Special Formula Laboratories v. M.*, 248NW664.

Title to Laws 1933, c. 339, extending time for redemption from foreclosure of mortgages during economic emergency, contains only one subject. *Blaisdell v. H.*, 249NW334.

Title to chapter 205, Laws 1931, is not objectionable in that it purports to amend two consecutively numbered sections in Mason's Minn. Stat. 1927, said sections covering but one subject. *Sweet v. R.*, 250NW46. See Dun. Dig. 8920.

Laws 1931, c. 382, §§1 and 2, relating to appointment of an assistant attorney general for the division of securities, etc., are invalid as not being embraced within the title of the act. Op. Atty. Gen., July 17, 1931.

Laws 1933, c. 414, amending §2139, Mason's Minn. Stat., is constitutional. Op. Atty. Gen., Sept. 20, 1933.

### 33. Special legislation prohibited.

#### 1. Prior to amendment of 1932.

*State v. Mower County*, 185M390, 241NW60.

#### 2. Subsequent to amendment of 1932.

Laws 1927, c. 147, providing for funding by certain counties of road and bridge indebtedness and issuance of bonds, is valid. 171M312, 213NW914.

State banking corporations are properly placed in a class by themselves for the purpose of legislation and Laws 1926, c. 38, is not class or special legislation. 174 M36, 218NW238.

Laws 1927, c. 288 (Mason's Minn. Stat. 1927, §§2558-1 to 2558-4), is valid. 174M305, 219NW172.

Laws 1913, c. 545, providing that the voters of the district at the annual town meeting may fix the salaries of their school officers in ten town school districts having less than thirty schools and a high school, is constitutional. 175M316, 221NW231.

Laws 1929, cc. 208, 303, relating to certain villages, do not violate this section. 178M337, 227NW41; 178M342, 227 NW202.

Laws 1929, cc. 267, 424, admitting certain disabled veterans and court reporters to the practice of law without examination, violate this section. 178M331, 227NW179; 178M335, 227NW180.

A statute which limits its operation to those who are within its provisions at the time of its passage or within a limited time thereafter is special legislation. 178M335, 227NW180.

Laws 1929, c. 57, relating to firemen's civil service commission in cities of a certain population, held valid. 180M352, 232NW830(2).

Mason's Minn. Stat., §§1726-1 to 1726-5, providing for detachment of lands from a city and school district, held invalid as special legislation. 179M358, 229NW346.

Laws 1929, c. 15, is invalid. 180M44, 230NW115.

A law is general and uniform in its operation if it operates uniformly upon all subjects within a proper class, but the classification must be based on a substantial distinction. 180M44, 230NW115.

Basic Science Act (Mason's Minn. Stat., §5705-1 et seq.), held not invalid because of limitation of operation to certain medical practitioners. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Chapter 67, Laws 1929, permitting the electors of a school district to reimburse its treasurer for moneys paid by him to it on account of loss of school funds in an insolvent bank is valid. 181M523, 233NW802. See Dun. Dig. 1691.

Mason's Stat. 1927, §1726-6 et seq., providing for detachment of farm land from cities, is not unconstitutional as class or special legislation. *Clinton Falls Nursery Co.*, 182M427, 236NW195. See Dun. Dig. 1675, 1692, 6521.

Special Laws 1885, c. 175, relating to the building and maintaining of bridges in Mower County, was not repealed by Laws 1913, c. 235, or Laws 1921, c. 323. *State v. County of Mower*, 185M390, 241NW60.

The legislature may repeal, but cannot extend, amend, or modify any existing special or local law. *State v. County of Mower*, 185M390, 241NW60. See Dun. Dig. 1685, 1688.

Laws 1931, c. 87, requiring counties of certain population to build and maintain all bridges, held special and local legislation. *State v. County of Mower*, 185M390, 241NW60. See Dun. Dig. 1692.

Mason's Minn. Stat., 1931 Supp., §§1933-48 to 1933-63, held not invalid. *Neaseth v. V.*, 185M526, 242NW6. See Dun. Dig. 1691.

Laws 1929, c. 142, amending Laws 1923, c. 129, held constitutional in so far as act relates to highways to be established connecting roads with navigable streams. *County of Becker v. S.*, 186M401, 243NW433. See Dun. Dig. 1691.

Statute fixing compensation of school treasurer is not unconstitutional as special legislation because based upon number of schools within territory. *County Board of Education v. F.*, 186M554, 244NW56. See Dun. Dig. 1691.

Laws 1921, c. 417, fixing \$60 per capita as the maximum tax levy in all school districts in state, is not unconstitutional as special legislation. *Independent School Dist. No. 35 v. B.*, 187M539, 246NW119. See Dun. Dig. 1689.

Laws 1921, c. 292, is valid, though it may apply only to one school district in state. *State v. Brown*, 248NW822.

Laws 1933, c. 339, extending time for redemption from mortgage foreclosure sale is general and not special or class legislation. *Blaisdell v. H.*, 249NW334.

Laws 1921, c. 292, is not unconstitutional as a modification of Special Laws 1866, c. 29, as amended by Special Laws 1889, c. 132. *State v. Brown*, 249NW569. See Dun. Dig. 1685.

Laws 1933, c. 339, permitting extension of time for redemption on mortgage foreclosure, is valid. *Blaisdell v. H.*, 249NW333. See Dun. Dig. 1684.

A special law such as Laws 1864, c. 15, creating Faribault school district, may not be amended as to limits of district or terms or manner of election of officers. Op. Atty. Gen., Jan. 31, 1933.

Special laws may be amended by general legislation. Op. Atty. Gen., Feb. 14, 1933.

Legislature has authority to make special appropriation to county to reimburse it for money paid by county to state which had been lost by closing of county depository. Op. Atty. Gen., Feb. 17, 1933.

Legislature cannot repeal a special or local law in part by a special law. Op. Atty. Gen., Feb. 24, 1933.

Laws 1933, House File No. 55, providing that personal property taxes should not become delinquent, but excepting counties having certain valuation, denies equal protection of laws. Op. Atty. Gen., Feb. 27, 1933.

Laws 1931, c. 212, amending Mason's Minn. Stat. 1927, sec. 10305 by permitting members of village or city councils, town or school boards to designate banks in which they are interested as public depositaries, contravenes this section. Op. Atty. Gen., March 23, 1933.

An act reducing salaries of all public officials except those employed in certain counties would be invalid as special legislation. Op. Atty. Gen., Apr. 21, 1933.

Laws 1933, c. 372, is not invalid as a special law. Op. Atty. Gen., May 3, 1933.

Section does not prohibit general laws relating to affairs of cities. Op. Atty. Gen., Aug. 3, 1933.

Provision in Laws 1933, c. 412, permitting perpetual lease of water dam rights is invalid. Op. Atty. Gen., Aug. 7, 1933.

#### 34. General laws.

Laws 1927, c. 147, providing for funding by certain counties of road and bridge indebtedness and issuance of bonds, is valid. 171M312, 213NW914.

Laws 1929, cc. 208, 303, relating to certain villages, do not violate this section. 178M337, 227NW41; 178M342, 227NW202.

Laws 1929, c. 15, is invalid. 180M44, 230NW115.

A law is general and uniform in its operation if it operates uniformly upon all subjects within a proper class, but the classification must be based on a substantial distinction. 180M44, 230NW115.

Laws 1929, c. 57, relating to firemen's civil service commission in cities of a certain population, held valid. 180M352, 230NW830(2).

Basic Science Act (Mason's Minn. Stat., §5705-1 et seq.), held not invalid because of limitation of operation to certain medical practitioners. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Chapter 67, Laws 1929, permitting the electors of a school district to reimburse its treasurer for moneys paid by him to it on account of loss of school funds in an insolvent bank is valid. 181M533, 233NW802. See Dun. Dig. 1691.

Mason's Stat. 1927, §1726-6 et seq., providing for detachment of agricultural lands from cities, is not unconstitutional as class or special legislation. Clinton Falls Nursery Co., 182M427, 236NW195. See Dun. Dig. 1675, 1692, 6521.

Laws 1931, c. 87, requiring counties of certain population to build and maintain all bridges, held special and local legislation. State v. County of Mower, 185M390, 241NW560. See Dun. Dig. 1683.

Police civil service commission law (Laws 1929, c. 299, [Mason's Minn. Stat. 1931, Supp. §§1933-48 to 1933-63]) is not invalid as lacking uniformity of operation. Naeseth v. V., 185M526, 242NW6. See Dun. Dig. 1683.

Laws 1933, c. 372, is not invalid as a special law. Op. Atty. Gen., May 3, 1933.

Section does not prohibit general laws relating to affairs of cities. Op. Atty. Gen., Aug. 3, 1933.

#### 36. Cities and villages may adopt charters—Classification of cities for legislative purposes.

This section held not to authorize a city to pass an ordinance requiring landowners to sheath-pile excavation so as to protect walls on adjoining property. 172M428, 215NW840.

Provision in home rule charter recognizing validity of municipal contract in which officer is interested is unconstitutional, in view of Mason's Minn. Stat., §10305. Op. Atty. Gen., Feb. 10, 1930.

The validity of a charter provision adopted under this section, held not required to be tried before a court of three judges as required by Mason's Code 28, §380. 32F(2d)748.

Section 6578-1 sufficiently protects landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177M146, 225NW86.

Laws 1929, c. 57, relating to firemen's civil service commission in certain cities, held valid. 180M352, 230NW830(2).

Minneapolis home rule charter, c. 13, §4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. 181M576, 233NW834. See Dun. Dig. 8656.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor, is valid. State v. H., 182M144, 233NW874. See Dun. Dig. 1682.

The legislature by express legislation may supersede or change the provisions of home rule charters. Guaranteed Concrete Co. v. G., 185M454, 241NW588. See Dun. Dig. 1685.

Charter provisions of the city of Ely with respect to condemnation of land outside city are valid. Op. Atty. Gen., June 15, 1931.

Laws 1909, c. 236, providing that a new or revised home rule charter can be submitted in the manner of a new

Charter provisions of the city of Ely with respect to July 31, 1931.

A village may not adopt a charter pursuant to this provision and still remain a village. Op. Atty. Gen., Oct. 14, 1932.

Proposed revision of home rule charter must be published for at least 30 days in three newspapers of general circulation in city or village affected. Op. Atty. Gen., Jan. 12, 1933.

Thirty days' publication of proposed revision of home rule charter must be once each week in weekly papers and daily in daily papers. Op. Atty. Gen., Jan. 12, 1933.

Minimum wage laws for groups of municipal employees would be constitutional. Op. Atty. Gen., Feb. 9, 1933.

The offices of city auditor and poor commissioner of city of Breckenridge would be incompatible. Op. Atty. Gen., Feb. 16, 1933.

Home rule charter city may compel inspection of records of public utilities for rate making purposes. Op. Atty. Gen., Apr. 21, 1933.

Neither charter commission nor city council have authority to revise or supervise charter amendments presented to commission by petition, and courts have no jurisdiction to determine constitutionality until electors have acted. Op. Atty. Gen., Aug. 25, 1933.

Right of city of fourth class operating under home rule charter to abandon the same and thereafter be governed by general law is an open question in this state. Op. Atty. Gen., Oct. 2, 1933.

#### Curative Act.

Laws 1929, c. 40, legalizes certain appropriations made by cities of the first class for promoting industrial and commercial development.

For validation of bonds authorized by vote on a proposition providing for the issuance of an aggregate for two or more distinct improvements, see Laws 1929, c. 112; Laws 1929, c. 125.

Port Authority created for cities of over 50,000 population. See Laws 1929, c. 61.

Airports. See Laws 1929, c. 125; c. 217; c. 379.

Act relating to certain charter elections held under this section. Laws 1931, c. 145.

Act legalizing conveyances of city of fourth class operating under home rule charter pursuant to this section. Laws 1931, c. 361.

### Article 5.—THE EXECUTIVE DEPARTMENT.

#### 4. Powers and duties of governor.

Vacancy in office of village justice is to be filled by village council. Op. Atty. Gen., Dec. 20, 1929.

Powers of pardon board extend only to offenses against the state, and do not apply to municipal ordinances. Op. Atty. Gen., Apr. 8, 1931.

#### 8. Oath of office.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

### Article 6.—THE JUDICIARY.

#### 1. Courts.

Martin v. M., 247NF515; note under art. 6, §7. Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177M146, 225NW86.

Mason's Stat., §§7688 and 7689 are not unconstitutional as attempting to delegate judicial power to the commissioner of banks. American State Bank of Minneapolis v. J., 184M498, 239NW144.

Probate judge must keep record of proceedings in insanity and juvenile matters. Op. Atty. Gen., Mar. 27, 1933.

2. Supreme Court.—The supreme court shall consist of one chief justice and six associate justices. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court. It shall hold one or more terms in each year, as the legislature may direct, at the seat of government, and the legislature may provide, by a two-thirds vote, that one term in each year shall be held in each or any judicial district. It shall be the duty of such court to appoint a reporter of its decisions. There shall be chosen, by the qualified electors of the state, one clerk of the supreme court, who shall hold his office for the term of four years, and until his successor is duly elected and qualified; and the judges of the supreme court, or a majority of them, shall have the power to fill any vacancy in the office of clerk of the supreme court until an election can be regularly had.

Amendment proposed by Laws 1929, c. 430. Adopted at election held Nov. 4, 1930. Promulgated Nov. 20, 1930. A violation of a city ordinance is an offense against the city and a right of appeal may be denied. 175M222, 220NW611.

Judicial power of supreme court has its origin in constitution, but it came into existence with inherent power to protect itself and make rules of practice. Great-house, 248NW735. See Dun. Dig. 1587.

#### 4. Judicial districts—District court judges.

Legislature may impose limitations upon the manner in which district judges shall exercise their judicial power. 173M271, 217NW351.

Op. Atty. Gen., Nov. 9, 1929; note under Const. art. 6, §12.

#### 5. Jurisdiction of district courts.

District court had no jurisdiction to suspend a criminal judgment of a justice of the peace where no appeal had been taken and time therefor had expired at the time of application for suspension. Op. Atty. Gen., Jan. 12, 1932.

#### 6. Jurisdiction of district courts.

A violation of a city ordinance is an offense against the city and a right of appeal may be denied. 175M222, 220NW611.

Municipal judges need not be attorneys. Op. Atty. Gen., Feb. 9, 1933.

#### 7. Probate courts.

District court has right to determine title to homestead pending proceeding in probate court to administer estate of decedent. 171M182, 213NW736.

The probate court has authority to direct guardians of minors and incompetent persons to require bonds to secure deposits of funds of their wards in banks. 176M541, 224W152.

The presentation of a claim by the guardian in probate court against the estate of his deceased ward, after his final account as guardian had been settled, whereby the guardian seeks to recover compensation for services rendered to his ward in addition to the allowance made to him for services in the order settling his account, is a collateral attack on such order. Trapp v. T., 182M537, 235NW29. See Dun. Dig. 4125a(21).

An order duly made by the probate court settling the final account of a guardian is conclusive on the guardian, and cannot be attacked collaterally by him. Trapp v. T., 182M537, 235NW29. See Dun. Dig. 4125a(21).

Proof of an understanding or agreement of the parties that plaintiff's claim need not be included in the guardian's account would be permissible only in a direct attack upon the order of the probate court settling the account. Trapp v. T., 182M537, 235NW29. See Dun. Dig. 4125a(21).

The probate court has jurisdiction to order co-administrators to hold and distribute estate funds jointly. Wilson v. S., 183M374, 236NW701. See Dun. Dig. 7771, 7778.

When a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court. In re Martinson, 184M29, 237NW596. See Dun. Dig. 99.

Probate court has power to hear and determine applications for restoration to capacity by patients in insane hospitals. State v. O'Brien, 186M432, 243NW434. See Dun. Dig. 4528.

A conflict between probate courts of two counties as to which shall exercise jurisdiction over the estate of a person deceased held a question of venue rather than jurisdiction. Martin v. M., 247NW515. See Dun. Dig. 7773 (94).

Jurisdiction of a probate court over an estate, once properly invoked, precludes subsequent exercise of jurisdiction over same matter by another probate court, unless and until first proceeding is dismissed or discontinued. Id.

Dependent, neglected, or delinquent children are proper subjects to be placed under guardianship by the probate court. State v. Patterson, 247NW573, 249NW187. See Dun. Dig. 1646.

District court has no jurisdiction to enjoin administrator from selling land under license of probate court. Mundinger v. B., 248NW47. See Dun. Dig. 7770c.

Probate judge must keep record of proceedings in insanity and juvenile matters. Op. Atty. Gen., Mar. 27, 1933.

Legislature cannot consolidate offices of judge of probate or clerk of district court with other elective offices because such offices are created by the constitution. Op. Atty. Gen., Apr. 3, 1933.

#### 8. Justices of the peace.

Justice of the peace in Golden Valley has no jurisdiction of an offense committed in Minneapolis by waiver or otherwise. 174M608, 219NW452.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100 or by imprisonment in excess of three months. State ex rel. v. Morical, 182M368, 234NW453. See Dun. Dig. 6900b(63).

Vacancies in offices of village justices created by Laws 1929, c. 413. Op. Atty. Gen., Dec. 20, 1929.

If there is no special act of the legislature requiring justices, a particular city may abolish the office on drafting a home rule charter. Op. Atty. Gen., Oct. 3, 1931.

A constable is not a constitutional officer, and city charter may abolish the office. Op. Atty. Gen., Oct. 3, 1931.

Office of defeated justice of the peace is vacant where newly elected justice is not qualified and old justice does not hold over. Op. Atty. Gen., Feb. 3, 1933.

Justices of the peace and municipal courts have jurisdiction for violations of liquor laws under Laws 1933, c. 115, §3. Op. Atty. Gen., Apr. 12, 1933.

#### 10. Vacancies.

Provision in Mason's Stat. 1927, §217, for filling of vacancy by appointment "for the unexpired term" conflicts with this section. Op. Atty. Gen., May 23, 1929.

Vacancies in office of village justice are to be filled by village council. Op. Atty. Gen., Dec. 20, 1929.

Where judge of district court resigns after primary, but more than thirty days before November general election, his position should be filled by voters at general election. Op. Atty. Gen., May 11, 1932.

Where judicial district has two judges and only one is nominated at primary, but other judge resigns before November general election, candidates nominated at primary may run only for single district judgeship, and other position should be voted upon separately. Op. Atty. Gen., May 11, 1932.

Municipal court judge appointed by governor to fill vacancy under Mason's Stats., 1929, §217, only holds office until next general election and not for full term of predecessor. Op. Atty. Gen., Oct. 14, 1933.

#### 12. Change of judicial districts.

Legislature in rearranging judicial districts cannot vacate the office of any judge, but such judge may be assigned to a certain district even be filled by village council. Op. Atty. Gen., Nov. 9, 1929.

#### 13. Clerk of district court.

Op. Atty. Gen., Apr. 3, 1933; note under §7 of this article.

#### 14. Pleadings—Process—Conclusion of indictments.

District court rule permitting objections to language of closing arguments to be seasonably taken at close thereof, is reasonable. Jovaag v. O., 249NW676. See Dun. Dig. 2773.

### Article 7.—ELECTIVE FRANCHISE.

#### 1. Persons entitled to vote.

If Mason's Minn. Stat., §839, be construed as requiring a county commissioner, who is a candidate for the office of county treasurer, to resign his office before the primary election, it is unconstitutional. Op. Atty. Gen., Mar. 22, 1930.

The right to vote should not be denied on account of mere technicalities, such as the failure to designate a polling place and election officers. Op. Atty. Gen., May 22, 1930.

Blank lines should be provided below the names of candidates in elections under §§1805 to 1811. Op. Atty. Gen., Dec. 2, 1930.

Persons moving from one precinct to another in a city less than thirty days before any election cannot vote at such election. Op. Atty. Gen., Mar. 31, 1930.

Op. Atty. Gen., Mar. 29, 1932; note under §2.

Non-resident cannot be employed as village marshal. Op. Atty. Gen., June 6, 1932.

Otherwise qualified elector could sign referendum petition under Albert Lea Home Rule Charter, §40, notwithstanding that he was not registered pursuant to permanent registration act. Op. Atty. Gen., Sept. 17, 1932.

A bill which in effect would prohibit "sticker" candidates at a general election if such candidates had been defeated at the primary election, contravenes this section. Op. Atty. Gen., Feb. 4, 1933.

One defeated in primary cannot be prohibited by legislative act from running as sticker candidate at general election. Op. Atty. Gen., Feb. 4, 1933.

American woman marrying an alien and residing in this country after September 22, 1922, is a citizen and may vote unless she renounced such citizenship. Op. Atty. Gen., Mar. 10, 1933.

Thirty days' residence does not mean continuous presence every day during 30-day period. Op. Atty. Gen., May 20, 1933.

Indians who may vote at township election. Op. Atty. Gen., Mar. 27, 1933.

#### 2. Persons not entitled to vote.

Person confined in jail for a misdemeanor may cast his ballot under the absent voters' law. Op. Atty. Gen., May 31, 1930.

A guardianship of the estate, as distinguished from guardianship of the person, disqualifies from voting. Op. Atty. Gen., July 3, 1930.

Person convicted in federal court cannot vote or hold office. Op. Atty. Gen., Apr. 3, 1930; Apr. 21, 1930.

One not adjudged insane or mentally incompetent by the court is entitled to vote, notwithstanding that his property might be subject to the control of a guardian. Op. Atty. Gen., Mar. 18, 1931.

One pleading guilty to felony, but not sentenced or had judgment passed upon him, is entitled to vote. Op. Atty. Gen., Mar. 29, 1932.

Secretary of State cannot refuse to place name of candidate upon ballot where he files usual affidavit, though he has been advised that candidate served term in federal prison and has not been restored to civil rights. Op. Atty. Gen., May 5, 1932.

A resident of Minnesota imprisoned in the reformatory for a felony continues to be a resident of Minnesota but is not a citizen until restored as provided in §§10772 and 10773. Op. Atty. Gen., Apr. 7, 1933.

Felony committed in state against a federal law has same effect on criminals' right to vote and hold office as violation of a state law. Op. Atty. Gen., May 2, 1933.

A federal mail fraud is a felony, but conviction results only in loss of right to vote, and not loss of citizenship. Op. Atty. Gen., May 11, 1933.

### 3. Residence not lost.

Person confined in jail for misdemeanor may cast his ballot under the absent voters' law. Op. Atty. Gen., May 31, 1930.

Op. Atty. Gen., Apr. 7, 1933; note under §2 of this article.

If a person has not lost his residence for purposes of voting, he has not lost his residence for purpose of hospitalization for insanity. Op. Atty. Gen., May 11, 1933.

### 4. Soldiers and sailors.

The Motor Vehicle Registration Tax Law, held valid and applicable to vehicles owned by members of the military forces of the United States residing on the Fort Snelling military reservation and using the highways of the state for their personal business and pleasure. 283 US57, 51SCR354, aff'g 180M281, 230NW572. See Dun. Dig. 4167a, 9576d.

### 7. Eligibility to office.

Office of county attorney and member of conservation commission are not incompatible. See §925-1.

Offices of county commissioner and treasurer of school district are incompatible. 157M263, 196NW467.

Art. 4, §9, creates an exception to this section. State ex rel. v. Erickson, 180M246, 230NW637.

Offices of county commissioner and court bailiff (deputy sheriff) are incompatible. Op. Atty. Gen., Dec. 31, 1930.

Offices of county surveyor and county highway engineer are incompatible. Op. Atty. Gen., Jan. 10, 1930.

The office of member of state live stock sanitary board and the office of member of state fair board of managers are not incompatible. Op. Atty. Gen., Jan. 13, 1930.

The office of deputy clerk of the district court and the office of court commissioner are not incompatible. Op. Atty. Gen., Jan. 31, 1930.

The office of city attorney and that of judge of probate are not incompatible. Op. Atty. Gen., Mar. 7, 1930.

If Mason's Minn. Stat., §339, be construed as requiring a county commissioner who is a candidate for the office of county treasurer to resign his office before the primary election, it is unconstitutional. Op. Atty. Gen., Mar. 22, 1930.

The office of village recorder is incompatible with that of county auditor. Op. Atty. Gen., Apr. 16, 1930.

The office of justice of the peace and the office of guard at the state reformatory are not incompatible. Op. Atty. Gen., May 7, 1930.

Blank lines should be provided below the names of candidates in elections under §§1805 to 1811. Op. Atty. Gen., Dec. 2, 1930.

Office of member of school board and that of mayor or member of city council are not, as a matter of law, incompatible, but the holding of the two offices might be embarrassing in case of contract between school board and city council. Op. Atty. Gen., Dec. 27, 1930.

Person convicted in federal court cannot vote or hold office. Op. Atty. Gen., Apr. 3, 1930; Apr. 21, 1930.

Offices of village marshal and street commissioner are not incompatible. Op. Atty. Gen., Feb. 25, 1931.

House File No. 1122, providing that any officer having alcoholic beverages in his possession shall forfeit his office, would be unconstitutional if passed. Op. Atty. Gen., Mar. 30, 1931.

Office of judge of municipal court organized under Laws 1895, c. 229, §34, is not incompatible with office of member of school board of an independent school district. Op. Atty. Gen., Apr. 15, 1931.

Offices of city attorney and member of board of regents of state university are not incompatible. Op. Atty. Gen., Apr. 27, 1931.

Offices of county attorney and city or village attorney of a municipality within the county are incompatible, but a city or village may employ a county attorney on a specific case which does not affect the county. Op. Atty. Gen., May 7, 1931.

A county commissioner, or any other county officer, may accept employment from a school board as driver of a school bus. Op. Atty. Gen., July 15, 1931.

Op. Atty. Gen., Mar. 29, 1932; note under art. 7, §2. Op. Atty. Gen., May 5, 1932; note under art. 7, §2.

Janitor of a school may also be employed as a state boiler inspector. Op. Atty. Gen., Aug. 18, 1931.

The offices of justice of the peace and town supervisor are incompatible. Op. Atty. Gen., Sept. 11, 1931.

Offices of village attorney and state representative are incompatible. Op. Atty. Gen., Dec. 4, 1931.

The offices of village trustee and village assessor are incompatible. Op. Atty. Gen., Dec. 19, 1931.

Member of water, light and power commission of a village may also hold village office of justice of the peace. Op. Atty. Gen., Feb. 11, 1932.

Office of village treasurer and that of street commissioner are not incompatible. Op. Atty. Gen., Apr. 5, 1932.

Offices of police officer and manager of waterworks of village of Swanville are compatible with elective office of village assessor. Op. Atty. Gen., Apr. 7, 1932.

Justice of peace may hold also office of city assessor. Op. Atty. Gen., Apr. 18, 1932.

County commissioner may also hold office of district boiler inspector. Op. Atty. Gen., May 27, 1932.

Same person may hold offices of county coroner and member of school board in independent school district. Op. Atty. Gen., June 27, 1932.

Offices of member of city council and school board are incompatible where city furnishes water to school district at rate fixed by city council. Op. Atty. Gen., July 15, 1932.

Offices of game warden and constable are not incompatible. Op. Atty. Gen., Aug. 25, 1932. See Dun. Dig. 7995.

Op. Atty. Gen., Feb. 4, 1933; note under §1 of this article.

Offices of county commissioner and town clerk are incompatible. Op. Atty. Gen., Jan. 6, 1933.

The offices of city auditor and poor commissioner of city of Breckenridge would be incompatible. Op. Atty. Gen., Feb. 16, 1933.

One defeated in primary cannot be prohibited by legislative act from running as sticker candidate at general election. Op. Atty. Gen., Feb. 4, 1933.

Special municipal judge need not resign before becoming candidate for regular position as municipal judge. Op. Atty. Gen., Mar. 25, 1933.

Offices of justice of the peace and city clerk are not incompatible where the city clerk is not a member of the city council. Op. Atty. Gen., Apr. 17, 1933.

Office of justice of peace is not incompatible with office of city clerk where city clerk is not member of city council. Op. Atty. Gen., Apr. 17, 1933.

Where government of city and government of school district are separate in all things, office of city attorney and member of school board are not incompatible. Op. Atty. Gen., Apr. 25, 1933.

Offices of constable and councilman of Le Sueur are incompatible. Op. Atty. Gen., May 1, 1933; May 9, 1933.

Felony committed in state against a federal law has same effect on criminals' right to vote and hold office as violation of a state law. Op. Atty. Gen., May 2, 1933.

A federal mail fraud is a felony, but conviction results only in loss of right to vote, and not loss of citizenship. Op. Atty. Gen., May 11, 1933.

One having home in village may be resident entitled to hold office of councilman, though he has a home in another city where he stays most of the year, it being a matter of intent. Op. Atty. Gen., July 12, 1933.

Offices of town supervisor and school director are not incompatible. Op. Atty. Gen., July 14, 1933.

Offices of alderman and constable are incompatible. Op. Atty. Gen., May 9, 1933.

Offices of special municipal judge and school director are not incompatible. Op. Atty. Gen., Aug. 1, 1933.

Positions of member of library board and member of school board are not incompatible. Op. Atty. Gen., Aug. 1, 1933.

Contractor and city engineer's supervisor are incompatible. Op. Atty. Gen., Oct. 4, 1933.

### 9. Official year—Terms of office—General elections.

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of January following such election. State v. Borgen, 248NW744.

## Article 8.—SCHOOL FUNDS, EDUCATION AND SCIENCE.

### 1. Uniform system of public schools.

Minneapolis home rule charter, c. 13, §4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. 181M576, 233NW834. See Dun. Dig. 8656.

### 2. School and swamp lands—School funds from sale of.

Adoption by constitutional amendment, of an existing statutory method of appraisal and sale of state land, included whole scheme, terms of sale, form of certificate of sale, and rights thereby conferred on purchaser. State v. Finnegan, 246NW521. See Dun. Dig. 1576, 7964.

Laws 1931, c. 186 [Mason's 1931 Supp., §53-23½, et seq.], creating a department of conservation and transferring functions of state auditor, is valid. *State v. Finnegan*, 246NW521. See Dun. Dig. 8846d.

Provision in Laws 1933, c. 412, permitting perpetual lease of water dam rights is invalid. *Op. Atty. Gen.*, Aug. 7, 1933.

### 3. Public schools in each township—No appropriation for sectarian schools.

Requiring the reading of the Old Testament in every school room, but permitting the pupils to absent themselves during the reading, does not infringe this provision. 171M142, 214NW18.

Minneapolis home rule charter, c. 13, §4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. 181M576, 233NW834. See Dun. Dig. 8656.

Independent school districts cannot levy taxes for support of parochial schools. *Op. Atty. Gen.*, Sept. 30, 1933.

### 4. University of Minnesota.

The board of regents, in the management of the University, is constitutionally independent of all other executive authority, and Laws 1925, c. 426, is unconstitutional insofar as it attempts to subject the control of University finances to the commission of administration and finance, in view of Laws 1851, c. 3. 175M259, 220NW951.

The Constitution vests the government of the University of Minnesota in the board of regents, following *State v. Chase*, 175M259, 220NW951; and in the exercise of its granted power of government, so long as it keeps within the limits of its grant, it is not subject to legislative or executive interference or judicial control at the suit of a taxpayer. *Fanning v. U. of M.*, 183M222, 236NW217. See Dun. Dig. 8694.

In the exercise of its power of government, the board of regents may construct a dormitory upon the University campus without legislative authority. *Fanning v. U. of M.*, 183M222, 236NW217. See Dun. Dig. 8694.

University may insure property against fire and tornado regardless of legislative action, if premiums are not paid out of legislative appropriations. *Op. Atty. Gen.*, Nov. 4, 1929.

Order of industrial commission requesting changes in nurses' home on University campus for fire protection purposes is of no legal effect. *Op. Atty. Gen.*, May 26, 1933.

### 6. Investment of school funds.

Act to legalize real estate mortgages made to school district trustees. Laws 1931, c. 230.

### 8. Exchange of public lands [Proposed].

Laws 1929, c. 431, proposes an amendment to this article to authorize exchange of public lands of the state for lands of the United States. Proposed amendment defeated at election.

Laws 1931, c. 417, proposes an amendment by adding a §8 to art. 8, relating to exchange of lands with the United States, the proposal to be submitted at the general election in 1932.

Proposed as amendment to be voted on at general election 1934. Laws 1933, c. 443.

## Article 9.—FINANCES OF THE STATE AND BANKS AND BANKING.

### 1. Power of taxation.

Laws 1931, c. 420, proposes amendment relating to taxation of national banks and income and franchise taxes, to be submitted at general election in 1932.

Proposed amendment to be voted on at general election 1934. Laws 1933, cc. 442, 444.

Rule of assessment properly ignoring both use and value was condemned because it adopted a combination of factors of frontage and depth in such fashion as to cause discrimination in favor of undivided lots. *Third Street Widening*, 184M170, 240NW355. See Dun. Dig. 6860.

Laws 1931, c. 420, proposing an amendment to constitution to extend scope of taxation, held not multifarious. *Winget v. H.*, 187M78, 244NW331. See Dun. Dig. 1571.

Buildings owned by a city upon leased land are exempt from taxation though the land is not. *Op. Atty. Gen.*, July 30, 1931.

Where University leases land to faculty members under long term leases to be used for dwellings constructed by the lessee, the leasehold interest and the buildings are taxable as real estate. *Op. Atty. Gen.*, Nov. 27, 1931.

A church building upon real estate owned by a non-exempt person is exempt from taxation. *Op. Atty. Gen.*, Dec. 24, 1931.

#### 1. In general.

174M509, 219NW872.

The term "Church Property" has reference to the use of the property for the purposes of the church organization, and where a lot and dwelling owned by a church is rented for dwelling purposes and the rental used by the church in support of its religious exercises, it is not exempt from taxation. 173M40, 216NW326.

City ordinance requiring license fee of \$100 per year be paid for the operation of a gasoline filling station, held unreasonable and invalid. 177M539, 225NW904.

Laws 1929, c. 258, establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226NW633.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. In re *Lands Polk Co.*, 182M437, 234NW691. See Dun. Dig. 9151a.

Property purchased by a church as a site for new church buildings is exempt at least from time architect is employed to prepare plans. *State v. Second Church of Christ, Scientist*, 185M242, 240NW532. See Dun. Dig. 9152.

Fact that church purchasing site for new buildings receives some small incidental revenue from the property was not sufficient ground for denying tax exemption. *State v. Second Church of Christ, Scientist*, 185M242, 240NW532.

To render property exempt it must not only be used for a charitable purpose but it must be held by an institution of purely public charity. A trust instrument devoting certain lands to use as a summer camp for various children's organizations, held not obligatory so as to render the land exempt from taxation. *Op. Atty. Gen.*, May 19, 1930.

Property used by a church for Sunday school classes, for doing social work, and for the publication of a church paper, held exempt. *Op. Atty. Gen.*, May 20, 1930.

Bonds and notes given by a church for money borrowed by it are not exempt in the hands of investors. *Op. Atty. Gen.*, June 16, 1930.

Whether houses and lots occupied by employees of Carleton college as a part of their compensation are exempt is a question of fact dependent on the necessity of the college furnishing the residences in order to operate the institution. *Op. Atty. Gen.*, July 7, 1930.

Land owned and used by Boy Scouts of America is not exempt from taxation. *Op. Atty. Gen.*, Aug. 11, 1930.

Property of Young Men's Christian Association used for boys' camp is not exempt from taxation. *Op. Atty. Gen.*, Aug. 11, 1930.

State may adopt an income tax law without constitutional amendment. *Op. Atty. Gen.*, Feb. 17, 1931.

Property purchased by an institution under a contract for a deed is not exempt from taxation. *Op. Atty. Gen.*, July 20, 1931.

Hospital held not exempt from taxation. *Op. Atty. Gen.*, Mar. 11, 1933.

### 2. Special assessments—173M67, 216NW607.

A corner lot may be assessed for a sewer on two sides. *Op. Atty. Gen.*, Apr. 15, 1931.

City of Austin under its charter could not re-surface a paved street and pay for it out of the general fund, but must assess the cost against property benefited. *Op. Atty. Gen.*, Apr. 28, 1931.

Constitutional exemption of church property from taxation has no application to special assessments for local improvements. *Op. Atty. Gen.*, Sept. 21, 1932. See Dun. Dig. 9151.

Constitutional exemption of church property from taxation has no effect upon manner of collection of special assessments which are to be collected in same manner as against real estate generally. *Op. Atty. Gen.*, Sept. 21, 1932.

### 4. Equality and uniformity.

A co-operative telephone company may be exempted from paying gross earnings tax and being taxed according to number of telephones in use. *Op. Atty. Gen.*, Mar. 17, 1933.

Gross earnings tax on telephone companies may be graduated according to size of incomes. *Op. Atty. Gen.*, Mar. 17, 1933.

### 5. Classification—Uniformity.

Laws 1927, c. 228 (Mason's Minn. Stat. 1927, §§2558-1 to 2558-4) is valid. 174M305, 219NW172.

Tax imposed by Laws 1923, c. 226, not invalid. 175M305, 221NW13.

Laws 1929, c. 361, excepting from the operation of the gross earnings tax on express companies the license tax on vehicles using the highways, held unconstitutional. 180M268, 230NW815.

Laws 1921, c. 417, fixing \$60 per capita as maximum tax levy in all school districts, is not unconstitutional because population may be determined from last federal census or by special local census. *Independent School Dist. No. 35 v. B.*, 187M539, 246NW119. See Dun. Dig. 1680.

Requirement of equality and uniformity does not demand an impossible nicety of exactness. *Independent School Dist. No. 35 v. B.*, 187M539, 246NW119. See Dun. Dig. 9140.

Chapter 58, Laws 1931 [Mason's Supp., 1931, §2674], relating to the taxation of automobiles of dealers in new and unused motor vehicles, is valid, and does not offend any constitutional provision. *City of Minneapolis v. A.*, 246NW660. See Dun. Dig. 9143.

Legislature has power to enact a graduated progressive income tax without constitutional amendment. *Op. Atty. Gen.*, Feb. 25, 1933.

An act exempting rural telephone company not organized or operated for profits, from payment of gross earnings tax, would not violate this section. *Op. Atty. Gen.*, Mar. 7, 1933.

Laws 1933, c. 356, relating to taxation of agricultural lands in independent districts, is valid. Op. Atty. Gen., July 17, 1933.

#### 6. Income tax.

Provision may legally be inserted in a statutory income tax statute, taking incomes of officers and employees of state municipalities. Op. Atty. Gen., Mar. 6, 1933.

#### 7. Gross earnings.

A gross earnings tax may validly be imposed on owners of radio broadcasting stations in lieu of other taxes. Op. Atty. Gen., Mar. 3, 1933.

### 3. Property subject to taxation.

#### 1. In general

Legislature has power to enact a graduated progressive income tax law without constitutional amendment. Op. Atty. Gen., Feb. 25, 1933.

**5. Public debt; gasoline tax; disposition of proceeds.**—For the purpose of defraying extraordinary expenditures, the state may contract public debts, but such debts shall never, in the aggregate, exceed two hundred and fifty thousand dollars; every such debt shall be authorized by law, for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the Legislature, to be recorded by yeas and nays on the journals of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt, and also a tax sufficient to pay the principal of such debt within ten years from the final passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation and taxes shall not be repealed, postponed, or diminished, until the principal and interest of such debt shall have been wholly paid. The state shall never contract any debts for works of internal improvements, or be a party in carrying on such works, except as authorized by Section 16 of Article 9, and by Article 16 of this Constitution, but it may levy an excise tax upon any substance, material, fluid, force or other means or instrumentality, or the business of dealing in, selling or producing any or all thereof, used or useful, in producing or generating power for propelling motor or other vehicles used on the public highways of this state, and shall place two-thirds of the proceeds of such tax in the trunk highway fund provided for in Section 2 of said Article 16, and one-third thereof in the state road and bridge fund, and further except in cases where grants of land or other property shall have been made to the state, especially dedicated by the grant to specific purposes, and in such cases the state shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

Proposed amendment (Mason's Statutes 1927, pp. XLI, XLII) adopted November 6, 1928. Promulgated Dec. 20, 1928.

For act relating to use of money accruing from tax imposed on use of gasoline, see Laws 1929, c. 283 (§§2720-88 to 2720-99).

Laws 1919, c. 341, as amended by Laws 1921, c. 109 (§§5604-5609), does not contravene the constitutional provision forbidding the state to engage in works of internal improvement. 173M559, 218NW123.

Laws 1929, c. 258 (§§5620-1 to 5620-13), establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226 NW633.

Laws 1933, c. 389, authorizing purchase by state of bonds of municipalities, is not invalid as lending of state's credit. Op. Atty. Gen., June 7, 1933.

#### 6. Bonds for public debt.

Laws 1929, c. 258 (§§5620-1 to 5620-13), establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226 NW633.

#### 8. Application of loans.

Laws 1929, c. 265 (§§3036-10 to 3036-16), held to violate this section because of the attempt to divert interest received from rural credit loans to the aid of school districts. State ex rel v. Sageng, 182M665, 235NW380. See Dun. Dig. 8848.

Board of Regents of the University may appropriate net earnings of the dormitory and pledge rentals and earnings to the payment of money advanced for dormitory construction and undertake that they shall be so applied, and may evidence its pledge by bonds. Fanning v. U. of M., 183M222, 236NW217. See Dun. Dig. 8694.

### 10. State credit not to be loaned.

Laws 1931, c. 419, proposes amendment authorizing taxation of lands acquired through operation of rural credit system, to be submitted at general election in 1932.

Proposed amendment to be voted on at general election 1934. Laws 1933, c. 441.

Laws extra sess. 1919, c. 35 (§§125, 126), does not authorize the State Board of Relief to take a note for seed grain furnished by the state to a farmer without such grain or means to procure it, because of the excessive floods which occurred in Marshall County in 1919, and hence is valid. 172M344, 215NW510.

Laws 1929, c. 258 (§§5620-1 to 5620-13), establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226 NW633.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. In re Lands Polk Co., 182M437, 234NW691. See Dun. Dig. 8848.

### 12. State and school funds.

Where city treasurer has made deposits in excess of collateral securities given by bank in lieu of a depository bond under §1973-1, city did not have a preferred claim on the theory that the over-deposit was a criminal offense. 172M324, 215NW174.

Const., art. 9, §12, is not self-executing, and what are "suitable laws" is a legislative question. 174M286, 219 NW163.

The rigid rule making absolute the liability of a school district treasurer for school funds may be relaxed by the Legislature. State ex rel v. Kaml, 181M523, 233NW802. See Dun. Dig. 8678(58).

### 13. Banking law.

#### (3).

Liability of stockholders in state banks. Bank of D. v. M., 183M127, 235NW914. See Dun. Dig. 796(83).

### 16. State road and bridge fund.

Laws 1933, c. 325, amending Laws 1929, c. 283 [1931 Supp., §§2720-93, 2720-94], by authorizing, and in certain cases compelling, use of money distributed to counties from gasoline taxes, for payment of county road or bridge bonds, is valid. Op. Atty. Gen., Mar. 29, 1933.

## Article 10.—CORPORATIONS HAVING NO BANKING PRIVILEGES.

**3. Liability of stockholders.**—The Legislature shall have power from time to time to provide for, limit and otherwise regulate the liability of stockholders or members of corporations and co-operative corporations or associations, however organized. Provided every stockholder in a banking or trust corporation or association shall be individually liable in an amount equal to the amount of stock owned by him for all debts of such corporation contracted prior to any transfer of such stock and such individual liability shall continue for one year after any transfer of such stock and the entry thereof on the books of the corporation or association.

Amendment proposed by Laws 1929, c. 429, adopted at election held Nov. 4, 1930. Promulgated Nov. 24, 1930.

Act prescribing liability of stockholders under this section: Laws 1931, c. 210 (§§7465-1, 7465-2).

32F(2d)665, 180M250, 230NW645(2).  
Commissioner of banks was authorized to enforce the individual liability of stockholders, and to attach property held in trust for stockholders. 172M83, 214NW771.

Laws 1925, c. 333, authorizing corporations to issue non par stock, does not contravene Const., art. 10, §3. 172M303, 215NW185.

Where increase of stock was invalid, there was no double liability as to the increase. 172M334, 215NW428.

The test as to whether a Minnesota corporation is authorized to do an exclusively manufacturing business so that its stockholders are not subject to a double liability, is whether, under its articles of incorporation, the corporation can maintain the right to conduct other than a manufacturing business against the objection of the state or dissenting stockholders. 172M394, 215NW521.

Exploring for iron and other ores, and dealing in mineral lands as an incident, is not a "manufacturing business" nor so closely related to manufacturing as to be incidental thereto. The articles of incorporation in this case held to permit the defendant corporation to engage in other than a manufacturing business or a mechanical business incidental thereto, and its stockholders are subject to double liability. 173M1, 216NW325.

The superadded liability is contractual in its nature and is assumed by one becoming a stockholder. 173M603, 218NW121.

The provision for a superadded stockholder's liability creates a substantive right, enforceable in any court of competent jurisdiction as an incident of a receivership. 173M603, 218NW121.

A federal court has jurisdiction to empower a receiver of a Minnesota corporation appointed by it to institute actions in state court to enforce constitutional liability, using the remedy provided by state statute. 173M603, 218NW121.

Stockholder cannot offset corporation's indebtedness to him. 174M387, 219NW452.

Provision in Mason's Stat., §7836, for forfeiting and retiring stock of offending stockholder does not free him from double liability. 174M427, 219NW466.

The creditors may waive right to resort to constitutional liability of stockholders and such defense is not determined by the order of assessment, but may be interposed when the receiver brings suit. 175M44, 219NW945.

A voluntary composition agreement between a corporation and its creditors, whereby the corporation transfers all of its property in consideration of being released from all liability on the amounts owing the creditors, waives and releases the constitutional liability of the stockholders. 175M382, 221NW426.

Stockholders were not liable where manufacturing corporation was converted into a mercantile corporation by amendment of the charter. 176M588, 224NW245.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent and may resort to stockholders' double liability. 177M72, 224NW454.

Court acquired jurisdiction to assess stockholders of insolvent co-operative corporation, even though there was an obvious misprint of the year in the published notice of hearing and no proper proof of personal service of notice. 177M211, 225NW22(2).

Defense that judgment upon which sequestration proceeding was based, was obtained by fraud or collusion, cannot be set up in action to collect assessment. 177M526, 225NW649.

One who was a director of a certain company, was estopped to claim that he was induced through deceit to accept stock in the company and believed that he was stockholder in another company with a similar name. 178M9, 225NW927.

No rights arose in receiver in sequestration proceedings from the fact that corporation issued stock to stockholders as security for a loan, there being no creditor whose claim did not come into existence until after the corporation gave its notes for and canceled the stock. 178M179, 226NW513.

A corporation may buy and sell its own shares provided it does so in good faith without intent to injure and without in fact injuring its creditors. 178M179, 226NW513.

Representation that corporate stock was not subject to assessment was one of law and there was no larceny. 178M446, 227NW495.

Where stockholder, prior to bankruptcy of corporation, offered to surrender his stock on ground of fraudulent representation, but took no steps to perfect rescission, he had no defense which he could urge against receiver suing to enforce assessment. 179M259, 228NW917.

One who subscribes to the stock of one corporation and receives that of another does not become a stockholder, and he is not estopped to deny that he is liable as such. 181M316, 232NW519. See Dun. Dig. 2080a.

Where a purchaser of stock from corporation which has not complied with the Blue Sky Law may recover the money paid, he cannot defend a suit brought by the receiver of the corporation to enforce the stockholders' liability, and it is immaterial that a certificate of stock has not been issued to him. 181M327, 232NW523. See Dun. Dig. 2061.

An active director of a corporation was estopped to deny that he was a stockholder, as respected double liability. Johnson v. E., 182M385, 234NW590. See Dun. Dig. 2080, 2080a.

Limitations was not tolled, as against liability of stockholder accruing at appointment of receiver, by reason of continuances and negotiations, on the theory of estoppel, or otherwise. Miller v. A., 183M12, 235NW622. See Dun. Dig. 2080.

If cause of action for double liability of stockholder accrued at time receiver was appointed, action was barred six years thereafter. Miller v. A., 183M12, 235NW622. See Dun. Dig. 2080.

Liability of stockholders in state banks. Bank of D. v. M., 183M127, 235NW914. See Dun. Dig. 796(84).

A bona fide transferor of stock is not liable for the debts of the bank incurred after the transfer. He is liable for those existing at the time of the transfer and not afterwards paid. Bank of D. v. M., 183M127, 235NW914. See Dun. Dig. 803(13).

Whether a corporation was organized exclusively for doing a manufacturing business depends on its articles of incorporation and extrinsic evidence is not admissible to show the actual business in which it engaged, the burden of proof to show exemption of the corporation being on a stockholder against whom an as-

essment was made. Saetre v. Chandler, (CCA8), 57F(2d) 951.

The amendment of this section cannot be said to impair the obligation of contracts with respect to pre-existing liability, since it merely confers on the legislature the power to define the liability, and in such definition to preserve existing contract rights. Id.

Assessment of stockholders of a state bank, authorized by Mason's Stat., §7684 et seq., creates a fund which is an asset of the bank which cannot be applied to discharge double liability of stockholders. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 2080.

Constitutional double liability of stockholders of bank is for benefit of creditors, and bank has no authority over the fund created by its enforcement. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 2080(45).

Corporation quarrying stone and marketing rough products held not engaged in manufacturing or mechanical business. Veigel v. M., 186M182, 242NW621. See Dun. Dig. 2080.

Validity and effect of order for enforcement of liability in suit in foreign state to enforce order, Chandler v. M., 13Pac(2d)(Wash)22. See Dun. Dig. 5207.

The state securities commission of a sister state cannot take away the protection to creditors afforded by this section. Cox v. Updegraff, 14Pac(2d)(Ore)280. See Dun. Dig. 1698.

Complaint in action to enforce stockholders' liability was not demurrable because of absence of allegation that complaint in action resulting in sequestration alleged that debt accrued prior to repeal. Miller v. R., 246NW465. See Dun. Dig. 2142, 2161, 2170.

A corporation organized for purpose of "buying, selling, manufacturing and dealing in milk, cream, ice cream, cheese and butter, handling, managing, owning, operating, and controlling a creamery or creameries in usual course of such business, and to do and perform all acts and things usual, requisite and necessary on premises," is not an exclusively manufacturing corporation whose stockholders were exempt from liability. Olivia Creamery & Produce Ass'n., 246NW480. See Dun. Dig. 2080(58).

The liability imposed by this section as it existed prior to the adoption of the Amendment of 1930 was a contractual one. Op. Atty. Gen., 1931.

The constitutional liability of stockholders who acquired their stock prior to the date the Amendment of 1930 became effective exists in favor of creditors who became such prior to that date. Op. Atty. Gen., 1931.

There is no liability of stockholders in corporations organized since the amendment of 1930 other than banks or trust companies, the old constitutional provision being impliedly repealed, and there will be no such liability until the legislature creates it. Op. Atty. Gen., 1931.

The amendment of this section in 1930 was in fact a substitute rather than an amendment for the existing constitutional provision. Op. Atty. Gen., 1931.

No constitutional liability attaches to purchasers of stock who became such subsequent to the date the Amendment of 1930 became effective, though the corporation had been doing business for several years and had existing liabilities on that date. Op. Atty. Gen., 1931.

Stockholders of elevator company are not subject to double liability of debts thereof, unless incurred prior to Nov. 4, 1930. Op. Atty. Gen., Feb. 18, 1933.

Laws 1933, c. 55, does not contemplate finding of insolvency by reason of declaration of emergency by directors of bank and contingent liability of stockholder does not become absolute. Op. Atty. Gen., Mar. 10, 1933.

Since the 1930 amendment preferred stock of state banks cannot be made non-assessable. Op. Atty. Gen., Mar. 31, 1933.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

Insurance company may issue preferred stock which shall not be subject to any double liability, but such stock may not be exempted from assessment to make up impairment of capital. Op. Atty. Gen., Sept. 26, 1933.

#### 4. Lands taken for public-way.

Lot owners have no constitutional right to damages for an obstruction of a street by a railroad embankment simply because the embankment is within the same plat as their lots. Locascio v. N., 185M281, 240NW661. See Dun. Dig. 3049(14).

### Article 13.—IMPEACHMENT AND REMOVAL FROM OFFICE.

#### 1. Impeachment of certain state officers.

House File No. 1122, providing that any officer having alcoholic beverages in his possession shall forfeit his office, would be unconstitutional if passed. Op. Atty. Gen., Mar. 30, 1931.

#### 2. Removal.

House File No. 1122, providing that any officer having alcoholic beverages in his possession shall forfeit his office, would be unconstitutional if passed. Op. Atty. Gen., Mar. 30, 1931.

**Article 14.—AMENDMENTS TO THE CONSTITUTION.****1. Submission to the people.**

Under Mason's Minn. Stats. 1927, §347, supreme court is authorized to direct secretary of state to refrain from preparing, printing and distributing ballots containing a proposed amendment to constitution forbidden by last provision in this section. *Winget v. H.*, 187M78, 244NW331. See Dun. Dig. 1573.

Laws 1931, c. 420, proposing an amendment to constitution to extend scope of taxation, held not multifarious. *Winget v. H.*, 187M78, 244NW331. See Dun. Dig. 1573.

**Article 16.—TRUNK HIGHWAY SYSTEM.****1. Creation of system.**

Reimbursement of counties for money expended by them through boroughs, villages or cities in improving trunk highways. See Laws 1929, c. 122; Laws 1931, cc. 67, 168.

Proposed amendment relating to Trunk Highway System to be voted on at the general election of 1934. Laws 1933, c. 439.

*State v. Stanley*, 247NW509; note under §2554. *Murphy v. G.*, 248NW715. See Dun. Dig. §120, §121. The amount of traffic on a highway is an element to be considered as bearing upon loss of time and inconvenience to one whose land is divided. 171M369, 214NW653.

When a permanent trunk highway is located by the highway commissioner the practicable road along the general location is not thereby vacated, but reverts to the control of the county or town board as the case may be. 171M369, 214NW653.

Jury properly permitted to determine acreage involved in determining damages, and verdict held not excessive. 171M369, 214NW653.

This amendment clearly provides that trunk highways shall not extend within the limits of cities of the first class. 175M103, 220NW408.

Subdivisions 3 and 4 of §13, c. 323, Laws 1921, are entirely consistent with the provisions of the Constitution, art. 16. 175M103, 220NW408.

The title of c. 530, Laws 1919, submitting this amendment is general and in no way intimates that trunk highways should or should not enter cities. 175M103, 220NW408.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 173M144, 226NW398. Followed in 178M430, 227NW357(2).

An enlargement by the court against objection, of condemnation proceedings to include easements over lands or lots not sought in the state's petition, is an unwarranted interference with properly delegated legislative functions. *State v. Erickson*, 185M60, 239NW908. See Dun. Dig. 4158(71).

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated routed. It is the exercise of a legislative function constitutionally delegated to the commissioner by the legislature and is conclusive on the courts as to the necessity of the taking. *State v. Erickson*, 185M60, 239NW908. See Dun. Dig. 4158(71).

Sections 1 and 2 permit state to reimburse counties out of trunk highway fund only for "permanently improving" roads. *State v. Babcock*, 186M132, 242NW474. See Dun. Dig. 8452.

Purchasing or acquiring of right of way for new road is not "improving" or improvement of road. *State v. Babcock*, 186M132, 242NW474.

**Route No. 3.**

The two cities of Minneapolis and St. Paul adjoining, there is no space or occasion for building any trunk highway to connect one with the other. 175M103, 220NW408.

**Routes 73 to 211, inclusive.**

See §§2662-2½, 2662-2½a.

**2. Fund.**

*State v. Babcock*, 186M132, 242NW474; notes under art. 16, §1.

Laws 1929, c. 394, appropriating money out of the trunk highway fund to pay damages to persons injured through negligence of highway department held invalid. 181M409, 232NW718. See Dun. Dig. 8452.

Expenses of motor vehicle division of Department of Secretary of State cannot be paid from funds derived from collection of motor vehicle taxes. Op. Atty. Gen., Feb. 7, 1931.

Laws 1931, c. 306, §7, item 4, an appropriation for the motor vehicle department, violates this section. Op. Atty. Gen., June 29, 1931.

**3. Taxation of motor vehicles.**—The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property; provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village, and except that the legislature may impose such tax upon motor vehicles of companies paying taxes under gross earnings system of taxation and upon the right to use such vehicles upon the public highways notwithstanding the fact that earnings from such vehicles may be included in the earnings of such companies upon which such gross earnings taxes are computed. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a nonresident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid in to said trunk highway sinking fund. Adopted Nov. 2, 1920. Amended, Election Nov. 8, 1932. Proclaimed Nov. 28, 1932.

The Motor Vehicle Registration Tax Law, held valid and applicable to vehicles owned by members of the military forces of the United States residing on the Fort Snelling Military Reservation and using the highways of the state for their personal business and pleasure. 283 US57, 51SCR354, aff'g 180M281, 230NW572. See Dun. Dig. 4167a, 9576d.

Nature of tax. 173M72, 216NW542.

Citizen and resident of the state must pay motor vehicle tax therein, although he spends the major portion of the year with his car in another state. *State v. White*, 176M183, 222NW918.

Taxation of motor vehicles in hands of dealers on May 1st. 178M300, 227NW43.

Laws 1929, c. 361, (§§2673-2, 2673-3), excepting from the operation of the gross earnings tax on express companies the license tax on vehicles using the highways, held unconstitutional. 180M268, 230NW815.

Laws 1931, c. 306, §7, appropriating motor vehicle license moneys to defray expenses of issuing licenses, does not contravene this article. *State v. King*, 184M250, 238NW334. See Dun. Dig. 9576d.

Chapter 58, Laws 1931 [Mason's Supp. 1931, §2674], relating to the taxation of automobiles of dealers in new and unused motor vehicles, is valid, and does not offend any constitutional provision. *City of Minneapolis v. A.*, 246NW660. See Dun. Dig. 9143.

Laws 1931, c. 306, §7, item 4, appropriating \$400,000 for the year 1931 and \$420,000 for the year 1932, from the receipts of the state tax on motor vehicles, is unconstitutional. Op. Atty. Gen., June 29, 1931.

**4. Bonds.**

Laws 1929, c. 412, authorizes issues of bonds to retire maturing county highway bonds during the years 1930, 1931, and 1932.