

MASON'S MINNESOTA STATUTES

1927

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UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
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BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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fund of said officer or said department, and it shall be unlawful for the head of any department of the state government to direct the payment of such additional compensation out of the contingent fund, and the state auditor is hereby prohibited from issuing his warrant upon such contingent fund in payment of such additional compensation. ('09 c. 395 § 1) [116]

128. Same — Penalty — Every person offending against the provisions of this act shall be guilty of a misdemeanor and punished by a fine of not exceeding

\$100.00 or imprisonment in the county jail for not exceeding ninety days. ('09, c. 395 § 2) [117]

128-1. Holding two appointive offices—Compensation—In filling any appointive state office which the law provides shall be filled by the governor, he may appoint to such office a person already holding a state office and such person may hold both such offices and perform the functions and duties thereof; but such person shall receive only the salary by law provided for the office first held. ('25, c. 353)

CHAPTER 5

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SUPREME COURT

129. **Justices—Terms**—The supreme court shall consist of one chief justice and four associate justices, who shall hold one term of court each year, at the seat of government, commencing on the first Tuesday after the first Monday in January, with such continuations or adjournments thereof during the year as may be necessary for the dispatch of the business coming before the court. When the chief justice of said court shall be absent from the state, or shall be, for any reason, incapacitated from acting as such, the associate justice present within the state and not incapacitated who shall have served the longest time, or when there are two or more associate justices of equal terms of service, then the associate justice, whom the chief justice shall designate as senior associate justice as such, shall have and exercise all the powers, duties and functions of the chief justice during his absence or incapacity and shall be, during such absence or incapacity, the presiding justice of said court. ('05 § 69, G. S. '13 § 118, amended '19 c. 96 § 1.)

130. **Special terms**—Special terms may be held whenever the court shall so direct, but three weeks' published notice of the order appointing the same shall be given at the seat of government. Any term may be continued from time to time by orders announced in court and entered in the minutes. Any three justices may hold the court and exercise its powers. Unless three shall attend at the time for opening court, those present, or, if all be absent, the clerk, shall adjourn the court until the following day; but, if three justices be absent for six consecutive days, the court shall stand adjourned without day. (70) [119]

131. **Pending cases continued**—Whenever a term is adjourned, or there is a failure for any reason to hold a term at the appointed time, all causes then on the calendar, and all writs, recognizances, appeals, and

proceedings taken or made returnable to the court at such term, shall stand over to, and be heard at, the general or special term next ensuing, as if no such adjournment or failure had occurred. (71) [120]

132. **Writs—Process**—The court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and processes and for the hearing and determination of all matters involved therein and for the entry in its minutes of such orders as may from time to time be necessary to carry out the power and authority conferred upon it by law, subject to such regulations as it may prescribe. Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return. ('05 § 72, G. S. '13 § 121, amended '17 c. 403 § 1)

Power to issue writ of certiorari (13-508, 468; 86-301, 303, 90+772; 44-244, 46+349; 103-485, 115+647, 125-427, 147+820; 127-161, 149+11; 128-154, 150+383; 134-206, 158+977; 142-113; 171+263; 146-131, 178+167; to issue writ of mandamus (28-40, 8+899; 99-313, 109+404); to issue writ of quo warranto (27-38, 6+408; 40-213, 41+1020; 48-497, 51+613; 58-275, 277, 59+1015; 69-108, 112, 71+910; 96-255, 104+948. See 189+709 as to injunction.

In a quo warranto proceeding instituted in this court, charges of misfeasance in office of a respondent cannot be tried, and allegations of that sort must be disregarded. 156-276, 194+624.

The rule that an ex parte order is not appealable when made in a judicial proceeding is applicable to an order made in a drainage proceeding sought to be reviewed by certiorari. For the purpose of such review, a drainage proceeding is to be regarded as a judicial proceeding. 156-401, 194+1023.

133. **Power—Rules**—The Supreme court shall have all the authority necessary for carrying into execution its judgments and determinations, and for the exercise of its jurisdiction as the supreme judicial tribunal of the state, agreeable to the usages and principles of law. Such court shall prescribe and from time to time may amend and modify, rules of practice therein and also rules governing the examination and admission to practice of attorneys at law and rules governing their conduct in the practice of their profession and rules concerning the presentation, hearing and determination of accusations against attorneys at law not inconsistent with law, and may provide for the publication thereof at the cost of the state. ('05 § 73, amended '21 c. 297 § 1) [122]

For court rules see appendix in front of tables. 157-83, 195+794.

Delay for year in remitting to client money collected some of which was remitted after disbarment proceedings were instituted, held conduct authorizing disbarment. 210+865.

134. **Decisions**—In all cases decided by the court, it shall give its decision in writing, and file the same with the clerk, together with headnotes, briefly stating the points decided. A copy of such headnotes shall be furnished by the clerk, without charge, to such proprietors of daily newspapers as may desire them for free publication. Decisions may be rendered and judgments entered thereon in vacation as well as in term. (74) [123]

COMMISSIONERS

135. **Appointment**—The supreme court of the state, upon the taking effect of this act, is hereby authorized and directed to appoint two persons as commissioners of the supreme court, each of whom shall possess the same qualifications, and take a like oath as justices of the supreme court. Such appointment shall be for six years from the date thereof. They shall each re-

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227nw 179
227nw 180
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ceive the same compensation as a justice of the supreme court, and payable in the same manner; and during their appointment shall not engage in the practice of law. All vacancies shall be filled in the same manner as the original appointment. ('13 c. 62 § 1) [124]

136. **Duties**—It shall be the duty of said commissioners, under such rules and regulations as the supreme court may adopt, to aid and assist said court in the performance of its duties, in the disposition of causes now pending before it, or which shall hereafter be brought into it during the term of office of such commissioners. During his term of office each commissioner shall be provided with an office at the state capitol, suitably furnished, be supplied with stationery, and may appoint a stenographer who shall receive the same compensation, and to be paid in the same manner as stenographers of the justices of the supreme court are now, or may hereafter be appointed and paid. ('13 c. 62 § 2) [125]

137. **Term**—Upon the increase, in the manner provided by law, of the number of associate justices of the supreme court to six, and the appointment and qualification of such additional associate justices, the term of the supreme court commissioners then in office shall terminate, and the office of supreme court commissioners hereby created, shall without further act be abolished. ('13, c. 62, § 3) [126]

CLERK

138. **Bond—Assistants**—The clerk of the supreme court shall give bond to the state in the sum of one thousand dollars, to be approved by the governor, conditioned for the faithful discharge of his official duties. He may employ, from time to time, necessary stenographic and other clerical office help for whose compensation legislative appropriation shall have been made. The justices of the supreme court may appoint a deputy clerk for the discharge of the duties of the office in the absence of the clerk or his inability to act, and such other duties as shall be assigned to him by the clerk or the court. The deputy so appointed shall take the usual oath of office and give bond to the state in the sum of one thousand dollars, to be approved by the court, and conditioned for the faithful discharge of his duties. He shall serve during the pleasure of the court. (R. L. '05 § 75, G. S. '13 § 127, amended '21 c. 46 § 1) [127]

139. **Records**—The clerk shall keep such dockets, journals, and other records, and perform such duties appropriate to his office, as the supreme court may by its rules prescribe. And he shall provide at the cost of the state all books, stationery, furniture, postage, and supplies necessary for the proper transaction of the business of the court. (76) [128]

MARSHAL

140. **Appointment, duties**—A marshal of the supreme court may be appointed by the justices thereof to act during their pleasure. His qualifications, duties, and powers shall be such as the court may prescribe conformably to the laws. (77) [129]

STATE LIBRARY

141. **Justices to govern library**—The state library, as now constituted, with all future additions thereto, shall be maintained in the capitol under the supervision of the justices of the supreme court. They shall direct such purchases of books, pamphlets, and documents therefor, and such sales and exchanges there-

from, as they may deem best. They shall also adopt rules for the government of the library and the management of its affairs, and prescribe penalties for their violation, which rules shall be conspicuously posted in the library rooms. (78) [130]

142. **Librarian**—The official term of the state librarian appointed by the governor shall be two years and until his successor qualifies. He shall give bond to the state in at least two thousand dollars, to be approved by the governor, conditioned for the faithful performance of his official duties. He may appoint an assistant librarian to serve during his term, who shall perform his duties when he is absent or disabled, but such appointment shall not take effect until approved by the justices. He may also employ, from time to time, with the approval of the justices, such clerical and other assistants as may be necessary, and for whose compensation provision shall have been made by law. (79) [131]

143. **Duties**—The librarian shall have charge of the library rooms and property, and attend, under the direction of the justices, to all purchases, exchanges, and sales; and the public printer shall forward such public documents of the state as the librarian may desire to send to designated institutions and officials of other states for purposes of exchange. He shall obey and enforce the rules prescribed for the government of the library and its affairs, and collect, by action in his name, if necessary, all damages from injury to or retention of library property, and all fines imposed for violation of the rules. (80) [132]

144. **Records**—He shall keep a detailed chronological record of all purchases, exchanges, and sales, and of all additions to the library by gift, purchase, or exchange, respectively; also a like account of all amounts collected as damages, fines, or from other sources, and of all expenditures made. Such records and accounts shall be open to public inspection, and be transferred to his successor. All moneys collected shall be paid into the treasury, and added to the library appropriation for the current year. (81) [133]

145. **Public documents**—All official publications of the United States, and of other states and countries, which are received for the use of this state by any officer thereof, shall be deposited in the state library forthwith; and two copies of each official book or pamphlet issued by the state shall be preserved therein. (82) [134]

Explanatory note—Custodianship of records by Minnesota Historical Society, see infra, §§ 8008-1, 8008-2.

JANITOR

146. **Appointment and duties**—The justices may appoint, and at pleasure remove, a janitor, who shall have the care of the courtroom, the rooms of the clerk and justices of the court, and of the state library, and shall perform such other duties as the justices may require. (83) [135]

REPORTER

147. **Bond—Files**—The reporter of its decisions, appointed by the supreme court, shall give bond to the state in the sum of five hundred dollars, to be approved by the governor, conditioned for the faithful discharge of his duties. He shall be entitled to the possession, for a reasonable time, of the files of the court in all cases decided. (84) [136]

148. **Cases—Citations**—He shall accurately report all such cases, noting concisely the points decided, with a statement of the facts as shown by the record, unless the same are fully stated in the opinion; the names of counsel, with the points made and authorities

cited, as fully as he deems necessary; and the opinions rendered by the justices. All references in such opinions to former decisions of the court which have been published in "The Northwestern Reporter" shall also cite the volume and page of such reporter where the same appear; and, if the opinion reported has been published in said reporter, the volume and page of such publication shall be cited. (85) [137]

149. Copy—Copyright—Within ninety days after the filing of a sufficient number of decisions to make a printed volume of six hundred pages, and sooner if practicable, the reporter shall deliver the manuscript of his report of such cases to the contractor for the publication thereof. As soon as the same is put in type, he shall read and correct the printer's proof, and furnish to the contractor an index, a table of cases, and other matter necessary to complete the volume. He shall have no pecuniary interest in such reports, which shall be copyrighted by the secretary of state in trust for the people. (86) [138]

MINNESOTA REPORTS

150. Printing and binding of reports of decisions—Contracts by Commissioner of Purchases—Purchase and distribution of volumes by state—The reports of such decisions shall be printed and bound in style and quality to be approved by the court, shall contain at least six hundred pages of four and one-half inches in width, and shall be equal in quality of paper and binding to the best of those heretofore published.

The Commissioner of Purchases, pursuant to provisions of Chapter 426, General Laws 1925, under appropriate specifications to be approved by the court, from time to time and for designated periods not exceeding ten years, shall enter into a contract, in form and manner approved by the court, for the continued publication of such bound volumes, with suitable provisions requiring the publisher at all times to keep the published volumes on sale at a designated place within the state at a specified maximum price per volume, and specifying the number of such volumes to be sold and delivered to the state for distribution as herein directed. The volumes purchased by the state under the provisions of such contract shall be delivered to the secretary of state and shall be distributed as follows:

1. One to each judge of the district, probate, and municipal courts of the state, and to each justice, commissioner and the reporter of the supreme court.
2. To the attorney general, one volume for each set of reports in use in the department.
3. One to each clerk of the district court, for the use of the court when in session, and otherwise for the use of officials and citizens of the county.

All of the foregoing shall remain the property of the state and shall be delivered to the successors in office of the officials named.

4. Three to the clerk of the United States circuit court of appeals for the eighth circuit, one to be kept for the use of the judges at each of its places of meeting.

5. One hundred to the state university, to be used in exchanges or otherwise for the benefit of its law library.

6. To the state library, as many as the court shall certify to be necessary for the use of the library and for exchanges with other law libraries.

The copies not disposed of hereunder shall remain in the custody of the secretary of state. (87) [139] (Amended '27, c. 379, § 1)

Explanatory note—For Laws 1925, c. 426, see §§ 53-1 to 53-52, herein.

151. New contract—[Repealed.]

This section is repealed by Laws 1927, c. 379, § 2, the repeal not to affect the existing contract for the publication and sale of the reports.

152. Present contract—[Repealed.]

This section ('21, c. 509, § 1) is repealed by Laws 1927, c. 379, § 2, the repeal not to affect the existing contract for the publication and sale of reports.

153. Distribution of copies—[Repealed.]

This section is repealed by Laws 1927, c. 379, § 2.

DISTRICT COURT

154. Jurisdiction—The district courts shall have original jurisdiction in all civil actions within their respective districts, in all cases of crime committed or triable therein, in all special proceedings not exclusively cognizable by some other court or tribunal, and in all other cases wherein such jurisdiction is especially conferred upon them by law. They shall also have appellate jurisdiction in every case in which an appeal thereto is allowed by law from any other court, officer, or body. (90) [143]

District courts have original jurisdiction of civil actions regardless of the amount in controversy (6-110, 53; 6-503, 350; 7-393, 316; 10-215, 173); and of criminal actions regardless of the punishment (26-143, 1-1054; 36-234, 30+764; 69-499, 72+832). They have original jurisdiction in equity (2-31, 21) and appellate jurisdiction in probate proceedings (72-165, 166, 75+123).

Federal Employers' liability Act. 156-380, 194+780. A citizen of a foreign state has the legal right to prosecute in the courts in this state an action against a common carrier, who is engaged in business in this state, to recover for personal injuries received by him in another state as an employee of such carrier while engaged in interstate commerce, and he cannot be denied this right because the court in the state where he has received his injuries has entered a judgment in equity restraining his prosecuting such action in the courts in this state. 157-52, 195+629.

The complaint and the course of trial do not justify a claim that this is an action to recover damages for fraud and deceit, in which it is not necessary to proceed in the probate court. 158-14, 196+655.

Removal of causes. 159-388, 199+178. The courts of this state will not decline to entertain an action of a transitory nature, brought by a citizen of another state against a railroad company subject to the service of process in that state, merely because a statute of the foreign state prohibits the solicitation of the business of prosecuting such an action without the state. 165-449, 206+710.

The United States was the proper party to maintain an action for the destruction of growing timber by fire negligently set by defendant where the land, on which the timber was destroyed, is held by an Indian under a restricted patent prohibiting the patentee from selling, leasing, or in any manner alienating the land without the consent of the President. It appearing that such an action had been brought in the proper federal court, this action in the state court was rightly dismissed. 166-14, 206+939.

155. Boundaries—Waters—For the purposes of exercising the concurrent jurisdiction of the courts of this state in civil and criminal cases arising upon rivers or other waters which constitute a common boundary to this and any adjoining state, the counties bordering upon such waters shall be deemed to include so much of the area thereof as would be included if the boundary lines of such counties were produced in the direction of their approach and extended to the opposite shore. (91) [144]

60-503, 506, 63+100.

156. Writs—Such courts shall have power to issue writs of injunction, ne exeat, certiorari, habeas corpus, mandamus, quo warranto, and all other writs, processes, and orders necessary to the complete exercise of the jurisdiction vested in them by law, including writs for the abatement of a nuisance. Any judge thereof may order the issuance of such writs, and direct as to their service and return. (92) [145]

50-264, 266, 52+862; 66-213, 215, 68+976; 71-16, 73+521; 72-165, 75+123; 96-255, 104+948; 98-89, 107+730; 106-197, 118+1014; 107-441, 120+894; 124-10, 144+415; 125-404, 144+423.

The courts have no authority to enjoin the officials of the executive department from holding an election called by the Governor to fill a vacancy in the representation of this state in the Senate of the United States. 156-270, 1944-630.

In calling such an election under the power conferred upon him by the federal Constitution, the Governor is exercising a governmental and political power, over which the courts have no control. 156-270, 1944-630.

A district court has jurisdiction to try an action which seeks to restrain the enforcement of a debt, evidenced by a judgment in another district court of the state, by execution when the debt has been satisfied, or when the plaintiff has ceased to be liable upon the judgment. 210+396.

157. Testing writs—Every writ or process issuing from a court of record shall be tested in the name of the presiding judge, be signed by the clerk and sealed with the seal of the court, be dated on the day of its issue, and before delivery to the officer for service, shall be indorsed by the clerk with the name of the attorney or other person procuring the same; and, when no other time is fixed by law or authorized by the rules of practice, it shall be made returnable on the first day of the next succeeding term. (93) [146]

16-426 383; 20-196, 175; 22-189, 192; 40-65, 70, 41+459; 91-352, 357, 98+188; 124-457, 145+167.

158. Judge may act in another district—Whenever in the judgment of the governor, or of any judge of any judicial district, the convenience or interest of the public or the interest of any litigant shall require that the judge of another judicial district shall discharge any of the duties of such judge, the governor may designate, or such judge may request, a judge of the district court of any other judicial district to discharge any such duties; to hold, or to assist in holding a general or special term of such court, in any county of such judicial district other than his own, or to try and determine any motion, action or proceeding pending therein. And thereupon such judge of the district court, or any other judicial district so designated or requested, may discharge any such duties, hold or assist in holding a general or special term of such court, or try and determine any motion, action or proceeding pending therein. And by consent of the parties any judge of said court may act in all matters brought before him from another judicial district. In either case the acts, orders and judgments of the judge so acting shall have the same force and effect as though given by a judge of such judicial district. When no other provision has been made therefor, the clerk shall seasonably notify the governor of the inability of the judge to hold any of his terms. (R. L. § 94, amended '07 c. 157 § 1) [147]

76-391, 392 79+397.
165-349, 206+457.

Where a cause pending in a county of one judicial district is tried by a judge of another district, sitting in place of the resident judge, it will be conclusively presumed, in the absence of an affirmative showing to the contrary, that he was called upon or requested to hear the matter in the manner authorized by statute. 156- 95, 194+402.

159. Judge not to practice law—No judge of the district court shall practice as an attorney or counselor at law except in cases in which he is a party in interest, nor receive any fees for legal or judicial services other than as prescribed by law; nor shall he be a partner of any practicing attorney in the business of his profession. (95) [148]

160. Court not open Sunday—Exception—No court shall be opened on Sunday for any purpose other than to receive a verdict, give additional instructions to or discharge a jury; but this provision shall not prevent a judge of such court from exercising jurisdiction in any case where it is necessary for the preservation of the peace, the sanctity of the day or the arrest and

commitment of an offender. (R. L. '05 § 96, G. S. '13 § 149, amended '15 c. 38 § 1)
55-58, 56+350.

161. District courts to be open at all times—The district courts of the state shall be deemed open at all times, except on legal holidays and Sunday, for the transaction of such business as may be presented, including the issuance of writs and process, the hearing of matters of law in pending actions and proceedings, and the entry of judgments and decrees therein; and in addition to the general terms appointed by law to be held, which may be adjourned from time to time, the judge of the district, or one thereof in districts of more than one judge, may by order filed with the clerk, convene the court in actual session during the vacation period on a date named in the order, for the trial of both civil actions involving public interest and criminal actions, whenever in his judgment public interests will thereby be promoted. When so convened, the court may by order entered in the minutes by the clerk, direct the issuance of special venires for grand and petit juries, returnable on a named date, for the performance of such duties as may be submitted by the court in the usual course of procedure. Civil actions involving public interests may be noticed for trial at an adjourned sitting of such term occurring more than eight days after the date of calling same, and informations by the county attorney charging the commission of crimes within the county may, as authorized by law, be presented at such terms, and any such information then presented and filed and all indictments then returned by the special grand jury shall be proceeded with by the court in all respects in harmony with the law applicable to other cases and other terms of the court. The judge of the district may also, by order filed with the clerk, appoint special terms in any county of the district for the hearing of matters of law. ('23 c. 412 § 1)

162. Times for holding general terms—The general terms of the district court shall be held in the several counties in each year at the times herein prescribed as follows:

First Judicial District

In Goodhue County—The second Monday in March and the first Monday in October each year.

In Dakota County—The fourth Monday in January and the first Monday in May and the second Monday in November each year. ('11 c. 6 § 1, amended '15 c. 327 § 1; '21 c. 199 § 1)

Second Judicial District

In Ramsey County—The first Monday in October in each year. ('17 c. 5 § 1)

Third Judicial District

The General Terms of the District Court in the several counties constituting the Third Judicial District of the State of Minnesota shall be held, each year, at the times herein prescribed as follows:

Olmsted County: On the third Monday in February, the first Monday in June and the third Monday in October.

Wabasha County: On the second Monday in May and the third Monday in November.

Winona County: On the second Monday in January and the third Monday in April and September.

Houston County: On the second Monday in June and the first Tuesday in December.

No grand jury shall be drawn or summoned for any

of the said terms of Court, except upon the direction of the presiding Judge thereof. ('17, c. 2, § 1; amended '21, c. 103, § 1; '23, c. 14, §§ 1, 2; superseded '25, c. 84, §§ 1, 2)

Explanatory note—Section 3 of Laws 1925 repeals all inconsistent acts and parts of acts.

Fourth Judicial District

Hennepin County: Second Monday of September, effective after September 1, 1909.

Fifth Judicial District

In Dodge county, the first Monday in April and the third Monday in September.

In Rice county, the first Monday in May and the first Wednesday after the first Monday in November.

In Steele county, the first Monday in June and the first Monday in December.

In Waseca county, the first Monday in March and the second Monday in October.

Provided, however, that where any general term in said Waseca county has been or shall hereafter be adjourned for a period of more than thirty (30) days, and issues of fact in any action are joined more than eight (8) days before the first day of any such adjourned term, then and in that case such action may be brought on for trial at such adjourned term upon notice of trial served eight (8) days or more before the beginning of said adjourned term. ('13, c. 326, § 1; amended '25, c. 99, § 1)

Explanatory note—Section 2 of Laws 1925 repeals all inconsistent laws and parts of laws.

Sixth Judicial District

Blue Earth county: First Tuesday in February and June; second Wednesday in November.

Watwan county: First Tuesday in May and October.

Seventh Judicial District

From and after the passage of this act the general terms of the district court in and for the several counties composing the seventh judicial district of the State of Minnesota, shall be held in each year as follows:

In Becker County, on the second Monday in March, and the first Monday in October.

In Benton County, on the fourth Monday in February, and on the third Monday in September.

In Clay County, on the second Monday in May and the first Monday in December.

In Douglas County, on the second Monday in February, and the first Tuesday in September.

In Mille Lacs County, on the fourth Tuesday in March and the third Tuesday in October.

In Morrison County, on the fourth Monday in March and the third Monday in October.

In Otter Tail County, on the second Monday in May and the first Monday in December.

In Stearns County, on the second Monday in May and the first Monday in December.

In Todd County, on the fourth Monday in February, and the third Monday in September.

In Wadena County, on the second Monday in April, and, in the odd numbered years on the first Monday in November, and in the even numbered years on the Wednesday next following general election day. ('13, c. 9, § 1, amended '15, c. 90; '17, c. 37, § 1; '25, c. 9, § 1)

Eighth Judicial District

In Carver County, on the second Monday in March and on the second Monday in October.

In Le Sueur County, on the Third Monday in February and on the third Monday in September.

In McLeod County, on the second Monday in May and the second Monday in November.

In Scott County, on the first Monday in April and the fourth Monday in October.

In Sibley County, on the first Monday in June and the first Monday in December. ('21 c. 73 § 1; amended '23 c. 249)

Ninth Judicial District

Brown County: On the 3rd Monday in May and the 4th Monday in November.

Lincoln County: On the 3rd Monday in March and the 4th Monday in September.

Lyon County: On the 1st Monday in June and the 3rd Monday in November.

Nicollet County: On the 1st Tuesday in May and the 2nd Tuesday in October.

Redwood County: On the 3rd Monday in April and the 4th Monday in October. ('15, c. 67, § 1; superseded '25, c. 102, § 1)

Explanatory note—Section 2 of Laws 1925, c. 102 repeals all inconsistent laws and parts of laws.

Tenth Judicial District

In Fillmore County, on the fourth Monday in May and the second Monday in November.

In Freeborn County, on the first Monday in February, the second Monday in May and the fourth Monday in September.

In Houston County, on the last Tuesday in April and the first Tuesday in December, provided that no grand jury shall be called for the April term except upon the special order of the presiding judge, directing that a grand jury be drawn.

In Mower County, on the second Monday in March and the third Monday in October. ('17 c. 367 § 1; amended '19 c. 29)

Eleventh Judicial District

Carlton County, second Tuesday in February, first Tuesday in June, third Tuesday in October.

St. Louis County, first Wednesday in January, March, May, September and November.

Lake County, first Wednesday in June and December.

Cook County, third Monday in June. ('13 c. 522 § 1) [Special provisions as to places for holding court, see §§ 164 et. seq.]

Twelfth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Twelfth Judicial District of the State of Minnesota at the time herein prescribed as follows:

Chippewa County: First Monday in June; fourth Monday in November.

Kandiyohi County: Third Monday in March; first Monday in October.

Meeker County: Second Monday in June; first Monday in December.

Renville County: Second Monday in May; second Monday in November.

Swift County: Third Monday in May; second Monday in November.

Yellow Medicine County: Second Tuesday in January; third Monday in June.

Lac qui Parle County: First Tuesday in May; second Tuesday in December. ('23, c. 290, § 1; amended '27, c. 55, § 1)

Explanatory note—Laws 1927, c. 55, § 2 repeals all inconsistent acts and parts of acts.

Thirteenth Judicial District

Cottonwood County, first Monday in June; second Monday in November.

Murray County, first Tuesday in May; first Tuesday in December.

Nobles County, third Monday in February; third Monday in October.

Pipestone County, second Tuesday in January; third Tuesday in May.

Rock County, third Monday in March; last Monday in September. ('13 c. 52 § 1; amended '21 c. 57 § 1)

Fourteenth Judicial District

The general terms of the District court in the several counties constituting the Fourteenth judicial district of the State of Minnesota shall be held, each year, at the times herein prescribed as follows:

Kittson county: On the fourth Monday in June, and the second Monday in November.

Marshall county: On the third Monday in May, and on the fourth Monday in November.

Norman county: On the third Monday in May, and on the fourth Monday in October.

Pennington county: On the first Tuesday in February, and on the first Tuesday in July occurring after the Fourth of July.

Mahnomen county: On the first Tuesday in March.

Polk county: On the first Monday in June, and on the first Monday after the first day of January.

Red Lake county: On the second Monday in April, and on the second Monday in October.

Roseau county: On the first Monday in May, and on the fourth Monday in October. ('15, c. 43, § 1; amended '17, c. 67, § 1; '21, c. 135, § 1; '25, c. 8, § 1; superseded '25, c. 34, § 1; superseded '27, c. 67, § 1)

Explanatory note—Laws 1925, c. 8, § 2 repeals all inconsistent acts and parts of acts. Laws 1925, c. 34, § 2 repeals all inconsistent acts and parts of acts. Laws 1927, c. 67, § 2 repeals all inconsistent acts and parts of acts.

Fifteenth Judicial District.

The general terms of the District court shall be held each year in the several counties constituting the Fifteenth Judicial District of Minnesota, at the times herein prescribed, as follows:

Aitkin county on the third Tuesday in February and the second Tuesday in September.

Beltrami county, on the second Tuesday in February and the second Tuesday in September.

Cass county, on the second Tuesday in January and the second Tuesday in June.

Clearwater county, on the second Tuesday in April and on the first Tuesday in October.

Crow Wing county, on the first Tuesday in May and the first Tuesday in November.

Hubbard county, on the fourth Tuesday in May and the first Tuesday in December.

Itasca county, on the third Tuesday in March and the fourth Tuesday in September.

Koochiching county, on the first Tuesday in May and the first Tuesday in October.

Lake of the Woods county, on the second Tuesday in June and the first Tuesday in December. ('21, c. 143, § 1; amended '23, c. 222, § 2; '25, c. 344; superseded '27, c. 197, § 1)

Explanatory note—Laws 1927, c. 197, § 2 repeals all inconsistent acts and parts of acts.

Sixteenth Judicial District

The general terms, of the District Court of the 16th Judicial District of the State of Minnesota, shall be

held in the several counties therein, in each year, at the times hereinafter prescribed, as follows:

Big Stone County—Third Monday in March; second Monday in October.

Stevens County—Third Monday in April; fourth Monday in September.

Traverse County—First Monday in May; second Monday in November.

Grant County—First Monday in June; fourth Monday in October.

Wilkin County—Third Monday in May; second Monday in December.

Pope County—Second Monday in June; fourth Monday in November. ('13, c. 263; superseded '15, c. 64, § 1; '27, c. 22, § 1)

Explanatory note—Laws 1927, c. 22, § 2 repeals all inconsistent acts and parts of acts.

Seventeenth Judicial District

Martin County, second Monday in March; second Monday in October.

Faribault County, first Monday in April; second Monday in November.

Jackson County, third Monday in May; first Monday in December. ('21 c. 174 § 1)

Eighteenth Judicial District

Anoka County, third Monday in March; second Monday in October.

Wright County, first Monday in June and December. Sherburne County, second Monday in May and November.

The general terms of the district court shall be held in the county of Isanti in each year at the times herein prescribed as follows:

The general terms on the third Monday in February and the fourth Monday in September. ('19 c. 88 § 1)

Nineteenth Judicial District

Washington County, second Monday in May; fourth Monday in November.

Chisago County, fourth Tuesday in April; first Monday in October.

Pine County, first Monday in April; fourth Tuesday in October. ('19 c. 70, amended '23 c. 56 § 1)

The general terms of the District Court shall be held in the County of Kanabec in each year at the times herein prescribed as follows:

The general term on the third Tuesday in August.

In addition thereto general terms of court shall be held in Kanabec county on the fourth Tuesday in January, on the fourth Tuesday in March and the third Wednesday in June, for the trial and determination of both criminal and civil cases, but no grand or petit jury shall be drawn or summoned unless the court shall so direct by a written order made and filed with the clerk of court of the county, at least twenty days before the dates herein fixed for holding said court. ('17, c. 9, § 2; amended '25, c. 345)

(R. L. § 97 amended '09 c. 244 § 1 with all later amendments and modifications indicated in the text.)

No jurisdiction to convene for trial of actions or proceedings involving fact issues at any place in the county other than the county seat, except by consent or express statute. (98-109, 107+547)

163. Special terms in Washington county—That in addition to the general terms of the district court in Washington county, special terms of said court shall be held in said county on the second and fourth Mondays of each month for the trial of issues of fact by the court, the trial of issues of law, the hearing of

motions and applications, and all matters except the trial of issues of fact by a jury. ('09 c. 21 § 1) [162]
Cited (98-109, 107+547)

164. Eleventh Judicial District—St. Louis County—
In addition to the general terms of the district court held at the county seat of St. Louis county as now provided by law, general terms of the district court for the county of St. Louis are hereby established, to be held in the city of Virginia, in said county, on the first Tuesday in April, on the first Tuesday in September, and on the first Tuesday in December, in each year, and in the village of Hibbing, in said county, on the first Tuesday in February, on the first Tuesday in June, and on the fourth Tuesday in October in each year, and at the city of Ely, in said county, on the first Tuesday in March and on the first Tuesday in October in each year, for the trial, hearing and determination of all actions, civil and criminal; with the same force and effect as though held at the county seat of said county; and all proceedings of whatsoever kind, that can be heard and determined in the district court of this state, may be tried, heard and determined at the said city of Virginia, the said village of Hibbing, or the said city of Ely with the same force and effect as though held and determined at the county seat of said county.

Provided, that all proceedings for the registration of title to real estate shall be tried at the county seat of said county as now provided by law.

Provided, further, that all other actions to determine title to real estate shall be tried at the county seat of said county, except that by written consent of all the parties thereto any such action may be tried at the said city of Virginia or village of Hibbing, or city of Ely.

Provided, further, that no officer having in his custody any of the public records of St. Louis county shall be required to produce any of said records at the trial of any action herein provided for, save on an order of said court providing for the immediate return of any such records to the proper office. ('09, c. 126; amended '11, c. 368, § 1; '15, c. 93, § 1; '21, c. 302, § 1; '25, c. 218) [176]

129-424. 152+838.

165. Same—Special Terms—Special terms of said District Court shall also be held at said City of Virginia at least once in each month and at said village of Hibbing, at least once in each month, on such days and at such times as the Court may designate by order, for the hearing of such matters as are usually heard at special terms and at Chambers in the District court, and the Court may by order, provide for holding special terms of Court at the City of Ely at any time when in the judgment and discretion of the court it shall deem expedient so to do, for the hearing of such matters as are usually heard at special terms and at chambers, in the District court, and may in such order if he deems it expedient, provide for the trial of issues of fact and law in cases where such action is to be tried by the Court without a jury or a jury has been waived by the parties to the action, and such waiver has been filed with the Clerk of Court. ('09 c. 126, amended '11 c. 368 § 1; '15 c. 93 § 2) [177]

129-424. 152+838.

166. Same—Deputy sheriff and clerk—There shall be at all times a chief deputy sheriff of said county and a chief deputy clerk of said district court and such other deputies as may be necessary, resident at said city of Virginia, or said city of Ely or the village of Hibbing and their appointment shall be made in the same manner as other deputy sheriffs and deputy

clerks of the district court in said counties. The salaries of such deputies shall be fixed and paid in the same manner as other such deputies. But the offices of said deputy sheriff and the offices of said deputy clerk at Virginia and Hibbing and Ely shall not in any sense be considered or deemed to be the office of the sheriff or the office of the clerk of said court for any purpose, except for the performance of their respective duties relating solely to proceedings tried or to be tried at said city of Virginia or said city of Ely or village of Hibbing, except that marriage licenses and naturalization papers may be issued by said deputy clerk. ('09 c. 126, amended '11 c. 368 § 1; amended '15 c. 93; '15 c. 371; '17 c. 225; '21 c. 284 § 1) [178]

167. Same—Courthouse — Jail — Expenses—It is hereby made the duty of the board of county commissioners of the county of St. Louis, to furnish and maintain adequate accommodations for the holding of terms of the district court at the village of Hibbing, and the City of Virginia, proper offices for said deputies, and a proper place for the confinement and maintenance of the prisoners at the village of Hibbing and the City of Virginia.

And said county shall also reimburse the clerk of said court and his deputies as herein provided for, and the county attorney and his assistants and the district judges of said district and the official court reporter for their traveling expenses actually and necessarily incurred in the performance of their respective official duties. ('09 c. 126, amended '11 c. 368 § 1; '15 c. 371 § 1; '17 c. 255 § 1) [179]

168. Same—Jurors—Grand and petit jurors for each of said general terms shall be selected, drawn and summoned in the same manner in all respects as for the general terms of said court held at the County Seat of said County, except when in the discretion of the Court, there will be no necessity of drawing a grand jury or petit jury, the Court may enter its order directing that no grand jury or petit jury be summoned for the particular term therein mentioned. ('09 c. 126, amended '11 c. 368 § 1; amended, '15 c. 93) [180]

169. Same—Appeals from municipal courts and justices—All appeals from municipal courts and from justices of the peace, shall be heard and tried at the place of holding regular or adjourned regular terms of said district court which is nearest to the court appealed from, by the usual routes of travel.

Provided, that by consent of the parties any such appeal may be tried at any other place in the county where regular terms of said district court are held. ('09 c. 126, amended '11 c. 368 § 1) [181]

113-425. 129+780.

170. Same—Trial of criminal cases—All persons bound over to the Grand Jury, charged with a criminal offense, by any justice of the peace or municipal court, shall be tried at the place of holding regular terms of said district court, which is nearest to the court binding said party over; except as hereinafter provided; and all criminal offenses committed in any city, village, township or unorganized territory shall be tried at the place of holding the regular term of said district court which is nearest to said city, village, township or place where said offense is committed. Provided that when said offense is committed nearer to Virginia or Hibbing or Ely than to the county seat, the party committing said offense shall be tried at the first term of court to be held at either Virginia or Hibbing or Ely at which a grand jury is in session. Provided further, that when such offense is committed nearer the city of Ely than any of the other places

referred to, said cause, in the discretion of the Court, or on demand of the person charged with the offense, may be tried at said city of Ely. ('09 c. 126, amended '11 c. 368 § 1; '15 c. 93 § 5) [182]

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249aw 576
171. Same—Trial of actions—All civil actions brought in the district court of said county against any person or persons, firm or corporation residing in said county, shall be tried, heard and determined at the place of holding regular or adjourned terms of said district court which is nearest, by the usual route of travel, to the residence of said defendant or defendants, or the majority thereof, unless the place of trial shall be waived by the said defendant or defendants; and for the purpose of determining the place of residence of domestic corporations, (a corporation,) such a corporation shall be considered as residing at any place where it has an office, resident agent or business place; provided, that if none of the parties shall reside or be found in the state, or the defendant be a foreign corporation, the action shall be begun and tried in the place designated in the summons. ('09 c. 126, amended, '11 c. 368 § 1; '21 c. 302 § 2) [183]

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128-227, 150+925; 129-424, 152+839.
172. Same—Summons—Place of trial—Any party wishing to have any civil cause commenced by him in said Court, tried in said city of Virginia, shall in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the city of Virginia," and any party wishing any civil cause commenced by him in said Court tried at the Village of Hibbing, shall in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the village of Hibbing," and any party wishing any civil cause commenced by him in said Court tried at the city of Ely, shall in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the City of Ely"; and in all cases where any summons contains any such specifications, the case shall be tried at said City of Virginia or the Village of Hibbing or City of Ely, as the case may be, unless the defendant shall have the place of trial fixed in the manner hereinafter set out.

If the place of trial designated is not the proper place of trial, as specified in this act, the cause shall nevertheless be tried in such place, unless the defendant, in his answer in addition to the other allegations of defense, shall plead the location of his residence, and demand that such action be tried at the place of holding said court nearest his residence as herein provided; and in any case where the answer of the defendant pleads such place of residence and makes such demand of place of trial, the plaintiff in his reply, may admit or deny such allegations of residence, and if such allegations of residence be not expressly denied, such case shall be tried at the place so demanded by the defendant, and if the allegations of residence be so denied, then the place of trial shall be determined by the Court on motion.

If there are several defendants, residing at different places in said county, the trial shall be at the place which the majority of such defendants unite in demanding, or if the numbers are equal, at the place nearest the residence of the majority.

Provided, that the venue of any such action may be changed from any one of said places to any other, by order of the Court, in the following cases:

1. Upon written consent of the parties.
2. When it is made to appear, on motion, that any party has been made a defendant for the purpose of preventing a change of venue as provided in this section.

3. When an impartial trial cannot be had in the place where the action is pending; or

4. When the convenience of witnesses and the ends of justice would be promoted by the change.

Application for such change under sub-divisions 2, 3, or 4, shall be made by motion which shall be returnable and heard at the place of commencement of the action. ('09 c. 126, amended '11 c. 368 § 1; '15 c. 93; '21 c. 302 § 6) [184]

128-227, 150+925; 129-424, 152+839.

173. Same—Papers where filed—After the place of trial of any cause is determined, as provided in this act, all papers, orders and documents pertaining to all causes to be tried at Virginia and filed in court shall lie filed and be kept on file at the clerk's office in the city of Virginia, and all causes to be tried in Hibbing and all papers, orders and documents pertaining thereto shall be filed and be kept on file at the clerk's office in the village of Hibbing.

In all actions tried at the city of Virginia or the village of Hibbing, the clerk of said court as soon as final judgment is entered, shall forthwith cause such judgment to be docketed in his office at the county seat; and when so docketed the same shall become a lien on real estate and have the same effect as judgments entered in causes tried at the county seat.

Provided, that in all actions tried at said city of Virginia or said village of Hibbing, involving the title of real estate, upon final judgment being entered, all the papers in said cause shall be filed in the clerk's office at the county seat and the final judgment or decree recorded therein, and a certified copy of all papers in said case shall be made by the clerk and retained at the clerk's office in the city of Virginia or in the clerk's office in the village of Hibbing where the action was originally tried, without additional charge to the parties to said action. ('09 c. 126, amended '11 c. 368 § 1; '15 c. 93; '17 c. 255 § 3) [185]

174. Same—Rules, etc.—The judges of the district court shall have full power and authority to make all such rules, orders and regulations as are necessary to carry out the provisions of this act. ('09 c. 126, amended '11 c. 368 § 1) [186]

For court rules see appendix in front of tables.

175. Same—Division of business—Juvenile court—The said judges, or a majority of them, may divide the business of said court among the said judges, and may otherwise regulate said business by rules or otherwise; and each of said judges may separately try court or jury cases during the same term, or at the same time.

And the said judges or any two of them may designate one of their number whose duty it shall be to act as judge of the juvenile court at Virginia, in said county, to hear and determine cases arising under the provisions of chapter 285 of the General Laws of 1905 [7162-7175] and all cases affecting dependent, neglected and delinquent children under the law; and all authority of said chapter 285 shall be applicable to said court; and the same shall be known as "the juvenile court of Virginia."

Said juvenile court of Virginia shall have concurrent jurisdiction with the juvenile court heretofore established in said county in all cases under said act.

That the terms of said juvenile court shall be at the times specified by the judge of said court.

Special terms of said court may be held at the village of Hibbing on the order of the judge of said court.

One of the deputy clerks of said court, residing at Virginia, shall be clerk of the said juvenile court, and

the appointment of such deputy clerk as such clerk of said juvenile court shall be made by the clerk of the district court of said county, with the consent and approval of the judges of the juvenile courts of said county, and such clerk of such juvenile court shall receive as compensation for his or her services, including those of deputy clerk, the sum of one hundred and twenty-five (\$125.00) dollars per month. ('11 c. 368, § 1, amended '13, c. 171, § 1) [189]

The bracket [7162-7175] refers to sections in G. S. 1913, which were repealed by '17, c. 397, § 35.

176. Terms—In new counties—Whenever a new county is added to any district, until the time for holding court therefor is fixed by law, the judge or judges of such district, by an order filed with the secretary of state and with the several clerks in such district, shall fix the time of holding terms in such county; but such order shall not take effect until thirty (30) days after the filing thereof with the secretary of state, nor to be altered except as thereafter provided by law. The secretary of state shall publish in the volume of laws enacted at each legislative session, a schedule of the times of holding court in the several counties as fixed by law. ('09 c. 244 § 2) [159]

177. Absence of judge—Who may act—Whenever the judge who should hear any action, motion, or proceeding is unable to be present, any other judge of the same judicial district may act in his place, except in the trial of causes already begun before the judge so absent: Provided, that motions for a new trial shall be heard by the judge before whom the cause was tried, if he be still in office and not disabled. (98) [160]

75-289, 77+960; 125-475, 147+654.
165-349, 206+457.

178. Adjourned and special terms—The judges of each district may adjourn court from time to time during any term thereof, and may appoint special terms for the trial of issues of law and fact, and, when necessary, direct grand or petit juries to be drawn therefor. Three weeks' published notice of every such special term shall be given in the county wherein it is to be held. They may also appoint special terms for the hearing of all matters except issues of fact, the order for which shall be filed with the clerk, and a copy posted in his office for three weeks prior to such term. (99) [161]

61-73, 76, 63+171, 28 L. R. A. 324; 64-394, 67+216; 74-448, 451, 77+206; 132-458, 157+706.

179. Non-attendance of judge—Adjournment—If the judge fails to attend on the day appointed for holding court, the sheriff or clerk may open court and adjourn the same from day to day; but, if he does not appear by 4 o'clock p. m. of the third day, one of said officers shall adjourn the term without day, and dismiss the jurors: Provided, that such clerk or sheriff, upon the direction of the judge, and without his presence, may adjourn any general or special term to a day certain, in which case the jurors, if any, shall attend on such day without further notice. (100) [163]

180. Failure to hold term, etc., not to affect writs, etc.—Whenever any term of court is not held, all persons bound by recognizance or otherwise to appear thereat shall appear at the next general term thereof held in the county, or, if a special term be sooner held for the trial of civil and criminal causes, then at such special term. And if the time for holding any such term be changed by adjournment or otherwise, all persons so bound shall appear at the term as changed. No process, proceeding, or writ shall abate or be discontinued by reason of any alteration in the time or

place of holding court, or of any vacancy or change in the office of judge. (101) [164]

74-345, 351, 77+214.

181. Temporary courthouses—Terms for naturalization—Whenever the courthouse or place provided for holding court in any county is destroyed or becomes unsafe or unfit for the purpose, or if no courthouse be provided, the judges may designate a convenient place at the county seat for temporary use as such. And they may hold general or special terms of the court for the purpose of hearing applications for naturalization, in any place designated by them in the several counties of their respective districts. (102) [165]

182. Rules of practice—The judges of the district court shall assemble annually at such time and place as may be designated in a call for such meeting given by the district judge of said state longest in continuous service to revise the general rules of practice in such courts, for which purpose any eighteen of them shall constitute a quorum. When so assembled, such judges may revise and amend such rules as they deem expedient, conformably to law, and the same shall take effect from and after the publication thereof. Such rules, as the same shall be so revised and amended from time to time, shall govern all the district courts of the state; but, in furtherance of justice, they may be relaxed or modified in any case, or a party relieved from the effect thereof, on such terms as may be just. Any other proper business pertaining to the judiciary may also be transacted. (R. L. '05 § 104; G. S. '13 § 167, amended '19 c. 33)

For court rules, see appendix in front of tables.
71-511, 74+283.

Rules as to findings. 163-294, 204+38.

183. Several judges—Division of business, etc.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. The business of the court may be divided between the judges, and otherwise regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. (105) [168]

184. Terms to be held in certain cities and villages—Order and notice—Except as hereinafter provided, one or more terms of the district court shall be held during each year in all cities and villages in this state which at any time shall have a population of more than 6,000, which are situated fifty miles or more by the usual traveled route by rail from the county seat of the county in which said village or city may be situated. The time and place of holding such terms of court shall be fixed by the order of a judge of said court, made and filed with the clerk thereof at least thirty days before the time appointed to hold said court. Such order may be special as to each term of court to be held, or it may be a general order providing the times and places at which such terms shall be held, until the further order of the court. Such clerk shall cause published notice of said order to be made for two successive weeks in a newspaper published in the city or village where such terms shall be appointed to be held, the last of which publication shall be had not less than ten nor more than twenty days before the opening of any such term. At such terms of court, with the limitations hereinafter provided, all matters cognizable before the court, except the trial

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249nw 676
Art. 6 § 14
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of issues of fact by a jury, may be brought on for hearing, trial and determination. ('07 c. 414 § 1) [169]

185. Same—Place of trial, how determined—The business to be transacted at any such term shall be such as may be brought before the court by consent of parties, and, if in any case or proceeding the parties shall fail to agree with respect to the place of hearing or trial thereof, when one or more of such parties shall reside within such county, and more than fifty miles distant from the county seat thereof, the matter in dispute may be submitted to the court eight days or more before any such term, and the court shall thereupon determine the place of hearing or trial, having consideration of the residence and convenience of the parties, and the hearing or trial shall thereupon be had at the place so fixed; provided, that in case cities or villages having the population herein provided for, shall at any time exist within fifteen miles of each other, it shall not be necessary to fix or hold terms of court in both of such places, but the terms of court may be held in either, as a judge of this court may from time to time determine. ('07 c. 414 § 2) [170]

186. Same—Court room, how provided—It shall be the duty of every such city or village in which such term of court shall be appointed to be held as aforesaid, to provide therefor a suitable room or building to hold the terms of court as shall be so designated by said judges, at the expense of said village or city. ('07 c. 414 § 3) [171]

187. Same—Calendar—Note of issue—It shall be the duty of the clerk to keep a calendar of actions for trial in any such city or village, and it shall be the duty of parties litigant entitled to have their action tried in any such city or village, as aforesaid, to designate the same upon the note of issue to be filed with the clerk of court. ('07 c. 414 § 4) [172]

188. Same—Duties of judges and sheriffs—It shall be the duty of one or more judges of the district court, the sheriff or his deputy or deputies, the clerk of the district court, or one or more of his deputies, to be present at all terms of court, so appointed to be held, to properly attend to the trial and disposition of all cases on the calendar for trial, for any such city or village. ('07 c. 414 § 5) [173]

189. Same—Records—All records, orders, judgments, of any term of a court so held shall finally be deposited and recorded in the county clerk's office at the county seat of the county. ('07 c. 414 § 6) [174]

190. Same—Traveling expenses—Change of venue—The judges of the district court shall have full power and authority to make all such orders as are necessary to carry out the provisions of this act, and shall have the power to direct the county commissioners of any such county to pay the necessary traveling and other expenses connected with holding said terms of court, not otherwise provided by law. Provided, that nothing in this act shall prevent the change of venue of the trial of civil actions as otherwise provided by law. ('07 c. 414 § 7) [175]

CLERK

191. Election—Bond—Duties—There shall be elected in each county a clerk of the district court who before entering upon the duties of his office, shall give bond to the county, to be approved by the County Board, in a penal sum not less than One Thousand Dollars nor more than Ten Thousand Dollars, conditioned for the faithful discharge of his official duties: Provided that

in counties having a population of more than 200,000 and less than 350,000 inhabitants the amount of such bond shall be Ten Thousand Dollars, and in counties having a population of more than 350,000 the amount of such bond shall be \$25,000.00, which bond, with his oath of office, shall be filed for record with the Register of Deeds. Such clerk shall perform all duties assigned him by law and by the rules of the court. He shall not practice as an attorney in the court of which he is the clerk. (106) [219] (Amended '25, c. 337, § 1)

Liability on bond (86-138. 90+371, cited 98-109, 107+547)

192. Money paid into court—Fees—Where money is paid into court to abide the result of any legal proceedings, the judge, by order, may cause the same to be deposited in some duly incorporated bank, to be designated by him, or such judge, on application of any person paying such money into court, may require the clerk to give an additional bond, with like condition as the bond provided for in section 191, in such sum as said judge shall order. For receiving and paying over any money deposited with him the clerk shall be entitled to a commission of one per cent, on the amount deposited, one-half of such commission for receiving, the other for paying, the same to be paid by the party depositing such money, provided, that where money is paid or deposited in any court by or for a city of the first class, no fee or commission shall be paid to or for the clerk for any service performed by him in receiving or paying over any such money deposited with him. (R. L. '05 § 107, G. S. '13 § 220, amended '21 c. 178)

193. Deputies—By an instrument in writing, under his hand and seal, and with the approval of the judge indorsed thereon, the clerk may appoint deputies, for whose acts he shall be responsible, and whom he may remove at pleasure. The appointment and oath of every such deputy shall be filed with the register of deeds. (108) [221]

40-65, 70, 41+459.

193-1. Assignment clerk in counties with population of not less than 240,000 and not more than 330,000—Appointment—That in counties of this state now or hereafter having, according to the last completed state or national census, a population of not less than 240,000 and not more than 330,000 inhabitants, the Clerk of the District Court may appoint and employ a deputy clerk in addition to all other deputy clerks now provided for by law. ('25, c. 52, § 1)

193-2. Same—Duties—Such deputy clerk shall be known as the Assignment Clerk, and his duties shall be to have charge of the calendar and the assignment of cases under the supervision of the court, and he shall have such other powers and duties as shall be determined by order or rule of the court. ('25, c. 52, § 2)

193-3. Same—Salary—The salary of such assignment clerk is hereby fixed at \$1800.00 per annum, payable out of the County Treasury in equal monthly installments. ('25, c. 52, § 3)

194. To search records—Certificate—Public inspection—The clerk, upon request of any person, shall make search of the books and records of his office, and ascertain the existence, docketing, or satisfaction of any judgment or other lien, and certify the result of such search under his hand and the seal of said court, giving the name of the party against whom any judgment or lien appears of record, the amount thereof, and the time of its entry, and, if satisfied of its satisfaction, and any other entries requested relative to such judgment. But nothing in this section shall prevent at-

torneys or others from having access to such books and records at all reasonable times, when no certificate is necessary or required. (R. L. § 109, amended '07 c. 203 § 1) [222]

84-439, 87+1126; 93-11, 100+382.

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See 9497

195. Books to be kept—Every clerk shall procure, at the expense of his county, and keep, the following books:

1. A register of actions, in which he shall enter the title of each action, whether originally commenced in his said court, or brought there by appeal or transcript of judgment from justice court or from any court of record of the state or the United States, and a minute of each paper filed in the cause, and all proceedings therein.

2. A judgment book, in which every judgment shall be entered.

3. A docket, in which he shall enter alphabetically

the name of each judgment debtor, the amount of the judgment, and the precise time of its entry.

4. Indexes, as described in § 196, and such other books as the court, in its discretion, may direct. (110) [223]

19-452, 393; 41-283, 43+3.

196. Index of records—Every clerk shall keep in separate books a plaintiff's and defendant's index to court records, in which all cases shall be entered in alphabetical order under the name of each plaintiff and defendant. They shall set forth the names of the parties, kind of action, term commenced, the record books and pages on which recorded, the term disposed of, date of judgment, book and page of judgment dockets, execution dockets, fee books, satisfied or not satisfied, and number of case. The defendant's index shall be ruled and printed in the same manner as plaintiff's except that the parties shall be reversed. They shall be ruled and printed substantially as follows:

Plaintiffs	Defendants	Kind of Action	Term Commenced	Record Book	Pages	
Term disposed of	Date of Judgment	Judgment Docket	Execution Docket	Fee Book	Satisfied or not Satisfied	Number of Cases
	Month Day	Book Page	Book Page	Book Page		

(111) [224]

In counties having less than 50,000 inhabitants, the clerk was directed by '07 c. 312 to index all cases on file prior to March 7th, 1885, and as compensation to receive such sum as fixed by the judge at not exceeding 10 cents per index.

In counties having over 45,000 and not more than 50,000 inhabitants the clerk was directed, by '17 c. 12, to transcribe prior to June 1, 1917, in a book to be procured for that purpose, all judgments docketed within the last ten years and unsatisfied of record; compensation to be fixed by the board of county commissioners. 197+198 and 199.

197. Return in criminal cases to county attorney—

The clerk of every court of record having criminal jurisdiction, within ten days after the adjournment of any such court, shall tax the costs or disbursements paid or incurred by the state in the trial of each criminal case tried during such term, enter the amount thereof in the record in each, and forthwith report to the county attorney the amount of such costs and disbursements taxed in each case, the amount of fines imposed, and the amount thereof paid. (112) [227]

198. To enter unregistered cases—Every clerk shall enter upon the proper registers all cases, civil and criminal, which, through a mistake, inadvertence, or neglect of his predecessor in office, have not been registered. The true date of the filings in such cases shall be entered in said registers, and said entries, when so made, shall have the same force and effect as if made by the clerk at the proper time: Provided that, in docketing any judgment, the date thereof shall be the time when actually docketed, and the lien thereof shall attach only from such date. (113) [228]

199. Printed calendars—The clerk of the district court in each of the several counties of this state shall

provide printed calendars of the cases to be tried at the general terms thereof at the expense of the counties where such court is held. Provided, that this act shall not apply to a county constituting one judicial district where only one term of court is held each year. ('09 c. 369 § 1) [229]

200. Vacancy—Vacancies in the office of the clerk shall be filled by appointment by the judge. The appointee shall give the bond and take the oath required by law, and shall hold his office until the next general election, and until his successor qualifies. In case any such clerk is adjudged insane, the judge shall appoint a competent person to act as clerk in his place until he shall be duly declared restored to sanity. The person so appointed shall take the oath and give the bond required by law of clerks of the district court, and shall be entitled to the fees and emoluments of the office during the time he shall so act, and his acts shall have the same force and effect as if performed by such clerk. (114) [230]

15-198, 153; 64-207, 66+264.
130-405, 155+629.

SALARIES OF CLERKS AND DEPUTIES AND CLERK HIRE IN CERTAIN COUNTIES.

In each county of the state having a population of 220,000 or more and less than 330,000 inhabitants, the salary of the clerk is \$4,500.00 per annum; chief deputy, \$2,800.00 per annum; deputy clerk, \$2,150.00 per annum; deputy clerk \$1,950.00 per annum; deputy clerk, \$1,850.00 per annum; nine deputy clerks, \$1,560.00 per annum.

('11 c. 80 § 1, amended '13 c. 190, '15 c. 83 § 1, '19 c. 304 § 8, '21 c. 336, § 9, '23 c. 307 § 6).

In such county the salary of the clerk of the juvenile division of the district court is \$2400.00 per annum and in counties having over 200,000 and less than 330,000 in-

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habitants, the judge of the juvenile court may appoint one or more investigators who shall receive a salary of \$1300.00 per annum, provided that the judge may designate one investigator to have general charge of the work, receiving a salary of \$1560.00 per annum.

('11 c. 122 § 3, amended '13 c. 191 § 3, '19 c. 304 § 9, '21 c. 336 § 10).

The salary of the clerk in counties having a population of 380,000 inhabitants or over, shall be \$4000.00 per annum; chief deputy \$2835.00 per annum; one head counter deputy \$2205.00 per annum; one assignment deputy, \$2205.00 per annum; three deputy clerks, \$1870.00 per annum; four deputy clerks, \$1700.00 per annum; eleven deputy clerks, \$1600.00 per annum; two deputy clerks, \$1540.00 per annum; one bookkeeper and cashier, \$1760.00 per annum; one stenographer, \$1650.00 per annum, and one special clerk, \$2200.00 per annum.

('21 c. 133, amended '23 c. 419 §§ 13, 14). The above sections supersede the provisions of '13 c. 400 § 10 and § 11, amended by '17 c. 511, '19 c. 302 § 11, which at the time of their passage related only to Hennepin county and are now inapplicable to any county in the state being based on a population of over 300,000 inhabitants only.

In counties having over 150,000 and less than 200,000 inhabitants, the salary of the clerk shall be \$3600.00 per annum and he shall employ sufficient help and deputies to properly discharge the duties of his office but the number and compensation shall be under control of the county board, the clerk having the right if feeling aggrieved, to appeal to the district court from such orders of the county board.

('11 c. 145 §§ 9 and 10).

In counties having an assessed valuation of more than \$250,000,000.00 and an area of over 5000 square miles, the clerk's salary is \$4000.00 per annum and that of his assistants is under control of the county board.

('19 c. 149 §§ 10-12; amended '21 c. 492 §§ 11, 12).

In all counties having less than 45,000, counties having a population of less than 7000 inhabitants shall be known as class "A"; less than 12,000, class "B"; 12,000 and less than 18,000, class "C"; 18,000 and less than 24,000, class "D"; 24,000 and less than 35,000, class "E"; 35,000 and less than 45,000, class "F"; and clerks shall receive compensation as follows: Class "A", \$650.00 per annum; class "B", \$750.00 per annum; class "C", \$800.00 per annum; class "D", \$800.00 per annum; class "E", \$1000.00 per annum; class "F", \$1100.00 per annum; provided, such counties have a taxable valuation of more than \$6,000,000.00 and in the preceding year the grand jury returned indictments against at least twenty separate defendants or court was held for forty days or more. For all services rendered by such clerks, they shall receive the fees and compensation allowed by law. Provided, that in counties having less than 45,000 inhabitants if the fees and salary do not equal \$2000.00, the auditor shall issue a warrant sufficient to make up that sum. Provided, however, in counties having an assessed valuation of \$7,000,000.00, the auditor shall issue a warrant sufficient only to make all returns equal \$1500.00.

('09 c. 335, amended '13 c. 511, '19 c. 229).

In counties having a population of less than 45,000 inhabitants, counties having less than 7000 inhabitants shall be known as class "A"; less than 12,000 inhabitants class "B"; less than 18,000 inhabitants, class "C"; 18,000 and less than 30,000, class "D"; 30,000 and less than 45,000, class "E"; and in such counties the several clerks shall be allowed for clerk hire the sum of \$200.00 per annum in counties of class "A"; \$300.00 per annum in class "B"; \$400.00 per annum in class "C"; \$500.00 per annum in class "D"; \$600.00 per annum in class "E".

('17 c. 476).

Clerk of district court in any county having population of not less than 45,000 nor more than 75,000, whose fees are not fixed by special law, may apply to district judge for appointment of a deputy clerk, and if reasonably necessary district judge by order may authorize the appointment and fix compensation.

('15 c. 71).

In any county having 70 congressional townships and not more than 80 congressional townships and an assessed valuation of not less than \$3,000,000.00 nor more than \$5,000,000.00, the salary of the district clerk shall be \$1500.00 per annum and he shall be allowed not to exceed \$600.00 per annum for clerk hire.

('19 c. 286 § 4).

In each county having more than 60 and less than 80 congressional townships and a population of more than 45,000 and less than 75,000 inhabitants, the clerk shall be entitled to such sum for clerk hire as may be fixed by the board not exceeding \$1200.00 per annum and the compensation of the clerk shall be as heretofore fixed and he can retain no fees except those received for naturalization papers and work on the Board of Audit.

('21 c. 355, Rep. '21, c. 355, § 2, infra, this note.)

In each county containing not less than 50 nor more than 70 congressional townships and having an assessed valuation of not more than \$3,000,000.00, the clerk of the district court shall receive a salary of \$1500.00 per annum.

('17 c. 374).

In counties having more than 41 and less than 45 townships and an assessed valuation of not less than

\$14,000,000.00 and not more than \$18,000,000.00 the salary of the clerk shall be \$1620.00 per annum and he may retain all fees collected in real estate tax proceedings.

('21 c. 437 § 10).

In counties containing more than 60 or less than 80 congressional townships and having a population of more than 45,000 and less than 75,000, the clerk of the district court is entitled to a sum for clerk hire, to be fixed by the county board, not to exceed \$1,500 per annum, by Laws 1925, c. 301, § 1. Section 2 repeals Laws 1921, c. 355.

In counties having not more than 53 nor less than 30 full and fractional congressional townships and an assessed valuation of not more than \$4,000,000, the clerk of the district court shall receive for his compensation all fees collected, and, if such fees amount to less than \$1,500 he shall receive a sum in addition to make the income from his office \$1,500, with a proviso that he shall receive a salary of \$650 per annum, to be considered a portion of his fees, fees in naturalization proceedings not to be considered, and he shall receive for clerk hire not to exceed \$200 per annum, by Laws 1925, c. 5, § 3.

In counties with not less than 41 and not more than 43 congressional townships and a population of not less than 25,000 nor more than 30,000 the clerk of the district court shall receive a salary of \$1,400 per annum and shall be allowed to retain all other fees, and he shall be allowed not to exceed \$500 per annum for a deputy clerk by Laws 1925, c. 91, §§ 1, 7; such compensation to be in full for all services rendered by § 14; additional clerk hire may be allowed not to exceed \$80 per month, to be used only in case of emergency, by § 15; salary to be paid monthly, except in case of special clerk hire, by § 16; fees to be subject to Gen. St. 1923, §§ 976, 977, by § 17; clerk hire to be authorized and paid for work performed only, by § 18.

Laws 1911, c. 80, § 1, as amended by Laws 1913, c. 190, Laws 1915, c. 83, § 1, Laws 1919, c. 304, § 3, Laws 1921, c. 336, § 9, and Laws 1923, c. 307, § 6, is amended by Laws 1927, c. 420, § 5, to read as follows: "The salary of the clerk of the District court of each county in this state having, or which may hereafter have, a population of not less than two hundred and twenty thousand (220,000) and not more than three hundred and thirty thousand (330,000) inhabitants, shall be the sum of four thousand five hundred dollars (\$4,500) per annum.

Such clerk of the District court may appoint and employ one chief deputy who shall be paid the sum of twenty-eight hundred dollars (\$2,800) per annum; one deputy clerk who shall be paid the sum of two thousand one hundred fifty dollars (\$2,150) per annum; one deputy clerk who shall be paid the sum of two thousand and fifty dollars (\$2,050) per annum; one deputy clerk who shall be paid the sum of nineteen hundred fifty dollars (\$1,950) per annum; nine deputy clerks who shall each be paid the sum of sixteen hundred twenty dollars (\$1,620) per annum; one clerk to be known as the assignment clerk, who shall be paid a salary of nineteen hundred twenty dollars (\$1,920) per annum.

Laws 1923, c. 419, § 14, amending Laws 1921, c. 133, § 14, relating to deputies and clerks in counties having population of 380,000 or over, is amended by Laws 1925, c. 398, § 2, to read as follows: That Section 14 of Chapter 419, Laws of 1923, be and the same is hereby amended to read as follows:

Section 14. The Clerk of the District Court shall appoint and employ one chief deputy who shall be paid the sum of thirty-six hundred (\$3,600.00) dollars per annum; one head counter deputy who shall be paid the sum of twenty-two hundred and five dollars (\$2,205.00) per annum; one assignment deputy who shall be paid the sum of twenty-two hundred and five (\$2,205.00) dollars per annum; three deputy clerks who shall each be paid the sum of eighteen hundred and seventy (\$1,870.00) dollars per annum; four deputy clerks who shall be paid the sum of seventeen hundred (\$1,700.00) dollars per annum; eleven deputy clerks who shall each be paid the sum of sixteen hundred (\$1,600.00) dollars per annum; two deputy clerks who shall each be paid the sum of fifteen hundred and forty (\$1,540.00) dollars per annum; one bookkeeper and cashier who shall be paid the sum of seventeen hundred and sixty (\$1,760.00) dollars per annum; one stenographer who shall be paid the sum of sixteen hundred fifty (\$1,650.00) dollars per annum; one special clerk who shall be paid the sum of Twenty-two hundred (\$2,200.00) dollars per annum. The increases provided by the above are to be approved by the board of county commissioners, by § 5 of said Laws 1925, c. 398.

STENOGRAPHIC REPORTERS

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201. Appointment—Duties—Bond—Each judge, by duplicate orders filed with the clerk and county auditor of the several counties of his district, may appoint a competent stenographer as reporter of the court,

to hold office during his pleasure, and to act as his secretary in all matters pertaining to his official duties. Such reporter shall give bond to the state in the sum of two thousand dollars, to be approved by the judge appointing him, conditioned for the faithful and impartial discharge of all his duties, which bond, with his oath of office, shall be filed with the clerk in the county in which the judge resides. (115) [240]

See '07 c. 186, amended '15 c. 175; '21 c. 241; '13 c. 240; '15 c. 50; '17 c. 51; '17 c. 140; '17 c. 141; '17 c. 142; '17 c. 143; '17 c. 144; '17 c. 145; '17 c. 146; '17 c. 147; '17 c. 148; '17 c. 149; '17 c. 371; '19 c. 34; '19 c. 147; '21 c. 400; '23 c. 77. The above Session acts contain special provisions for the appointment, duties and compensations of the reporters in various districts.

202. Duties as to reports—Such reporter shall make a complete stenographic record of all testimony given and all proceedings had before the judge upon the trial of issues of fact, with or without a jury, or before any referee appointed by such judge. In so doing, he shall take down all questions in the exact language thereof, and all answers thereto precisely as given by the witness or by the sworn interpreter. He shall also record, verbatim, all objections made, and the grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all motions, orders, and admissions made and the charge to the jury. When directed so to do by the judge, he shall make a like record of any other matter or proceeding, and shall read to such judge or referee any record made by him, or transcribe the same, without charge, for any purpose in furtherance of justice. (116) [241]

203. Record to be filed—Transcript—As soon as the trial is ended, the reporter shall file his stenographic report thereof with the clerk, or elsewhere, if the judge shall so direct, and, upon request of any person interested, and payment or tender of his fees therefor, he shall furnish a transcript of such record in the words and figures represented by the characters used in making the same, and for that purpose he may take and retain such record so long as may be necessary, when it shall be returned to the files. (117) [242]

204. To act when another judge presides—Unless otherwise directed by the judge appointing him, the reporter shall serve as such in all matters heard by another judge when acting in place of the former, and shall perform in relation to such matters all the duties required of him by law. (118) [243]

205. Salaries of court reporters—The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1921, and on or before the first Monday in January, annually thereafter, shall fix and establish the salary of the court reporter at an amount not exceeding two thousand seven hundred dollars (\$2700) per year and in such order shall apportion the salaries of the reporters in their respective districts among the several counties, and each county shall be required by such order to pay a specified amount thereof in monthly installments, which amount shall be such proportion of the whole salary as the number of days work actually done by the reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Each reporter shall have and maintain his residence in the district in which he is appointed, but if any reporter be appointed in two or more districts he may reside in either or any of them.

The reporter, in addition to his salary, shall be paid such sums as he shall pay out as necessary railway, traveling and hotel expenses while absent from the city or village in which he resides in the discharge of his official duties, such expenses to be paid by the

county for which the same were incurred upon presentation of a verified, itemized statement thereof approved by the judge; and the county auditor of such county, upon presentation of such approved statement, shall issue his warrant in payment thereof. (R. L. § 119, amended '09 c. 168 § 1; '21 c. 170) [244]

206. Fees—In addition to such salary, the reporter may charge for a transcript of his record, ordered by any person other than the judge, twelve cents per folio thereof, and three cents per folio for each manifold or other copy thereof when so ordered that it can be made with such transcript. (R. L. 1905, § 120; amended '27, c. 262, § 1) [245]

206-1. Same—Counties excepted—This act shall not apply to any county containing a city of the first class. ('27, c. 262, § 3)

Explanatory note—See § 206, ante.

207. Readjustment of salaries on change of district—That whenever a new judicial district is created, or the boundary lines of a judicial district is changed, the judge or judges of such district or districts shall, within thirty (30) days after the establishing of such new district or the changing of such boundary lines, file an order readjusting the salaries of court reporters and the proportions to be paid by the several counties, with the several county auditors in each district, to conform to such changes, and the filing of such order shall vacate and set aside any and all orders then on file with such auditors. ('07 c. 242 § 1) [246]

208. Existing laws not affected—Nothing in this chapter shall be construed as repealing or modifying existing laws relating to the office of court reporter in any judicial district which contains a city of the first class. (121) [247]

SALARIES

Provisions as to salary of officers of Judicial Department will be found in ch. 5A.

209. Expenses of judges of district court—The judges of the district court shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties. (And all sums they shall necessarily hereafter pay out for telephone tolls, postage, expressage and stationery, including printed letter heads and envelopes, for official business.) Each judge shall file quarterly with the state auditor an itemized statement, verified by him, of all such expenses actually paid by him during the preceding quarter, which shall be audited by said state auditor and paid upon his warrant. ('13 c. 466 § 1, amended '21 c. 249) [253]

210. Retirement of supreme court judges, supreme court commissioners, and district court judges—Whenever a judge of the supreme court or a commissioner of the supreme court or a judge of the district court in this state shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable and if he shall thereby determine that such disability exists, and the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon by written order, to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which re-

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irement shall create a vacancy in said office, which shall be filled by appointment, as provided by law.

Provided, that when the disability is mental and to an extent that renders such judge incompetent to make such application, the same may be made by the legally appointed guardian of such judge. ('13, c. 269, § 1; amended '27, c. 337, § 2) [254]

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211. Same—Compensation—When a judge or commissioner of the supreme court shall be retired under the provisions of Section 210, General Statutes, 1923, he shall receive the compensation allotted to his office for the remainder of his said term, or if then past seventy years of age, having served as a judge of the district court and as a judge of the supreme court, or either, continually for more than twenty-five years, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time, and in the manner provided by law. ('13, c. 269, § 2; amended '23, c. 79; '27, c. 337, § 1) [255]

211-1. Compulsory retirement of district judges for incapacity to perform duties—Petition to Governor—Whenever any judge of the district court of the state becomes mentally or physically incapacitated from performing his official duties and such incapacity shall have continued for at least six months, and the public service is and will continue to suffer by reason thereof, and no application has been made by such judge or his legally appointed guardian to the governor for his retirement under and pursuant to Section 210, General Statutes 1923, any 25 or more freeholders and electors of the judicial district of such judge may petition the governor to have the question of the incapacity of such judge judicially determined as hereinafter provided. ('25, c. 281, § 1)

211-2. Same—Contents of petition—The said petition shall be in writing, duly verified, and shall allege said incapacity and set forth the nature and extent thereof, that such incapacity has existed for at least six months before the presentation thereof, and that the public service is suffering and will continue to suffer on account thereof unless such judge be suspended and retired from his said office. ('25, c. 281, § 2)

211-3. Same—Suspension of judge pending determination of incapacity—Upon receiving such petition, the governor shall forthwith deliver a certified copy thereof to the attorney general of the state, and shall file another certified copy thereof in the office of the clerk of the district court of the county in which such judge resides, together with an order suspending said judge from office until the final determination of the question of his incapacity, and shall also forthwith make and file in said clerk's office an order appointing a special term of the district court of said county, to be held at a time and place specified therein, for a hearing upon said petition, which said order shall designate and assign three judges of the district court of the state to sit en banc to try and determine the question of the incapacity of such judge to perform his judicial duties, at which hearing the district judge longest in judicial service shall preside. Such hearing shall be commenced not less than 30 days nor more than 60 days after the filing of said order, and certified copies of said petition and of said order shall be personally served upon said judge, upon his legally appointed guardian, if there be one, and upon the attorney general, not less than 20 days before the day set for the commencement of such hearing. After the filing of said petition, the same shall not be withdrawn nor

abandoned without full hearing, and said judges may, if necessary, appoint counsel at the expense of the state to conduct said hearing and to prepare and present evidence, and may, for cause continue said hearing a reasonable length of time on application of said judge, his legally appointed guardian, if there be one, the petitioners, or any attorney duly appearing in said proceedings. ('25, c. 281, § 3)

211-4. Procedure on hearing—At such hearing, the petitioners, the said judge, and his guardian, if there be one, may appear and be heard, personally or by counsel, and may offer any competent evidence upon the issues involved. The attorney general, if in his judgment the public interest so requires, may, in person or by any reputable attorney or attorneys of the state appointed by him as special assistant attorney or attorneys general for such hearing, appear and be heard, participate in said hearing, and produce evidence thereat.

The said proceedings, including all evidence offered or received, all rulings, and all orders made, shall be taken down in shorthand by some competent shorthand reporter appointed by the presiding judge, as upon other trials in the district court, but such judge shall not appoint the court reporter of such district. The said judge sitting en banc shall determine all issues of law and fact, and particularly whether such judge is, or is not, incapacitated from performing his judicial duties, and shall make and file with the clerk of the district court of such county their findings of fact upon the issues involved in said proceedings. The reporter shall forthwith, upon the completion of said hearing, transcribe his shorthand notes of said proceedings and file a certified copy thereof with said clerk.

Upon the filing of said findings of fact, the clerk shall forthwith transmit to the governor a certified copy thereof. ('25, c. 281, § 4)

211-5. Same—Order for retirement—Filling vacancy—If the said judges shall find that such judge is incapacitated from the performance of his judicial duties, the governor shall, upon the expiration of the time for appeal, if no appeal is taken, and upon the final determination of such appeal, if taken, sustaining such findings, by written order, direct his retirement for the unexpired portion of his term, a certified copy of which said order shall be forthwith served upon such judge and upon his legally appointed guardian, if there be one, and a copy thereof shall be filed in the office of the clerk of the county in which such hearing was had. The filing of said order, with proof of service upon such judge and his legally appointed guardian, if there be one, shall create a vacancy in said office, which shall be filled by appointment as provided by law; and such appointee shall, upon qualifying, become the judge of said district and hold such office until a successor is elected and qualified. ('25, c. 281, § 5)

211-6. Same—Appeals to supreme court—Within twenty days after the filing of such findings of fact, such judge, or his legally appointed guardian, the petitioners, or anyone or more of them, or the attorney general may appeal from said findings to the supreme court of the state by filing a notice of such appeal with the clerk in whose office said findings are filed. Such clerk shall forthwith transmit a certified copy of such notice to the clerk of the supreme court, and said supreme court shall place such matter upon the calendar for hearing at the earliest time conveniently possible, giving preference to such matter over general matters pending. The court shall also make such order in regard to printing, filing, and serving of briefs and

record as shall seem proper in the premises. The clerk of the district court shall transmit to the clerk of the supreme court all records and files in said proceedings, including the reporter's transcript. ('25, c. 281, § 6)

211-7. Same—Compensation of retired judge—Whenever any judge shall be retired under the provisions of this act, he shall receive the compensation to which he would have been entitled had he served out the remainder of his term, which compensation shall be paid at the time and in the manner provided by law. ('25, c. 281, § 7)

Explanatory note—For "this act" read "Sections 211-1 to 211-7."

MUNICIPAL COURTS

Appeals on convictions under ordinances. 160-261, 199+913.

212. Existing courts confirmed—The several municipal courts organized, and in the actual exercise of their functions, at the time when the Revised Laws shall take effect, are hereby confirmed; and the jurisdiction thereof, the practice and procedure therein, the tenure and compensation of the judges and other officers thereof, and the taking of appeals therefrom, shall continue in all things to be governed by the laws relating thereto in force at the time of the enactment of said Revised Laws, notwithstanding the repeal thereby of any existing statute. All municipal courts thereafter established, shall be organized and governed under and pursuant to the provisions of this subdivision and not otherwise. (124) [256]

112-136, 127+473; 112-482, 128+834; 130-494, 153+954; 149-368, 183+821; 150-454, 185+934.

213. Oaths and bonds—The oaths, and bonds when required, after their approval, of all judges and clerks of municipal courts, whether organized under special or general law, shall hereafter be filed with the secretary of state. They shall be in such form as the attorney general shall prescribe. ('09 c. 116 § 1) [257]

214. Same—To be forwarded to secretary of state—The several custodians of the oaths and bonds of all such officers now acting, shall, prior to May 1, 1909, forward the same to the secretary of state, who shall receipt therefor and likewise file and record the same. ('09 c. 116 § 2) [258]

MUNICIPAL COURTS IN CITIES AND VILLAGES.

215. A court of record to be known as "the municipal court of" is hereby established in and for every city, and in, and for every incorporated village, which has or shall have one thousand (1,000) inhabitants or more, or which has an assessed valuation of at least \$4,000 000 regardless of population, in which city or village no municipal court existed at the time of the taking effect of the Revised Laws of 1905, but no court thus established shall be organized until the city or village council so determines by a resolution adopted by a four-fifths majority of its members, and approved by its mayor or president, providing a suitable place for holding its sessions, prescribing the number of judges and other officials thereof, and fixing their compensation; and in case that two judges shall be prescribed for said court, one thereof may be called the municipal judge and the other the special municipal judge. (R. L. § 125, amended '13 c. 104 § 1; '15 c. 75; '19 c. 268) [259]

Municipal Court of Duluth, Laws 1925, c. 85, §§ 1 to 8, amending Laws 1923, c. 238, §§ 3, 11, 19, 39, 43, 44, 52 and adding § 33a. Laws 1927, c. 33, antecedent Laws 1923, c. 238, § 34.

Municipal court of Faribault, Laws 1925, c. 120, §§ 1, 5, establishing the court. Laws 1927, c. 81, §§ 1-5, amending Laws 1925, c. 120, §§ 2, 3, and adding §§ 4A, 4B and 4C. The municipal court of the city of Faribault is without power to try a person upon a criminal complaint made by a private individual, charging an offense beyond the jurisdiction of a justice of the peace, but within the jurisdiction prescribed by section 3, c. 120, Laws 1925, creating the court. The information designated in said section 3 means an information made and filed by a duly constituted prosecuting officer, and the proceedings thereunder must conform to the provisions of sections 10664-10668, G. S. 1923. 164-328, 205+63.

Municipal court of Hibbing. Laws 1927, c. 105, relating to compensation of jurors.

Municipal court of Mankato. Laws 1927, c. 61, §§ 1-37, establishing the court.

Municipal court of Minneapolis. Laws 1927, c. 130, §§ 1, 2, providing for additional judge. Laws 1925, c. 410, §§ 1, 2, amending Sp. L. 1889, c. 34, § 9, and adding § 13-a. Laws 1927, c. 424, §§ 1-7, amending Sp. L. 1889, §§ 2, 7, 18 and 20, as amended.

Municipal court of St. Paul. Laws 1925, c. 371, § 1, amending Sp. L. 1889, §§ 47, 52, as amended by Laws 1913, c. 430, Laws 1919, c. 308 and Laws 1921, c. 362, relating to deputy clerks. Laws 1927, c. 317, §§ 1, 2, amending Sp. L. 1889, §§ 49, 52, as amended by Laws 1907, c. 30, Laws 1913, c. 430, Laws 1917, c. 246, Laws 1919, c. 308, Laws 1927, c. 362.

Municipal court of Winona. Laws 1925, c. 45, amending Sp. L. 1885, Sp. L. c. 115, § 9, as amended by Sp. L. 1889, Sp. L., c. 14, relating to the clerk of the court. Laws 1925, c. 46, § 1, amending Sp. L. 1885, c. 115, § 21, as amended by Sp. L. 1887, c. 50, Laws 1917, c. 70, relating to salary of municipal judge.

216. Application to existing courts—By a like resolution, adopted and approved as specified in § 259, the council of any village, or of any second, third or fourth class city, may adopt the provisions of this subdivision for the future government of the municipal court of such city or village. Thereupon, said court shall in all things be subject to the provisions hereof; but the tenure and compensation of the several officers thereof shall not be curtailed during the terms for which they were chosen, nor shall any action or proceeding then pending therein be discontinued, nor shall any judgment or decision thereof be affected, by such change. (126) [260]

112-136, 127+473. § 259 referred to is § 215, herein.

217 217 29 - 223 33 - 269

217. Judges—Election—Term—Salary—The judges of such courts shall be elected at the regular city or village elections, for the term of four years, beginning on the first Monday of the month next following their election, and until their successors qualify. When a new court is organized more than ninety (90) days prior to a regular election, the Governor shall appoint a judge or judges thereof to serve until they are elected and qualified, and vacancies shall be filled by like appointments for the unexpired term. Provided, that in the absence or disability of the municipal judge and special municipal judge of such court, if there be one, the mayor or president of the council may designate a practicing attorney to sit in place of such municipal judge from day to day. All municipal judges and special municipal judges shall be men learned in the law and residents of the city or village, and shall hold no other elective public office during their term as judge. The salary of each shall be paid monthly by the city or village, and shall be fixed by resolution adopted by a four-fifths majority of the council of such city or village, and approved by the mayor or president before the term begins, and shall not be increased or diminished during such term. Provided, however, that where there shall be a municipal judge and a special municipal judge, the special municipal judge shall act only in the absence or disability of the municipal judge, and receive as compensation therefor an amount per diem to be fixed by the council of such city or village and paid out of the salary of the municipal judge; and provided further, that any such special

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municipal judge shall not be prohibited from practicing in said municipal court or in any other court, but he shall not sit in the trial of any cause or proceeding wherein he may be interested, directly or indirectly, as counsel or attorney, or otherwise. (R. L. 1905, § 127; amended '13, c. 104, § 1; '27, c. 276, § 1) [261]

218
178m 282; 218. Jurisdiction—Every municipal court shall be a court of record and its jurisdiction shall be coextensive with, and limited to, the county or counties in which the city or village lies. It may try and determine civil actions:

1. Arising on contract, for the recovery of money only, when the amount claimed does not exceed five hundred dollars.

2. For damages for injury to the person or to real property, or for taking, detaining, or injuring personal property, when the amount claimed, or, in replevin, the value of the property in controversy, does not exceed five hundred dollars.

3. For a penalty given by statute, not exceeding five hundred dollars, or upon a bond conditioned for the payment of money, whatever the penalty thereof, when the amount claimed does not exceed five hundred dollars.

4. On an official bond, or any bond taken in a municipal court, if the penalty does not exceed five hundred dollars.

218⁶
80sp 351
226nw 847; 5. For forcible entry and unlawful detainer, whether involving the title to real estate or not.

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9029
9149; It may also take and enter judgments by confession to an amount not exceeding five hundred dollars, and shall have all the powers and jurisdiction, civil and criminal, of courts of justices of the peace. (128) [262]

139-463, 167+110.
A municipal court, having the same power as a justice court, in actions of forcible entry and detainer, has jurisdiction to entertain an answer setting forth any matter at law, in excuse, justification, or avoidance, but does not have jurisdiction to entertain an answer setting forth, for such purposes, equitable matter in which the defendant seeks affirmative action in order that he may by reason thereof create a matter in defense. 157-161, 195+898.

219
226nw 847; 219. Jurisdiction withheld—Except as provided in § 262, subd. 5, no municipal court shall have jurisdiction of civil actions involving the title to real estate, or of any action:

1. For a divorce.

2. To recover damages for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or breach of promise to marry;

3. Wherein equitable relief is demanded;

4. Against an executor or administrator, as such; or

5. Against the city, village or county.

Nor shall such court have power to issue writs of habeas corpus, quo warranto, ne exeat, mandamus, prohibition, or injunction. (129) [263]

§ 262 referred to is § 218, herein.

109-208, 123+406; 123-494, 143+785; 126-406, 148+565.

220.—Defences in excess of jurisdiction—Procedure—Whenever a counterclaim in excess of five hundred dollars is asserted, or an equitable defence is interposed, or it shall appear that the title to real estate is involved in any action other than for a forcible entry or unlawful detainer, the fact shall be recorded, and the clerk shall transmit to the clerk of the district court a certified transcript of the record, and all papers filed in the case. Thereafter the cause shall proceed to judgment in said district court as if it had been there begun, and the costs shall abide the event. (130) [264]

109-208, 123+406.

221. Criminal jurisdiction—Justices of the peace—No justice of the peace shall have jurisdiction of offenses committed in any city or village wherein a municipal court is organized and existing, but all such offenses otherwise cognizable by a justice shall be examined and tried by such municipal court, and, all cases arising under the charter, ordinances, or by-laws of such city or village shall be tried by said court without a jury. Said court shall have jurisdiction concurrently with the justices of all offenses committed elsewhere within the county. (R. L. § 131, amended '13 c. 104 § 1) [265]

117-173, 134+509; 129-386, 152+777.

222. Two judges—Daily sittings—Terms—Excepting in cases where the resolution establishing such court provides for a municipal judge and a special municipal judge, each may exercise all the powers thereof. Each judge shall see that the laws of the state and the ordinances and by-laws, of the city or village are obeyed. The court shall be opened every morning, except on Sundays and holidays, for the hearing and disposition, summarily, of all complaints made of offenses committed within the county, of which the court has jurisdiction. A general term for the trial of civil actions shall be held on and following the first Tuesday of each month, and at such other times as the court may from time to time prescribe by rule. (R. L. § 132, amended '13 c. 104 § 1) [266]

223. Clerks and deputies—Process—The clerk of each municipal court, and his deputies, shall be appointed by the judge thereof, who may remove any of them at pleasure. If there be two judges, the senior in office shall exercise such power. Every clerk and deputy shall give bond to the state, in at least the sum of one thousand dollars (\$1,000.00) to be approved by the appointing judge, conditioned for the faithful discharge of his official duties, and for the payment as required by law or by order of the court of all moneys coming into his hands. All process shall be tested in the name of the judge, or the senior in office if there are two, be signed by the clerk, issue under the seal of the court, and be directed for service to any police officer, court officer, marshal, or constable of the city or village, to the sheriff of the county, or all of them. No judge or other officer of such municipal court, excepting the special municipal judge, if any, shall prepare or draw any pleadings or other papers in any civil actions in said municipal court, nor shall they institute, for another, any civil action in such court. (R. L. § 133, amended '13 c. 104 § 1) [267]

224. Clerk to receive and pay over fines, etc.—The clerk shall receive all fines, deposits, penalties, and other moneys paid into court, and keep detailed accounts thereof. Upon filing the weekly reports provided for in § 269, he shall pay to the treasurer all sums then in his hands, except such fees as he is entitled to retain as part of his compensation. (134) [268]

§ 269 referred to is § 225, herein.

225. Weekly report of clerk—On Monday of each week the clerk shall file with the treasurer of the city or village a verified report, showing:

1. The names of all persons convicted in such court during the preceding week, and the nature of the offence.

2. The fine or other punishment imposed upon each.

3. The amount paid by each, and the amount of cash deposited in lieu of bail, since his last report.

4. The total amount of money received from all sources during the same period.

5. The names of all persons discharged from jail by order of the court. (135) [269]

226. Court officers—In cities and villages of less than five thousand (5,000) population, the constable, marshal or chief of police shall act as officer of the municipal court, serve all papers thereof placed in his hands, and receive the same fees as are allowed to constables by law. In cities and villages of five thousand (5,000) population or more, the mayor or president shall appoint one or more (not exceeding three) court officers, who shall also have the power and authority of policemen, receive the same pay as other policemen, and shall give bond to the city or village, for the use of all persons interested, to be approved by the council of such city or village and conditioned for the faithful performance of their duties as such. Their fees shall be collected by the clerk and paid into the treasury of the city or village, except where no salary is allowed them. Court officers shall attend the sessions of the court and perform all duties in connection therewith, when ordered by the court. (R. L. § 136, amended '13 c. 104 § 1) [270]

227. Reporter—Duties—Fees, etc.—In cities of the second class, and elsewhere when the appointment and compensation of a reporter is provided for by resolution of the council, the judge may employ a shorthand reporter of its proceedings, and may dismiss him at pleasure. When requested by a party, the reporter shall make and furnish a transcript in longhand of the whole or any part of the testimony taken, or of any proceeding in court, upon being paid therefor such sum per folio as the court, by its rules, shall prescribe. And when so directed by the judge, he shall furnish such copy for the judge's use, and act as a referee to take and report testimony, without compensation other than his salary. (137) [271]

228. Powers and duties—Practice—Rules—Fees—Except as otherwise provided by this chapter, the municipal court and the judges and clerks thereof, shall have in matters within its jurisdiction, all the powers and duties of judges and clerks of the district court in like cases, and the procedure and practice therein shall be the same. In garnishment, however, the minimum of indebtedness and recovery shall be the same as in the justices' courts. The court may make and alter rules for the conduct of its business, and prescribe therein forms of process and procedure, conformably to the law. The fees of the clerk of each municipal court and of officers serving process and papers therein, shall be the same as are allowed by law to the like officers of the district court of the same county. If such officers are paid a salary in lieu of fees, they shall nevertheless collect such fees and pay the same into the city or village treasury, and shall be responsible for such collection. Where, in any county of this state there are two or more municipal courts having jurisdictions throughout said county, whether they be created or established under chapter five (5), Revised Laws of Minnesota for 1905, or by any other general or special law, the defendant in any civil action begun in any one of said courts may have a change of venue therefrom to the municipal court in said county nearest his place of residence, by filing with the clerk of the municipal court, in which such action may be begun, an affidavit, by himself, his agent or attorney, stating definitely his place of residence, and the location of the nearest municipal court thereto in said county, accompanied by a demand for such change of venue, not less than three (3) days before the opening day of the term of such municipal

court at which such action may be noticed for trial. (R. L. § 138, amended '13 c. 104 § 1) [272]

The provisions of R. L. 1905 c. 5, are included in Chapter 5 hereof.
128-225, 150+924.

228-1. Compensation of municipal court clerks in certain villages—In all villages having a population in excess of 2500 and an assessed valuation of \$3,000,000 or more the clerk of the municipal court shall be paid such compensation as may be fixed by the council or governing body of such village; provided, such compensation shall not be diminished during the term for which such clerk is appointed. ('25, c. 182)

229. Costs and disbursements—Costs in civil actions shall be allowed as follows:

1. To the plaintiff, upon a judgment in his favor of fifty dollars or more in an action for the recovery of money only, when no issue of law or fact is joined, five dollars; when issue is joined, ten dollars; in all other actions, five dollars.

2. To the defendant, upon discontinuance or dismissal, five dollars; upon a judgment in his favor upon the merits, five dollars; and, if the amount of plaintiff's claim be fifty dollars or more, ten dollars.

3. To the prevailing party on demurrer or motion, in the discretion of the court, ten dollars or less, which may be made absolute or to abide the event.

In all cases the prevailing party shall be allowed his disbursements. (139) [273]

230. Notices, etc.—Unlawful detainer—Costs shall be taxed upon notice of not less than two (2) days. Notes of issue shall be filed at least three (3) days before the term. Notice of taking a deposition shall be the same as in the district court. Otherwise the time within which pleadings may be served and other acts performed shall be half that prescribed in the district court, but no such half time shall be less than three (3) days. In forcible entry and unlawful detainer, the summons shall be issued by the clerk and may be made returnable on any day not less than three (3) days after the issuance of such summons; and in other respects such suits shall be governed by similar regulations relating to justices of the peace. (R. L. § 140, amended '13 c. 104 § 1) [274]

The municipal court of Minneapolis in forcible entries and unlawful detainers cannot entertain (1) a motion for a new trial; (2) a motion for judgment notwithstanding the verdict. It can, however, (a) dismiss an action; (b) discharge a jury; (c) direct a verdict; (d) entertain and determine a motion for judgment on the pleadings. 158-217, 197+209.

231. Jury trials—Except as in this chapter otherwise provided, all general laws relating to trial by jury in the district court shall apply to this court. In such cities and villages, the mayor and city clerk in cities, and the president and village clerk in villages, or in the absence or disability of either, the officer authorized to perform his duties, shall meet with the judge or clerk of the municipal court at the city or village clerk's office on the second Monday in February, May, August and November of each year, and there shall select one hundred (100) voters of the city or village as jurors of said court when required and drawn as such during the ensuing three (3) months, and until their successors are chosen. Their names shall be listed, and the list certified by the officials selecting them, and the clerk shall place such names, written on separate slips, in a box or wheel. No person shall be required to serve as such juror during more than one quarter in any one year. (R. L. § 141, amended '13 c. 104 § 1) [275]

129-386, 152+778; 134-311, 159+789.

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229nw 579

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179m 461

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232. Drawing jury—Fees—Special venire—In all cases if either party desires a jury, he shall so state when the case is set for trial. A jury of six may be drawn if both parties consent thereto in open court. The party demanding the jury shall pay to the clerk at the time fifty cents (50c) for each juror required, otherwise the case shall be tried by the court. The clerk shall draw from the box twice as many names as there are jurors required for the trial, and the person so selected shall be summoned to appear at the appointed time. Each juror sworn as such shall be paid one dollar (\$1.00) out of the city treasury upon a certificate issued to him by the clerk at the time of his discharge. Whenever necessary, a special venire may be issued. (R. L. § 142, amended '13 c. 104 § 1) [276]

233. Fees in criminal cases—What attorneys to prosecute—Fees in civil cases—In all municipal courts, jurors in criminal cases and witnesses for the prosecution shall be paid by the city or village upon certificates issued by the clerk. Witnesses for the defense in such cases may be paid in like manner when the court shall so direct. The fees of witnesses shall be the same, in both civil and criminal cases, as are allowed by law in the district court; but in criminal cases fees shall not be required in advance, nor shall policemen or other officials or employees of the county, city or village be paid witness fees. Misdemeanors and violations of ordinances or by-laws shall be prosecuted by the city or village attorney, and all other offenses by the county attorney. In civil cases there shall be paid to the clerk of the court a fee of two dollars (\$2.00) by the party entering the suit, which fee shall be accounted for and paid over to the city or village, and shall be in lieu of all fees of the clerk of said court. (R. L. § 143, amended '13 c. 104 § 1) [277]

234. Retrial of title to lands—The defeated party in an action wherein the title to land is involved, and which has been determined against him, may secure a second trial thereof in the district court by:

1. Depositing with the clerk, within twenty-four hours after notice of the judgment, the amount of all costs and disbursements included therein.

2. Serving notice upon the adverse party, within forty-eight hours, that he will apply to the court, on the first day of the next term occurring more than four days thereafter, for an order transferring the case to the district court for such trial, and fixing the amount of the bond hereinafter mentioned. And the names of his proposed sureties shall be inserted in said notice.

3. Giving bond to the adverse party, in such amount and with such sureties as the court shall fix and approve, conditioned for the payment to him or his assigns of all costs and disbursements which he shall recover upon such second trial, and of all rents, profits, and damages accruing or resulting to him during the pendency of the action, and to abide by any order the court may make therein. Upon the filing of such bond, duly approved, within five days after the amount thereof is so fixed, the court shall cause the case to be forthwith certified and transmitted to the clerk of the district court, with all the papers on file therein. Upon service of the notice herein provided for, all proceedings under the judgment shall be stayed until otherwise ordered. (144) [278]

235. Lien of judgments—Transcripts—Execution, etc.—No judgment of a municipal court shall be a lien upon the real estate until a transcript thereof is filed and docketed with the clerk of the district court. If no execution thereon be outstanding, the judgment

creditor may cause such transcript to be docketed in the same county, and thereafter execution may issue from either court. The clerk with whom the transcript is so filed may issue transcripts to be filed and docketed in other counties, as in the case of a judgment originally rendered in his court. When docketed as herein provided, the judgment shall have the same force and effect, in all respects, as a judgment of the district court. (R. L. § 145, amended '13 c. 104 § 1) [279]

236. Appeals to district court—Appeals may be taken to the district court of the county from the judgments of municipal courts in the same cases, upon the same procedure, and with the same effect as provided by law respecting appeals from justices' courts, and all laws relating to such last named appeals shall be adapted and applied to appeals from the municipal courts. Provided, however, that the time for appeal shall not start to run until the judgment has been perfected, the costs taxed and notice of entry of judgment served upon the adverse party. (R. L. § 146, amended '13 c. 104 § 1) [280]

109-292, 123+809; 143-290, 173+651; 146-358, 178+812; 187+703

160-261, 199+918, note under § 9129, herein.

237. Courts in cities of fourth class—Salary of judge—Organization—Fees—Whenever the common council of any city of the fourth class, where any municipal court heretofore has been or hereafter shall be organized, shall fail to fix the salary of the municipal judge, as provided for by law, or the mayor shall not approve the salary fixed by the council, such judge shall receive as his compensation until such salary shall be so fixed and approved the same fees as is provided for in section 32 of chapter 229 of the General Laws of the state of Minnesota for the year 1895, and shall, in addition to his duties as such judge perform the duties incumbent on the clerk of such municipal court.

The common council in cities of the fourth class, having a population of less than five thousand inhabitants, which heretofore has been or hereafter may be incorporated under the laws of this state, and which have not organized a municipal court at the time of the passage of this act, may by resolution adopted by its common council or governing body and approved by its mayor, organize such a court under and by virtue of and with such jurisdiction and powers as are conferred by chapter 229 of the General Laws of Minnesota for 1895 and amendments thereto, and the judge of any court so organized shall, in addition to his duties as judge, perform the duties otherwise incumbent or imposed by law on the clerk of such municipal court.

In addition to the other powers now granted to the common council of any city of the fourth class by law, which powers are not abridged or impaired by anything herein contained, such common council shall have the power to fix the salary of any such judge, which salary may be fixed by resolution adopted by such council and approved by the mayor and shall not be diminished during his term.

Any municipal court to which the provisions of this act shall apply shall be governed as near as may be under and pursuant to the provisions of law applicable to municipal courts, and contained in the Revised Laws of Minnesota, 1905, and the jurisdiction thereof, the practice and procedure therein shall conform as near as may be to the provisions of law applicable to municipal courts contained in the Revised Laws of Minnesota, 1905, provided, however that any municipal court in any city of the fourth class may adopt and follow the practice and procedure prescribed by chapter 229

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Sec 9093

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of the General Laws of Minnesota for 1895, and all proceedings, orders and judgments of such municipal courts which have followed the procedure prescribed by chapter 229 of the General Laws of 1895, and which are otherwise jurisdictional are hereby legalized and validated.

Any common council of any city of the fourth class having a municipal court now organized, or which shall hereafter organize a municipal court to which the provisions of this act may apply, shall have power to fix such reasonable sum, in lieu of all judges' and clerks' fees, to be charged to litigants in civil actions therein, and provide for the collection thereof and the payment of the sum so fixed into the city treasury of such city, and may provide for the collection of fees and the payment thereof into the city treasury, or shall have power to determine that the fees provided for in this act shall be in lieu of and in place of all salary, and shall have power to and may require in cases where salary is paid by the city that such judges collect such fees and pay same into the city treasury and be responsible for such collection.

When fees shall be taxed they shall be taxed and paid as in ordinary cases in courts of justices of the peace and shall be the same in amount as are provided in section 32 of chapter 229 of the Laws of 1895, as hereinbefore stated. ('09 c. 306 § 1, amended '11 c. 10 § 1) [281]

Explanatory note—Laws 1891, c. 146, sub-chapter XI, §§ 1 to 51 provided for municipal courts in villages with a population of over 3,000. These provisions, as amended by Laws 1893, c. 190, § 5, were carried into G. S. '94 as §§ 1357 to 1408. Laws 1899, c. 143 made applicable §§ 1376, 1377 of G. S. '94 to municipal courts in cities having over 2,000 inhabitants. Laws 1903, c. 291, §§ 1 to 40 provided for municipal courts in villages with a population of more than 2,000 and less than 3,000 in counties with a population of more than 50,000 and less than 150,000.

Laws 1895, c. 229, referred to in this section, was an act entitled "An act to establish municipal courts in incorporated cities having a population of less than five thousand (5,000) inhabitants." As amended said Laws 1895, c. 229 reads as follows:

"Section 1. There is hereby established in each incorporated city in the state of Minnesota, having a population of less than five thousand (5,000) inhabitants, a municipal court, for the transaction of all business which may lawfully come before it.

"Sec. 2. Said court shall be a court of record and shall have a clerk and seal, and shall have jurisdiction to hear, try, and determine civil actions at law where the amount in controversy does not exceed five hundred (\$500) dollars. It shall also have exclusive jurisdiction to hear all criminal complaints and conduct all examinations and trials in criminal cases arising or triable within such city heretofore cognizable before a justice of peace or a de facto municipal court, and its jurisdiction shall be co-extensive with the limits of the county in which such city is situated.

It shall not have jurisdiction of actions for divorce, nor of any action when the relief asked for in the complaint is purely equitable in its nature, nor cases involving the title to real estate; nor for false imprisonment, libel, slander, malicious prosecution, criminal conversations or seduction, or upon a promise to marry, nor for an action against an executor or administrator as such, and when in any case pending in said court a counter claim in excess of five hundred (\$500) dollars over plaintiffs' claim, or an equitable defense or ground for equitable relief is interposed, or whenever it shall appear from the pleadings or upon the trial of any cause that the title to real estate is involved, the said court shall immediately cause an entry of the facts to be made of record, and cease all further proceedings in the cause, and order the clerk to certify and return to the district court of the county in which such city is situated a transcript of all entries made in the record relating to the cause, together with all process and papers relating to the cause, and the clerk shall within ten days after being so ordered make such certificate and return; and thereupon such district court shall proceed in the cause to final judgment and execution the same as if said cause had been commenced in said district court, as near as may be, and the costs shall abide the event of the action;

Provided, the clerk of said municipal court shall not make such certificate or return, until the costs chargeable by the clerk shall have been paid.

"Sec. 3. The qualified electors of such city shall at the general city election to be held in such city next after the passage of this act, and at the general city election every fourth (4th) year thereafter, elect a suitable person to the office of said judge of municipal court, who shall be called 'municipal judge,' who shall hold his office for a term of four years and until his successor shall be elected and qualified.

"In case of any vacancy in the office of municipal judge, the governor of the State of Minnesota shall appoint some qualified person to said office until the next general city election, occurring more than thirty (30) days after the vacancy shall have happened, when a judge shall be elected for a full term of four (4) years.

"The governor of the State of Minnesota shall immediately after the passage of this act, and the acceptance of the provisions of the same, as hereinafter provided, appoint some suitable person to said office, who shall hold the same until his successor is elected and qualified.

"The judge of said municipal court shall be a qualified elector of said city.

"Any municipal judge of a city where no general city election is held in the year 1900 and whose term of office expires in the year 1909 shall continue to hold his office until the next general city election, to be held in such city after said year 1900 and until his successor is elected and qualified.

"Any municipal judge of a city where no general city election is held in the year 1901 and whose term of office expires in the year 1901 shall continue to hold his office until the next general city election, to be held in such city after said year 1901 and until his successor is elected and qualified. (Amended '99, c. 137, § 1.)

"Sec. 4. Before entering upon the discharge of the duties of his office, the judge of said court shall take and subscribe an oath as prescribed in the general statutes for judicial officers, which oath shall be filed in the office of the clerk or recorder of said city. He shall have the general powers of judges of courts of record, and may take and certify acknowledgments in all cases, and as a conservator of the peace shall have all the powers and authority which is by law vested in justices of the peace, or any other judicial officer. In all cities where there has been, or may hereafter be, a municipal court established under the provisions of said chapter two hundred twenty-nine (229), at the next general city election, occurring more than thirty days after the passage of this act, or the establishment of such municipal court, there shall be elected by the qualified electors of such cities, a special judge of such municipal court, whose term of office shall be for four (4) years and until his successor is elected and qualified. He shall be a qualified elector of said city and shall take and subscribe the same oath as the municipal judge, which oath shall also be filed in the office of the clerk or recorder of said city. His powers and duties while acting as the judge of said court shall be the same as the municipal judge. In case of a vacancy in the office of special judge, the governor of Minnesota shall appoint some suitable person to fill such office until the next general city election occurring more than thirty (30) days after such appointment. At the request of the municipal judge, or in case of his sickness or absence, or if said municipal judge is interested in or related to any of the parties to any action arising within the limits of said city, then such action may be commenced and tried before such special judge. Said special judge shall not act on the trial or examination of any case, or otherwise, except as above provided, and any such special judge while acting as the judge of said court shall receive as compensation the fees herein provided for the judge of said court. This section shall not incapacitate any such special judge from acting as an attorney in any case or proceeding in said court, but when acting as judge of said court, he shall take no action in said case save to adjourn the same. (Amended '99, c. 102, § 1; '99, c. 271, § 1; '11, c. 127, § 1.)

"Sec. 5. Said municipal court shall have a clerk, who shall be appointed or removed at the pleasure of said judge by an order in the minutes of the court.

"The salary or compensation of said clerk shall be such as such judge shall direct and shall be paid by such judge.

"Such clerk, before he enters upon the duties of his office, shall take an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to such city a penal bond in the sum of one thousand (\$1,000) dollars with two sureties to be approved by the mayor of said city conditioned that he will account to and pay over to said city and county, on the first Monday of every month, all fines, penalties, and other moneys belonging to or to go to said city and county, which may have come into his hands during the month next preceding, and that he will, at all times, pay over to all other persons, on demand, all moneys to which they may be entitled, which have come into his hands in virtue or by reason of his said office.

Such oath and bond shall be filed in the office of said clerk or recorder of said city.

"Sec. 6. The municipal court shall have full power and authority to issue all process, civil and criminal, necessary and proper to carry into effect the jurisdiction given to it by law, and its judgments and other determinations, and it shall have and possess all of the powers usually possessed by courts of record at common law, subject to modifications of the statutes of this state applicable to courts of record, except that it shall not have jurisdiction to issue writs of habeas corpus, quo warranto, ne exeat, mandamus, prohibition nor injunction.

All process shall be attested in the name of the judge, and issued under the seal of the court and signed by the clerk, who shall be styled "clerk of the municipal court," and the forms of process may be prescribed by the court by rule or otherwise, and any form so prescribed shall be valid and sufficient, and such form may be changed by the court from time to time in the absence of such prescribed form of process in use in courts of record in this state or by justices of the peace.

Process may be directed for service to any police officer, marshal or constable of the city, or to the sheriff of the county, or to any or all of them.

"Sec. 7. The municipal court shall be held in said city at some suitable place, to be provided therefor by the city.

"Its judge shall be the chief magistrate of the city, and shall see that the criminal laws of the state, and the ordinances, laws, regulations and by-laws of said city are observed and executed, and for that purpose shall open his court at any time, Sundays and legal holidays excepted, and proceed to hear and dispose of in a summary manner, all causes which shall be brought before him by the police officers or marshals of the city, or otherwise, either with or without process, for violations of the criminal laws of the state, committed within the county in which said city is situated, or of the ordinances, laws, regulations or by-laws of said city.

"The clerk of said court shall keep a record of all its proceedings and enter all orders, judgments and sentences under the supervision of the judge, and issue commitments and executions, as well as other process; but said city shall furnish all dockets, civil and criminal, document files and file cases, printed blanks and such other supplies as may be necessary for the use of such court or the preservation of its records. (Amended '09, c. 379, § 1.)

"Sec. 8. The clerk of said municipal court shall have the custody and care of all the books, papers and records of said court.

He shall be present at all trials, unless absent from sickness or with consent of the judge, and in case of his absence the judge may appoint some person temporarily in his place.

He may swear all witnesses and jurors and administer all oaths and affidavits, and take acknowledgments.

He shall keep minutes of all proceedings and enter all judgments, and make up and keep the records of the court under the direction of the judge.

He shall tax all costs and disbursements allowed in any action, subject to review by the judge, and do all other things and acts necessary and proper to the enforcement and carrying out of the jurisdiction of the court, and when the judge is not present, adjourn the court from day to day.

He shall receive all fines and penalties, and all fees of any kind, accruing to the court or clerk, and keep full, accurate and detailed account of the same; and shall, on the first Monday of every month, deliver and pay over to the treasurer of the city all moneys so received for fines and penalties imposed for violations of the ordinances, regulations and by-laws of said city, with detailed accounts thereof, under oath, and take from such treasurer a duplicate receipt for such payments, one of which receipts he shall forthwith file in the office of recorder or clerk of such city.

He shall on the same day of each month deliver and pay over to the treasurer of the county all moneys received by him for fines and penalties imposed for violations of the criminal laws of this state, and take from such treasurer a duplicate receipt for such payments, one of which receipts he shall forthwith file with the auditor of such county.

"The clerk of said court may, when he deems the same necessary, appoint, with the sanction of the judge, a deputy clerk of said municipal court, for whose acts the said clerk shall be responsible, and said deputy shall be appointed under the hand of said clerk and seal of said court, with the sanction of said judge endorsed upon the back of said appointment; and before any deputy clerk of said court shall enter upon the duties of his office, he shall take and subscribe the same oath prescribed and required to be taken by the clerk of said court, which oath, together with the appointment of such deputy clerk shall be filed in the office of recorder or clerk of said city, and the clerk of such court, or the judge thereof, may at any time remove any deputy appointed under the provisions of this act.

"The deputy clerk of said court shall be paid by the clerk.

"He may administer oaths, take acknowledgments and perform all duties pertaining to the office of clerk of said municipal court.

"Sec. 9. The municipal court shall hold regular terms for the trial of civil actions on the first Tuesday of each month, which term shall continue from day to day, with such adjournments as to the court may seem proper, until the business of each term shall be finished; and the court may by rule or order appoint such terms to be held oftener or upon other days than the days above mentioned.

"Sec. 10. All civil actions for the recovery of money only shall be commenced by summons to be issued by the clerk.

The form of the summons may be as follows:

STATE OF MINNESOTA ss. City of.....
County of..... Municipal Court.

The State of Minnesota to any police officer of said city, or to the sheriff or any constable of said county.

You are hereby commanded to summon if he shall be found within the county of to be and appear before the municipal court of the city of at a term thereof to be holden on the day of 18....., at the hour of o'clock in the forenoon, and answer to in a civil action whose complaint is on file in said court, and have you then and there this writ.

(I. S.) Witness the Honorable municipal judge, this day of 18.....

.....
Clerk of municipal court.

Or the summons may be in any other form which the court may by rule prescribe, and shall be served upon the defendant at least six (6) days before the commencement of the term at which the same is made returnable.

"Sec. 11. The summons in this court shall be served in the same manner as prescribed by statute for the service of summons in the district courts of this state, in all cases or classes of cases whereof this court has jurisdiction, except that in service of summons by publication the period of such publication shall be three (3) consecutive weeks instead of six (6). (Amended '09, c. 271, § 2.)

"Sec. 12. All pleadings in said municipal court shall be in writing. If the defendant fails to appear at the opening of the court on the day on which the summons is made returnable, judgment may be entered against him for an amount not exceeding that mentioned in the complaint and for costs and disbursements, except that when the action is for unliquidated damages or relief, the plaintiff shall obtain such judgment, only as he shall show himself entitled to by evidence and proof.

"If he so appear, he shall then, or at such time as the court may designate, by rule or otherwise, answer the complaint; and if the answer contain a counterclaim or new matter, the plaintiff shall reply thereto forthwith, or at such time as the court may, by rule, or otherwise, designate.

"The answer and reply shall be in writing and filed with the clerk, and such pleading shall be verified by the party, his agent or attorney either as in courts of justices of the peace or in the district courts of this state.

"Sec. 13. Either party may demur to any pleadings of his adversary, as in the district court, except that the demurrer to any pleading shall be filed within the same time allowed for filing an answer or reply to such pleading.

"Sec. 14. All pleadings shall be construed liberally, and technical objections shall be disregarded.

"Sec. 15. The court may for good cause, in its discretion, and upon such terms as it may deem equitable, open any default at the same term at which it may have occurred, or allow an amendment of any pleading at any time, and shall disregard variance between the allegations of a pleading and the evidence, unless satisfied that the adverse party is prejudiced thereby.

"Sec. 16. Either party shall be entitled to a continuance of a civil action, except actions for forcible entry and unlawful detainer, until the next term of the court following the term at which the summons is made returnable; and further continuance may be granted upon sufficient cause shown and on such terms as may be just.

"Sec. 17. Said court shall have authority to order that the plaintiff, in any civil action in which a justice of the peace would have jurisdiction, and when the amount is beyond the jurisdiction of a justice of the peace when the plaintiff is a non-resident of this state, shall, by bond, recognizance, or deposit of money with the clerk, give security for the costs in such sums as the court may designate; when the plaintiff in any cause shall neglect or refuse to so give such security when ordered, the court may dismiss such cause at the cost of said plaintiff.

"Sec. 18. Costs shall be allowed in actions determined in said court to the prevailing parties as follows: To the plaintiff upon a judgment in his favor of one hundred (100) dollars or more, or in actions of replevin when the value of the property is one hundred (100) dollars or more, when no issue of fact or law is joined, five dollars; when an issue is joined, ten dollars.

"To the defendant, when the amount claimed in the complaint is one hundred (100) dollars or more, upon discontinuance or dismissal, five dollars; when judgment is rendered in his favor upon the merits, in such case, ten dollars.

Provided, that a defendant who has appeared in an action in any court existing under and by virtue of the provisions of this act or created by any special law of this state may at any time before trial offer to allow judgment to be taken against him for the sum or property in said offer specified, with costs. If the plaintiff accepts the offer the court shall thereupon enter judgment accordingly. If the plaintiff refuses to accept the offer the same is deemed withdrawn, and cannot be given in evidence; and if the plaintiff fails to obtain a more favorable judgment he cannot recover costs or disbursements made subsequent to such offer, but must pay the defendant's costs and disbursements incurred subsequently to such offer. (Amended '99, c. 271, § 3; '01, c. 161, § 1.)

"Sec. 19. Costs and disbursements shall be taxed and allowed either by the clerk or judge of said court, in the same manner provided by law for the taxation of costs and disbursements in courts of justices of the peace. (Amended '99, c. 271, § 4.)

"Sec. 20. Any creditor desiring to proceed by attachment in said court, may, at the time of commencing the action, or thereafter and while the action is still pending, by himself, his agent or attorney, make and file with the clerk an affidavit similar to the affidavit required by law in the application for a writ of attachment in a justice court, and also cause to be filed with the clerk a bond with sufficient sureties to be approved by the judge, court commissioner or any justice of the peace of the county in which said city is situated; except that in cases not within the jurisdiction of a justice court the limit of liability thereon shall be mentioned therein as not exceeding the sum of two hundred fifty dollars. The writ of attachment may be in form as follows:

STATE OF MINNESOTA, ss. City of
County of Municipal Court.

The State of Minnesota to any police officer in the said city of or to the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects and credits of or so much thereof as shall be sufficient to satisfy the sum of with interest and costs of suit, in whoever's hands or possession the same may be found in said county, and so provided that the same may be subject to further proceedings as the law requires; and make due return of his writ.

Witness the Honorable judge of said court, this day of

Clerk.

"Or the writ may be in any other form that the court may prescribe by rule or otherwise.

"In all other respects, save as in this act otherwise provided, the service of the writ and other proceedings thereon shall be similar, as near as may be, to the service of such writ and proceedings in the justice court.

"Sec. 21. The defendant may at any time before the time for answering expires, or at any time thereafter, when he has answered, before the trial, apply to the court, on five days' notice, to vacate the writ of attachment.

If the motion is made upon affidavits on the part of the defendants, but not otherwise, the plaintiff may oppose the same with counter affidavits.

"Sec. 22. The plaintiff in an action to recover possession of personal property may, at the time of the issuing of the summons, or at any time before answering, claim the immediate delivery of such property.

The plaintiff, his agent or attorney, shall make and file an affidavit, similar to the affidavit required in the justice court in like case.

"The plaintiff, or some person in his behalf, shall execute a bond with sufficient sureties, to be approved by the judge, court commissioner or a justice of the peace of the county in which said city is situated, conditioned, similar to the bond required in such case in the justice court, as near as may be, and file such bond, and an action may be maintained on such bond as upon similar bonds filed in like actions in justice courts.

"The clerk shall thereupon issue the writ, which may be in form as follows:

STATE OF MINNESOTA, ss. City of
County of Municipal Court.

The state of Minnesota to any police officer of said

city of or the sheriff or any constable of said county.

Whereas, complains that has become possessed of and unjustly detains from the following described goods and chattels, that is to say: (Particularly describing the articles and value.) Therefore, you are hereby commanded to cause the said goods and chattels to be replevied without delay, and deliver the same to the said and return this writ to the court within days, together with the return of your proceedings thereon.

Witness, the Honorable municipal judge, this day of A. D. 18....

(L. S.)

Clerk of the municipal court.

"Or the writ may be in any other form that the court may prescribe, by rule or otherwise.

"Sec. 23. The writ mentioned in the preceding section shall be served and all proceedings thereunder had, as near as may be consistent with the practice of this court, in the same manner as in the proceedings in replevin in the justice court; but the times of trial and the forms of pleadings shall be the same as in other actions in this court.

"The officer executing the writ shall retain the property taken under it in his custody for three days before delivering the same to plaintiff; and if within that time the defendant, or some one in his behalf, shall execute to the plaintiff a sufficient bond in amount equal to the bond filed by the plaintiff, with sufficient sureties, to be approved by the judge, court commissioner or a justice of the peace of the county in which said city is situated, conditioned as in like cases in the district court and file such bond, the clerk shall thereupon issue an order to the officer to deliver such property to the defendant.

"Sec. 24. The defendant may except to the sufficiency of the plaintiff's sureties within the same time and in the same manner as in proceedings of claim and delivery of personal property in district court, and when defendant so excepts, the same proceedings shall be had as in like actions in the district court, except that the justification of sureties be had before the judge of said municipal court or the court commissioner or a justice of the peace of the county in which such city is situated.

"The qualifications of sureties shall be the same as required in like actions in the district court.

"Sec. 25. The clerk of said court shall, prior to each term of the court, make up a calendar of the causes which shall come up for trial, or for any disposition before the court, at such term, adopting such arrangement as the judge may direct; and the court shall direct the order of trial, and other disposition of causes.

"Sec. 26. In all actions where either party demands a trial by jury, such jury shall be drawn and empanelled in the same manner as in justice courts, and the laws of this state relative to trial by jury in justice courts shall apply to this court; provided that the judge of said court may direct the chief of police or any police officer or marshal of said city to perform the duties prescribed to be performed by the sheriff or constable in justice courts.

"Sec. 27. Depositions may be taken and read in evidence in said court as in justice courts, and all laws relative to depositions in justice courts shall apply to said municipal court.

"Sec. 28. Title eighteen of chapter sixty-six of the general statutes of eighteen hundred seventy-eight, and title nineteen of the same chapter, shall apply to said court; and said court shall have jurisdiction of actions of forcible entry and unlawful detainer, and may fix return days for such actions other than the regular term days of said court; and chapter eighty-four of the general statutes of eighteen hundred and seventy-eight, shall apply to said court, and the practice shall be the same in such cases, as near as may be, to similar proceedings in justice courts.

"Sec. 29. Proceedings against garnishee may be instituted in the same manner as in justice courts, but the summons may be served either by an officer authorized by this act to serve process, or by any person not a party to the action, at any place within the state of Minnesota; and the summons may be made returnable at any term of said court which may be named therein; and the notice required to be served on the defendant may be signed by either the clerk of said court, or the person serving the garnishee summons, or the plaintiff or his attorney.

"The disclosure of the garnishee may be taken and all further proceedings had in the same manner as if the proceedings were in the district court, except that the examination of the garnishee shall be before the judge of said court or a referee by him appointed.

"Sec. 20. No judgment rendered in said municipal court shall attach as a lien upon real estate until a transcript thereof shall be filed in the district court, as hereinafter provided; but writs of execution thereon

may issue against the goods and chattels of the judgment debtor, returnable within thirty days, as in justice courts, the provisions for renewals of executions in district court shall apply to this court, except that such renewal shall extend the life of the execution for only thirty days from the date of such renewal, and except that no renewal of such execution shall be made by the clerk until the fee of twenty-five cents therefor shall have been paid.

"Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding five dollars besides costs may, upon paying the fee therefor, demand and shall receive from such clerk a transcript of the docket entries of such judgment, duly certified, and may file the same in the office of the clerk of the district court in and for the county in which said city is situated, who shall file and docket the same, as in the case of transcripts of judgments from courts of justices of the peace.

"And every such judgment shall become a lien upon the real estate of the debtor from the time of filing such transcripts to the same extent as a judgment of said district court, and shall thereafter be exclusively under the control of said district court and carried into execution by its process, as if said judgment had been rendered in said district court, the clerk of said municipal court shall not issue such transcript while a writ of execution is outstanding, in the hands of an officer, or otherwise, and shall note on the record of said judgment the fact that such transcript has been given; and shall not thereafter, issue any writ of execution on the same judgment, but may, at any time after the first transcript is issued, give to any party applying therefor, upon such party paying the clerk's fee therefor, a new transcript, and the clerk shall note the record of each transcript given upon such judgment.

"Sec. 31. Complaints in criminal cases, where the defendant is not in custody, may be made to the judge or clerk, in writing, or reduced to writing by the judge or clerk, and sworn to by the complainant whether the offense charged be a violation of the criminal laws of this state, or of the ordinances, regulations or by-laws of said city; and the clerk shall issue a warrant only upon the order of the judge indorsed upon the complaint, and complaints, warrants and all other process in criminal cases may follow substantially the same forms heretofore in use by justices of the peace, with such alterations as may be convenient to adapt the same to the style of said municipal court, or may be in such other form as the court may prescribe, sanction or approve.

In all cases where alleged offenders shall be in custody and brought before the court without process the clerk shall enter upon the records of the court a brief statement of the offense with which the defendant is charged, which shall stand in place of a complaint unless the court shall direct a formal complaint to be made. The plea of the defendant shall be "Guilty" or "Not guilty."

In case of a failure to plead the clerk shall enter a plea of "Not guilty," and a former acquittal or conviction for the same offense may be proved under the plea as well as if formally pleaded.

In the examination of offenders charged with indictable offenses the clerk shall keep such minutes of the examinations as the court shall direct and shall make the proper return to the court before which the party charged with the offense may be bound to appear.

Sec. 32. For section 32, as amended, see *infra*, § 239.

"Sec. 33. The clerk shall not be required to enter any judgment in any cause, nor perform any services required of him in any cause, as such clerk, after the entry of judgment therein, until the fees therefor shall have been paid.

"Sec. 34. The judge of said municipal court shall hold no other office under said city, and no law partner of said judge shall practice before said court.

"Sec. 35. The city attorney of said city shall have charge of the prosecution of all criminal cases before said court wherein the defendant is charged with the violation of the city charter, or any ordinance or by-law of the city, and the county attorney of the county in which said city is situated shall act in the prosecution or examination of offenders charged with other offenses, when required by law to prosecute in like cases before a justice of the peace.

"Sec. 36. In all criminal cases tried in said court and in examination of the persons therein charged with crime, the clerk shall tax costs and fees as hereinbefore provided in this act; and when said court has final jurisdiction, and the defendant is convicted the clerk shall tax the said costs as part of the costs against the defendant and include the same in the judgment to be entered against him.

"Sec. 37. In all examinations of persons charged with crime under the laws of this state, and in all trials of criminal cases under such laws, when the defendant is acquitted and when he is convicted and does not pay his fine and the costs accruing therein after the first determination of said cause, the clerk shall make out an

itemized bill of the costs accruing in said case, in such examination, in said municipal court, certified to under his hand and the seal of said court, and file such bill with the auditor of the county in which the city is situated, who shall upon such presentation draw his warrant upon the treasurer of such county for the amount of the bill so presented, in favor of the judge of said court, and the treasurer shall forthwith pay the same, and it shall be the duty of the judge of said court to disburse the costs so accruing in each criminal cause or examination to the persons entitled thereto; if at any time after the conviction or examination of such defendant he shall pay the fine and costs accruing therein to said municipal court, it shall be the duty of the judge of said court to forthwith pay the same to the county treasurer taking his receipt therefor in duplicate and file one with the auditor of said county.

"In all trials of criminal cases under the ordinances, by-laws and regulations of said city, where the defendant is acquitted and when he is convicted and does not pay his fine and the costs accruing therein, after the final determination of said cause, the clerk shall make out an itemized bill of the costs accruing in said case, in said municipal court, certified to under his hand and the seal of said court, and file such bill with the recorder or clerk of said city, who shall, upon presentation, draw his order upon the treasurer of said city for the amount of the bill so presented in favor of the judge of said court, and the treasurer of said city shall forthwith pay the same, and it shall be the duty of the judge of said court to disburse the costs so accruing in each criminal cause to the persons entitled thereto. If, at any time after the conviction of such defendant he shall pay the fine and costs accruing therein to said municipal court, it shall be the duty of the judge of said court to forthwith pay the same to the treasurer of said city, taking his receipt therefor in duplicate and file one with the recorder or clerk of each city. (Amended '03, c. 49, § 1.)

"Sec. 38. All appeals from any judgment, order or action of said court shall be had to the district court of the county in which such city is situated, in like manner and under the same rules of practice and procedure as in cases of appeal from justice to district courts, the general laws of this state relating to appeals from justice courts, and the laws relating to proceedings for contempt before justices of the peace shall apply to this court.

"Sec. 39. Any city in the class mentioned in the title of this act which may wish to avail itself of the provisions of this act shall do so by a resolution of its common council, expressly accepting the provisions hereof, which resolution shall be adopted by vote of four-fifths of all the members of such council, and be approved by the mayor of such city; and this act shall not apply to any such city until the adoption as aforesaid of such resolution.

Provided, that any city of the class mentioned in the title of this act now having a municipal court organized and established under any special law of this state may, upon the repeal of said special law, in like manner avail itself of the provisions of this act, and the municipal court so established under the provisions of this act shall succeed said municipal court established by special law and so repealed, and take cognizance of all the causes and proceedings therein as if the same were originally commenced in said court, and shall have power to enforce by execution or otherwise any and all process and judgments heretofore rendered by said court. (Added '97, c. 140, § 1.)

"Sec. 40. This act shall take effect and be in force from and after its passage.

"Sec. 41. It shall be lawful for the judge of said municipal court, or the special judge while acting as judge, to perform any and all the duties provided in this act to be performed by the clerk of said court, including the signing and issuing of any and all process or papers in his own name as judge or special judge, as the case may be." (Added '99, c. 271, § 5.)

Laws 1897, c. 140, § 2 (§ 1 of which amended Laws 1895, c. 229, § 39, by adding the proviso) reads as follows: "It shall be and it is hereby made the duty of the judge of any municipal court, existing and established under any special law, said special law being repealed, to turn over to the judge of the court established under the provisions of this act, all of the dockets, records, files and papers and the seal of said court and all other property belonging to said court in his custody or possession."

238. Same—Certain courts legalized—Any municipal court heretofore organized or attempted to be organized in any city of the fourth class under any law, and now existing and performing the duties of such court is hereby legalized and the organization thereof in all things performed. ('09 c. 306 § 2) [282]

239. Fees to be charged by municipal courts—In all proceedings had in said municipal court the following

fees shall be charged and collected by the judge or clerk as and for the compensation of the judge, and said fees may be taxed in all cases where applicable, as follows:

For summons, warrant or subpoena, thirty-five (35) cents.

For venire for a jury, fifty (50) cents.

For a warrant in a criminal case, thirty-five (35) cents.

Taking a recognizance, thirty-five (35) cents.

Administering an oath, twenty-five (25) cents.

Certifying the same when administered out of court, twenty-five (25) cents.

For a writ of attachment, thirty-five (35) cents.

For hearing and deciding every motion for a new trial, every demurrer, and every motion to open a default, one (\$1) dollar.

Appeal from taxation of costs, one (\$1) dollar.

Entering a judgment, one dollar (\$1).

Every adjournment, twenty-five (25) cents.

Every bond, recognizance or security directed by law to be taken by judge of court, thirty-five (35) cents.

Taking an examination, deposition or confession, or entering any cause in docket, per folio, fifteen (15) cents.

For copy of any paper, proceeding or examination in any case, when demanded, per folio, fifteen (15) cents.

Entering a satisfaction of judgment, twenty-five (25) cents.

Issuing a commission to take testimony, fifty (50) cents.

Entering any order or exception thereto, ten (10) cents.

Entering amicable suit without process, thirty-five (35) cents.

For transcript of judgment, thirty-five (35) cents.

Opening a judgment for rehearing, thirty-five (35) cents.

Filing every paper required to be filed, ten (10) cents.

Issuing notice to take deposition, thirty-five (35) cents.

Taking recognizance, certifying oath or affidavit and making return to district court, per folio, fifteen (15) cents.

For search warrant, thirty-five (35) cents.

For commitment to jail, thirty-five (35) cents.

For an order to bring up prisoner, thirty-five (35) cents.

For an order to discharge prisoner issued to jailer, thirty-five (35) cents.

Discharging a prisoner, after hearing a motion to discharge, twenty-five (25) cents.

For an execution, thirty-five (35) cents.

For every other writ not herein enumerated, thirty-five (35) cents.

For every affidavit or other paper drawn by the judge or clerk, for which no other allowance is made by law, per folio, fifteen (15) cents.

Taxing costs, twenty-five (25) cents.

For marrying and making return thereof, three (\$3) dollars, and such other sum as may be allowed by the parties making the application.

Holding an inquisition in cases of forcible entry and unlawful detainer, in addition to other fees, one (\$1) dollar.

Taking and certifying the acknowledgment of a deed, for each grantor named therein, twenty-five (25) cents.

For traveling to perform any duty, when not otherwise provided for and such travel is necessary, per mile, going and returning, ten (10) cents. ('95, c. 229, § 32; amended '19, c. 318)

Explanatory note—See supra, note to § 237.

240. Form of summons in municipal court—The summons in Municipal Court in villages and cities of the fourth class, however organized, except such cities and villages as have heretofore or may hereafter establish a Municipal Court under the provisions of Chapter 229, Laws of Minnesota for the year 1895, shall be subscribed by the plaintiff or his attorney; it shall be directed to the defendant and require him to serve his answer to the complaint on the subscriber by copy, thereof at a specified place within the state where there is a post office, within ten days after the service on him of such summons, exclusive of the day of service, it shall also notify him that the complaint is either attached thereto or on file in the office of the clerk of said court and it shall also notify him in substance, that if he fails so to serve his answer;

1. If the action be for the recovery of a debt or a liquidated money demand only, that the plaintiff will take judgment for the amount specified therein.

2. In other actions that he will apply to the court for the relief demanded in the complaint. ('19 c. 389 § 1, amended '21 c. 119 § 1)

Explanatory note—See supra, note to § 237.

241. Courts in cities of first class—Probation officer, etc.—In each city of the first class not operating under a home rule charter pursuant to section 36, article IV, of the state constitution, a probation officer shall be appointed by the judges of the municipal court of said city. Such officer may appoint one or more deputies, subject to approval by said judges. Each shall serve four (4) years, unless sooner removed by said judges for cause. ('13 c. 424 § 1) [283]

242. Same—Powers and duties—Such officer, or his deputy, shall be present at every session of said court. He shall receive all persons placed on probation by said court and committed to his care during such probation period and perform such acts with reference to them as the judgment of the court may direct. He shall not be a regular member of the police force, but in the execution of his official duties shall have all the power of a police officer. ('13 c. 424 § 2) [284]

243. Same—Reports—Every such probation officer shall report in writing to the court as often as required by it, with reference to the condition, disposition and other pertinent facts relative to the persons under his care. ('13 c. 424 § 3) [285]

244. Same—Offices, etc.—The city council of said cities shall provide such officer and his deputies with suitable furnished offices in the building where such courts are held, with record books, blanks, stationery, postage and other expenses required for the proper execution of the purposes of this act. ('13 c. 424 § 4) [286]

245. Salary of probation officer—Such probation officer shall receive as full compensation for his services, twenty-seven hundred dollars per annum, and each deputy such amount as shall be fixed by the judges of said court not exceeding twenty-two hundred dollars per annum. Such salary shall be payable in equal semi-monthly installments out of the city treasury. ('13 c. 424 § 5, amended '23 c. 413 § 2) [287]

COURT COMMISSIONER

246. Election—Term of office—There shall be elected in each county a court commissioner, who shall hold his office for four years and until his successor quali-

fies. One person may hold at the same time the offices of court commissioner and probate judge. (147) [288]

247. Qualification and powers—Court commissioners shall be men learned in the law, and shall have and may exercise the judicial powers of a judge of the district court at chambers. Among other powers conferred by law, they are empowered to issue writs of habeas corpus, to take acknowledgments of deeds and other written instruments, to take depositions and certify to the same, to perform the marriage ceremony, to take disclosures in garnishment proceedings pending in the district court, and orders for the examination of judgment debtors in proceedings supplementary to execution may be made returnable before the court commissioner. (R. L. § 148, amended '09 c. 59 § 1) [289]

Const. art. 6 § 15; 3-352, 249; 10-63, 45; 17-340, 315; 28-455, 10+778; 64-226, 66+969; 91-5, 97+371; 91-352, 98+188; 131-129, 154+748.

To be eligible to the office of court commissioner a person need not be an attorney at law. 209+327.

248. To give bond and take oath—Before entering upon his duties, each court commissioner shall give to the county a bond in the sum of two thousand dollars to be approved by the county board, conditioned for the faithful performance of his duties, which bond,

with his oath of office, shall be filed for record with the register of deeds. (149) [290]

249. Records—Clerical help—The court commissioner shall keep a record of all proceedings had before him in books procured at the expense of the county, and shall be supplied with necessary stationery, which books and unused stationery shall be delivered to his successor; and in counties having a population of two hundred thousand and over shall be supplied with a suitable office and such clerical help as may be deemed necessary by the board of county commissioners. (R. L. '05 § 150 amended '15 c. 203 § 1) [291]

250. Vacancy—Whenever a vacancy occurs in the office of court commissioner, the judge of the district court of the county shall appoint some competent person to fill such vacancy, who shall give the bond and take the oath by law required, and shall hold his office until the next general election, and until his successor qualifies. (151) [292]

PROBATE AND JUSTICE COURTS

251. Jurisdiction—The jurisdiction of the probate courts and courts of justices of the peace, and the powers, duties, and compensation of the officers thereof, shall be such as are defined in the several chapters of the Revised Laws relating thereto. (152) [293]

133-124, 158+234.

CHAPTER 5A

SALARIES OF CERTAIN STATE OFFICERS AND EMPLOYEES

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itary storekeeper, thirteen hundred and twenty dollars; clerk, twelve hundred dollars; stenographer, one thousand dollars.

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252. Amount—Payment—The yearly salaries of the state officers and employes mentioned in this act shall be as herein fixed, and all salaries shall be payable in semi-monthly installments. ('13, c. 400, § 1; amended as indicated below)
125-104, 145+794.

1. Office of Governor

Governor, \$7000; private secretary, \$4500; executive clerk, \$3000; recording clerk, who shall be also clerk of the pardon board, \$2000; executive messenger, \$2000; assistant executive messenger, \$1200; notary clerk and stenographer, \$1800. (Amended '17 c. 459, '19 c. 364; '21 c. 367)

2. Judicial Department.

Chief Justice, seven thousand five hundred dollars; associate justices, seven thousand dollars each; supreme court commissioners, seven thousand dollars each; clerk of the supreme court, four thousand five hundred dollars; deputy clerk, three thousand dollars; one stenographer and one assistant clerk, one thousand five hundred dollars each; supreme court reporter, thirty-six hundred dollars; reporter's assistant to be appointed by him and approved by the court, two thousand dollars; marshal, fifteen hundred dollars; janitor, twelve hundred dollars; each stenographer such sum as shall be fixed by the justice or court commissioner appointing them, not exceeding fifteen hundred dollars. (Amended Ex. Sess., '19, c. 30; '21, c. 504; '23, c. 377; '25, c. 268)

3. Office of Secretary of State

Secretary of state, forty-five hundred dollars; assistant secretary of state, twenty-eight hundred dollars; chief clerk, three thousand dollars; recording clerk, eighteen hundred dollars; assistant recording clerk, fifteen hundred dollars; general clerk, twelve hundred dollars; custodian of public documents clerk, fifteen hundred dollars; United States Government survey clerk, fifteen hundred dollars; stenographer, twelve hundred dollars. (Amended '19 c. 366; '23 c. 407)

4. Office of State Auditor

State auditor, forty-six hundred dollars; deputy auditor, twenty-seven hundred and fifty dollars; accountant, twenty-four hundred dollars; warrant clerk, eighteen hundred dollars; clerk of investment board, eighteen hundred dollars; stenographer, twelve hundred dollars; additional clerks, such sum as the auditor shall prescribe not exceeding in all thirteen thousand seven hundred forty dollars; assistant land clerk, fifteen hundred dollars; additional land clerks, such sum as the auditor shall prescribe not exceeding in all fifty-four hundred dollars; mineral land clerk, twenty-one hundred dollars. (Amended '19 c. 486)

5. Office of Adjutant General

Adjutant general, twenty-four hundred dollars; assistant adjutant general, sixteen hundred dollars; mil-

6. Office of Attorney General

The annual salary of the attorney general is hereby fixed at six thousand dollars (\$6,000); and of the deputy attorney general at fifty-five hundred dollars (\$5,500); and of the several assistant attorneys general at forty-eight hundred dollars (\$4800); and of the department clerk and the law clerk in the office of the attorney general at twenty-one hundred dollars (\$2,100). The compensation of said officers and employes, to the extent it exceeds that now established, shall be paid until July 1, 1921, from the fund heretofore appropriated and unexpended as a special contingent fund for the attorney general's office. (Amended '21 c. 324)

7. Office of Insurance Commissioner

(Repealed '19 c. 336. See Insurance Commissioner)

8. Office of State Librarian

State librarian, three thousand dollars; assistant librarian, eighteen hundred dollars; second assistant librarian fifteen hundred dollars; librarian's stenographer, twelve hundred dollars. (Amended Ex. Sess. '19 c. 30)

9. Office of Superintendent of Banks

Office of superintendent of banks abolished, see supra, § 53-32. See, also at the beginning of chapter 28E, these statutes.

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See 5320

Superintendent of banks, forty-five hundred dollars; one deputy superintendent of banks, four thousand dollars; one examiner in charge of liquidation, thirty-seven hundred fifty dollars; one bank examiner assigned to examination in cities of the first class, thirty-seven hundred fifty dollars; ten bank examiners thirty thousand dollars; eleven assistant examiners, twenty-seven thousand five hundred dollars; three second assistant examiners fifty-four hundred dollars; three examiners' clerks, forty-five hundred dollars; four examiners' clerks, at an amount not to exceed fifty-six hundred dollars; one chief clerk, twenty-four hundred dollars; one first assistant clerk, fifteen hundred dollars; seven stenographers and clerks, eighty-two hundred eighty dollars; one extra clerk hire for contingencies, one thousand dollars. (Amended '21 c. 499, '23 c. 252)

10. Office of Public Examiner

Office of public examiner abolished. See supra, § 53-44.

Public examiner, \$4,500.00; deputy public examiner, \$3,300.00; one assistant public examiner, \$3,200.00; one assistant public examiner, \$2,700.00; twelve assistant public examiners at salaries ranging from \$1,500.00 to \$2,400.00 each, but not exceeding in the aggregate the sum of \$27,000.00; one executive clerk, \$1,800.00, and such other clerks and stenographers as may be necessary, but the salaries for such shall not exceed in the aggregate the sum of \$5,800.00, which said sum of \$5,800.00 shall be paid from the maintenance fund. (Amended '15, c. 176; '17, c. 487; Superseded '19, c. 369, § 1)

Explanatory note—Section 2 Laws 1919, c. 369 repeals all inconsistent acts and parts of acts.

11. Office of Superintendent of Public Instruction

Office of State Superintendent of education abolished. See infra, §§ 2958 to 2972.

Superintendent of public instruction and clerk of normal school board, forty-five hundred dollars; assistant superintendent, twenty-eight hundred dollars; second assistant superintendent, two thousand dollars; rural school commissioner, three thousand dollars; high school inspector, three thousand dollars; assistant high school inspector, twenty-seven hundred dollars; graded school inspector, three thousand dollars; special assistant, three thousand dollars; supervisor of school libraries, twelve hundred dollars; clerks not to exceed in all five thousand dollars.

12. Office of State Treasurer

State treasurer, forty-five hundred dollars; deputy state treasurer, three thousand dollars; cashier, twenty-seven hundred dollars; investment clerk, twenty-one hundred dollars, assistant cashier, accountants, stenographers and general clerks, such sum as the treasurer shall prescribe, not exceeding in all the amount appropriated by the legislature for such purpose. (Amended '17 c. 50; '19 c. 529; '21 c. 505.)

13. Office of Railroad and Warehouse Commission.

Three railroad and warehouse commissioners, forty-five hundred dollars each.

14. Office of the Minnesota Tax Commission

Three commissioners, forty-five hundred dollars each; secretary, twenty-seven hundred dollars.

15. Office of Game and Fish Commission

(Repealed '19 c. 370. See Game and Fish Commissioners)

16. Office of Dairy and Food Commissioner

The annual salary of the Dairy and Food Commissioner and the position, number and annual salary of the subordinates to be appointed by him in his department are hereby fixed as follows:

The Commissioner, four thousand dollars; assistant commissioner, three thousand dollars; secretary, two thousand dollars; chief chemist, three thousand five hundred dollars; chief clerk, thirteen hundred and twenty dollars; statistician, twelve hundred dollars; laboratory clerk and stenographer, twelve hundred dollars; one stenographer twelve hundred dollars; general clerks as in his judgment may be necessary not to exceed two at twelve hundred dollars each; two stenographers not to exceed twelve hundred dollars each; three assistant chemists and twenty-two inspectors at a minimum annual salary of fifteen hundred dollars each; but the commissioner may, in consideration of faithful and continuous service, increase the salary of any assistant chemist or inspector not more than two hundred dollars for each year such assistant chemist or inspector has been employed by the department until such salary reaches two thousand dollars, which shall be the maximum; provided, that the provisions of this act shall not apply to Chapter 97, Laws of 1913, and amendments thereto.

The expenses of the Commissioner and his subordinates necessary and actually incurred in the discharge of his official duties shall be paid in addition to salary, upon itemized vouchers approved by the Commissioner or Assistant Commissioner. (Amended '15 c. 247; '19 c. 316; '21 c. 520)

Laws 1913, c. 97 is repealed by Laws 1921, c. 495, § 83. See infra, § 3870.

17. Office of State Forestry Board

State forestry board abolished. See supra, § 53-45. See, also, supra, §§ 53-19 to 53-23.

State forester, four thousand dollars; assistant forester, twenty-seven hundred dollars; secretary, eighteen hundred dollars; clerk, twelve hundred dollars; draughtsman, nine hundred sixty dollars; two stenographers, nine hundred dollars each.

18. Office of State Inspector of Apiaries

Inspector, fifteen hundred dollars; deputy inspectors, five dollars per day for each day actually spent in the performance of his duties, provided that the total sum paid deputies shall not exceed five hundred dollars in any one year.

19. Office of Board of Control

Three members, board of control, forty-five hundred dollars each.

20. Office of State Printer

State printer, twenty-four hundred dollars.

21. Office of Bureau of Labor

Office of department of labor and industries. Commissioner of labor, thirty-six hundred dollars; assistant commissioner of labor, twenty-four hundred dollars; chief statistician, twenty-four hundred dollars; statistician, seventeen hundred dollars; assistant statistician, twelve hundred dollars; superintendent, bureau of women and children, eighteen hundred dollars; two deputy labor commissioners, not to exceed thirty-seven hundred and twenty dollars; one elevator inspector, not to exceed eighteen hundred and sixty dollars; seven male factory inspectors, not to exceed eleven thousand six hundred dollars; one railroad inspector, not to exceed seventeen hundred dollars; four female inspectors, not to exceed five thousand six hundred dollars; three local managers of employment offices not to exceed four thousand three hundred dollars; four assistant managers of employment offices, not to exceed four thousand four hundred and forty dollars; three special agents, compensation division, not to exceed five thousand five hundred and eighty dollars; one special agent, statistical division, fifteen hundred dollars; one secretary, not to exceed twelve hundred dollars; three stenographers, not to exceed three thousand and eighty dollars; four clerks, not to exceed four thousand dollars; one chief file clerk, not to exceed twelve hundred dollars. (Amended '19 c. 394)

22. District Court Judges

The judges of the District Court, six thousand dollars each from the state and fifteen hundred dollars additional, payable monthly from each county in their respective districts having a population of seventy-five thousand or more and three hundred dollars additional in each judicial district having an area of more than fifteen thousand square miles, payable monthly from the counties comprising such judicial district in such proportion as the assessed valuation of each county bears to the total assessed valuation of such judicial district in the preceding year. ('19 Ex. Sess. c. 30; amended '21, c. 431; '27, c. 446, § 1, effective July 1, 1927) [Added to G. S. '13, § 294, by amendment as noted]

Explanatory note—This bill was passed April 12, 1927, but was vetoed by the Governor; but the Supreme Court has held that the veto was not made within the time limit fixed by the Constitution, so that the bill became a law notwithstanding such veto. See —+—.

252-1. Salaries of employees payable semi-monthly except elective officers and appointive heads of State Departments—All employees of the State of Minnesota shall receive compensation due them for services rendered semi-monthly; provided that this shall not apply to elective officers and heads of State Departments who may be appointed thereto. ('21, c. 379, § 1)

253. Salaries to be in full—The salaries provided in this act for the officers and employees named herein,

shall be in full payment for all services that may be rendered by said officers or employees either in the performance of their regular or special duties or while acting as a member or employee of any state board or commission. ('13 c. 400 § 2) [295]

125-104, 145+794.

254. Fees—All fees of any nature collected by any officer or employee named in this act shall be paid in to the state treasury. ('13 c. 400 § 3) [296]

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CHAPTER 6

ELECTIONS

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1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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of such charge before any judge of any District Court of this state such Court may cause such official or head of a state department to be removed upon proof being duly made of the misappropriation or for any other purpose than for which the appropriation was made, except in an emergency and then only with the approval of Commission of Administration and Finance. (Apr. 24, 1937, c. 457, §36.)

Sec. 41 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

Appropriation can only be expended for purposes stated except in emergency, and what constitutes an emergency is a matter for both official or head of department and commission of administration and finance to agree upon. Op. Atty. Gen. (9a-3), June 7, 1937.

126. Board of Relief. * * * * *

2. Certificates of indebtedness for relief of distress authorized.—The state board of relief is hereby authorized to take any measures necessary to prevent or avert any impending disaster which threatens to destroy life or property in this state, to grant relief or temporary assistance to communities in this state stricken by disease, flood, storm, fire (or) action of the elements, or extreme economic distress causing destitution of families or individuals or disabled persons, or prevent the occurrence or spread of any such calamity or disaster which might entail loss of life or property or result in great suffering and hardship among the people of this state, and in any such event, it shall have the authority to commandeer and take for use, in any such emergency, any property, vehicle, motor car or any means of transportation by rail or water or any means of communication or any public service, which in the opinion of the said board might be necessary to save life or property or prevent and avert any such impending disaster or furnish assistance or relief to communities in this state, so stricken, or for the prevention of any such calamity. The owner of any property so taken shall be given a receipt for the same and shall be paid for the use of such property or for any damage which might be caused to the same while in the service of the state board. (As amended Apr. 21, 1933, c. 355.) * * * * *

6. Loan Authorized.—For the purpose of carrying out the provisions of this act, whenever an emergency exists, the board of relief hereby created is authorized to borrow such a sum of money, not exceeding seven hundred fifty thousand dollars (\$750,000), as shall in its judgment be necessary and sufficient. (As amended Apr. 21, 1933, c. 355.) * * * * *

This act 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 the year 1919. 172M344, 215NW510.

By receiving the grain from the state and by giving his note therefor, defendant held not to have become estopped from denying liability on the note. 172M344, 215NW510.

2. Authority.

Executive council has power to place unemployed persons upon farms and furnish them with animals, machinery, feed and furniture to get them started. Op. Atty. Gen., May 20, 1933.

Act permits executive council to grant relief to be disbursed by Soldiers' Home Board. Op. Atty. Gen., Aug. 1, 1933.

Responsibility for administration of fund appropriated by executive council for relief of disabled veterans and their families rests with state board of control and not state soldiers' home board. Op. Atty. Gen., Oct. 6, 1933.

Act creating Lincoln-Lyon tornado relief commission, defining powers respecting relief to tornado swept district. Laws 1931, c. 130.

128-1. Holding two appointive offices—Compensation.

Offices of superintendent of Bureau of Criminal Apprehension and superintendent of Highway Patrol are not incompatible. Op. Atty. Gen. (2137), Jan. 14, 1939.

128-2. State Geographic Board established.—There is here established a State Geographic Board which shall consist of the Commissioner of Conservation, the Commissioner of State Highways, and the Superintendent of the Minnesota Historical Society. (Mar. 8, 1937, c. 63, §1.)

128-3. Powers and duties.—It shall be the duty of the State Geographic Board and it shall have power and authority:

(a) To determine the correct and most appropriate names of the lakes, streams, places and other geographic features in the state, and the spelling thereof;

(b) To pass upon and give names to lakes, streams, places and other geographic features in the state for which no single generally accepted name has been in use;

(c) In cooperation with the county boards and with their approval, to change the names of lakes, streams, places and other geographic features, with the end in view of eliminating, as far as possible, duplication of names within the state;

(d) To prepare and publish an official state dictionary of geographic names and to publish the same, either as a completed whole or in parts when ready;

(e) To serve as the state representatives of the United States geographic board and to cooperate with the said board to the end that there shall be no conflict between the state and federal designations of geographic features in the state. (Mar. 8, 1937, c. 63, §2.)

Constitution, art. 4, §33, does not interfere in any way with exercise of powers granted by this act. Op. Atty. Gen. (230), July 2, 1937.

128-4. Names given to be official.—Whenever the State Geographic Board shall have given a name to any lake, stream, place and other geographic feature within the State, such name shall be used in all maps, records, documents and other publications issued by the State or any of its departments and political subdivisions, and such name shall be deemed the official name of such geographic features. (Mar. 8, 1937, c. 63, §3.)

128-5. County boards naming geographic features must have approval of Geographic Board.—No County Board shall order the change of or establish the name of any lake, river, or other body of water without the written approval of the State Geographic Board endorsed on any resolution determining or fixing said name, which endorsement must be made on the same prior to recording with the Register of Deeds. (Mar. 8, 1937, c. 63, §4.)

128-6. Inconsistent acts repealed.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Mar. 8, 1937, c. 63, §5.)

Sec. 6 of Act Mar. 8, 1937, provides that the act shall take effect from its passage.

CHAPTER 5

Judicial Department

SUPREME COURT

132. Writs—Process.

Deduction of inheritance tax because of disallowance of claims against estate cannot be reached by certiorari. 179M233, 228NW920.

Appeal and not mandamus is proper remedy to compel making of findings of fact. 180M530, 230NW472.

Where mandamus is used to review an order of trial court on motion to change place of trial to promote convenience of witnesses and ends of justice, only matters presented to trial court can be considered. State v. Dis-

trict Court of Brown County, 194M595, 261NW701. See Dun. Dig. 5764a, 10126, 10127, 10129.

Granting of leave to a municipal corporation to file an information in nature of quo warranto, notwithstanding refusal of attorney general to apply for writ or to consent to its filing, lies in sound discretion of court, and that discretion should be exercised favorably, and leave granted where one municipal corporation, on grounds prima facie valid, challenges legal effectiveness of proceedings by another to take over and include within its limits territory belonging to former, issue so raised being one of public rather than mere private interest. *State v. City of Chisholm*, 196M285, 264NW798. See Dun. Dig. 8070.

Supreme court has power to grant leave to file information for writ of quo warranto to test propriety of including land within boundaries of a city over objections of the attorney general. *State v. City of Chisholm*, 196M285, 266NW689. See Dun. Dig. 8064.

In quo warranto by one town attacking taking in of additional territory by a city, another town occupying same position as petitioner will be granted leave to intervene. *Id.* See Dun. Dig. 8070.

In quo warranto by town testing validity of taking territory into city, taxpayers and residents of town having special rights that will be affected may be permitted to intervene, but this does not mean that they would be permitted to come in as original and only relators. *Id.*

To justify court in overruling judgment of attorney in refusing to institute quo warranto proceedings, case must be exceptional and one in which it clearly appears that public interests require it. *State v. Johnson*, 201M 219, 275NW684. See Dun. Dig. 8070.

Prohibition will not issue where law provides a remedy and will not lie to prevent commissioner of registration from taking steps to remove name from election register under §389, there being a remedy by appeal to the district court. *State v. Ferguson*, 203M603, 281NW765. See Dun. Dig. 7842.

A writ of prohibition may issue out of supreme court when it clearly appears that an inferior court has no rightful jurisdiction or is exceeding legitimate powers in a matter of which it has jurisdiction. *State v. District Court*, 204M415, 283NW738. See Dun. Dig. 7840.

Following *State ex rel. Hurd v. Willis*, 61 Minn. 120, 63NW1699 supreme court will not review by writ of certiorari an order of the district court adjudging the relator guilty of a civil contempt. *Guleson v. G.*, 286N W721. See Dun. Dig. 1404.

Writ of prohibition to court christian. 20MinnLaw Rev272.

133. Power—rules.

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. *State v. Jackson*, 198M111, 268NW924. See Dun. Dig. 2501.

Rules governing attorneys in the practice of their profession. 16MinnLawRev270.

COMMISSIONERS

135 to 137. [Superseded.]

Superseded by amendment of art. 6, §2, of the constitution, promulgated Nov. 20, 1930.

MINNESOTA REPORTS

150. Printing and binding reports of decisions—Contracts by commissioner of purchases—Purchase and distribution of volumes by state.—The reports of such decisions shall be printed and bound in style and quality to be approved by the court, shall contain at least six hundred pages of four and one-half inches in width, and shall be equal in quality of paper and binding to the best of those heretofore published.

The Commissioner of Purchases, pursuant to provisions of Chapter 426, General Laws 1925 [§53-10], under appropriate specifications to be approved by the court, from time to time and for designated periods not exceeding ten years, shall enter into a contract, in form and manner approved by the court, for the continued publication of such bound volumes, with suitable provisions requiring the publisher at all times to keep the published volumes on sale at a designated place within the state at a specified maximum price per volume, and specifying the number of such volumes to be sold and delivered to the state for distribution as herein directed. The volumes purchased by the state under the provisions of such contract shall be delivered to the secretary of state and shall be distributed as follows:

1. One to each judge of the District, Probate, and Municipal Courts of the State, and to each Justice,

Commissioner and the Reporter of the Supreme Court.

2. To the Attorney General, one volume for each set of reports in use in the department.

3. One to each clerk of the District Court, for the use of the court when in session, and otherwise for the use of officials and citizens of the county.

3½. One copy to the Industrial Commission of Minnesota.

All of the foregoing shall remain the property of the state and shall be delivered to the successors in office of the officials named.

4. Three to the clerk of the United States Circuit Court of Appeals for the eighth circuit, one to be kept for the use of the judges at each of its places of meeting.

5. One hundred to the State University, to be used in exchanges or otherwise for the benefit of its law library.

6. To the state library, as many as the court shall certify to be necessary for the use of the library and for exchanges with other law libraries.

The copies not disposed of hereunder shall remain in the custody of the Secretary of State. (As Am. Mar. 23, 1937, c. 81, §1.)

Sec. 2 of Act Mar. 23, 1937, cited, provides that the Act shall take effect from its passage.

DISTRICT COURT

154. Jurisdiction.

The federal district court has no discretion to refuse to hear and determine cases removed from a state court and based on the Federal Employers' Liability Act and arising out of injuries received in another state; and comity does not require the court to respect an injunction granted by the foreign court. *Beem v. Illinois Cent. Ry. Co.*, (DC-Minn.), 55F(2d)708; *Doyle v. Northern Pac. Ry. Co.*, (DC-Minn.), 55F(2d)708. See Dun. Dig. 1530.

Suit to enjoin railroad from abandoning a line as authorized by interstate commerce commission, was not within the jurisdiction of the state court, although it was alleged that the order violated a contract between the railroad and a municipality, and the federal district court acquired no jurisdiction of the cause upon its removal. *Village of Mantorville v. C.* (USDC-Minn.), 8F Supp791. See Dun. Dig. 8400.

Public policy requires that official duties be performed without restraint, and that the motives underlying the performance of such official duties should not be inquired into in a proceeding in a court of law. *Block v. S.*, (DC-Minn.), 26FSupp105.

Public policy requires that officers and agents of the government, in connection with matters arising from the performance of their official duties, shall not be held responsive to suits or claims arising from their actions. *Id.*

Officials of Works Progress Administration held not answerable in court proceedings for dismissal of plaintiff as an employee of the administration, as the result of an employment record made by them, even though they may have been actuated by improper motives. *Id.*

Custodia legis means that the jurisdiction of the court having custody of res is exclusive in so far as restrictions may be necessarily imposed on other courts for the proper control and disposition of it by the court having custody and control of the same. *National Automatic Tool Co. v. G.*, (DC-Minn.), 27FSupp399.

Act of president of a national bank in receiving money of another and misapplying it was a violation of a federal statute (Mason's Code, Tit. 12, §592), and he could not be prosecuted in state court for grand larceny. 171M466, 214NW279.

District court has jurisdiction of action by nonresident against foreign corporation based on Federal Employers' Liability Act, and it is the duty of such court to assume jurisdiction. 180M52, 230NW457.

District court, in equity suit, had jurisdiction to determine whether widow had elected to take under will. 180M134, 230NW575.

Court in Minnesota may grant injunctions by default against the prosecuting of a cross-action in Texas in a case therein to foreclose a mortgage on Texas land, all parties being domiciled in Minnesota. *Child v. H.*, 183M 170, 236NW202. See Dun. Dig. 1554(29).

Public policy of this state does not forbid recovery here against estate of deceased tortfeasor for surviving liability for tort committed extraterritorially, though liability does not survive under our statutes. *Chub-buck v. Holloway*, 182Minn225, 234NW314, 868, adhered to. *Kerston v. J.*, 185M591, 242NW329. See Dun. Dig. 1531.

Our district courts are courts of concurrent jurisdiction, and when one first acquires jurisdiction over an action and parties thereto, it is an excess of jurisdiction for another, by injunctive proceedings against parties, to attempt to restrain further proceedings in court first

acquiring jurisdiction. *State v. District Court*, 195M163, 262NW165. See Dun. Dig. 2758.

It is essential, to authorize a district court to proceed in an action or proceedings, that it have jurisdiction over parties and over subject-matter. *Fulton v. O.*, 195M247, 262NW570. See Dun. Dig. 2759.

A suit by third parties against surviving partners of a firm, to recover on liabilities of firm and of surviving partners, is within jurisdiction of district court, and not probate court. *Id.*

When any court, competent to exercise it, acquires jurisdiction of an action, that jurisdiction continues to the end. *Weisman v. M.*, 196M574, 265NW431. See Dun. Dig. 2350.

Inasmuch as whole field of domestic relations, including those between parents and child, is reserved to states, state courts have jurisdiction over a statutory filiation proceeding against a foreign consul. *State v. Flores*, 197M590, 268NW194. See Dun. Dig. 2350a.

Provisions of the constitution of a voluntary, nonprofit labor organization, requiring as a condition precedent to a resort to the courts, in any matter in which a member thereof feels aggrieved by the action of the organization or its officers, that such member first exhaust all remedies open to him within the organization, are valid, if the remedies so provided are reasonable. *Skrivanek v. B.*, 198M141, 269NW111. See Dun. Dig. 2345.

It does not invalidate provisions of labor organization with insurance feature that member must exhaust remedies within organization that only aggrieved member himself or some other member acting on his behalf is permitted to appear before tribunals of organization in any dispute. *Id.*

Jurisdiction to decide is power to decide erroneously as well as correctly. *Reid v. I.*, 200M599, 275NW300. See Dun. Dig. 2345.

Where mode of acquiring jurisdiction is prescribed by statute, compliance therewith is essential or proceedings will be a nullity. *Strom v. L.*, 201M226, 275NW833. See Dun. Dig. 2345.

Whenever attention of court is called to absence of a jurisdictional fact, it may, and should, refuse to exceed its powers. *Id.*

Decisions of U. S. Supreme Court respecting federal sovereignty and immunity from state taxation are binding upon the states. *Geery v. M.*, 202M366, 278NW594. See Dun. Dig. 2350a, 9120.

Regional agricultural credit corporations are not immune from suit. *Casper v. R.*, 202M433, 278NW896. See Dun. Dig. 9955b.

Determination of issues arising under federal anti-trust laws, whether raised by way of attack or defense, is made by statutes to rest exclusively within jurisdiction of federal courts and beyond that of state courts. *General Talking Pictures Corp. v. D.*, 203M28, 279NW750. See Dun. Dig. 8437.

State court had no jurisdiction of an action by an applicant for a patent against another applicant filing for a patent, resulting in an interference in patent office, to recover damages for conspiracy to steal plaintiff's property rights by means of fraud and perjury, at least pending determination of interference by patent office. *Grob v. C.*, 204M459, 283NW774. See Dun. Dig. 7419.

Validity of acts of unrecognized de facto governments in the courts of non-recognized states. 13MinnLawRev 216.

Discretion to dismiss actions between non-residents on causes of action arising outside of state. 15MinnLawRev 83.

156. Writs.

The position of general superintendent and engineer of the water department of the city of St. Paul is an employment and not an office, and quo warranto does not lie to determine the right to hold it. 174M410, 219NW 760.

Quo warranto to test right of corporate directors to act. 180M486, 231NW197.

A district judge, exercising power of court itself, has jurisdiction to vacate an order of court commissioner for a writ of habeas corpus and to quash writ if issued, merits of matter not having been decided by commissioner. *State v. Hemenway*, 194M124, 259NW687. See Dun. Dig. 2331.

City may be ousted from territory improperly included. *State v. City of Chisholm*, 199M403, 273NW235. See Dun. Dig. 8064.

Where in election contest proceedings, court found that there was a tie vote and that a vacancy existed and ordered village council to fill it by appointment, and no appeal was taken, one of contestants will not be permitted on petition for leave to file an information in nature of quo warranto to collaterally attack the finding and order that vacancy existed which council had authority to fill by appointment. *State v. Johnson*, 201M 219, 275NW684. See Dun. Dig. 8066.

To justify court in overruling judgment of attorney in refusing to institute quo warranto proceedings, case must be exceptional and one in which it clearly appears that public interests require it. *Id.* See Dun. Dig. 8070.

Where village recorder resigned a few weeks before regular election, and trustee of village was appointed to perform duties of recorder until election, and he accepted only on understanding that he did not have to vacate his office as trustee and did not take oath of

office of recorder or accept compensation, court did not abuse its discretion in denying petition for leave to file an information in nature of quo warranto on ground that respondent forfeited his office as trustee by performing incompatible duties of office of recorder. *State v. Ingelbretson*, 201M222, 275NW686. See Dun. Dig. 8070.

One who has no certificate of election to a state office from state canvassing board is not entitled to quo warranto to test title of incumbent appointee thereto. *State v. Atwood*, 202M50, 277NW357. See Dun. Dig. 8070.

District court has discretionary power to grant leave to file an information in nature of quo warranto at instance of a private relator having no interest in matter distinct from that of general public, notwithstanding refusal of Attorney General to institute or consent to proceedings, but case should be exceptional, and one in which it clearly appears that public interests require it, and fact that there is a substantial defect in title to office is not controlling. *State v. Fredrickson*, 202M79, 277 NW407. See Dun. Dig. 8070.

Improper motives may lead to denial of relief in quo warranto, even though relator is attorney general. *State v. Crookston Trust Co.*, 203M512, 282NW138. See Dun. Dig. 8062.

In quo warranto defense of improper motive may not be disposed of by demurrer. *Id.* See Dun. Dig. 8071a.

Title to public office will not be tried in a suit for injunction against a claimant. *Doyle v. R.*, 285NW480. See Dun. Dig. 4486.

In granting leave to members of a private corporation to challenge by quo warranto rights of its officers to hold offices they claim to occupy, court exercises judicial discretion, but no judicial discretion is exercised if it appears court acted improvidently or through inadvertence and under a misapprehension of facts, in which case court may dismiss proceedings on motion. *Dollenmayer v. R.*, 286NW297. See Dun. Dig. 8062, 8070.

Where one judge improvidently issued writ of quo warranto, another judge on motion of respondents could quash proceeding, especially where no objection was made to hearing and submission of motion. *Id.* See Dun. Dig. 8073.

Petition to test validity of incorporation of a village should name officers of newly incorporated village and the defendants in the proposed proceedings. *Op. Atty. Gen.* (361e-4), Dec. 14, 1934.

157. Testing writs.

Summons is not process and need not run in name of state. *Schultz v. O.*, 202M237, 277NW918. See Dun. Dig. 7798.

158. Judge may act in another district.

Authority to "any judge of any judicial district" when "the convenience or interest of the public or the interest of any litigant shall require" substitution, has for its basis a determination of facts, and such duty is judicial or at least quasi judicial. *State v. Montague*, 195M278, 262NW684. See Dun. Dig. 4961.

Where presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district, governor may not designate an outside judge to preside thereat, it appearing that regular and properly designated judge is competent to act, that there is no accumulation of business before court, and that delay of trial is not probable. *Id.*

In so far as Mason's Minn. St. 1927, §§158 or 9218, assume to empower Governor to designate a judge of another district to discharge duties of a district judge, it is in contravention of §1 of article 3 and beyond authority of §5 of article 6 of constitution. *State v. Day*, 200M77, 273NW684. See Dun. Dig. 4961.

This section is unconstitutional, at least in its application to alleged bias on part of sitting judge. *Op. Atty. Gen.* (213B), Jan. 30, 1939.

161. District courts to be open at all times.

District court is held, within meaning of Gen. Stats. 1913, §238, as amended by Laws 1919, c. 229, when judge is sitting for the determination of questions of fact or of law, and there is no distinction between general and special term days. *Op. Atty. Gen.*, Dec. 24, 1931.

Sections 161 and 173 are not inconsistent but merely provide two different methods of calling special grand juries. *Op. Atty. Gen.* (494a-3), June 15, 1934.

Where county attorney more than 15 days before regular term obtained order from judge of district court for grand jury, but did not file order with clerk of court until less than 15 days before term, no grand jury could be called for such term. *Op. Atty. Gen.* (494a-3), Sept. 30, 1937.

TERMS OF COURT

162. Times for holding general terms.

Third Judicial District

The general terms of district court in the several counties constituting the Third Judicial District of the State of Minnesota shall be held each year at the times prescribed as follows:

Houston County on the third Monday in May and the fourth Monday in October;

Olmsted County on the third Monday in January, April and September;

Wabasha County on the third Monday in May and the second Monday in November;

Winona County on the second Monday in January and the third Monday in April and September;

Provided, however, that when any general term in any of said counties shall be adjourned for a period of more than thirty days, and issues of fact in any action are joined more than eight days before the first day of any such adjourned term, then and in that case such action may be brought on for trial at such adjourned term upon notice of trial served eight days or more before the beginning of said adjourned term; such notice of trial shall be filed with the clerk at least six days before the beginning of such adjourned term and shall serve as a note of issue. ('17, c. 2, §1; '21, c. 103, §1; '23, c. 14, §§1, 2; '25, c. 84, §§1, 2; Mar. 20, 1935, c. 62, §1).

Fifth Judicial District

The general terms of the district court in the several counties constituting the Fifth Judicial District of the State of Minnesota shall be held at the times herein prescribed, as follows:

In Dodge County, the first Monday in April and the third Monday in September.

In Rice County, the first Monday in May and the first Wednesday after the first Monday in November.

In Steele County, the first Monday in June and the first Monday in December.

In Waseca County, the first Monday in March and the second Monday in October.

Provided, however, that where any general term in any of said counties has been or shall hereafter be adjourned for a period of more than thirty (30) days, and issues of fact in any action are joined more than eight (8) days before the first days of any such adjourned term, then and in that case such action may be brought on for trial, at such adjourned term upon notice of trial served eight (8) days or more before the beginning of said adjourned term. (R. L. '05, §97; '09, c. 244, §1; '13, c. 326, §1; '25, c. 99, §1; Feb. 9, 1933, c. 15, §1.)

Sec. 2 of Act Feb. 9, 1933, cited, repeals inconsistent acts and §3 provides that the act shall take effect from its passage.

Sixth Judicial District

The general terms of the District Court to be held each year in the several counties constituting the Sixth Judicial District of the State of Minnesota shall be held at the times herein prescribed, as follows:

Blue Earth County: On the first Tuesday in February, the second Tuesday in May and the second Wednesday in October.

Watonwan County: On the second Tuesday in April and the second Tuesday in September.

Laws 1937, Chapter 5, is hereby repealed.

This act shall take effect and be in force from and after September 1, 1937. (Jan. 30, 1937, c. 5, §§1, 2; Apr. 8, 1937, c. 184, §§1-3.)

Seventh Judicial District

The general terms of the District Court in the several counties constituting the Seventh Judicial District of the State of Minnesota shall be held at the time herein prescribed, as follows:

In Becker County, on the first Monday in March, and the second Monday in September.

In Benton County, on the first Monday in March, and the second Monday in September.

In Clay County, on the second Monday in April, and the second Monday in November.

In Douglas County, on the first Monday in March, and the second Monday in September.

In Mille Lacs County, on the third Monday in March, and the second Monday in October.

In Morrison County, on the second Monday in May, and the first Monday in December.

In Otter Tail County, on the second Monday in April, and the second Monday in November.

In Stearns County, on the second Monday in April, and the second Monday in November.

In Todd County, on the third Monday in March, and the second Monday in October.

In Wadena County, on the first Monday in March, and the second Monday in September. (R. L. '05, §97; '09, c. 244, §1; '13, c. 9, §1; '15, c. 90; '17, c. 37, §1; '25, c. 9, §1; Apr. 6, 1931, c. 117, §1; Feb. 15, 1933, c. 28, §1; Mar. 23, 1933, c. 108, §1; Mar. 15, 1935, c. 46, §1.)

Act Mar. 15, 1935, cited, provides that the act shall take effect from its passage.

Eighth Judicial District

The general terms of the District Court to be held each year in the several counties constituting the Eighth Judicial District of the State of Minnesota shall be held commencing on the days hereinafter set forth, as follows, to-wit:

In Carver County on the first Monday in March and on the second Monday in October.

In Le Sueur County on the third Monday in April and the third Monday in September.

In McLeod County on the second Monday in May and the second Monday in November.

In Scott County on the fourth Monday in March and the fourth Monday in October.

In Sibley County on the first Monday in June and the first Monday in December. (Mar. 31, 1937, c. 127, §1.)

Sec. 2 of Act Mar. 31, 1937, repeals inconsistent acts, and §3 provides that the act shall take effect July 1, 1937.

Ninth Judicial District

The general terms of the district court in the several counties constituting the Ninth Judicial District of the State of Minnesota shall be held at the time herein prescribed, as follows:

Brown County: On the third Monday in May and the fourth Monday in November.

Lincoln County: On the fourth Monday in March and the fourth Monday in September.

Lyon County: On the fourth Monday in April and the third Monday in November.

Nicollet County: On the first Tuesday in May and the second Tuesday in October.

Redwood County: On the second Monday in April and the fourth Monday in October.

Sec. 2. Effective March 1, 1931.—This act shall take effect and be in force from and after March 1, 1931. (R. L. '05, §97; '09, c. 244, §1; '15, c. 67, §1; superseded '25, c. 102, §1; Mar. 9, 1931, c. 50, §1.)

Tenth Judicial District

That the General Terms of the District Court shall be held each year in the several counties constituting the Tenth Judicial District of the State of Minnesota at the time herein prescribed as follows:

Freeborn County: First Monday in February; second Monday in May, and third Monday in September;

Mower County: Second Monday in March and second Monday in October;

Fillmore County: Third Monday in April and second Monday in November. ('17, c. 367, §1; '19, c. 29; Apr. 15, 1935, c. 182, §1.)

Sec. 2. Effective July 1, 1935.—This Act shall take effect and be in force from and after July 1, 1935. (Act Apr. 15, 1935, c. 182, §2.)

Section 3 repeals inconsistent acts.

Eleventh Judicial District

The general terms of the District Court of the Eleventh Judicial District in the State of Minnesota shall be held as follows:

In Carlton County: On the first Tuesday after the first day in January, on the second Tuesday in June and on the third Tuesday in October.

Cook County: On the fourth Monday in June.

Lake County: On the second Wednesday in June and second Wednesday in December.

St. Louis County: On the first Wednesday after the first day in January, on the first Wednesday in March, on the first Wednesday in May, on the first Wednesday after the first Monday in September, and on the first Wednesday in November. (Mar. 2, 1937, c. 48, §1.)

Sec. 2 of Act Mar. 2, 1937, is set forth as §164, post.
 Sec. 3 of said act repeals inconsistent laws.
 Sec. 4 of said act provides that the act shall take effect from its passage.
 Superseding Act Jan. 27, 1936, Ex. Ses., c. 111.
 [Special provisions as to places for holding court, see §164 et seq.]

Twelfth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Twelfth Judicial District of the State of Minnesota at the same time herein prescribed as follows:

- Chippewa County: First Monday in June; fourth Monday in November;
- Kandiyohi County: Third Monday in March; first Monday in October;
- Meeker County: Second Monday in March; third Monday in December;
- Renville County: Second Monday in May; second Monday in November;
- Swift County: Third Monday in May; second Monday in November;
- Yellow Medicine County: First Monday in April; third Monday in September;
- Lac qui Parle County: First Monday in May; second Monday in December. (R. L. '05, §97; '09, c. 244, §1; '23, c. 290, §1; '27, c. 55, §1; Feb. 2, 1933, c. 11, §1; Apr. 29, 1935, c. 356, §1; Feb. 9, 1939, c. 11.)

Thirteenth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Thirteenth Judicial District of the State of Minnesota at the times herein prescribed as follows: In Cottonwood County on the second Tuesday in May and the second Tuesday in November; in Murray County on the second Tuesday in April and the first Tuesday in December; in Nobles County on the second Tuesday in February and the second Tuesday in October; in Pipestone County on the second Tuesday in January and the first Tuesday in June; and in Rock County on the second Tuesday in March and the second Tuesday in September. (R. L. '05, §97; '09, c. 244, §1; '13, c. 52, §1; '21, c. 57, §1; Jan. 22, 1929, c. 3; Feb. 11, 1933, c. 22; Mar. 1, 1939, c. 36.)

Fourteenth Judicial District

The general terms of the District Court in the several counties constituting the Fourteenth Judicial District of the State of Minnesota shall be held, each year, at the times herein prescribed as follows:

- Pennington County: On the fourth Monday in February and the first Monday in October.
- Mahnomen County: On the fourth Monday in May.
- Kittson County: On the fourth Monday in March, and the second Monday in November.
- Roseau County: On the second Monday in April, and the fourth Monday in October.
- Marshall County: On the first Monday in May, and the fourth Monday in November.
- Norman County: On the fourth Monday in April, and the third Monday in October.
- Polk County: On the third Monday in May, and the third Monday in November.
- Red Lake County: On the second Monday in April, and the second Monday in October. (R. L. '05, §97; '09, c. 244, §1; '15, c. 43, §1; '17, c. 67, §1; '21, c. 135, §1; '25, c. 8, §1; '25, c. 34, §1; '27, c. 67, §1; Jan. 17, 1929, c. 2; Apr. 21, 1931, c. 285, §1; Mar. 3, 1933, c. 51, §1; Apr. 24, 1937, c. 448, §1.)

Sec. 2 of Act Mar. 3, 1933, repeals inconsistent acts. Sec. 3 provides that the act shall take effect from and after Apr. 1, 1933.

Sec. 2 of Act Apr. 24, 1937, cited, repeals inconsistent laws. Sec. 3 provides that the act shall take effect from and after June 1, 1937.

Fifteenth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Fifteenth Judicial District of Minnesota at the times herein prescribed, as follows:

- Aitkin County, on the second Tuesday in May and the first Tuesday in December.
 - Beltrami County, on the third Tuesday in February and the second Tuesday in September.
 - Cass County, on the first Tuesday in March and the first Tuesday in October.
 - Clearwater County, on the third Tuesday in April and the first Tuesday in November.
 - Crow Wing County, on the first Tuesday in April and the first Tuesday in November.
 - Hubbard County, on the first Tuesday in February and the first Tuesday in September.
 - Itasca County, on the third Tuesday in February and the second Tuesday in September.
 - Koochiching County, on the second Tuesday in May and the first Tuesday in December.
 - Lake of the Woods County, on the third Tuesday in April and the first Tuesday in November.
- In years when the first Tuesday in November is general election day the November terms shall be held on the first Wednesday of that month.
- All Acts and parts of Acts inconsistent herewith are hereby repealed.
- This Act shall take effect and be in force from and after July 1, 1937. (R. L. '05, §97; '09, c. 244, §1; '21, c. 143, §1; '23, c. 222, §2; '25, c. 344; '27, c. 197, §1; Dec. 23, 1933, Ex. Sess. c. 15; Apr. 17, 1937, c. 261, §§1-4.)

Seventeenth Judicial District

The general terms of the district court, to be held each year in the several counties constituting the Seventeenth Judicial District, of the State of Minnesota, shall be held commencing on the day herein-after described, as follows, to-wit:

- In Jackson county on the second Monday in February and the second Monday in September.
- In Martin county, on the second Monday in March and the second Monday in October.
- In Faribault county, on the second Monday in April and the second Monday in November. (R. L. '05, §97; '09, c. 244, §1; '21, c. 174, §1; Feb. 13, 1929, c. 16, §1.)

Sec. 2 of Act Feb. 13, 1929, c. 16, repeals Laws 1921, c. 174, and all inconsistent acts. Sec. 3 provides that the act shall be in force on and after June 1, 1929.

Eighteenth Judicial District

The general terms of the District Court to be held each year in the several counties constituting the Eighteenth Judicial District of the State of Minnesota shall be held at the times herein prescribed as follows:

- Anoka County, third Monday in March; fourth Monday in September.
 - Wright County, first Monday in May and third Monday in November.
 - Sherburne County, fourth Monday in February and fourth Monday in October.
- The general terms of the District Court shall be held in the County of Isanti in each year at the times herein prescribed as follows: the general terms on the second Monday in February and the second Monday in September. (Apr. 17, 1937, c. 267, §1; June 14, 1937, Sp. Ses., c. 18, §1.)

Nineteenth Judicial District

The general terms of the District Court shall be held in the Counties of Chisago and Pine in the

Nineteenth Judicial District as follows:

In the County of Chisago on the fourth Tuesday in April and on the first Monday in October of each year.

In the County of Pine on the first Monday in April and on the fourth Tuesday in October of each year.

All acts and parts of acts inconsistent with this act are hereby repealed.

This act shall take effect and be in force from and after July 1, 1923. ('19, c. 70; '23, c. 56, §1.)

The general terms of the District Court shall be held in the County of Kanabec in each year at the times herein prescribed as follows:

The general term on the third Tuesday in August.

In addition thereto general terms of court shall be held in Kanabec county on the fourth Tuesday in January, on the fourth Tuesday in March and the third Monday in June, for the trial and determination of both criminal and civil cases, but no grand or petit jury shall be drawn or summoned unless the court shall so direct by a written order made and filed with the Clerk of Court of the County, at least twenty days before the dates herein fixed for holding said court. ('17, c. 9, §2; '25, c. 345, §2; Mar. 2, 1937, c. 49.)

163. Nineteenth Judicial District—Special terms in Washington County.—That in addition to the general terms of the District Court in Washington County, special terms of said court shall be held in said county on the second and fourth Mondays of each month for the trial of issues of fact by the Court, the trial of issues of law, the hearing of motions and applications, and all matters except the trial of issues of fact by a jury. That during the months of June, July, August, and September such special terms shall be held only on the fourth Monday of each said month. ('09, c. 21, §1 [162]; Mar. 2, 1937, c. 50, §1.)

164. Eleventh Judicial District—St. Louis County.—In addition to the general terms of the District Court in St. Louis County to be held at the County Seat, general terms of the Court are hereby established to be held in the city of Virginia in that county on the first Tuesday in April, on the first Tuesday after the first Monday in September and on the fourth Tuesday in November; and in the village of Hibbing in that county on the second Tuesday in February, on the second Tuesday in May and on the third Tuesday in October in each year; and in the city of Ely in said county on the third Tuesday in March and on the second Tuesday in October in each year, for the trial, hearing and determination of all actions, civil and criminal, and with the same force and effect as though held at the county seat of said county; and all proceedings of whatsoever kind, that can be heard or determined in the District Court of this State, may be tried, heard and determined at the said city of Virginia, the said village of Hibbing or the said city of Ely with the same force and effect as though heard and determined at the county seat of said county, except that all proceedings for the registration of title to real estate shall be tried at the county seat of said county as now provided by law, and all other actions to determine title to real estate shall be tried at the county seat, except that by written consent of all the parties thereto any such action may be tried at said city of Virginia, at the village of Hibbing or the city of Ely in accordance with such written consent; but no officer having in his custody any of the public records of St. Louis County shall be required to produce such record at the trial of any action not on trial at the county seat, save upon the order of the Court providing for the production of such record and its immediate return to the officer producing it, upon its introduction as evidence in such cause. ('09, c. 126; '11, c. 368, §1; G. S. '13, §176; '15, c. 93, §1; '21, c. 302, §1; '25, c. 218; Mar. 30, 1929, c. 118; Mar. 2, 1937, c. 48, §2.)

Sec. 3 of Act Mar. 2, 1937, repeals inconsistent acts and §4 provides that the act shall take effect from its passage.

A party who goes to trial at Virginia in a case involving title to real estate without objection, cannot complain that there was no written consent to trial of a case involving title to real estate. 171M475, 214NW469.

166. Same—deputy sheriff and clerk.—There shall be at all times a chief deputy sheriff of said county and a chief deputy clerk of said district court and such other deputies as may be necessary, resident at said city of Virginia, or said city of Ely or the village of Hibbing and their appointment shall be made in the same manner as other deputy sheriffs and deputy clerks of the district court in said counties. The salaries of such deputies shall be fixed and paid in the same manner as other such deputies. The office of said deputy sheriff at Virginia, Hibbing and Ely shall not in any sense be considered or deemed the office of the sheriff for any purpose except the performance of his duties relating solely to proceedings tried or to be tried at said places; but the office of said deputy clerk at said places shall be equally deemed the office of the Clerk of Court for all purposes except the filing of papers in actions or proceedings to be tried at Duluth. Marriage licenses and naturalization papers may be issued by said deputy clerk. ('09, c. 126; '11, c. 368, §1; '15, c. 93, 371; '17, c. 225; '21, c. 284, §1; Apr. 15, 1931, c. 160, §1.)

Where contestant filed notice of contest in office of deputy clerk at Hibbing within 10-day limitation, but failed to state in his notice of contest, "to be tried at the Village of Hibbing," court did not acquire jurisdiction. Strom v. L., 201M226, 275NW833. See Dun. Dig. 7805, 8947, 8954.

171. Same—Trial of actions.

Denial of motion for change of venue held not abuse of discretion. Desjardins v. E., 139M356, 249NW576.

172. Same—Summons—Place of trial.—Any party wishing to have any appeal from an order of the Railroad and Warehouse Commission, any election contest, a lien foreclosure, or any civil cause or proceeding of any kind commenced or appealed by him in said Court, tried in said City of Virginia, shall in the summons, Notice of Appeal in such matters, or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the City of Virginia," and any party wishing any such matter commenced or appealed by him in said Court tried at the Village of Hibbing, shall in the summons, Notice of Appeal in such matters or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the Village of Hibbing," and any party wishing any such matter commenced or appealed by him in said Court tried at the City of Ely, shall in the summons, Notice of Appeal in such matters, or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the City of Ely," and in all cases where any summons, Notice of Appeal in such matters, or other jurisdictional instrument contains any such specifications, the case shall be tried at said City of Virginia or the Village of Hibbing or City of Ely, as the case may be, unless the defendant shall have the place of trial fixed in the manner hereinafter set out.

If the place of trial designated is not the proper place of trial, as specified in this act, the cause shall nevertheless be tried in such place, unless the defendant, in this answer in addition to the other allegations of defense, shall plead the location of his residence, and demand that such action be tried at the place of holding said court nearest his residence as herein provided; and in any case where the answer of the defendant pleads such place of residence and makes such demand of place of trial, the plaintiff in his reply, may admit or deny such allegations of residence, and if such allegations of residence be not

expressly denied, such case shall be tried at the place so demanded by the defendant, and if the allegations of residence be so denied, then, the place of trial shall be determined by the Court on motion.

If there are several defendants, residing at different places in said county, the trial shall be at the place which the majority of such defendants unite in demanding, or if the numbers are equal, at the place nearest the residence of the majority.

Provided, that the venue of any such action may be changed from any one of said places to any other, by order of the Court, in the following cases:

1. Upon written consent of the parties.
2. When it is made to appear, on motion, that any party has been made a defendant for the purpose of preventing a change of venue as provided in this section.
3. When an impartial trial cannot be had in the place where the action is pending; or
4. When the convenience of witnesses and the ends of justice would be promoted by the change.

Application for such change under subdivisions 2, 3, or 4, shall be made by motion which shall be returnable and heard at the place of commencement of the action. ('09, c. 126; '11, c. 368, §1; G. S. '13, §184; '15, c. 93; '21, c. 302, §6; Apr. 18, 1931, c. 195, §1.)

Desjardins v. E., 189M356, 249NW576; note under §171. Where contestant filed notice of contest in office of deputy clerk at Hibbing within 10-day limitation, but failed to state in his notice of contest, "to be tried at the Village of Hibbing," court did not acquire jurisdiction. *Strom v. L.*, 201M226, 275NW333. See Dun. Dig. 7805, 8947, 8954.

177. Absence of judge—who may act.

Where trial judge has become incapacitated and motion for new trial is heard by another judge, the latter has no power to amend findings of fact but he may amend the conclusions of law and may grant a new trial for the same causes which the trial judge may grant it. 175M346, 221NW424.

Motion for new trial must be heard before judge who tried action unless he is out of office or disabled. *State v. Qvale*, 187M546, 246NW30. See Dun. Dig. 7085.

Successor of an incapacitated judge is empowered to determine a motion for new trial on its merits. *Great Northern Ry. Co. v. B.*, 200M258, 274NW522. See Dun. Dig. 4961.

178. Adjourned and special terms.

Sections 161 and 178 are not inconsistent but merely provide two different methods of calling special grand juries. Op. Atty. Gen. (494a-3), June 15, 1934.

Where county attorney more than 15 days before regular term obtained order from judge of district court for grand jury, but did not file order with clerk of court until less than 15 days before term, no grand jury could be called for such term. Op. Atty. Gen. (494a-3), Sept. 30, 1937.

182. Rules of practice.

District court rule permitting objections to language of closing arguments to be seasonably taken at close thereof, is reasonable. *Jovaag v. O.*, 189M315, 249NW676. See Dun. Dig. 2773.

183. Several judges—division of business.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. The business of the court may be divided between the judges, and otherwise regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. In districts composed of not less than ten counties, the senior judge, at least 30 days before the time appointed by law for the holding of a general term of the court in each county, by order filed in the office of the clerk of the court in that county, shall designate and assign one or more of the judges of such district to preside at the term so appointed, and the clerk forthwith shall mail a copy

of such order to each judge of the district. If any judge assigned to hold a term of court as herein provided is incapacitated by illness or otherwise to preside at such term, another judge shall be designated and assigned in like manner to take his place. The same judge shall not be designated or assigned to hold two consecutive general terms in the same county. (R. L. '05, §105; G. S. '13, §168; Mar. 9, 1931, c. 51.)

Where presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district, governor may not designate an outside judge to preside thereat, it appearing that regular and properly designated judge is competent to act, that there is no accumulation of business before court, and that delay of trial is not probable. *State v. Montague*, 195M278, 262NW684. See Dun. Dig. 4961.

CLERK

191. Election—bond—duties.

Clerk of the district court may practice in the probate court and may transact other legal business so long as it is not necessary for him to transact any business in the district court. Op. Atty. Gen., Feb. 15, 1932.

Exhibits in criminal cases should only be released or disposed of on order of court. Op. Atty. Gen. (815g), Mar. 6, 1936.

192. Money paid into court—Fees.—Where money is paid into court to abide the result of any legal proceedings, the judge, by order, may cause the same to be deposited in some duly incorporated bank, to be designated by him, or such judge, on application of any person paying such money into court, may require the clerk to give an additional bond, with like condition as the bond provided for in Section 191, in such sum as said judge shall order. For receiving and paying over any money deposited with him, the clerk shall be entitled to a commission of one per cent, on the amount deposited, one-half of such commission for receiving, the other for paying, the same to be paid by the party depositing such money, provided, that where the money is paid or deposited in any court by or for a city of the first class or the State of Minnesota, no fee or commission shall be paid to or for the clerk for any service performed by him in receiving or paying over any such money deposited with him. (R. L. '05, §107; G. S. '13, §220; '21 c. 178; Apr. 12, 1937, c. 188, §1.)

Sec. 2 of Act Apr. 12, 1937, provides that the act shall take effect from its passage.

A clerk of court depositing money in national bank and taking certificate of deposit therefor is personally liable for loss sustained by failure of bank. Op. Atty. Gen., Apr. 28, 1932.

District Court clerk is not entitled to commission for receiving and paying back cash balance. Op. Atty. Gen. (144b-15), Apr. 19, 1934.

There is no statute prohibiting banks from placing floating charges on out of town checks deposited by clerk of court. Op. Atty. Gen. (532a-2), Oct. 30, 1935.

Clerk of district court is not entitled to fees where moneys are paid over by state in condemnation case. Op. Atty. Gen. (144b-18), May 4, 1937.

193. Deputies.

Appointment of deputy continues only during original term of appointing officer, and upon reelection deputy must be reappointed. Op. Atty. Gen. (144a-1), Jan. 28, 1937.

193-4. Deputy clerks in certain counties.—In all counties in the state, now or hereafter having a population of more than 150,000 and wherein regular terms of the District Court are held in three or more places, the Clerk of the District Court therein by an instrument in writing, under his hand and seal, and with the approval of the District Judge of the Judicial District in which said county is situated, or if there be more than one such District Judge with the approval of a majority thereof, may appoint deputies for whose acts he shall be responsible, such deputies to hold office as such until they shall be removed therefrom, which removal shall not be made except with the approval of the said District Judge or Judges. The appointment and oath of every such deputy shall be filed with the Register of Deeds. (Act Apr. 15, 1935, c. 179.)

193-5. Salary of Clerk of the District Court and deputies in certain counties.—The salary of the clerk of the district court of each county in this state having or which may hereafter have a population of not less than 240,000 and not more than 330,000 inhabitants shall be the sum of \$4,500.00 per annum.

Such clerk of the district court may appoint and employ one chief deputy who shall be paid the sum of \$2,800.00 per annum; one deputy clerk who shall be paid the sum of \$2,150.00 per annum; one deputy clerk who shall be paid the sum of \$1,950.00 per annum; one deputy clerk who shall be paid the sum of \$1,920.00 per annum, provided, however, that one of such deputy clerks shall be designated as assignment clerk; and nine deputy clerks who shall each be paid the sum of \$1,620.00 per annum to be increased to \$1,800.00 per annum after having completed five years of employment as such deputy clerk. (Laws 1937, c. 157; Apr. 17, 1939, c. 297.)

194. To search records—Certificate—Public inspection.

Judgment confessed under §2176-11 is not a judgment to which abstractor or clerk of court must certify as a judgment. Op. Atty. Gen. (520b), Apr. 20, 1936.

196. Index of records.

Act Mar. 25, 1939, c. 87, provides that the clerk of the district court in counties having a population of at least 250,000, and an area of over 6,000 square miles, may use a flexible plaintiff's and defendant's index to court records, instead of the index provided by the above section.

197. Return in criminal cases to county attorney.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

198. To enter unregistered cases.

A decree in equity may create a lien independently of this section, and this is true with respect to a decree for the separate maintenance of a wife justifiably living apart from her husband. 178M531, 227NW895.

200. Vacancy.

SALARIES OF CLERKS AND DEPUTIES AND CLERK HIRE IN CERTAIN COUNTIES

Act Apr. 19, 1937, c. 290, effective May 1, 1937, amends Laws 1921, c. §133, §14, as amended, to provide for chief deputy at \$3700; head counter deputy at \$2300; assignment deputy at \$2800; two deputies at \$1970; one deputy at \$2160; six deputies at \$1800; 12 deputies at \$1900; two deputies at \$1800; one deputy at \$1800; one deputy at \$2300; one deputy at \$2300; two deputies at \$2100; three deputies at \$1800; two deputies at \$1600.

Act Feb. 3, 1937, c. 11, amends '21, c. 351, §1, to apply to counties with 70 to 75 townships, assessed valuation of \$1,000,000 to \$5,000,000, and population of 7000 to 7500, but makes no change in amounts of salaries.

Act Apr. 12, 1937, c. 193, amends Laws 1921, c. 437, as amended, and provides that in counties having 44 to 45 townships, assessed value of \$8,000,000 to \$14,000,000, and population of 25,500 to 26,000, the clerk of the district court shall receive \$1620 for services in the respective counties, except real estate tax proceedings, and also fees not exceeding \$3200.

Act Apr. 26, 1937, c. 491, amends Laws 1921, c. 437, as amended, to fix salary of clerk at \$1620, in full for services except in real estate tax proceedings, and in addition fees collected.

Laws 1929, c. 69, fixes salary of Clerk of Court at \$2,400 in counties of more than 60 and less than 80 townships with population between 45,000 and 75,000. Sp. Laws 1891, c. 423, is repealed.

Laws 1929, c. 152, Amended, Apr. 17, 1937, c. 247.

Laws 1929, c. 306, §1, Amended, Apr. 6, 1937, c. 157.

Laws 1929, c. 359, Amended, Apr. 19, 1937, c. 290.

Act Feb. 9, 1933, c. 16, provides that in counties having 31 to 85 congressional townships and 18,000 to 30,000 population, the county board shall fix the clerk hire in the office of the clerk of the district court. Laws 1925, c. 7, repealed. See §§997-4a to 997-4h.

Laws 1933, c. 16, Amended, Mar. 19, 1937, c. 69.

Act Mar. 1933, c. 76, §4, effective Jan. 1, 1933, provides that in counties having area of 35 to 55, inclusive, congressional townships, with assessed valuation of \$2,000,000, exclusive of moneys and credits, the clerk of the district court shall receive \$1,200 out of fees, county to make up deficiency, and a salary of \$600 per annum, to be considered a portion of his fees. Salary payable monthly. County board to fix clerk hire. See §§997-4a to 997-4h.

Act Apr. 17, 1937, c. 278, §2, amends Laws 1933, c. 76, §4, to provide that the clerk's salary shall be \$1500, all fees to be paid into the county treasury.

Act Mar. 19, 1937, c. 70, §4, effective July 1, 1937, amends Laws 1933, c. 76, to make salary of clerk \$900 and fees, county to pay deficiency of fees under \$1500, but salary to be considered as portion of fees.

Act Mar. 20, 1933, c. 96, provides that in counties having 55,000 to 70,000 population and 35 to 45 congressional townships, the county board may fix the salary of clerk of district court at not to exceed \$3,500, and require that fees be paid into the general fund. See §§997-4a to 997-4h.

Act Jan. 15, 1936, Sp. Ses., 1935-36, c. 27, amends Laws 1933, c. 96.

Act Apr. 1, 1933, c. 143, amends Laws 1929, c. 69, §1, to provide that the clerk of district court shall receive \$2,000 per annum. See §§997-4a to 997-4h.

Act Apr. 10, 1933, c. 166, §5, provides that in counties having 76 to 80 congressional townships and assessed valuation of \$3,000,000 to \$5,000,000, clerk of district court shall receive \$1,500 per annum and clerk hire of not over \$100 per annum, all fees and revenue to be paid into county treasury. See §§997-4a to 997-4h.

Act Apr. 11, 1933, c. 212, effective May 1, 1933, authorizes county board in counties having 50 to 70 congressional townships and assessed valuation, exclusive of moneys and credits of less than \$1,500,000, to fix salaries of county officers and require their fees to be paid into the county treasury.

Act Apr. 13, 1933, c. 219, §1, provides that in counties having assessed valuation of not more than \$6,000,000 and population of not more than 12,500 the county board shall fix the salaries of subordinate county employees. This section seems to be invalid as not expressed in the title of the act. Section 2 authorizes the county board, in counties having assessed valuation, excluding moneys and credits, of \$2,500,000 to \$3,000,000, population of 9,000 to 10,000, and area of 29 to 31 congressional townships, to fix the salaries of all subordinate county employees.

Act Apr. 15, 1933, c. 281, provides that in counties having 100 or more townships and assessed valuation, including moneys and credits, the clerk of the district court shall receive \$990 per annum and clerk hire to be fixed by the county board. See §§997-4a to 997-4h.

Act Mar. 23, 1937, c. 91, repeals Laws 1933, c. 281, and provides that in counties having 100 to 105 townships and population of 12,000 to 16,000 the 1931 salary rate shall apply, regardless of decrease in valuation or change in population or other factor. Salary to be governed by general law, except as to minimum fixed. County board to fix clerk hire.

Act Apr. 15, 1933, c. 284, §10, amending Laws 1921, c. 437, Laws 1927, c. 225, and Laws 1931, c. 192, provides that in counties having 24 or 25 congressional townships and assessed valuation, exclusive of moneys and credits, of \$9,000,000 to \$12,000,000, the clerk of the district court shall receive \$1,263 per year and fees, with maximum of \$2,880, except in real estate tax proceedings. See §§997-4a to 997-4h.

Laws 1933, c. 284, Amended, Apr. 12, 1937, c. 193, amends §7 of Laws 1925, c. 91, by making the salary of the clerk \$1,281 per year, with not exceeding \$400 for clerk hire; 18% of fees to be paid into county treasury; total compensation not to exceed \$2,800 per year. See §§997-4a to 997-4h.

Laws 1933, c. 432, Amended, Apr. 14, 1937, c. 230.

Act does not affect right of Clerk of Court to receive and retain the per diem allowed for services on board of audit. Op. Atty. Gen., May 23, 1929.

Duties and compensation in counties of over 380,000 population. See Laws 1923, c. 419, as amended by Laws 1927, c. 125, and Laws 1929, c. 152.

Additional fees allowed clerks for completing records neglected by prior incumbent of office. See Laws 1929, c. 207.

In counties with population between 240,000 and 330,000, clerk's salary is \$4,500; chief deputy, \$2,800; one deputy clerk, \$2,150; one deputy, \$2,050; one deputy, \$1,950; nine deputies, \$1,620, to be increased to \$1,300 after 10 years' service; one assignment clerk, \$1,920. See Laws 1929, c. 306, which amends prior statutes.

Laws 1929, c. 341, §2, fixes salary at \$6,500 in counties of 415,000 population or over, but only at \$4,000 if act cannot be held to apply to fees received from federal government.

Counties having population of 380,000 or over, Laws 1929, c. 359, §1 (amending Laws 1925, c. 398, §2, which amended Laws 1923, c. 419, §14, which amended Laws 1921, c. 133, §14), fixes salaries as follows: Chief deputy, \$3,500; head counter deputy, \$2,205; assignment deputy, \$2,700; two deputies, each, \$1,870; one deputy, \$2,060; six deputies, \$1,700 each; 12 deputies, \$1,300 each; two deputies, \$1,600 each; one deputy, \$1,700; one deputy, \$2,200; one deputy, \$2,205; two deputies, \$2,000 each; three deputies, \$1,600 each.

Counties with 41 to 43 congressional townships and population of 25,000 to 30,000, Laws 1929, c. 161, §4, amends §15, c. 91, Laws 1925, and authorizes additional clerk with salary not to exceed \$80 per month.

Counties having area of not more than 23 and not less than 20 congressional townships, and assessed valuation

of not more than \$6,000,000, Laws 1931, c. 15, §3, permits clerk to retain \$1,500 out of fees, any deficiency to be paid to him by the county, and fixes his salary at \$800 to be considered as portion of fees. He is also allowed \$200 per annum for clerk hire. Effective Jan. 1, 1931.

Counties of 44 to 45 congressional townships and assessed valuation of \$12,000,000 to \$18,000,000, Laws 1931, c. 192, amends Laws 1921, c. 437, §1, to make amended act applicable to counties as above.

Act Feb. 27, 1935, c. 23, amends Laws 1933, c. 96, by adding thereto §3-1, empowering county board to fix clerk hire of clerk of district court at not more than \$3,300 per year.

Laws 1935, c. 81. Amended. Mar. 19, 1937, c. 70; Apr. 17, 1937, c. 278.

Laws 1935, c. 284. Amended. Apr. 26, 1937, c. 491. Act July 14, 1937, Sp. Ses., c. 14, amends Act Apr. 14, 1937, c. 226, to make the act apply to counties having 7500 to 9000 inhabitants, and makes the minimum salary of the clerk \$1320, existing statutes to govern salary above that figure, and act not to apply to counties for which other provision has been made by the 1937 legislature.

Act Feb. 9, 1937, c. 19, effective Jan. 1, 1937, provides that in counties with population of 8,000 to 11,000 with 18 to 22 townships, assessed value of \$4,000,000 to \$5,700,000, exclusive of monies and credits and homestead exemptions, the clerk shall receive his fees, county to pay deficiency in fees up to \$1500, and also \$800 in addition, and \$500 for clerk hire.

Act Mar. 19, 1937, c. 76, provides that in counties having assessed valuation of \$5,000,000 to \$6,000,000, population of 10,000 to 11,000, and 15 to 17 townships, the clerk shall receive \$480 per year for clerk hire.

Act Apr. 6, 1937, c. 156, provides that in counties having 16 to 20 townships, 7500 to 8500 inhabitants, assessed valuation of \$4,500,000 to \$8,000,000, and for which no other provision has been made by the 1937 legislature, the salary of the clerk shall be that provided by law, except that the minimum provided by 1931 law shall apply, irrespective of change of valuation or population.

Act Apr. 6, 1937, c. 157, provides that in counties having 240,000 to 330,000, the clerk shall receive \$4500, and clerk hire as follows: chief deputy \$2800; one deputy \$2150; one deputy \$2050; one deputy \$1950; 9 deputies \$1620 each, to be increased to \$1800 after 5 years' service; assignment clerk \$1920. Amended, Laws 1939, c. 297.

Act Apr. 14, 1937, c. 226, provides that in counties having 12 to 17 townships, 7000 to 9000 inhabitants, assessed valuation, exclusive of moneys and credits, of \$1,800,000 to \$2,500,000, the clerk of court shall receive a minimum salary of \$900, regardless of change in classification factors, county auditor to pay deficiency under \$1700 of salary and fees, general law to apply except as to minimum, and except as to other provisions made by 1937 legislature.

Act Mar. 31, 1939, c. 99, fixes the salary and expenses of clerks of district courts and their deputies and clerks in counties having 41 to 43 congressional townships, assessed valuation, exclusive of money and credits, of \$6,000,000.00 to \$12,000,000.00, and population of 25,000 to 30,000, and repeals Laws 1921, c. 437; Laws 1925, c. 91; Laws 1929, cc. 20, 161; Laws 1933, c. 432; Laws 1937, c. 230; Laws Sp. Ses. 1937, c. 54.

Salaries and clerk hire in counties having 50 to 70 townships and a valuation of \$500,000 to \$1,500,000 and population of 2,000 to 3,000. Laws 1939, c. 168.

Where clerk of district court was elected for four year term in 1930 and died after June primary in 1932, one appointed to fill vacancy will hold office only until November 1932 election, and nominations may be made by petition, in which candidate need not state his political party or affiliation. Op. Atty. Gen., July 16, 1932.

Legislature possesses right to change salaries of county officers at any time. Op. Atty. Gen., Feb. 21, 1933.

Clerk of Court is not entitled to additional compensation for indexing and keeping vital statistic records pursuant to Section 5365. Op. Atty. Gen., Mar. 24, 1933.

County officers whose terms expire on first Monday of January are entitled to compensation for days of service rendered in month of January up to time that their successors qualify and take office. Op. Atty. Gen. (104a-9), Dec. 1, 1934.

Salary of clerk of district court is determined in accordance with classification provided for in Laws 1909, c. 335, as amended by Laws 1919, c. 229, while clerk hire is controlled by classification found in Laws 1917, c. 476, and if Goodhue County comes within classification F as to clerk's compensation but within classification E as to clerk hire, judge of district court may allow such additional sum for deputy clerk hire as may be reasonable and necessary. Op. Atty. Gen. (144a-1), Dec. 13, 1934.

Laws 1933, c. 219, does not apply to Clearwater County and §1 thereof is not within title of act. Op. Atty. Gen. (104a-3), Feb. 5, 1935.

Clerk of court in county governed by Laws 1933, c. 166, §12, must turn naturalization fees into county treasury. Op. Atty. Gen. (144b-15), July 19, 1935.

Informations are to be considered as indictments within meaning of Laws 1919, ch. 229, so as to entitle clerk to salary specified in that act. Op. Atty. Gen. (144a-4), Jan. 3, 1936.

Under Laws 1919, ch. 229, district court clerks' salaries may be predicated upon "informations" in lieu of "indictments." Op. Atty. Gen. (144a-4), Feb. 10, 1936.

Where clerk of district court is paid under Laws 1919, c. 229, he is not entitled to any fees for services rendered to county, in any suit in which county is a party, whether such suits be criminal or civil, and he is not entitled to fee when county recovers fees against opposing party in suit. Op. Atty. Gen. (144b-15), Aug. 25, 1937.

Vacancy in office of clerk of district court is to be filled by district judge, under §200, not by county board under §822. Op. Atty. Gen., (144a-5), Nov. 25, 1938.

Clerk of court operating under Laws 1931, c. 15, and Laws 1937, c. 19, is personally entitled to fees for issuing personal property tax citations and perfecting judgments, but he must wait until judgment is paid. Op. Atty. Gen. (421a-5), Jan. 30, 1939.

Fees received by clerk of court for services rendered on board of audit, in connection with naturalization matter, and for taking passport applications go to him personally in county governed by Laws 1919, c. 229, and probably in all other counties other than Cass County. Op. Atty. Gen. (144B-1), July 24, 1939.

Laws 1925, c. 5, §3. The additional compensation of the clerk cannot be paid until allowance by the county board. Op. Atty. Gen., Jan. 15, 1930.

This act insofar as it relates to salary and clerk hire of clerk of district court of Clearwater county is unconstitutional pursuant to decision of district court, in absence of an appeal. Op. Atty. Gen. (82f), June 1, 1937.

STENOGRAPHIC REPORTERS

201. Appointment—Duties—Bond.

Laws 1929, c. 385, amends Laws 1921, c. 460, §5, and fixes salary of court reporters in St. Louis county at \$4,000 and \$10 per day while attending sessions of district court in other counties of the Eleventh Judicial District.

Act Apr. 17, 1937, c. 266, effective May 1, 1937, provides that in judicial district containing one judge and three counties containing two cities of over 10,000 inhabitants, and aggregate population of over 75,000, a court reporter may be appointed by the judge at a salary of not over \$3,000.

202. Duties as to reports.

Provision of District Court Rule 27, requiring party requesting reporting, as distinguished from transcribing argument, to pay reporter therefor, is invalid. *Jovaag v. O.*, 189M315, 249NW676. See Dun. Dig. 2773. Court reporter is entitled to charge against county cost of notebook paper. Op. Atty. Gen., Feb. 23, 1933.

205. Compensation of court reporters in certain districts.—The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1939, and on or before the first Monday in January, annually thereafter, shall fix and establish the salary of the court reporter at an amount not exceeding \$2700.00 per year, but in judicial districts comprised or hereafter comprised of not less than ten counties the salary shall be fixed and established at \$3000.00 per year, and in such order shall apportion the salaries of the reporters in their respective districts among the several counties, and each county shall be required by such order to pay a specified amount thereof in monthly installments which amount shall be such proportion of the whole salary as the number of days work actually done by the reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Each reporter shall have and maintain his residence in the district in which he is appointed, but if any reporter be appointed in two or more districts he may reside in either or any of them.

The reporter, in addition to his salary, shall be paid such sums as he shall pay out as necessary railway, traveling and hotel expenses while absent from the city or village in which he resides in the discharge of his official duties, such expenses to be paid by the county for which the same were incurred upon presentation of a verified, itemized statement thereof approved by the judge; and the county auditor of such county, upon presentation of such approved statement, shall issue his warrant in payment thereof. As amended Apr. 17, 1939, c. 289.)

Editorial note.—Act Mar. 17, 1939, c. 67, authorizes judges in any judicial district having three judges, composed of nine counties, area of 15,000 square miles, and not containing a city of the first class, to fix salary of court reporters at \$3,000 per annum.

Court reporter is entitled to charge 5c per mile for use of automobile, but not for week-end trips home. Op. Atty. Gen., May 2, 1933.

206. Fees.

Reporter is entitled to fees for transcripts of proceedings in criminal cases. Op. Atty. Gen., (129), June 18, 1938.

PROBATION AND INVESTIGATION DEPARTMENT

208-1. Probation and investigation department established.—There is hereby established in all counties of this state now or hereafter having a population of more than 415,000 inhabitants and constituting a single judicial district a probation and investigation department in connection with the district court of any such county. (Act Apr. 24, 1929, c. 326, §1.)

208-2. Officers and employees.—Such department shall consist of one chief probation officer and such other probation officers, investigators, clerical help and other employees as the judges of said court shall from time to time appoint.

Such probation officers, investigators, clerical help and other employees shall be appointed and removed by the judges of the district court in any such county. They may be appointed either for a definite period of time or for an indeterminate period in the discretion of the court. The salaries of all such persons shall be fixed by the judges of said court.

The said judges may by order determine the necessary qualifications of applicants for positions in said department and may in their discretion provide that applicants shall undergo certain tests as to their qualifications.

The chief probation officer shall have general supervision of such department, subject to the direction of the judges of said court. The court may divide the duties of said department into branches or divisions, and appoint from such probation officers or investigators the heads of such branches or divisions. A juvenile division may be established distinct from all other divisions of such department. (Act Apr. 24, 1929, c. 326, §2; Apr. 10, 1939, c. 183.)

208-3. Duties.—The duties of such department shall be:

(a) To undertake the supervision of all persons placed on probation or parole by any of the judges of said court, to keep accurate records of such supervision, and to report to the court as to such probation or parole as directed by any of the judges of the court.

(b) To be present when court is in session and so directed by any one of said judges.

(c) To perform the duties required of probation officers by the juvenile court act, as contained in Chapter 73A, Mason's Minnesota Statutes 1927.

(d) To assist in administering the law providing for all allowances to mothers of dependent children, and to perform the duties of investigation and supervision, as found in Sections 8671, to 8689, Mason's Minnesota Statutes 1927.

(e) To provide for mental and physical examination of persons coming under the juvenile court law, and to provide for necessary mental, dental, surgical and nursing care for such persons.

(f) To make such investigation as the court may direct concerning the circumstances of the offense, criminal record and social history of any person convicted of crime, and when deemed appropriate to obtain a physical and mental examination of such defendant and report thereon.

(g) To make collections of support money in divorce actions when ordered by a judge of said court for the benefit of children or indigent mothers and children jointly; to collect money ordered to be paid in desertion and abandonment cases; and to make collections of money or property when ordered to be paid as restitution or reimbursement and to turn over

such money or property to the person or persons entitled thereto.

(h) To make investigations in divorce cases of children and home conditions when directed by a judge of said court, and also to exercise supervision over children in such divorce cases as the court may direct.

(i) When directed by a judge of said court and when the person having custody of children is indigent, to take such steps as may be necessary to compel persons ordered to pay money for the support of children when in default; to take such steps as may be necessary to compel persons to make reimbursement to comply with the order of court when in default; to institute, if necessary, contempt proceedings in behalf of such person or persons to whom money or property is ordered to be paid or delivered. It shall be the duty of the county attorney to conduct such contempt proceedings when directed by one of the judges of said court.

(j) To perform such other duties for the protection of children and indigent mothers and children as may be directed by the court. (Act Apr. 24, 1929, c. 326, §3.)

208-4. County Board to furnish office room.—The county commissioners of such county shall provide said department with suitably furnished office rooms, record books, stationery, postage, expenses of investigation and transportation, and such other actual expenses as are required for the proper execution of the purposes of this act. (Act Apr. 24, 1929, c. 326, §4.)

208-5. Probation officers—Powers.—Probation officers shall have the power of peace officers in the execution of their duties. Each probation officer, before entering on the duties of his office shall take an oath of office to be administered by one of the judges making the appointment. Each probation officer or employee who collects or has the custody of money shall execute a bond with appropriate sureties in a penal sum to be fixed by said judges, at the expense of the county, conditioned for the true accounting of all money received by him as probation officer. (Act Apr. 24, 1929, c. 326, §5.)

208-6. Records to be in custody of the court.—The records of all cases in said office may be withheld from indiscriminate public inspection at the discretion of the judges of said court. (Act Apr. 24, 1929, c. 326, §6.)

208-7. Action by majority of judges.—Any act, order or thing required or permitted to be done by the judges of said court by the provisions hereof may be done by a majority of said judges. (Act Apr. 24, 1929, c. 326, §7.)

208-8. Census governing.—For the purpose of determining what counties in the state come under the classification contained in this act reference shall be made to the last complete state or national census. (Act Apr. 24, 1929, c. 326, §8.)

208-9. Repeal; municipal court.—All acts or parts of act inconsistent herewith are hereby repealed, in so far as they apply to counties affected by this act. In counties in which there is a separate municipal court probation officer, the probation department established by this act is hereby relieved of any of the duties specified in Sections 10910, 10911 and 10912, Mason's Statutes of Minnesota 1927, with references to attendance in municipal courts and with references to representing the interests of minors in said courts. (Act Apr. 24, 1929, c. 326, §9.)

SALARIES

211. Retirement of Supreme Court Justices and District Court Judges.—When a Justice of the Supreme Court or a Judge of the District Court shall

be retired under the provision of Mason's Minnesota Statutes of 1927, Section 210, he shall receive the compensation allotted to his office for the remainder of his said term, or, if a Justice of the Supreme Court is then past 70 years of age, and has served as a Justice of the Supreme Court, or as such Justice and as a Commissioner of the Supreme Court or a Judge of the District Court of this State, or either continuously for 25 years or more or if a Judge of the District Court is then past 70 years of age, and has served as a Judge of the District Court, or as such Judge and as a judge of a Municipal Court or a Probate Court of this State, or either, continuously for 25 years or more, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time, and the manner provided by law.

When a Justice of the Supreme Court has served continuously for 25 years or more, either as a Justice of the Supreme Court, or as a Justice of the Supreme Court and a Judge of the District Court or a Commissioner of the Supreme Court, and is then past the age of 70 years, or when a Judge of the District Court has served continuously for 25 years or more, either as a Judge of the District Court, or as a Judge of the District Court, or as a Judge of the District Court and a Judge of a Municipal Court or a Probate Court of this State, and is then past 70 years of age, and has not been retired under the provisions of existing law, he may retire from further service as such judge, and shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid in the manner provided by law for the payment of the salary of such Justice or Judge. (G. S. '13, §255; '13, c. 269, §2; '23, c. 79; '27c, 337, §1; Apr. 16, 1929, c. 201; Apr. 26, 1929, c. 408; Apr. 26, 1937, c. 475, §1.)

Where judge presented to governor his petition for retirement on Sept. 30, 1936, and requested that his retirement, if granted, be made effective prior to Nov. 15, 1936, and he found facts required by retirement act and made an order directing retirement to become effective at close of Nov. 15, 1936, no vacancy existed until Nov. 15, which governor could fill by appointment, and no new judge was elected at general election held on Nov. 3, where no notice was given and only a negligible number of electors exercised right to vote for that office. *State v. Holm*, 202M500, 279NW218. See Dun. Dig. 4954.

Eligibility for other office as affected by membership in legislative body providing retirement benefits. 23 MinnLawRev376.

211-7. Same—compensation of retired judge.

Laws 1931, c. 228, provides for retirement pay of supreme court and district judges under certain circumstances. The act is omitted as special and temporary.

211-7a. Same—Retirement prior to January 1, 1937.—Justices and Commissioners of the Supreme Court and Judges of the District Court who retired prior to January 1, 1937, under the statutes in force at the time of their retirement, shall from the date of their retirement receive retirement compensation at the rate and for the time provided in the statutes in force at the time each of them retired. (July 23, 1937, Sp. Ses. c. 83.)

211-8. Retirement of judges of probate court.—Whenever a probate judge shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable and if he shall thereby determine that such disability exists, and the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon by written order, to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in said office, which shall be filled by ap-

pointment, as provided by law. (Act Apr. 20, 1931, c. 253, §1.)

211-9. To receive half pay.—When a judge shall be retired under the provisions of section 1 of this act, he shall receive the compensation allotted to his office for the remainder of his term, or, if then past 70 years of age, having served as such probate judge continually for more than forty years, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law. (Act Apr. 20, 1931, c. 253, §2.)

MUNICIPAL COURTS

212. Existing courts confirmed.

This section supersedes any inconsistent home rule charter provision. *Op. Atty. Gen.*, Jan. 25, 1934.

213. Oaths and bonds.

Oath and bond of municipal judge of a city of fourth class are to be filed in office of secretary of state. *State v. City of Waseca*, 195M266, 262NW633. See Dun. Dig. 4953.

Penalty clause in bond of municipal judge should run in favor of state and not city. *Op. Atty. Gen.* (307a), Apr. 12, 1937.

Oath of office and bonds of a judge of municipal court of Brainerd is to be filed with secretary of state upon approval by attorney general. *Op. Atty. Gen.* (306a-3), Apr. 26, 1937.

Clerk of municipal court of Brainerd should furnish a bond in addition to that furnished by the judge, in amount required by statute, approved by judge, and filed with secretary of state. *Op. Atty. Gen.* (307i), May 13, 1937.

214-1. Rules of practice in Municipal Court.—The Judges of the Municipal Courts of the State may assemble annually at such time and place as may be designated by the President of the Minnesota Municipal Judges Association. When so assembled the Judges may formulate and revise the general rules of practice in such Courts as they deem expedient, conformable to law which rules shall not be inconsistent with any general or special law now applicable to Municipal Courts of this State. Any other proper business pertaining to such Municipal Courts may also be transacted. Any City or Village or Borough of this State, whether organized under the general laws or a special or home rule charter may appropriate through its governing body out of its general fund money to pay the actual and necessary expenses of such Judges in attending such assembly. (Apr. 17, 1937, c. 268, §1.)

Sec. 2 of Act Apr. 17, 1937, cited, provides that the Act shall take effect from its passage.

The rules of the municipal courts of Duluth, Minneapolis, and St. Paul, are set out in Appendix 4, post.

MUNICIPAL COURTS IN CITIES AND VILLAGES

215. Municipal courts.

The rules of the municipal courts of Duluth, Minneapolis, and St. Paul are set out in Appendix 4, post.

Municipal Court of Tower, Laws 1937, c. 144, amends Laws 1929, c. 4, §§1-3.

Municipal Court of Minneapolis. Laws 1919, c. 331, §1, relating to salaries of stenographic reporters, is amended by Laws 1929, c. 128. Laws 1929, c. 129, amends Sp. Laws 1889, c. 34, §18, as amended, relating to salaries of judges and clerks. Laws 1937, c. 273, effective Apr. 17, 1937, amends Sp. Laws 1889, c. 34, §18, and Laws 1913, c. 424, §§1, 2, 4, 5.

Municipal Court of Ely. Sp. Laws 1891, c. 59, §19, as amended by Laws 1916, c. 66, is amended by Laws 1929, c. 134. Laws 1931, c. 251, amends Sp. Laws 1891, c. 59, §1.

Municipal Court of Hibbing. Establishment, etc., by Laws 1929, c. 253.

Municipal Court of Duluth. Laws 1923, c. 238, §§20, 48, is amended by Laws 1929, c. 241. Laws 1923, c. 238, §52, as amended by Laws 1925, c. 85, §7, is further amended by Laws 1929, c. 45. Laws 1923, c. 238, §§9, 17, 35, 43, as amended by Laws 1925, c. 85, §5, is further amended by Laws 1931, c. 57 and Laws 1937, c. 143.

Duluth conciliation court: Act July 15, 1937, Sp. Ses. c. 67, amends Laws 1927, c. 17, §§4, 6, 7, 14, 15, 18, 19.

Municipal Court of Village of Hibbing. Laws 1931, c. 13 amends §§8, 22, 24 of c. 253, Laws 1929.

Act Feb. 17, 1933, c. 32, amends Laws 1925, c. 120, as amended by Laws 1927, c. 81, §4a.

Act Ex. Ses., Dec. 31, 1933, c. 35, establishes a municipal court in the village of Perham, Otter Tail County. Omitted as local.

Laws 1935, c. 253. Municipal court for village of New York Mills.

Municipal Court of the City of St. Cloud. Laws Sp. Ses. 1935-36, c. 88.

Municipal Court of St. Paul. Jurisdiction of forcible entry and detainer action under Sp. Laws 1889, c. 351.

Municipal court of Mahanomen: Act July 16, 1937, Sp. Ses., c. 72.

Act Apr. 21, 1939, c. 368, amends §§1, 4, 6 of Laws 1937, Ex. Ses., c. 72, §§1, 4, 6, relating to municipal court of Mahanomen.

A decree in equity may create a lien independently of this section, and this is true with respect to a decree for the separate maintenance of a wife justifiably living apart from her husband. 178M531, 227NW895.

In suit brought on a check, given as cash or earnest money, upon delivery of a contract to convey land, evidence did not involve or raise any issue as to title of land so as to deprive municipal court of city of Minneapolis of jurisdiction. Little v. D., 181M487, 233NW7, See Dun. Dig. 6906.

Municipal court organized under this section, as it read in 1916, cannot be abolished by the municipality. Op. Atty. Gen., Dec. 10, 1929.

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.

Municipal court established under general act is a state court and judge thereof a state officer, and judge cannot be legislated out of office nor his term of office shortened by municipality. Op. Atty. Gen. (307d), Sept. 28, 1934.

It is optional with governing body of municipality at time of establishment of municipal court whether or not provision shall be made for a special municipal judge. Op. Atty. Gen. (213f), May 1, 1935.

Fees of municipal court of village of Perham established by Laws 1933, Ex. Sess., ch. 35, are fixed by §239, Op. Atty. Gen. (196j), Jan. 16, 1936.

Fees in municipal court of village of New York Mills, established by Laws 1935, ch. 233, are fixed by §239. *Id.* City of International Falls by adoption of home rule charter without providing for election of justice of the peace abolished that office. Op. Atty. Gen. (306a), Apr. 9, 1936.

Word "each" was inadvertently omitted, and clerks are each entitled to salary of \$2200. Op. Atty. Gen. (36a-14), Apr. 21, 1937.

Laws 1935, Ex. Sess., c. 88, creating municipal court for St. Cloud and Benton and Sherburne Counties, is constitutional, except in so far as it requires judges to be persons learned in the law and duly admitted to practice as attorneys. Op. Atty. Gen. (306a-4), April 21, 1939.

Laws 1935, c. 253, creating municipal court at New York Mills, is constitutional so far as creation of courts is involved, but is unconstitutional in so far as it requires judge to be an attorney at law. Op. Atty. Gen. (307g), March 17, 1939.

216. Application to existing courts.

City council of Owatonna passed resolution on March 28, 1938, to come under uniform municipal court act. Op. Atty. Gen. (121B-14), Feb. 23, 1939.

217. Municipal judges—election—term—salary.—

The judges of such courts shall be elected at the regular city or village elections, for the term of four years, beginning on the first Monday of the month next following their election, and until their successors qualify. When a new court is organized more than 90 days prior to a regular election, the Governor shall appoint a judge or judges thereof to serve until they are elected and qualified, and vacancies shall be filled by like appointment for the unexpired term. Provided, that in the absence or disability of the municipal judge and special municipal judge of such court, if there be one, the mayor or president of the council may designate a practicing attorney to sit in place of such municipal judge from day to day. All municipal judges and special municipal judges shall be men learned in the law and residents of the city or village. The salary of each shall be paid monthly by the city or village and shall be fixed by resolution adopted by a majority of the council of such city or village, and approved by the mayor or president, and shall not be diminished during his term. Provided, however, that where there shall be a municipal judge and a special municipal judge, the special municipal judge shall act only in the absence or disability of the municipal judge, and receive as compensation therefor an amount per

diem to be fixed and paid by the council of such city or village; and provided further, that any such special municipal judge shall not be prohibited from practicing in said municipal court or in any other court, but he shall not sit in the trial of any cause or proceeding wherein he may be interested, directly or indirectly, as counsel or attorney, or otherwise. Provided that in all cities over 7,000 population and having an assessed valuation of more than \$10,000,000, the city council may pay the special municipal judge a salary of \$50.00 per month in lieu of compensation on a per diem basis. (R. L. '05, §127; G. S. '13, §261; '13, c. 104, §1; '27, c. 276, §1; Apr. 18, 1929, c. 223; Apr. 15, 1933, c. 269; Apr. 6, 1937, c. 154, §1.)

Sec. 2 of Act Apr. 18, 1929, c. 223, repeals inconsistent acts.

Cities having population of 400,000 or more shall pay to the estate of any municipal judge dying in office, his full salary for the month of his death. Laws 1939, c. 232.

Judges of municipal court are state officers and not officers of the municipality electing them, and where a municipal judge was elected to a term commencing on the first secular day of February, 1928, his term of office did not expire until four years thereafter, and his term of office could not be changed by adoption of home rule charter changing dates of election, and where the only proper general election of a city next preceding first secular day of February, 1932, was in November, 1930, at which the same judge was elected, his four-year term of office under the second election began the first secular day of February, 1932. State v. Bensel, 194M55, 259NW389. See Dun. Dig. 6900a.

A municipal judge in a city of fourth class is elected for a term of four years and until his successor is elected and qualifies. State v. City of Waseca, 195M266, 262NW639. See Dun. Dig. 4953.

A resolution of city council adopted in May, 1933, enacted with same formalities as an ordinance, fixing salary of municipal judge, had same force as an ordinance, was not a temporary enactment, and did not expire with expiration of term of office of members of city council then in office. *Id.*

Statutes governing municipal courts in cities of fourth class, as they stood in 1934, did not authorize city council to discontinue salary of municipal judge of city or to place compensation of judge back on a fee basis. *Id.* See Dun. Dig. 4957.

Section 9221, relating to affidavits of prejudice, does not appear to cover judgments of municipal courts. City of Duluth v. L., 199M470, 272NW389. See Dun. Dig. 4962.

Where trial was set for June 18, and continued to June 19, affidavit of prejudice filed June 19 was too late. *Id.*

Provision authorizing Governor to fill vacancies by appointment "for the unexpired term" conflicts with Const., art. 6, §10. Vacancy cannot be filed at special election. Op. Atty. Gen., May 23, 1929.

Since amendment by Laws 1929, c. 223, municipal judge of Buhl may act as secretary or treasurer of the school board and be paid a salary for such service. Op. Atty. Gen., July 30, 1930.

Neither a municipal judge nor special municipal judge elected or appointed need be admitted to practice law. Op. Atty. Gen., Feb. 13, 1932.

Statute is valid in so far as it requires that a person designated by the mayor to act in place of a judge shall be a practicing attorney. Op. Atty. Gen., Feb. 13, 1932.

This section is not applicable to judge of municipal court of Stillwater. Op. Atty. Gen., Jan. 23, 1933.

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

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

In view of Const., art. 6, §10, appointee to fill vacancy would hold only until next general election and not for the full unexpired term of the predecessor. Op. Atty. Gen., Oct. 14, 1933.

Village council has authority to pay salary of municipal judge, although he has been inactive and unable to perform the duties of his office due to illness. Op. Atty. Gen., Mar. 16, 1934.

Term of village municipal judge may not be changed by electors in incorporating as a city of fourth class. Op. Atty. Gen. (307k), Sept. 13, 1934.

Term of office of one appointed to fill vacancy in office of municipal judge expires at first annual village election, and not with expiration of term of former judge. Op. Atty. Gen. (307L), Sept. 27, 1934.

Municipal judge holds over until his successor is elected and qualified at the next regular city election, and a judge may not be elected at a special election. Op. Atty. Gen. (307d), Sept. 28, 1934.

Term of municipal judge may not be changed by home rule charter, and salaries are to be fixed in accordance with this section. Op. Atty. Gen. (307k), Dec. 1, 1934.

Where no special municipal judge was elected at last municipal election, it cannot be said that there is a

vacancy which may be filled by the governor. Op. Atty. Gen. (213f), May 1, 1935.

Where regular judge is disqualified or is absent from city or ill, a practicing attorney may be appointed by the mayor or president of council to sit in place of the regular judge from day to day. Op. Atty. Gen. (307j), May 14, 1935.

Municipal judge appointed to fill vacancy in office, holds office only until next annual election. Op. Atty. Gen. (307k), July 30, 1935.

Salary of municipal judge appointed to fill vacancy can neither be increased or diminished during term for which deceased judge was elected. Id.

Offices of municipal court judge and director of independent school district are not incompatible. Op. Atty. Gen. (358-2), Aug. 28, 1935.

Municipal judges need not be attorneys. Op. Atty. Gen. (307g), Oct. 12, 1935.

City may not fix salaries for city matters, and permit court to select from county all fees for actions brought by county or work done for it. Op. Atty. Gen. (307i), Jan. 3, 1936.

Where vacancy occurs on account of death of judge, new appointee must be given same rate of salary as deceased. Op. Atty. Gen. (307l), Jan. 27, 1936.

Salary of municipal judge of Sauk Center may not be diminished during term. Op. Atty. Gen. (307i), Apr. 23, 1936.

Councils of cities of at least fourth class have power to provide for compensation of municipal judges either by salary, or by fees or by both, and as their legislative discretion might fix it. Op. Atty. Gen. (307i), May 13, 1936.

City council of Faribault may increase salary of judge of municipal court during term of office. Op. Atty. Gen. (307i), May 11, 1937.

Brainerd city council may by majority vote increase salary of municipal judge during his term of office. Op. Atty. Gen. (307i), May 13, 1937.

Practicing attorney appointed to act in place of municipal judge is not entitled to compensation in absence of city ordinance providing for such. Op. Atty. Gen. (307i), Jan. 19, 1938.

Council may provide that all fees which judge is by law authorized to collect shall be paid into city treasury. Op. Atty. Gen. (307i), Feb. 1, 1938.

Judges should be paid a salary and not part salary and part fees. Op. Atty. Gen. (307i), Feb. 1, 1938.

Compensation of judge of court operating under revised laws of 1905, as amended, is governed by this section, and not by §237. Op. Atty. Gen. (307i), Feb. 1, 1938.

Statute requiring municipal judge to be an attorney at law, would be unconstitutional. Op. Atty. Gen. (307g), Jan. 20, 1939.

217-1. Salaries of municipal judges in certain cities.

—Whenever a judge of the municipal court in any city of this state having a population in excess of 400,000 has died subsequent to January 1, 1935, the governing body of said city is authorized and empowered to pay to the estate of such deceased judge the full salary of such judge at the rate provided by law at the time of his death for the calendar month in which such death occurred. (Act Apr. 13, 1939, c. 232.)

218. Jurisdiction.

Removal of forcible entry case to district court not warranted by answer putting in issue the title, but there must be evidence putting title in issue. 178M282, 226NW 847.

Municipal court of Minneapolis had jurisdiction of an action against an investment company for money had and received. Goodell v. A., 185M213, 240NW534. See Dun. Dig. 6906.

Municipal courts organized under Laws 1895, ch. 229, or Mason's Minn. St. 1927, §§215 to 228, while courts of record are of special and limited jurisdiction and possess only such authority as is conferred by the particular statute under which organized, and such courts, like courts of justice of the peace, have no authority to grant new trials. Untiedt v. V., 195M239, 262NW568. See Dun. Dig. 6900b.

In forcible entry and unlawful detainer cases, municipal court of Minneapolis has no power to entertain a motion for a new trial or a motion for judgment in favor of defendant notwithstanding decision for plaintiff. Olson v. L., 196M352, 265NW25. See Dun. Dig. 6900b, 6906.

County attorney need not prosecute ordinary misdemeanors and city attorney is under no duty to prosecute misdemeanors arising outside of corporate limits. Op. Atty. Gen. (121b-7), May 8, 1935.

Municipal court has no authority to commit inebriates to or to release them from state hospital. Op. Atty. Gen. (306b-12), July 7, 1937.

(5).

Municipal court of Minneapolis had jurisdiction of unlawful detainer action, though title was involved. Cook v. L., 191M6, 252NW649. See Dun. Dig. 6906.

An appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v. L., 285NW932. See Dun. Dig. 309.

219. Jurisdiction withheld.

Conversion action arising out of partnership between two attorneys held properly dismissed on pleadings by municipal court, since rights of parties must be determined by an accounting action and conversion will not lie until termination of partnership. Grimes v. T., 273 NW816. See Dun. Dig. 6900b.

221. Criminal jurisdiction, etc.

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, 182M159, 234N W453. See Dun. Dig. 6900b(63).

Municipal judge could modify sentence to workhouse any time before execution of sentence had begun, and could change it to a jail sentence. State v. Municipal Court, 197M141, 266NW433. See Dun. Dig. 2487.

Municipal court of St. Paul may dispose of cases involving violations of a city ordinance without a jury trial. State v. Parks, 199M622, 273NW233. See Dun. Dig. 5235, 6907.

Legislature has power to determine how many justices of the peace there shall be in any county and what shall be their duties, and that there shall be no justice of the peace in any given county or portion thereof and may restrict constitutional jurisdiction, and may establish inferior courts and confer exclusive jurisdiction upon them and abolish jurisdiction of justices conferred upon such inferior courts, but Laws 1921, c. 362, in so far as it provides that the municipal court of city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county, is unconstitutional, as local or special legislation. State v. Gibbons, 202M421, 278NW578. See Dun. Dig. 5270.

A municipal judge has practically unlimited authority in the exercise of his duties as regards sentencing of defendant, suspending sentences and imposing fines. Op. Atty. Gen., June 26, 1933.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

Municipal court having jurisdiction of a justice court has no jurisdiction of a prosecution under §3200-51, relating to sale of liquors in dry county, but can only bind defendant over to district court. Op. Atty. Gen. (218f), August 7, 1939.

223. Clerks and deputies—Process.—The clerk of each municipal court, and his deputies, shall be appointed by the judge thereof, who may remove any of them at pleasure. If there be two judges, the senior in office shall exercise such power. Every clerk and deputy shall give bond to the state, in at least the sum of \$1,000.00 to be approved by the appointing judge, conditioned for the faithful discharge of his official duties, and for the payment as required by law or by order of the court of all moneys coming into his hands. All process shall be tested in the name of the judge, or the senior in office if there are two, be signed by the clerk, issued under the seal of the court, and be directed for service to any police officer, court officer, marshal or constable of any town, city or village, in the county, to the sheriff of the county, or all of them. No judge or other officer of such municipal court, excepting the special municipal judge, if any, shall prepare or draw any pleadings or other papers in any civil actions in said municipal court, nor shall they institute, for another, any civil action in such court. (R. L. '05, §133; G. S. '13, §267; '13, c. 104, §1; Feb. 21, 1931, c. 23, §1.)

It would be unethical for municipal judge to prepare proceedings or to advise in connection with civil action in his court. Op. Atty. Gen., May 25, 1932.

Clerk of municipal court does not come within provisions of Soldiers' Preference Law. Op. Atty. Gen., Mar. 13, 1933.

Appointment of municipal court clerk need not be approved by village council. Op. Atty. Gen., Apr. 8, 1933.

Court officer of municipal court of Virginia may serve papers any place in county, even where issued out of another municipal court in county. Op. Atty. Gen., May 17, 1933.

224. Clerk to receive and pay over fines, etc.

Fines and cost in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

Fines traceable to prosecutions by highway patrolman may be remitted by judge to municipal treasurer and by treasurer remitted to state. Op. Atty. Gen. (199b-4), Aug. 12, 1936.

Word "each" was inadvertently omitted in Laws 1937, ch. 273, §18(a), the municipal court of Minneapolis salary bill, and each clerk is entitled to \$2200. Op. Atty. Gen. (86a-14), Apr. 21, 1937.

226. Court officers.

Not applicable to municipal court of St. Cloud. See Laws Sp. Ses. 1935-36, c. 88, §5.
Op. Atty. Gen. (273d-1), Aug. 25, 1934; note under §6996.

A municipal court officer is not a policeman and so is not under civil service; and in cities of over 5,000 population mayor has power to appoint such officer without approval of city council; city council's only power in premises being to reject as legally insufficient or to approve bond put up by such officer. State v. City of Eveleth, 194M44, 260NW223. See Dun. Dig. 6900a.

Position of municipal court officer is subject to soldiers' and sailors' preference law. Id. See Dun. Dig. 7986.

Bond of city officer held sufficient to require its acceptance by city council though it contained no provision "for the use of all persons interested" and was executed for surety by "attorney" instead of "attorney-in-fact." State v. City of Eveleth, 196M307, 265NW30, See Dun. Dig. 8019.

Salaried officer of municipal court of Virginia is entitled to collect fees for serving papers, but is not entitled to retain them. Op. Atty. Gen., May 17, 1933.

This action supercedes any inconsistent home rule charter provision. Op. Atty. Gen., Jan. 25, 1934.

227. Reporters—Duties—Fees, etc.

Applicability to municipal court of St. Cloud. See Laws Sp. Ses. 1935-36, c. 88, §6.

228. Powers and duties—Practice—Rules—Fees.

Granting of continuance in prosecution for violation of a city ordinance is largely a matter within discretion of court, and granting a continuance of only one day was not abuse of discretion to a defendant who had more than a week to prepare for trial and to find alleged witness. City of Duluth v. L., 199M470, 272NW339. See Dun. Dig. 1715.

Municipal court had jurisdiction to make findings upon transcript of evidence adduced at a former trial before a judge since resigned, and it was error to grant a new trial, and it was error to decline to hear on merits defendant's motion for amended findings of fact or a new trial. Great Northern Ry. Co. v. B., 200M258, 274NW522. See Dun. Dig. 4961.

Whether or not district court practice applies to municipal court of Minneapolis on filing of affidavit of prejudice against judge, judicial propriety dictates that upon filing of such an affidavit or without it, in case of a criminal contempt, another judge should be called in to try case. State v. Laughlin, 204M291, 283NW395. See Dun. Dig. 4962.

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

This section does not apply to constables, marshals and village officers in cities and villages of less than 5,000 population, but rather to court officers appointed in cities and villages of 5,000 population or more under §226. Op. Atty. Gen. (273d-1), Aug. 25, 1934.

Municipal court has jurisdiction to dismiss a criminal action for failure of state to make out a case. Op. Atty. Gen. (307c), Jan. 23, 1936.

Municipal courts may suspend payment of fine, and are not responsible for fines not collected. Op. Atty. Gen. (306b-6), June 1, 1937.

Except in villages governed by special statutory provisions it is optional with village council to allow clerks to receive statutory fees or to provide for compensation on a salary basis in lieu of fees. Op. Atty. Gen. (308c), Feb. 15, 1938.

Clerk of court may be paid a salary in an amount to be determined by village council. Op. Atty. Gen. (308c), Feb. 21, 1938.

City council has power to provide that there be no collections of fees in criminal cases under ordinances. Op. Atty. Gen. (196j), Dec. 31, 1938.

On trial of violations of state laws municipal court may not tax costs of arrest, attendance and mileage against defendant or county, where officer making arrest and attending trial is a salaried police officer. Op. Atty. Gen. (199a-3), May 9, 1939.

Municipal court of Worthington organized under Laws 1895, c. 229, has right to issue an order to show cause, thereby shortening time for hearing on motion to vacate a writ of attachment. Op. Atty. Gen. (361a), July 19, 1939.

Where judge of municipal court allows offender to pay fine in installments or in one payment at some future date, judge can have offender picked up on a warrant and committed to jail for failure to pay fine, but only in event alternative sentence is imposed in first instance. Op. Atty. Gen. (199B-8), August 17, 1939.

228-1. Compensation of municipal court clerks in certain villages.

In villages coming within this section, it is mandatory on part of village council to fix compensation of clerk, whereas in villages not governed by this section, or by other sections, it is optional with council to allow clerk

to receive fees, or to fix compensation on salary basis in lieu of such fees. Op. Atty. Gen. (308c), Feb. 15, 1938.

229. Costs and disbursements.

Where defendant prevailed on his counter claim in amount equal to plaintiff's recovery, defendant was entitled to costs. 179M461, 229NW579(2d).

"Costs" refers to disbursements where no statutory costs are involved. Id.

230. Notices, etc.—Unlawful detainer.

In forcible entry and unlawful detainer cases, municipal court of Minneapolis has no power to entertain a motion for a new trial or a motion for judgment in favor of defendant notwithstanding decision for plaintiff. Olson v. L., 196M352, 265NW25. See Dun. Dig. 6900b, 6906.

231. Jury trials.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. Op. Atty. Gen. (260a-13), Feb. 5, 1935.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. Op. Atty. Gen. (605a-11), Feb. 25, 1935.

One charged with an offense under municipal ordinance is not entitled to a jury trial, unless it is expressly provided in such ordinance, or by charter or law under which city or village is operating. Op. Atty. Gen. (477a), Mar. 2, 1938.

233. Fees in criminal cases, etc.

It is not the duty of a city attorney to prosecute violators of state laws within the city limits in justice court, and in assisting in such a prosecution he is not entitled to compensation from the city, but county attorney might allow compensation out of his contingent fund. Op. Atty. Gen., Feb. 18, 1931.

This section refers to prosecutions in municipal courts and does not apply to justice courts. Op. Atty. Gen., Sept. 26, 1932.

Neither village nor city attorneys are under any obligation to prosecute violators of state laws in justice court. Op. Atty. Gen., Sept. 26, 1932.

City of So. St. Paul must pay expense trial in municipal court of criminal cases arising outside city limits. Op. Atty. Gen., July 14, 1933.

If misdemeanor case is not one which county attorney is specifically directed by law to prosecute, it is duty of city attorney to conduct prosecution. Op. Atty. Gen., Dec. 21, 1933.

Op. Atty. Gen. (306b-6), Apr. 6, 1934; note under § 224.

Where instituted in municipal court, all misdemeanors and violation of ordinances shall be prosecuted by the city or village attorney, except where statute for particular crimes imposes such duty upon the county attorney and even in such cases these prosecutions should be carried on by city or village attorney where complaint is made directly to him. Op. Atty. Gen. (121b-7), July 17, 1934.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. Op. Atty. Gen. (260a-13), Feb. 5, 1935.

County attorney need not prosecute ordinary misdemeanors and city attorney is under no duty to prosecute misdemeanors arising outside of corporate limits. Op. Atty. Gen. (121b-7), May 8, 1936.

It is the duty of a village attorney to conduct all prosecution for violation of ordinances, rules, or by-laws of village. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

It is duty of village attorney to prosecute appeals taken to district court from conviction for violation of ordinances. Id.

County attorney has no duties in relation to prosecutions under village ordinances or appeals therefrom. Id.

Obligation to prosecute misdemeanors under §126-4 rests on city attorney and not county attorney. Op. Atty. Gen. (121b-7), Mar. 19, 1937.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace, except where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

It is duty of city attorney and not county attorney to prosecute statutory misdemeanors committed within city limits, and it is neither the duty of the county attorney or city attorney to prosecute in municipal court or justice court misdemeanors committed without the city limits, except that law specifically requires county attorney to prosecute certain misdemeanors, such as violations of game and fish laws, otherwise his duties are limited to preliminary hearings in justice courts and municipal courts. Op. Atty. Gen. (121B-14), Feb. 23, 1939.

Whether judge of municipal court in Waseca may include fees paid jurors as part of costs in a criminal case discussed but not determined because it involved a pending case. Op. Atty. Gen. (306B), June 27, 1939.

It is duty of village attorney to prosecute all violations of ordinances, rules and by-laws of village. *Op. Atty. Gen.* (358d-5), August 4, 1939.

236. Appeals to district court.

The district court is not required to make findings of fact in an appeal upon questions of law alone from judgments of the municipal courts in cities of the class of Worthington. *Iowa Mortgage Corp. v. K.* 181M477, 233NW18. See *Dun. Dig.* 6905.

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. *Pandolfo v. S.*, 183M336, 236NW483. See *Dun. Dig.* 486(74).

An appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. *Doyle v. L.*, 285NW932. See *Dun. Dig.* 309.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. *Op. Atty. Gen.* (260a-13), Feb. 5, 1935.

Where city charter is silent on appeals from convictions of violation of city ordinance, appeals may be taken under §9129. *Op. Atty. Gen.* (6h), June 11, 1937.

237. Courts in cities of third and fourth class, etc.

Whenever the common council of any city of the third or fourth class, where any municipal court heretofore has been or hereafter shall be organized, shall fail to fix the salary of the municipal judge, as provided for by law, or the mayor shall not approve the salary fixed by the council, such judge shall receive as his compensation until such salary shall be so fixed and approved the same fees as is provided for in Laws 1895, Chapter 229, Section 32, and shall, in addition to his duties as such judge perform the duties incumbent on the clerk of such municipal court, and jurors in such municipal court may by resolution adopted by its common council or governing body and approved by its mayor, be compensated in the same manner as in justice court.

The common council in cities of the fourth class, having a population of less than 5,000 inhabitants, which heretofore has been or hereafter may be incorporated under the laws of this state, and which have not organized a municipal court at the time of the passage of this act, may by resolution adopted by its common council or governing body and approved by its mayor, organize such a court under and by virtue of and with such jurisdiction and powers as are conferred by Laws 1895, Chapter 229 and amendments thereto, and the judge of any court so organized shall, in addition to his duties as judge, perform the duties otherwise incumbent or imposed by law on the clerk of such municipal court.

In addition to the other powers now granted to the common council of any city of the third or fourth class by law, which powers are not abridged or impaired by anything herein contained, such common council shall have the power to fix the salary of and such judge, which salary may be fixed by resolution adopted by such council and approved by the mayor and shall not be diminished during his term.

Any municipal court to which the provisions of this act shall apply shall be governed as near as may be under and pursuant to the provisions of law applicable to municipal courts, and contained in Revised Laws 1905, and the jurisdiction thereof, the practice and procedure therein shall conform as near as may be to the provisions of law applicable to municipal courts contained in the Revised Laws 1905, provided, however, that any municipal court in any city of the third or fourth class may adopt and follow the practice and procedure prescribed by Laws 1895, Chapter 229, and all proceedings, order and judgments of such municipal courts which have followed the procedure prescribed by Laws 1895, Chapter 229, and which are otherwise jurisdictional are hereby legalized and validated.

Any common council of any city of the third or fourth class having a municipal court now organized, or which shall hereafter organize a municipal court to which the provisions of this act may apply, shall have power to fix such reasonable sum, in lieu of all judges' and clerks' fees, to be charged to litigants in

civil actions therein, and provide for the collection thereof and the payment of the sum so fixed into the city treasury of such city, and may provide for the collection of fees and the payment thereof into the city treasury, or shall have power to determine that the fees provided for in this act shall be in lieu of and in place of all salary, and shall have power to and may require in cases where salary is paid by the city that such judges collect such fees and pay same into the city treasury and be responsible for such collection.

When fees shall be taxed they shall be taxed and paid as in ordinary cases in courts of justices of the peace and shall be the same in amount as are provided in Laws 1895, Chapter 229, as hereinbefore stated. ('09, c. 306, §1; '11, c. 10, §1; G. S. '13, §281; Apr. 5, 1935, c. 114.)

The rules of the municipal courts of Duluth, Minneapolis, and St. Paul are set out in Appendix 4, post.

Statutes governing municipal courts in cities of fourth class, as they stood in 1934, did not authorize city council to discontinue salary of municipal judge of city or to place compensation of judge back on a fee basis. *State v. City of Waseca*, 195M266, 262NW633. See *Dun. Dig.* 4957.

There being here a valid resolution in force fixing salary of municipal judge, attempt of city council to discontinue such salary was not effective and did not operate as a failure to fix salary, which was already fixed. *Id.*

Where terms of office of municipal judge and members of city council commence on same day and a resolution of city council is adopted on evening of that day after commencement of term of office of municipal judge, it is ineffective to reduce or discontinue salary of such judge for his term of office already commenced. *Id.*

A resolution of city council adopted in May, 1933, enacted with same formalities as an ordinance, fixing salary of municipal judge, had same force as an ordinance, was not a temporary enactment, and did not expire with expiration of term of office of members of city council then in office. *Id.*

Judge of municipal court, organized under this section, may also hold the office of member of school board of an independent school district. *Op. Atty. Gen.*, Apr. 15, 1931.

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.

Judge of municipal court, also discharging duties of clerk of court on failure of council to appoint clerk, must give bond. *Op. Atty. Gen.*, Mar. 1, 1933.

Fees of judge of municipal court are the same as those of a justice of the peace under §6998. *Op. Atty. Gen.* (306b-4), Feb. 16, 1935.

Special Laws 1891, c. 59, §19, as amended by Laws 1915, c. 66, and Laws 1929, c. 134, governs the matter of reduction of salary of municipal court judge in the city of Ely, and judge in such city may have his salary reduced during his term. *Op. Atty. Gen.* (307i), Mar. 23, 1935.

Salary of municipal judge of Sauk Center may not be diminished during term. *Op. Atty. Gen.* (307i), Apr. 23, 1936.

Councils of cities of at least fourth class have power to provide for compensation of municipal judges either by salary, or by fees or by both, and as their legislative discretion might fix it. *Op. Atty. Gen.* (307i), May 13, 1936.

Compensation of judge of court operating under Revised Laws of 1905, as amended, is governed by §217, rather than this section. *Op. Atty. Gen.* (307i), Feb. 1, 1938.

Judges should be paid a salary and not part salary and part fees. *Op. Atty. Gen.* (307i), Feb. 1, 1938.

Council may provide that all fees which judge is by law authorized to collect shall be paid into city treasury. *Op. Atty. Gen.* (307i), Feb. 1, 1938.

City of Northfield, having a population of 4153 in 1930, is a city of the fourth class and may adopt practice and procedure prescribed by laws 1895, c. 229. *Op. Atty. Gen.* (306a), July 27, 1938.

City council has power to provide that there be no collections of fees in criminal cases under ordinances. *Op. Atty. Gen.* (196j), Dec. 31, 1938.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. *Op. Atty. Gen.* (266B-11), April 14, 1939.

On trial of violations of state laws municipal court may not tax costs of arrest, attendance and mileage against defendant or county, where officer making arrest and attending trial is a salaried police officer. *Op. Atty. Gen.* (199a-3), May 9, 1939.

Laws 1895, c. 229.
Municipal courts organized under Laws 1895, ch. 229, or Mason's Minn. St. 1927, §§215 to 228, while courts of record, are of special and limited jurisdiction and possess only such authority as is conferred by the particular

statute under which organized, and such courts, like courts of justice of the peace, have no authority to grant new trials. *Untiedt v. V.*, 195M239, 262NW568. See *Dun. Dig.* 6900b.

Council of city of Waterville cannot abolish municipal court created by legislative act, though organized by resolution of council. *Op. Atty. Gen.*, July 13, 1933.

Municipal judge of Sauk Center held not entitled to receive fees in addition to salary fixed by council after he took office. *Op. Atty. Gen.* (307e), Apr. 21, 1937.

Whether judge of municipal court in Waseca may include fees paid jurors as part of costs in a criminal case discussed but not determined because it involved a pending case. *Op. Atty. Gen.* (306B), June 27, 1939.

Laws 1895, c. 200, §6.

Where city council of Marshall adopted provisions of *Mason's Stats.*, §§215 to 240, summons in actions in municipal court should be subscribed by plaintiff, or his attorney, and such summons may be served by any disinterested person. *Op. Atty. Gen.*, Mar. 28, 1932.

Municipal court of Worthington, organized under this act may issue an order to show cause, thereby shortening time for hearing on motion to vacate a writ of attachment. *Op. Atty. Gen.* (361a), July 19, 1939.

Laws 1895, c. 200 * * * * *

Sec. 30. Lien not to attach unless judgment is filed in District Court.—No judgment rendered in said municipal court shall attach as a lien upon real estate until a transcript thereof shall have been filed in the district court, as hereinafter provided; but writs of execution thereon may issue against the goods and chattels of the judgment debtor, at any time after the entry of judgment, returnable within 30 days. The provisions for renewals of executions in district court shall apply to this court, except that such renewal shall extend the life of the execution for only 30 days from the date of such renewal, and except that no renewal of such execution shall be made by the clerk until the fee of 25c therefor shall have been paid.

Every person in whose favor a judgment is rendered, in said municipal court for an amount exceeding \$5.00 besides costs, may, at any time after the entry of such judgment, upon paying the fee therefor, demand and shall receive from such clerk a transcript of the docket entries of such judgment, duly certified, and may file the same in the office of the clerk of the district court in and for the county in which said city is situated, who shall file and docket the same, as in the case of transcripts of judgments from other district courts in the state.

And every such judgment, after being so transcribed and docketed in the district court, shall become a lien upon the real estate of the debtor from the time of filing such transcripts to the same extent as a judgment of said district court, and shall thereafter be exclusively under the control of said district court and carried into execution by its process as if said judgment had been rendered in district court, the clerk of said municipal court shall not issue such transcript while a writ of execution is outstanding, in the hands of an officer, or otherwise, and shall note on the record of said judgment the fact that such transcript has been given; and shall not thereafter, issue any writ of execution on the same judgment, but may, at any time after the first transcript is issued, give to any party applying therefor, upon such party paying the clerk's fee therefor, a new transcript, and the clerk shall note the record of each transcript given upon such judgment. (As amended Mar. 27, 1933, c. 119.) * * * * *

239. Fees to be charged by municipal courts.

Fees in municipal court of village of Perham established by Laws 1933, Ex. Sess., ch. 35, and municipal court for village of New York Mills established by Laws 1935, ch. 253, are fixed by this section. *Op. Atty. Gen.* (196j), Jan. 16, 1936.

Councils of cities of at least fourth class have power to provide for compensation of municipal judges either by salary, or by fees or by both, and as their legislative discretion might fix it. *Op. Atty. Gen.* (307i), May 13, 1936.

Where person was convicted of violation of ordinance in municipal court and appealed and was found not guilty in district court, clerk of district court is entitled to his fees from city. *Op. Atty. Gen.* (144b-15), Apr. 14, 1938.

240. Form of summons in municipal court.

Where city council of Marshall adopted provisions of *Mason's Stats.*, §§215 to 240, summons in actions in municipal court should be subscribed by plaintiff, or his attorney, and such summons may be served by any disinterested person. *Op. Atty. Gen.*, Mar. 28, 1932.

241. Courts in cities of first class—Probation officer.—In each city of the first class not operating under a home rule charter pursuant to the state constitution Article IV, Section 36, a probation officer shall be appointed by the Judges of the Municipal Court in said city. Such officer may appoint an assistant probation officer and one or more deputies, subject to approval by said Judges. Each shall serve four years, unless sooner removed by said

Judges for cause. ('13, c. 424, §1.) [283.]; Apr. 17, 1937, c. 273, §2.)

242. Same—Powers and duties.—Such probation officer, or assistant probation officer or a deputy, shall be present at every session of said Court. He shall receive all persons placed on probation by said Court and committed to his care during such probation period and perform such acts with reference to them as the judgment of the Court may direct. He shall not be a regular member of the police force, but in the execution of his official duties shall have all the power of a police officer. ('13, c. 424, §2. [284.]; Apr. 17, 1937, c. 273, §3.)

244. Same—Offices, etc.—The city council of any such city shall provide such probation officer and his assistant and deputies with suitable furnished offices in the building where such courts are held, with record books, blanks, stationery, postage and other expenses required for the proper execution of the purposes of this act. ('13, c. 424, §4.) [286.]; Apr. 17, 1937, c. 273, §4.)

245. Salary of probation officer and assistants.—Such probation officer shall receive as full compensation for his services \$2,970 per annum; the assistant probation officer, \$2,420 per annum; and each deputy such amount as shall be fixed by the judges of said court not exceeding \$2,200 per annum; such salary shall be payable in equal semi-monthly installments out of the city treasury. ('13, c. 424, §5; Amended '19, c. 303, §2; '21, c. 201, §2; '23 c. 413, §2; '27, c. 424, §5; '37, c. 273, §5.)

Sec. 6 of Act Apr. 17, 1937, cited, provides the act shall be severable and an invalidation of any part does not affect the remainder.

COURT COMMISSIONER

246. Election—Term of office.

Laws 1929, c. 341, §2 (§997-4), fixes salary at \$3,500 and marriage fees in counties of 415,000 population.

Act Apr. 17, 1937, c. 269, provides that in counties having over 400,000 population the salary of the court commissioner shall be \$3740.

Where court commissioner was elected in 1926 and office became vacant in 1929, and vacancy was not filled by appointment and in 1932 election there was an election to that office and in 1934 blank space was left following words "for court commissioner" and incumbent was again voted for, and same thing occurred in 1936, and same blank space was left in 1938 but a different person was voted for, person receiving most votes in 1938 was entitled to certificate of election. *Op. Atty. Gen.* (128e), April 17, 1939.

247. Qualification and powers.

A district judge, exercising power of court itself, has jurisdiction to vacate an order of court commissioner for a writ of habeas corpus and to quash writ if issued, merits of matter not having been decided by commissioner. *State v. Hemenway*, 194M124, 259NW687. See *Dun. Dig.* 2331.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. *Op. Atty. Gen.* (128b), June 21, 1935.

Only power given to a court commissioner by Laws 1935, c. 246, amending §2150, is power to issue an attachment for rent, and he does not have authority to pass upon leasing of tax delinquent lands. *Op. Atty. Gen.* (128b), Aug. 2, 1937.

250. Vacancy.

Section 250, and not Section 822, governs an appointment to fill a vacancy in the office of court commissioner. *Op. Atty. Gen.*, Jan. 26, 1931.

Where court commissioner was elected in 1926 and office became vacant in 1929, and vacancy was not filled by appointment and in 1932 election there was an election to that office and in 1934 blank space was left following words "for court commissioner" and incumbent was again voted for, and same thing occurred in 1936, and same blank space was left in 1938 but a different person was voted for, person receiving most votes in 1938 was entitled to certificate of election. *Op. Atty. Gen.* (128e), April 17, 1939.

PROBATE AND JUSTICE COURTS

251. Jurisdiction.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace except

where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

JUDICIAL COUNCIL

251-1. Judicial Council created.—A Judicial Council is hereby created for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, and of all matters relating to the administration of said system and its several departments. (Apr. 26, 1937, c. 467, §1.)

251-2. Membership in Judicial Council.—The Judicial Council shall consist of the Chief Justice of the Supreme Court, or some other Justice or former Justice, appointed from time to time by the Chief Justice for such service; two Judges or former Judges of the District Court, to be designated, or who shall have been designated by the Judges of the District Court in annual meeting assembled; one Judge or former Judge of Probate, similarly designated by the Judges of Probate; and seven other persons appointed by the Governor, one of whom shall be a Judge of a Municipal Court, and not less than four of the others shall be attorneys at law of wide practical experience. Of the seven members first appointed by the Governor, two shall be appointed for a period of one year, two for a period of two years, and three for a period of three years. All appointments made thereafter shall be for a term of three years and until their successors shall qualify, except that in the case of a vacancy, the appointment shall be made to fill the unexpired term. (Apr. 26, 1937, c. 467, §2.)

251-3. Shall report to Governor.—The Judicial Council shall report annually on or before December 1st, to the Governor, upon the work of the various branches of the judicial system. It may also from time to time submit, for the consideration of the several courts and judges, such suggestions in regard to rules of practice and in regard to procedure as it may deem advisable. (Apr. 26, 1937, c. 467, §3.)

251-4. Expenses of Judicial Council.—No member of the Judicial Council shall receive any compensation for his services, but the Judicial Council shall be allowed, out of any appropriations made for the purpose, expenses for clerical and other services, and the members of the Judicial Council shall be allowed such expenses as the Governor shall approve. (Apr. 26, 1937, c. 467, §4.)

251-5. Appropriation.—There is hereby appropriated from any moneys in the State Treasury, not otherwise appropriated, the sum of \$1,000.00 for each of the fiscal years ending June 30, 1938, and June 30, 1939, for the purpose of carrying out the provisions of this Act. (Apr. 26, 1937, c. 467, §5.)

251-6. Effective July 1, 1937.—This Act shall take effect on July 1, 1937. (Apr. 26, 1937, c. 467, §6.)

REVISOR OF STATUTES

251-11. Office created.—There is hereby created the office of Revisor of Statutes. (Act Apr. 22, 1939, c. 442, §1.)

251-12. Supreme Court to appoint—Salary.—The Supreme Court shall appoint to the office of Revisor of Statutes a person qualified to perform the duties hereinafter described, at an annual salary of \$5,000, who shall hold his office at the pleasure of the Supreme Court. (Act Apr. 22, 1939, c. 442, §2.)

251-13. May employ assistants.—Subject to the approval of the Supreme Court the Revisor of Statutes

shall employ such assistants, clerks and stenographers as may be necessary and shall procure necessary office furniture, stationery, books, postage and other supplies and shall be furnished with suitable office rooms convenient to the state library. Such assistants, clerks and stenographers shall be employed during the pleasure of the Revisor of Statutes. (Act Apr. 22, 1939, c. 442, §3.)

251-14. Duties.—It shall be the duty of the Revisor of Statutes:

(a) To formulate and prepare a definite plan for the order, classification, arrangement, printing and binding of the Minnesota Statutes and to prepare and at the beginning of each session of the legislature to present to the judiciary committees of the senate and house, in such bill or bills as he may deem best, such consolidation, revision and other matter relating to the statutes or any portion thereof as he shall deem proper or as he may be instructed by the Supreme Court.

(b) To renumber any chapter or section of the statutes for the purpose of revision, and to change and supply reference numbers to agree with any renumbered chapter or section in any compilation of the statutes hereafter made.

(c) As soon as may be after the close of each regular session of the legislature, to prepare and deliver to the commission of administration and finance printer's copy for a volume to be called "Minnesota Statutes," appending to that name the year of the last regular session of the legislature, which volume shall contain the constitution of the United States, the constitution, organic act, enabling act and act of admission of the state of Minnesota, all general statutes in force, a table of the statutes which have been revised by the Revisor of Statutes, an alphabetical index, a table showing the terms of district courts, and such other useful information as the Revisor of Statutes shall determine to be desirable and practicable.

To one copy of such volume the Revisor of Statutes shall append his certificate to the effect that he has compared each printed section therein with the original section of the statutes, or, as the case may be, with the original section in the enrolled act from which the section was derived, together with all amendments, if any, of such original section, and that all the sections therein appear to be correctly printed. Such copy shall be filed in the office of the Secretary of State as a public record and all other copies of such volume shall contain a printed copy of such certificate.

(d) To prepare and biennially to revise annotations of the constitution and statutes of Minnesota by reference to the decisions of the Supreme Court of Minnesota and of the courts of the United States. As soon as may be after the close of each regular session of the legislature the Revisor of Statutes shall prepare and deliver to the commission of administration and finance printer's copy of these annotations, which shall also contain such other and useful matter as the Revisor of Statutes shall determine to be desirable and practicable. (Act Apr. 22, 1939, c. 442, §4.)

251-15. Commission of administration and finance to make publication.—Upon receipt of the printer's copy described in Section 4, paragraphs (c) and (d) herein, the commission of administration and finance shall enter into a contract for the publication of said "Minnesota Statutes" and annotations. Said contract shall specify the price at which they shall be sold to the state, subdivisions of the state, and the public. (Act Apr. 22, 1939, c. 442, §5.)

251-16. Copies of laws to be delivered to revisor of statutes by Secretary of State.—Immediately upon the enrollment of any law or passage of any memorial or resolution three copies thereof shall be delivered to the Revisor of Statutes by the Secretary of State. (Act Apr. 22, 1939, c. 442, §6.)

251-17. Appropriation.—There is hereby appropriated from any moneys in the state treasury not otherwise appropriated the sum of \$10,000 for each of the fiscal years ending June 30, 1940, and June 30, 1941,

for the purpose of carrying out the provisions of this act. (Act Apr. 22, 1939, c. 442, §7.)

251-18. Effective date.—This act shall take effect on July 1, 1939. (Act Apr. 22, 1939, c. 442, §8.)

CHAPTER 5A

Salaries of Certain State Officers and Employees

Act limiting amount which may be paid state officer or employee for use of automobile. Laws 1931, c. 331, §§254-47, 254-48.

252. Amount—Payment.

2. Judicial Department.

Salary of chief justice, associate justices and commissioners.—The annual salary of the chief justice of the supreme court shall be \$9,000.00 and that of each associate justice and each commissioner of the supreme court \$8,500.00. (G. S. '13, §294; '13, c. 400, §1; Ex. Sess. '19, c. 30; '21, c. 504; '23, c. 377; '25, c. 268; Apr. 24, 1929, c. 322, §1.)

The above provision amends this paragraph with respect to the salaries of the chief justice, associate justices, and the commissioners.

6. Office of Attorney General.

Salary of attorney general and assistants.—The annual salary of the attorney general is hereby fixed at \$7,000.00 and of the deputy attorney general at \$6,000.00, and of the several assistant attorneys general, other than the assistant attorney general who is a member of the rural credit bureau, at \$5,000.00. (G. S. '13, §294; '13, c. 400, §1; '21, c. 324; Apr. 25, 1929, c. 382, §1.)

The above provision amends this subdivision "so as to read as" above. As to whether it amends the provisions of the former law which are not embraced in the amendatory act may be open to question.

8. Office of State Librarian.

The salary of the assistant state librarian is hereby fixed at twenty-one hundred dollars annually, payable in semi-monthly installments. (G. S. '13, §294; '13, c. 400, §1; Ex. Sess. '19, cc. 30, 31, §1.)

Explanatory note.—Laws Ex. Sess. 1919, c. 31, §1, impliedly amended Laws Ex. Sess. 1919, c. 30, by increasing the salary of the assistant librarian to the amount above stated.

9. Office of Commissioner of Banks.

Commissioner of Banks, forty-five hundred dollars; one deputy commissioner of banks, four thousand dollars; one bank examiner assigned to examination in cities of the first class, thirty-seven hundred fifty

dollars; ten bank examiners thirty thousand dollars; eleven assistant examiners, twenty-seven thousand five hundred dollars; three second assistant examiners fifty-four hundred dollars; three examiners' clerks, forty-five hundred dollars; four examiners' clerks, at an amount not to exceed fifty-six hundred dollars; one chief clerk, twenty-four hundred dollars; one first assistant clerk, fifteen hundred dollars; seven stenographers and clerks, eighty-two hundred eighty dollars; one extra clerk hire for contingencies, one thousand dollars. (As amended '21, c. 499; '23, c. 252; Apr. 13, 1933, c. 232, §1.)

Commissioner to fix salary of Examiner in charge of Liquidation.—The Commissioner of Banks shall fix the salary of the Examiner in Charge of Liquidation appointed by him, but not to exceed four thousand dollars, and the same shall be paid out of funds of banks in the hands of the Commissioner of Banks for liquidation. (Act Apr. '13, 1933, c. 252, §2.)

19. Office of Board of Control.

* * *

Salary increases for certain employees.—That the salaries of all employees of the various institutions of the state under the jurisdiction of the State Board of Control amounting to \$20 to \$50 a month exclusive of maintenance they may receive, be increased \$5 to \$10 per month, and the said State Board of Control is hereby authorized and directed to increase such salaries in said manner, using their own discretion as to the rate of increase in the individual case. (Act Apr. 15, 1935, c. 183, §1.)

Sec. 3 of Act Apr. 15, 1935, cited, provides that the act shall take effect from its passage. Sec. 2 of such act is set forth as §10834-1.

22. District Court Judges.

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

254. Fees.

Laws 1935, c. 391, §37, reducing salaries 10%, is changed by Act Apr. 24, 1937, c. 457, §37, which reinstates pre-existing salaries.

CHAPTER 5B

Public Officers and Employees in General

STATE EMPLOYEES' RETIREMENT ASSOCIATION

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

(a). "State Employee" shall mean any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid, either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting elective state officers, court commissioners, district judges, the members of the Tax Appeal Board, the Civil Service Board, and the members of any other State Board or Commission who serve the state intermittently and are paid on a per diem basis, and the president, deans, professors, and in-

structors in the state university and in the state teachers' colleges, and teachers in state institutions who are eligible to membership in the Teachers' Retirement Fund but shall not include temporary employees or students who secure employment with the state or a state institution, incidental to and in furtherance of their education. Any employee who has been employed for a period of over six months continuously shall become a member, any classification of employees as temporary, permanent, or otherwise, by the head of any department, or any commission or agency of the state notwithstanding.

Employees of the department of education who are eligible to membership in the Teachers' Retirement Fund shall have the option of electing whether to be a member of the State Employees Retirement Association or the Teachers' Retirement Fund, and any em-

ployee in the department of education who, prior to the passage of this act, is a member of both the Teachers' Retirement Fund, under Laws 1931, Chapter 406 and Chapter 146, and the State Employees Retirement Association shall elect prior to July 1, 1939, as to which association or fund he or she shall remain a member. Teachers in the state institutions who are eligible to membership in the Teachers' Retirement Fund and employees of the department of education who have elected to remain members of the Teachers' Retirement Fund, who are members at the time of the passage of this act shall have the option of taking a deferred annuity if they have sufficient state service, or a refundment. Elective state officers who are members at the time of the passage of this act shall have the option of taking a deferred annuity if they have sufficient state service, or a refundment. The option to take a deferred annuity must be exercised on or before January 1, 1940.

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

(c). "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member, and the total amount of assessments paid by a member in lieu of such deductions prior to July 1, 1939, and credited to his or her individual account in the retirement fund, without interest.

(d). "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, prior to July 1, 1939, and all other moneys paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon, including contributions on the part of the state as provided for by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 254-4, Subdivision 1, being Section 2, Subdivision (a), of this act.

(e). "Monthly Deductions from Salaries" shall mean the actual receipts received or credited to the fund from salary deductions in any calendar month.

(f). "Prior Service" shall mean the service of a member rendered before the first day of July, 1929, and shall include the service during the world war of officers, soldiers, sailors, marines, and army nurses who were "State Employees" at the time of enlisting or being drafted into the military service of the United States, and who returned directly to the service of the state upon returning from the world war.

(g). "Allowable State Service" shall mean the service a member is entitled to have credit for pursuant to Section 4, Subsection (b) and (c), and the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 254-9 and 254-10. (Act Apr. 15, 1929, c. 191, §1; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238; Apr. 22, 1939, c. 432, §1.)

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

Act Apr. 22, 1935, c. 238, amending Laws 1929, c. 191, as amended, corrects the defect in the title of Laws 1933, c. 326. The title of Act Apr. 22, 1935, c. 238, is as follows: "An act to amend Laws 1929, Chapter 191, Sections 1, 2, 4, 6, 9, 10, 11, to re-number and amend sections 15, 16 and 17 thereof as amended by Laws 1931, chapter 351, sections 1, 2, 4, 6, 9, 10, 11, 15, 16, 17; to repeal Laws 1929, chapter 191, section 12, as amended by Laws 1931, chapter 351, section 12; to repeal Laws 1929, chapter 191, section 13, and Laws 1933, chapter 326; to amend Laws 1929, chapter 191, section 5, and to amend and re-number Laws 1929, chapter 191, sections 14, 18, 19, 20, 21 and 22,

and to add thereto a new section as section 21; relating to state employees' retirement fund."

Act is constitutional. *Hessian v. E.*, 204M287, 283NW 404.

Officers and servants of Minneapolis-St. Paul Sanitary District are not state officers or employees within act creating State Employees' Retirement Association. *State v. King*, 193M405, 258NW583.

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

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

State teachers who are reemployed each year may become members of state employees' retirement association. *Op. Atty. Gen.*, Nov. 25, 1933.

Persons paid entirely out of the state emergency relief administration fund are not state employees and are not entitled to remain as members of the state employees' retirement association unless they were in the employ of the state for more than five years, but employees paid partly from state funds and partly from state emergency relief administration fund are entitled to membership, but only to the extent of the amount received from the state. *Op. Atty. Gen.* (331a-8), Dec. 15, 1934.

Minneapolis-St. Paul Sanitary System employees are not state employees. *Op. Atty. Gen.* (331a-7), Mar. 8, 1935.

Special examiners employed in division of insurance are not state employees within meaning of retirement act, unless they are employed continuously for a period of six months or more. *Op. Atty. Gen.* (331a-8), Sept. 7, 1935.

All persons entering employment of state department of education since July 1, 1929, must become members of either the Teachers' Retirement Fund or the State Employees' Retirement Association, and such employees as would come within the terms of both bodies must become members of both. *Op. Atty. Gen.* (175p), Oct. 8, 1935.

Employees engaged in public health service and paid out of federal funds allocated to state are state employees. *Op. Atty. Gen.* (331a-7), May 19, 1936.

County employees using sprayers in weed eradication under contract between state and county were not "state employees". *Op. Atty. Gen.* (322b), Mar. 22, 1938.

National Guard regimental clerks employed on a part time basis and paid from an allowance created under Laws 1921, c. 506, are not state employees. *Op. Atty. Gen.* (331a-6), May 23, 1939.

Superintendent of State School and Colony for Feeble-Minded at Faribault is not eligible for membership in teacher's retirement fund, his supervision of education being merely nominal. *Op. Atty. Gen.* (175p), June 6, 1939.

Teachers in state institutions who are members of Teachers' Retirement Fund, or those eligible to membership in such fund, are required to continue as member of that fund, and must take a refundment from State Employees Retirement Association, or, if they have been a member of retirement association 10 years, take a deferred annuity, but election to take a deferred annuity must be exercised before Jan. 1, 1940, but superintendent of state institution whose duties are chiefly administrative and in a custodial capacity should not be considered teacher for purposes of the act. *Op. Atty. Gen.* (331d), June 6, 1939; May 9, 1939.

Employees of Department of Education who are not members of both Teachers Retirement Fund and State Employees Retirement Association are required to elect prior to July 1, 1939, as to which association or fund he shall remain a member, and if they elect to remain a member of retirement fund, election must be made as to whether they shall take from State Employees Fund a refundment, or, if they have been members of retirement association 10 years, a deferred annuity. *Id.*

Teachers in state institutions who have not elected to be members of Teachers Retirement Fund and therefore not eligible to membership, must continue to be members of State Employees Retirement Association. *Id.*

Employees in Department of Education who are not members of State Employees Retirement Association and not Teachers Retirement Fund and eligible to membership in that fund have option to election to which fund or association they shall be members. *Id.*

Employees in Department of Education who are now members of State Employees Retirement Association and not Teachers Retirement Fund are entitled to elect to take membership in Retirement Fund and obtain a refundment from State Employees Retirement Fund, but it is questionable as to their right to take a deferred annuity. *Id.*

Status of an elective state official who was a former annuitant. *Op. Atty. Gen.* (331a-1), July 11, 1939; note under §254-10.

Vested interest of a government employee in a pension fund. 23MinnLawRev540.

(a). Whether or not a person is entitled to receive credit for services during a period when only employed intermittently should be determined by his status rather than from extent of activity. *Op. Atty. Gen.* (331a-6), Apr. 22, 1936.

Employee of employment service and unemployment compensation division of industrial commission and employees of old age assistance division of board of control are "state employees", and employees of state-wide highway planning survey are state employees after Jan. 1, 1938. Op. Atty. Gen. (331a-6), Mar. 10, 1938.

Members of board of parole are not state employees, and are entitled to a refund of money contributed to fund. Op. Atty. Gen. (331a-6), July 24, 1939.

Vice president of the State Board of Hairdressing and Beauty Culture Examiners is not a "state employee". Op. Atty. Gen. (331a-7), Sept. 1, 1939.

Members of Barber Board are not "state employees", but secretary of board is a "state employee". Op. Atty. Gen. (331a-7), Sept. 16, 1939.

254-2. State employees' retirement association created.—There is hereby established a state employees' retirement association the membership of which shall consist only of state employees. Membership in such association shall be optional on the part of persons in the employ of the state on July 1, 1929, but all new state employees entering the service of the state after July 1, 1929, except elective state officers shall become members of said association by acceptance of state employment and the head of the department shall thereupon cause deductions to be made from the salary of such new employes. Persons in the employ of the state on July 1, 1929, who apply for membership in the retirement association prior to January 1, 1930, shall pay a membership fee of One Dollar (\$1.00) and persons in the employ of the state on July 1, 1929, who apply for membership therein after January 1, 1930, shall pay a membership fee of Ten Dollars (\$10.00), but no person in the employ of the state on July 1, 1929, shall be eligible to apply for membership in the retirement association after July 1, 1931. In addition to such membership fee, every person in the employ of the state on July 1, 1929, who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employe become a member of the retirement association July 1, 1929, with interest thereon at the rate of four per cent per annum compounded annually. (Act Apr. 15, 1929, c. 191, §2; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §2.)

Teachers who were in employ of state prior to July 1, 1929, and who did not make application for membership in association prior to July 1, 1931, are not now entitled to membership. Op. Atty. Gen., Dec. 20, 1933.

Employees in dormitories of Mankato State Teachers College must become members of retirement association. Op. Atty. Gen., Dec. 28, 1933.

It is necessary that employes make back payments from time of their employment. *Id.*

An employe of state on July 1, 1929, who did not exercise option to become member, could nevertheless become a member after July 1, 1931, where he assumed an elective office in January, 1931. Op. Atty. Gen. (331a-7), Feb. 1, 1937.

An elective state officer can elect to become a member at any time, and membership once voluntarily accepted probably may not be terminated except as specifically provided in act. Op. Atty. Gen. (331a-14), June 17, 1937.

254-3. Board of managers—officers.—The management of said state employees' retirement fund is hereby vested in a board of seven members, who shall be known as the State Employees' Retirement Board. Said board shall consist of the state auditor, the state treasurer, the insurance commissioner and four state employes who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of said board so elected shall hold office for a term of four years and until their successors are elected and qualified; provided that at the first election held after the passage of this act one of said members shall be elected for the term of one year, one member for the term of two years, one member for the term of three years, and one member for a term of four years. Any vacancy in said board caused by the death, resignation or removal of either of the members so elected shall be filled by the retirement board for the unexpired portion of the term in which such vacancy occurs. The members of the

retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and shall appoint a secretary and such other employes as may be necessary and fix their compensation. The board shall from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (Act Apr. 15, 1929, c. 191, §3; Apr. 25, 1931, c. 351, §3; Apr. 22, 1935, c. 238, §3.)

Compensation of secretary and other employes are to be fixed by governing board of retirement association and not the department of administration and finance. Op. Atty. Gen. (331e), Feb. 25, 1935.

There is no provision specifically requiring an annual meeting of association, and is within discretion of board to determine what business shall be transacted at annual meeting and what matters membership shall be allowed to vote on. Op. Atty. Gen. (331a-2), July 19, 1935.

254-4. Payments into retirement fund.—(a). Persons in the employ of the state on July 1, 1929, who exercised their option to become members pursuant to Laws 1929, Chapter 191, Section 2 [§254-2], shall pay into the retirement fund, beginning July 1, 1939, according to their age on July 1, 1929, and persons entering the state service and becoming members of the association after July 1, 1929, shall pay into the retirement fund, beginning July 1, 1939, according to their age at the date of becoming members of the association in accordance with the following schedule: those under 30 years of age, three and one-half per cent; those 30 years of age and under 40 years of age, four per cent; those 40 years of age and under 45 years of age, four and one-half per cent; those 45 years of age and under 50 years of age, five per cent; those 50 years of age and under 55 years of age, five and one-half per cent; and those 55 years of age or over, six per cent of the compensation paid them including compensation for overtime, such payments shall be made by deduction thereof from such salary, provided however, that no deductions shall be made from said salaries on any amount thereof in excess of \$300.00 per month, and provided further that until July 1, 1939, the present deduction of 3½ per cent shall remain in effect. The head of each department is hereby required to cause such deduction to be made from the salary of each member of the retirement association on every payroll abstract and to approve one voucher payable to the state treasurer for the aggregate amount so deducted from the salaries covered by said payroll abstract, provided that deductions from salaries of employes paid direct by any department, institution or agency of the state shall be made by the officer or employee authorized by law to pay such salaries, and remitted by him to the secretary of the retirement association with a statement showing the amount of each of such deductions and the names of the employes on whose account the same have been made.

Every department, bureau, division, commission, committee or board which functions regularly as a permanent unit of the state government, and which controls the expenditure of its income or revenue shall pay to the state treasurer, for the uses and purposes of the state employees retirement fund, in the manner and at the times hereinafter specified, the amount of money hereinafter provided for, which said payments shall be credited to said retirement fund by the state treasurer.

Every such unit of the state government which is wholly or substantially financially self-sustaining by reason of income or revenue derived from its own activities shall, beginning with the state's fiscal year ending June 30, 1940, and continuing with each fiscal year thereafter, allocate to said state employees retirement fund an amount equal to one-half of the total amount of superannuation annuities paid during

the fiscal year to employees who were retired by such unit of the state government, and pay the same to the state treasurer within 60 days after the end of each fiscal year.

After the adoption of this act the state auditor shall within 60 days of the end of each fiscal year credit to the retirement fund from the general revenue fund an amount equal to one-half of the superannuation annuities paid during the preceding fiscal year to employees who were retired by all other units of the state government.

Within 30 days of the close of each fiscal year after the adoption of this act the board of directors of the retirement fund shall certify to each unit of the state government which is wholly or substantially self-sustaining the total sum paid in superannuation annuities during the preceding fiscal year to employees who were retired by such unit of the state government, and the said board of directors shall certify to the state auditor the total sum paid during the preceding fiscal year to the retired employees of all other units of the state government. The moneys necessary to provide for the contributions to said retirement fund by the state from the general revenue fund are hereby appropriated out of any funds in the state treasury not otherwise appropriated.

The moneys necessary to provide for contributions to said retirement fund by the various units of the state government which are wholly or substantially financially self-supporting by reason of income or revenue derived from its own activities are hereby appropriated for such purpose out of any funds derived by such units of government as income or revenue from its own activities.

Provided, if an employee has worked in departments other than the one in which he was last employed, that the portion of the annuity herein provided to be paid by the department, shall be paid by the department where he was last employed.

All such salary deductions and the contributions herein provided by the state shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from such fund. Under the direction of the retirement board the head of each department shall furnish such information and shall keep such records as the board may require for the discharge of its duties.

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

(c). No credit for service shall be allowed any member for periods such member may have been a state employee from June 30, 1929, to July 1, 1939, unless deductions shall have been made from the salary of such member or he has made payment in lieu thereof. From and after July 1, 1939, no credit for service shall be allowed any member for any calendar month in which he receives no salary or wages unless the head of the department gives notice in writing to the secretary of the retirement board within or prior to the calendar month when no salary or wages are received, that the member is on leave, or is on sick leave, or is inactive because of the seasonal nature of his work, as the case may be; or, unless the member's name is carried on the depart-

ment payroll abstract marked "on leave," "sick leave," or "inactive." From and after July 1, 1939, no member shall be entitled to make payments in lieu of salary deductions for periods no salary or wages are received; the deductions made from the compensation received shall cover periods of inactivity provided notice is given or the payroll abstract is marked as provided by this subdivision. Salaries paid for a fractional part of any calendar month shall be considered the compensation for the entire calendar month.

(d). No member shall be entitled to credit for former service upon entering the employ of the state after having received a refund from the retirement fund of accumulated deductions from his salary made pursuant to the provisions of this act, unless he shall restore the amount thereof to said fund as provided by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 254-10.

(e). The final power to determine the status of any individual in the employ of the state for the purposes of this act is hereby vested in the retirement board. (Act Apr. 15, 1929, c. 191, §4; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §4; Apr. 22, 1939, c. 432, §2.)

Deductions made to establish fund are not "taxes" but are proceeds of taxes allocated by law to a special fund. *Hessian v. E.*, 204M287, 283NW404. See Dun. Dig. 8007, 9114.

There is no way by which credit for service can be given to a person who was an elective state officer or a state employee, but not an elective state officer July 1, 1929, prior to time when he makes application for membership. *Op. Atty. Gen.* (331a-14), June 17, 1937.

Intention of legislature by 1939 amendment was to require employees to make up payments that were lost during absence from service by reason of lay-off or leave upon their return to the service, and where they have failed to do this they should pay into retirement fund subsequent to July 1, 1939, according to their age at last returning to service. *Op. Atty. Gen.* (331a-9), June 16, 1939.

State university must be considered as a single unit, and is not wholly or substantially financially self-sustaining. *Op. Atty. Gen.* (331), Sept. 16, 1939.

(2). Whether or not a person is entitled to receive credit for services during a period when only employed intermittently should be determined by his status rather than from extent of activity. *Op. Atty. Gen.* (331a-6), Apr. 22, 1936.

254-5. State Treasurer to be treasurer of association.—The state treasurer shall be ex-officio treasurer of the retirement funds of said association, and his general bond to the state shall cover all liability for his acts as treasurer of said funds. All monies of said association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall deliver to the secretary of the retirement board each month copies of all payrolls of the state together with the state auditor's warrants covering the deductions made on said payrolls for the retirement fund, whereupon the secretary shall cause to be made in triplicate a list of the auditor's warrants and said warrants shall then be deposited with the state treasurer to be credited to the retirement fund. He shall pay out said fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investments may be signed by the secretary of the state board of investment. (Act Apr. 15, 1929, c. 191, §5; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §5.)

After July 1, 1935, salary deductions are to be based on salaries actually received in view of Laws 1935, cc. 159, 183, 320, 382 and 391. *Op. Atty. Gen.* (331a-12), June 8, 1935.

254-6. Investment board to invest funds.—The retirement board shall from time to time certify to the state board of investment for investment such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized legal investments for savings banks and trust companies,

and shall sell any such securities upon request of the retirement board when necessary to provide money for the payment of refunds or annuities to members and/or other lawful obligations. (Act Apr. 15, 1929, c. 191, §6; Apr. 25, 1931, c. 351, §6; Apr. 22, 1935, c. 238, §6.)

State board of investment has no power to sell or accept payments before maturity of bonds held in teacher's retirement, public employee's retirement and state employee's retirement fund without a request of retirement board. Op. Atty. Gen. (928b-5), May 11, 1937.

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

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

254-9. Amount paid to be refunded in certain cases.—Whenever any member of said association shall cease to be a state employe for any reason other than death or retirement for superannuation, he or she shall be paid, upon making application therefor on blanks furnished by the retirement board, the full amount of the accumulated deductions standing to the credit of his or her individual account, provided that any such member who has been a member of the retirement association for not less than ten years may, in lieu thereof, elect in writing within 90 days from the termination of his or her employment to take a proportional deferred annuity beginning at the date he or she would have been eligible to receive an annuity if his or her state service had not terminated. Any member who elects to take a deferred annuity cannot thereafter make application for refundment unless he shall again become a "state employe" and his state service shall again terminate. In the event of the death of a member who has so elected to take a deferred annuity, refundment shall be made as is provided by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 254-12. The right to such deferred annuity shall be evidenced by a certificate of deferred annuity signed by the chairman and secretary of the retirement board. Members who have elected to take a deferred annuity who again become "state employes" shall surrender their certificates of deferred annuity and shall be entitled to full credit for the service covered by the surrendered certificate. Contributions to the fund are to be made according to the age at the time of again becoming a "state employe."

Any member who has prior to July 1, 1939, maintained his membership by making payments in lieu of salary deductions shall be given a period of three months from July 1, 1939, in which to elect whether to take a refundment or a deferred annuity, such deferred annuity to be based upon the member's allowable state service plus the period membership has been maintained by the payment of assessments in lieu of deductions, but no payments in lieu of deductions can be made after June 30, 1939. All deferred annuities provided for by this section shall begin on the first day of the calendar month. The rights of any member who has prior to the passage of this act made application in writing to the retirement board within 60 days from the termination of his or her employment to retain membership in the retirement association shall not be affected hereby. (Act Apr. 15, 1929, c. 191, §9; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §9; Apr. 22, 1939, c. 432, §3.)

Op. Atty. Gen., Dec. 15, 1934; note under 254-1.

There is an implied right on part of an appointive state employe who becomes an elective state officer to receive a refund of his payments when as such elective officer he exercises his right not to remain a member of association. Op. Atty. Gen. (331a-14), June 17, 1937.

Board has no discretion relative to which of two obligations, refundment and annuity, should be paid first from monthly income, and refundments must take precedence. Op. Atty. Gen. (331a-1), Feb. 3, 1939.

In computing 60 days within which application must be made holidays are to be counted except when last day of period falls on a holiday, when act may be done on next succeeding business day. Op. Atty. Gen. (276B), March 3, 1939.

Where employe discontinued his employment and made application for refund but died before mailing of check, refund should be paid to beneficiary in a lump sum. Op. Atty. Gen. (331a-11), June 5, 1939.

Members may not continue to pay into fund after termination of state employment. Op. Atty. Gen. (331a-9), June 6, 1939.

Intention of legislature by 1939 amendment was to require employes to make up payments that were lost during absence from service by reason of lay-off or leave upon their return to the service, and where they have failed to do this they should pay into retirement fund subsequent to July 1, 1939, according to their age at last returning to service. Op. Atty. Gen. (331a-9), June 16, 1939.

254-10. Members may be reinstated.—Whenever a state employe who has so withdrawn his accumulated deductions, shall re-enter the employment of the state and shall restore to the retirement fund his or her accumulated deductions that were withdrawn, with interest from the date of withdrawal to the date of repayment at four per cent per annum compounded annually, the annuity rights forfeited at that time shall be restored. If the amount so withdrawn is not restored within one year from the date of again becoming a member of the retirement association the employe becomes a member but not entitled to credit for former service. And in the case of a member returning to the service of the state without restoring a refundment and again leaving and having a refundment and later returning, such member can only restore the last refundment and will not be entitled to credit for service prior to that covered by the last refundment. Provided that if any member who has received a refundment from the retirement fund has not repaid it upon again becoming a member, and later becomes eligible to receive an annuity, or a deferred annuity, such annuity or deferred annuity shall be computed on the compensation upon which deductions for the retirement fund were based after June 30, 1929, including that covered by the refundment or refundments, and then reduced in the same proportion as the number of years service covered by the refundment or refundments is to the total service. Should any former member who has received either an annuity or a deferred annuity payment or payments again be employed by the state his annuity payments shall cease during his period of employment and deductions shall be made from his earnings. Upon the termination of his employment annuity payments shall be resumed and there shall be no change in the amount of the annuity or deferred annuity payments because of such employment. (Act Apr. 15, 1929, c. 191, §12; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §10; Apr. 22, 1939, c. 432, §4.)

Concluding provision that upon termination of employment annuity payments shall be resumed and there shall be no change in amount was merely intended to cover annuitants who might return to state service temporarily at a lower salary than that upon which their annuity was based. Op. Atty. Gen. (331a-1), May 4, 1939.

Concluding provision of this section does not affect new maximum amount determined by §254-11. Id.

Where elective state officer was granted an annuity in 1937 and received annuity payments for several years, when he again became an elective state officer, annuity payments should cease while he is state officer and deduction should be made from his salary, and upon termination of his state office, he will again be entitled to receive such annuity as is provided, though an elective state officer would not be eligible under present law. Op. Atty. Gen. (331a-1), July 11, 1939.

Person who returned to state service prior to April 22, 1939, date when Laws 1939, c. 472, was approved, has one year from date of reemployment in which to pay his refundment, with interest. Op. Atty. Gen. (331a-4), Sept. 1, 1939.

254-11. Retirement age—Annuities.—Whenever any member of the retirement association has been an employee of the state for a period of 20 years and has attained the age of 65 years or when any such employee has been in the service of the state for a period of 35 years, he shall be eligible for retirement for superannuation, but such retirement shall not be compulsory, provided that in computing such term of service the time during which any member of the association shall have maintained his membership by the payment of assessment during the period July 1, 1929, to July 1, 1939, shall be included. Such retirement may be made upon application of the member or of some one acting in his or her behalf, or in case of an employee in active service upon the application of the head of the department in which such member is employed. Upon retirement such member shall receive an annuity for the remainder of his or her life equal to 50 per cent of his or her average salary upon which deductions for the retirement fund have been based while a state employee; provided that no such retirement annuity shall exceed the sum of \$100.00 per month. If the total of annuities shall during any month become greater in amount than the monthly deductions from salaries and contributions made by the state, the board shall proportionally reduce the amount of annuities for said month. In determining the contributions made by the state in any month, it shall be considered that one-twelfth of the amount appropriated for the fiscal year is the amount of the contributions made by the state for that month, provided such one-twelfth does not exceed 50 per cent of the annuities paid and payable for that month. If such one-twelfth exceeds 50 per cent of the annuities paid and payable for that month, then and in that case 50 per cent of the annuities paid and payable for that month shall be considered the amount of the contributions made by the state for that month. The balance of any annuities heretofore not paid in full by reason of the fact that the total of annuities and refundments were greater than the monthly deductions from salaries, shall be paid proportionally in the first and subsequent months when the salary deductions exceed the total of annuities and refundments. Any annuity payments which may subsequent to July 1, 1939, be proportionally reduced by reason of the fact that annuities exceed the salary deductions and contributions made by the state, shall be paid proportionally in the first and subsequent months when the salary deductions and contributions by the state exceed the annuity payments. In making proportional annuity payments for prior months in which the annuities were not paid in full, full payments shall be made for the first month in which annuities were proportionally reduced before any proportional payments shall be made to apply on subsequent months when annuity payments were reduced, and this method shall be followed for each month when only proportional annuity payments were made. (Act Apr. 15, 1929, c. 191, §11; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §10; Apr. 22, 1939, c. 432, §5.)

The beneficiary has no vested right in a pension granted by government except as payments become due him absolutely under the law. *Hessian v. E.*, 204M287, 283 NW404. See Dun. Dig. 1612.

A member of retirement fund association, not as yet entitled to any payments from fund, is without judicial remedy for actuarial deficiencies which threaten solvency of fund. *Id.* See Dun. Dig. 8007.

Public officers and employees are mere agencies of government, and in absence of constitutional restriction, their compensation may be reduced and regulated by law, and contributors to pension fund have no vested right in payments deducted from their salaries which go to make up the fund. *Id.* See Dun. Dig. 8007.

Seasonal employee is entitled to service credit for periods of inactivity. *Op. Atty. Gen.*, Dec. 2, 1933.

Veteran may not be discharged without cause for purpose of retirement under state retirement fund act. *Op. Atty. Gen.* (85e), June 27, 1935.

It is optional for a game warden who has reached retirement age to accept such retirement solely on account of his having reached the age limit, but should not be

required to retire if his services are deemed of value. *Op. Atty. Gen.* (983o), Aug. 20, 1937.

Annuities are payable only from monthly deductions from salaries, while refundments should be paid first from monthly deductions from salary, or, if this is insufficient, out of cash balances not yet invested, and, if necessary, resort should be had to invested funds. *Op. Atty. Gen.* (331a-1), Feb. 3, 1939.

Monthly annuities which are cut in whole or in part cannot be made up in any subsequent month. *Id.*

Pensioner or annuitant has no vested interest that cannot be taken away by legislature during his lifetime. *Id.*

Annuities cannot in whole or in part be paid under any circumstances unless monthly salary deductions are greater than sum of refundments plus annuities. *Id.*

Words "annuities heretofore not paid" refer to annuities in effect prior to passage of Laws 1939, c. 432, and the annuity maximum then in effect, \$150 shall apply for months of January, February, and March, 1939. *Op. Atty. Gen.* (331a-1), May 4, 1939.

Reduction of maximum amount of annuity from \$150 to \$100 applies to those receiving annuities in excess of \$100 per month prior to passage of act. *Id.*

Proportional deferred annuities are computed on 50% of average salary upon which deductions for retirement fund have been based during state employment, and the \$100 limitation is merely a maximum and is not amount from which proportional amount should be computed. *Op. Atty. Gen.* (331a-1), July 28, 1939.

254-12. [Repealed.]

Repealed Apr. 22, 1935, c. 238, §2.

Disability annuity once established under Laws 1929, Chap. 191, is not lost by agreement with association to suspend disability allowance during attempt of employee to work. *Op. Atty. Gen.* (331a), Sept. 18, 1936.

254-13. [Repealed.]

Repealed Apr. 22, 1935, c. 238, §2.

254-14. Surviving spouse or legal representative of deceased member to receive lump sum.—Whenever a member of said association shall die without having received an annuity, or without having received in annuities an amount equal to the total amount of the accumulated deductions from his or her salary, the full amount of said accumulated deductions, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the surviving spouse, or, if none, to the legal representatives of such member, upon the establishment of a valid claim therefor. Any annuity payment to which a member is entitled at the time of his death shall be paid in the same manner. (Act Apr. 15, 1929, c. 191, §14; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §12.)

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

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

Amended and section of original act renumbered as section 12 by Act Apr. 22, 1935, c. 238, §3. Act Apr. 20, 1933, c. 326, is repealed by Act Apr. 22, 1935, c. 238, §2, but §3 of the latter act amends the section to read as above.

Contract rights referred to in this section are limited to right to receive back from association salary deductions or assessments and do not extend to annuities. *Op. Atty. Gen.* (331a-1), Feb. 3, 1939.

Where employee discontinued his employment and made application for refund but died before mailing of check, refund should be paid to beneficiary in a lump sum. *Op. Atty. Gen.* (331a-11), June 5, 1939.

254-15. To be paid in monthly installments.—All annuities granted under the provisions of this act shall be paid in equal monthly installments, and shall not be increased, decreased, or revoked except as provided in this act. (Act Apr. 15, 1929, c. 191, §15; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §13.)

See note under §254-1.

Act Apr. 22, 1935, c. 238, §1, amends this section of Act Apr. 15, 1929, c. 191, by renumbering it section 13 instead of 15. No other change is made in the section.

254-16. Date of retirement.—No retirement on account of superannuation shall be granted until July 1, 1931, nor shall any member of the retirement association be entitled to receive an annuity for superannuation until he shall have paid into the retirement

fund, either by deductions from salary or otherwise, before such retirement, an amount equal to five years' accumulated deductions from his or her average salary during the last five years of state service, and such additional amount as may be provided by law prior to July 1, 1931, and provided that until July 1, 1931, nothing done hereunder shall create or give any contract rights to anyone, except the right to receive back upon withdrawing from the association, any salary deductions made or assessments paid hereunder. (Act Apr. 15, 1929, c. 191, §16; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §14.)

Act Apr. 22, 1935, c. 238, §1, amends this section of Act Apr. 15, 1929, c. 191, by renumbering it section 14 instead of 16. No other change is made in the section. See note under §254-1.

254-17. Funds not subject to process.—None of the moneys, annuities or other benefits mentioned in this act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process nor shall they be subject to any state income tax. (Act Apr. 15, 1931, c. 191, §16; Apr. 25, 1931, c. 351, §1; Apr. 25, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §15.)

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

Act Apr. 22, 1935, c. 238, §1, amends this section of Act Apr. 15, 1929, c. 191, by renumbering it section 15 instead of 17. No other change is made in the section.

254-18. Insurance laws not to apply.—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. (Act Apr. 15, 1929, c. 191, §18; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §16.)

See note under §254-17.

Section of original act renumbered as section 16 by Act Apr. 22, 1935, c. 238, §3. No other change introduced.

254-19. May receive gifts and bequests.—The retirement board is hereby authorized and empowered to credit to the fund any moneys received in the form of donations, gifts, appropriations, bequests or otherwise, or derived therefrom. (Act Apr. 15, 1929, c. 191, §19; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §17; Apr. 22, 1939, c. 432, §6.)

See note under §254-17.

Amended section of original act renumbered as section 17 by Act Apr. 22, 1935, c. 238, §3.

254-19a. Appropriation for fund.—There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$50,000 for each year or so much thereof as may be necessary to carry out the provisions of this act, provided, however, that any amount paid into the state retirement fund by any unit of the state government which is wholly or substantially financially self-sustaining by reason of income or revenue derived from its own activities, shall be deducted from said annual appropriations of \$50,000. (Act Apr. 22, 1939, c. 432, §7.)

254-20. Provisions separable.—If any provision of this act shall be held to be unconstitutional such unconstitutionality thereof shall not affect the validity of the remaining parts of this act. (Act Apr. 15, 1929, c. 191, §20; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §18.)

See note under §254-17.

Act Apr. 22, 1935, c. 238, §3, amends this section of the original act by renumbering it as section 18. No other change introduced.

254-21. Payments to begin July 1, 1929.—This act shall take effect upon its passage and approval but no deductions from salary for the retirement fund shall be made from any salary earned prior to July 1, 1929. (Act Apr. 15, 1929, c. 191, §21; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §19.)

See note under §254-17.

Act Apr. 22, 1935, c. 238, §3, amends this section of the original act by renumbering it as section 19. No other change introduced.

254-22. Board of directors may make rules and regulations.—Any changes or additions which may be found necessary or advisable for the management of this fund, may be made by a majority vote of the board of directors, provided no increase is made in the amount of deductions from salaries, or decrease in the amount of benefits paid. (Act Apr. 15, 1929, c. 191, §22; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §20.)

See note under §254-17.

Act Apr. 22, 1935, c. 238, §3, amends this section of the original act by renumbering it as section 20. No other change introduced.

Restrictions against increase or decrease of annuities or benefits did not mean that act itself could not be amended by subsequent legislatures so as to increase or decrease annuity. Op. Atty. Gen. (331a-1), May 4, 1939.

254-22a. Rights not affected by this act.—The rights of any member who has prior to the passage of this act filed proof of disability with the retirement board shall not be affected hereby. (Act Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §21.)

MUNICIPAL EMPLOYEES' RETIREMENT ASSOCIATION

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

1. "Public Employee" shall mean any person holding a position, either by election, appointment or contract in and for any of the several counties, cities, villages or school districts which are now or hereafter may be affected by the provisions of this act, whose salary is paid, in whole or in part, through taxation, or by fees, assessments or revenue from any one or more of the governmental subdivisions hereinbefore enumerated, irrespective of whether or not such person is directly employed by the authority of, or is under the control and supervision of the governing body of any such county, city, village or school district. The term "public employee" shall also mean any person appointed as a district court reporter in this state; but shall not be construed to include any person, who, by virtue of his employment in the public service is required to contribute any portion of his salary to any other retirement fund or pension system established by or pursuant to the laws of this state and in force and operation at the time of the passage of this act, and neither shall the term "public employee" be deemed to include temporary employes.

From and after the date of passage of this act, the term "public employee" shall be construed so as to exclude any employe of any governmental subdivision for such periods of time as such employe has been or is eligible for membership in any retirement association or pension system established by or pursuant to any one or more of the following laws, and all acts amendatory thereof, to-wit: Revised Laws 1905, Section 1655 [§3728], relating to the establishment of firemen's relief associations; Laws 1907, Chapter 24 [§§3748 to 3750], relating to firemen's pensions in cities of the first class; Laws 1909, Chapter 343 [§§1358 to 1366], relating to pensions for teachers in certain cities; Laws 1915, Chapter 68 [§§1436 to 1442], relating to police pensions in cities of the first class; Laws 1915, Chapter 199 [§§2936 to 2950], relating to teachers' pensions; Laws 1919, Chapter 152 [§§1643-1 to 1643-9], relating to police pensions in cities of the second class; Laws 1919, Chapter 430 [§§1442-1 to 1442-10], relating to pensions for employes of the bureau of health in certain cities of the first class; Laws 1919, Chapter 522 [§§1442-11 to 1442-34], relating to pensions and retirement allowances in certain cities of the first class; Laws 1923, Chapter 179 [§§3729 to 3736], relating to pensions in volunteer fire departments; Laws

1929, Chapter 191 [§§254-1 to 254-22], relating to retirement annuities for state employes; Laws 1931, Chapter 48 [§§1264-6 to 1264-13], relating to police pensions in certain villages, and Laws 1935, Chapter 92 [§§1716-4 to 1716-18], relating to police pensions in certain cities of the third class.

2. "Head of Department" shall mean the head of any department, institution, office or branch of service of any governmental subdivision which directly pays salaries out of its revenues or is empowered to authorize the payment of such salaries.

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

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

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

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

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

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

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

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

11. "New Public Employe" shall mean any public employe who enters the public service in any county, city, village or school district subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed, or from whose funds his salary is paid. (Act Apr. 24, 1931, c. 307, §1; Apr. 21, 1933, c. 374, §1; Apr. 26, 1937, c. 466, §1.)

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

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

Act is applicable to employes of special school district. Op. Atty. Gen. (331b-1), Mar. 28, 1935.

A city of the third class, such as South St. Paul, operating under home rule charter, need not establish police pensions under §§1436 to 1442 but may establish pensions for all city employes under §254-23, et seq. Op. Atty. Gen. (785j), Aug. 19, 1936.

City that has not adopted provisions of this act cannot grant pensions to old employes. Op. Atty. Gen. (59a-33), Mar. 21, 1933.

Board of water commissioners of city of Stillwater is a part of city government and not an independent corporation separate from city itself, and employes of board are "public employes" of city within meaning of public employes retirement association act. Op. Atty. Gen. (331b), May 18, 1938.

City may not establish system of pensions, except pursuant to this act. Op. Atty. Gen., (335d), June 21, 1938.

Association has power to refund money paid in by members of a city firemen's relief association. Op. Atty. Gen. (331b-5), Dec. 16, 1938.

Employees of utility board of city of second class with home rule charter are eligible for membership in public employes' retirement association, and municipality may not provide a different system. Op. Atty. Gen. (59a-33), Feb. 21, 1939.

An employe who was employed by city prior to passage to resolution is a "present public employe" even though hired on a yearly basis under a contract renewed each year. Op. Atty. Gen. (331B), March 6, 1939.

An employe employed to fill an unexpired term of contract of employment which terminates within four months is not a "temporary employe" if it is probable that the employment will be a continuing one and that reappointment is likely. Id.

Municipal employes retirement association is not subject to reorganization act. Op. Atty. Gen. (640), July 7, 1939.

(1). Legislature did not intend to bar a public employe from membership in the association because of membership in another association or by reason of possible benefits from some other form of annuity or pension system not connected with his present employment. Op. Atty. Gen., May 23, 1931.

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

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

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

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

(10). District court reporters were in public service as such on April 24, 1931, are to be deemed "present public employes," and those who have entered public service subsequent to that date are new public employes. Op. Atty. Gen. (331b), June 15, 1935.

254-24. Public employes' retirement association established.—There is hereby established a public employes' retirement association, the membership of which shall consist only of public employes' and employes of said association. Membership in said association shall be optional on the part of the present public employes, but all new public employes except elective public officers shall become members of said association by acceptance of public employment. In all governmental subdivisions heretofore operating under and affected by the provisions of this act prior to January 1, 1933 present public employes who apply for membership therein after January 1, 1932, shall pay a membership fee of Ten (\$10.00) Dollars, but no present public employe shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee, every present public employe who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employe become a member of the retirement association July 1, 1931, with interest thereon at the rate of five per cent (5%) per annum, compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, present public employes who apply for membership in the retirement association after January 1, 1934, shall pay a membership fee of Ten (\$10.00) Dollars, but no such present public employe shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee every such present public employe who becomes a member of the retirement association shall pay in a sum equal to all

accrued deductions from his or her salary which would have been made had such public employe become a member of the retirement association July 1, 1933, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to May 1, 1935, present public employes may apply for membership in said association at any time within a period of two years from the first day of the first calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such present public employe who shall apply for membership in said association shall be required to pay a membership fee of Ten (\$10.00) Dollars. In addition thereto, any such present public employe shall pay into the retirement fund a sum equal to all accrued deductions which [would] have been made had such present public employe become a member of said association on the first day of the first calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, together with interest thereon at the rate of five per cent (5%) per annum."

An elected public officer, eligible for membership in said association, may exercise his option to become a member thereof, but such option once exercised, may not be withdrawn during the incumbency of such officer in the office to which he was elected or re-elected. If holding office at the time of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, the terms and conditions of membership pertaining to a present public employe shall govern the admission of such elected public officer to membership in said association. Any person elected to a public office in any governmental subdivision affected by the provisions of this act, subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, may apply for membership in said association at any time within a period of two (2) years from the date he first became eligible for membership in said association, and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such person who applies for membership in said association shall be required to pay a membership fee of Ten (\$10.00) Dollars. In addition thereto, any such elected public officer shall pay into the retirement fund a sum equal to all accrued deductions which would have been made had such elected public officer become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date he first assumed the office to which he was elected, together with interest thereon at the rate of five per cent (5%) per annum.

Any person appointed to fill a vacancy in an elective office and becomes eligible thereby to membership in said association may likewise exercise his option to become a member thereof under the terms and conditions that govern the admission of elective public officers to membership in said association.

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

c. 374, §1; Apr. 5, 1935, c. 106, §2; Apr. 26, 1937, c. 466, §2.)

The word "would" enclosed in brackets was omitted from the Apr. 26, 1937, amending act.

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

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

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

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

Time limits fixed by statute as to acceptance of membership may not be waived by retirement board nor may \$10 membership fee be waived. Op. Atty. Gen. (331b-1), Sept. 23, 1934.

Policemen in cities of third class covered by Laws 1935, c. 92, §1, are exempt from provisions of this act. Op. Atty. Gen. (331b-1), Apr. 15, 1935.

Application for membership may be accepted within two years after date a public official first assumed office to which he was elected. Op. Atty. Gen. (605b-30), May 15, 1936.

254-25. Board of directors—membership—terms.—

The management of the said public employes' retirement fund is hereby vested in a board of nine (9) members, who shall be known as the Public Employes' Retirement Board. Said board shall consist of the state auditor, the state insurance commissioner, the state treasurer, and six (6) public employes who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of said board so elected shall hold office for a term of three (3) years and until their successors are elected and qualified; provided that at the first (1st) election held after the passage of this act, two (2) of said members shall be elected for a term of one (1) year, two (2) members for a term of two (2) years, and two (2) members for a term of three (3) years. Within thirty (30) days after the passage of this act, at the call of state auditor, said association shall meet and elect the six (6) members to the retirement board. The members of the retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund for expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and shall appoint a secretary and such other employes as may be necessary and fix their compensation. The board shall, from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (Act Apr. 24, 1931, c. 307, §3.)

254-26. Retirement fund.—Every member of the retirement association shall pay into the retirement fund three and one-half per cent (3½%) of his salary as a public employe as and when paid. Such payment shall be made by deduction thereof from such salary, provided, however, that under such regulations as the retirement board may by general rule prescribe, any member may, at his option, continue to make contributions to the retirement fund on the basis of his last regular salary, in case said salary is diminished or reduced for any cause and thereby become entitled to the same annuity as though there had been no diminution or reduction in such salary. The head of each department is hereby directed to cause such deductions to be made at least once each month from the salary of each member of the retirement association and to issue or approve one voucher payable to the state treasurer for the aggregate amount so deducted from such salaries and to cause the same to be remitted within fifteen (15) days thereafter to the secretary of the retirement board

together with a statement showing the amount of each of such deductions, the amount of salaries from which such deductions have been made and the names of the employes on whose accounts the same have been made. All remittances so received by the secretary of the retirement board shall be promptly deposited with the state treasurer. Deductions from the salaries of district court reporters shall be made by the several county auditors of the state. Each county auditor of the state shall make such deduction from the amount of each warrant issued by him in payment of the salary of a district court reporter and shall on or before the fifteenth (15th) day of each month issue a warrant to the order of the state treasurer for the aggregate amount of all such deductions made by him during the preceding month and shall transmit the same to the secretary of the retirement board with a statement showing the amount of each of such deductions and the names of the district court reporters on whose account the same have been made, provided that the deductions from the salary of a district court reporter in a judicial district consisting of two or more counties shall be made by the auditor of the county in which the bond and official oath of such district court reporter are filed from the portion of his salary paid by such county. All salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from said fund. (Act Apr. 24, 1931, c. 307, §4; Apr. 21, 1933, c. 374, §1.)

Retirement association has authority to require governmental units to furnish payroll records or their equivalents or to inspect payrolls to determine whether employes have been properly reported. Op. Atty. Gen. (331B), July 7, 1939.

254-27. State treasurer to be custodian of funds.—The state treasurer shall be ex-officio treasurer of the retirement funds of said association and his general bond to the state shall be so conditioned as to cover all liability for his acts as treasurer of said funds. If the general bond of the state treasurer, at the time of the passage of this act, shall cover all liability for his acts as treasurer of said funds, no additional bond shall be required. If not, the said state treasurer shall execute to the State of Minnesota for the use and benefit of said State of Minnesota and all persons injured by failure to observe its conditions, a penal bond in such a sum as may be fixed by the retirement board and with such sureties as the governor and the state auditor may approve, conditioned that he will pay over to all persons on demand all monies to which they may be entitled which may have come into his hands in virtue or by reason of his office as such treasurer of said funds. All monies of said association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall transmit monthly to the secretary of the retirement board a detailed statement of all amounts so received and credited by him to said fund. He shall pay out said fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investment may be signed by the secretary of the state board of investment. (Act Apr. 24, 1931, c. 307, §5.)

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

254-28. State board of investment to invest funds.—The retirement board shall from time to time certify to the state board of investment for investment

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

State board of investment has no power to sell or accept payments before maturity of bonds held in teacher's retirement, public employes' retirement and state employes' retirement fund without a request of retirement board. Op. Atty. Gen. (928b-5), May 11, 1937.

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

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

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

254-31. Payments upon retirement.—Whenever any member of said association shall cease to be a public employe for any reason other than death or retirement, he shall be paid, on demand, after fifteen (15) days' notice, the full amount of the accumulated deductions standing to the credit of his or her individual account, provided that any such member who has been in the public service for not less than four (4) consecutive years immediately prior thereto may, in lieu thereof, upon application in writing to the retirement board within sixty (60) days from the termination of his or her employment, be permitted to retain membership in the retirement association and to enjoy all the rights and privileges thereof upon such terms and conditions as to his employment and the payment of assessments in lieu of salary deductions as the retirement board may by general rule prescribe. Any member of the retirement association who has maintained his or her membership after leaving the public service by the payment of such assessments may terminate such membership by notice in writing to the retirement board, whereupon he or she shall be paid on demand, after fifteen (15) days' notice, the full amount of the accumulated deductions standing to the credit of his or her individual account. (Act Apr. 24, 1931, c. 307, §9; Apr. 21, 1933, c. 374, §1; Apr. 26, 1937, c. 466, §3.)

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

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

254-33. Retirement.—Except as in this act otherwise provided, whenever any member of the retirement association has been a public employe for a period of twenty (20) years and has attained the age of sixty-five (65) years, or when any such employe has been a public employe for a period of thirty-five (35) years, he shall be eligible for retirement, provided that in computing such terms of service, the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service as a public employe, in lieu of deductions, shall be included. Provided, however, that no person admitted to membership in said association after May 1, 1937 shall be entitled to receive a retirement annuity unless he has either attained the age of sixty-five (65) years and has been a public employe for a period of twenty (20) years, or has attained the age of sixty (60) years and has been a public employe for a period of at least thirty-five (35) years. Such retirement shall be made upon application of the member or of someone acting in his or her behalf, or in the case of any employe in active service upon the application of the head of the department in which such member is employed. Except as in this act otherwise provided, upon such retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of the average annual salary received for the entire period of his or her membership in said association, provided, that in computing the average annual salary of members who have contributed by assessments, in lieu of salary deductions or otherwise, the average annual salary received while such member was in the public service as a member of said association shall, for the purpose of construing this section, be considered the salary of such member for that period of his membership in said association during which he made contributions to the retirement fund by assessments, in lieu of salary deductions or otherwise, and provided, further, that in computing the period of past service, employment by or for any of the governmental subdivisions as defined and enumerated by this act shall be counted, irrespective of whether or not the governing body of such governmental subdivision has qualified its public employes for membership in said association, and provided further, that no such retirement annuity shall, in any event, exceed the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per annum. Membership in said association for any present public employe shall com-

mence upon the date of the acceptance of the application for membership by the retirement board and, in no event, shall said retirement board grant to any member any pro rata annuity, as hereinafter provided for in Section 16 of this act, until and unless four full years of membership in said association shall have elapsed, nor shall said retirement board grant any pro rata annuity based on a greater number of years of contributions to the retirement board than stands to the credit of such member on the books of said association, or any full retirement annuity, as hereinafter provided, until and unless five full years of membership have so elapsed. (Act Apr. 24, 1931, c. 307, §11; Apr. 21, 1933, c. 374, §1; Apr. 5, 1935, c. 106, §2; Apr. 26, 1937, c. 466, §4.)

Board may grant annuities to take effect upon actual date of retirement, monthly installments to commence one month from time of such retirement. Op. Atty. Gen. (331h), Feb. 23, 1937.

254-34. [Repealed.]

Repealed Apr. 21, 1933, c. 374, §2.

254-35. [Repealed.]

Repealed Apr. 21, 1933, c. 374, §2.

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

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

Board may grant annuities to take effect upon actual date of retirement, monthly installments to commence one month from time of such retirement. Op. Atty. Gen. (331h), Feb. 23, 1937.

254-38. Retirement to begin July 1, 1935.—No retirement annuity shall be granted under the provisions of this act until July 1, 1935, nor shall any member of the retirement association be entitled to receive a retirement annuity until he shall have contributed to the retirement fund either by salary deductions or otherwise for a period of four (4) full years and unless he shall have been a member of said association for a like period. Provided, however, that if any member who is eligible for retirement and who has attained to the age of sixty-five (65) years has contributed to the retirement fund for a period of less than twenty (20) years, he shall be entitled to receive a pro rata retirement annuity for the remainder of his life in an amount bearing the same ratio to the full retirement annuity that the period of his salary deductions, or assessments in lieu thereof, bears to twenty (20) years, but fractional parts of a year shall not enter into the computation of such pro rata retirement annuity. Provided, further, that whenever any such member shall have become eligible to receive a pro rata re-

tirement annuity, as hereinbefore provided, and shall have contributed to the retirement fund for a period of five (5) full years, and shall have been a member of said association for a like period, such member may, if he shall so elect at any time before making application for such pro rata retirement annuity make application for a full retirement annuity, or for a pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to his credit on the books of said association, and, in either case, the same shall be granted to him upon compliance with the following terms and conditions, to-wit:

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

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

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

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

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

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

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

accrued interest payments as may be determined in the manner hereinafter set forth, to-wit:

In case of one (1) additional year's credit, an amount equal to that percentage of the total accumulated deductions required for one (1) year as may be determined by multiplying the number of full years such member has contributed to the retirement fund by four (4%) per cent. In case of two (2) additional years' credit, an amount equal to that percentage of the additional accumulated deductions required as in the case of one (1) additional year's credit, and in addition thereto, a further amount equal to two (2%) per cent of the total accumulated deductions required. In like manner for three (3) additional years' credit, or more, an amount equal to that percentage required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount computed on the following percentage of the total accumulated deductions required in each instance as hereinafter set forth, to-wit: Three (3) additional years' credit, four (4%) per cent; four (4) additional years' credit, six (6%) per cent; five (5) additional years' credit, eight (8%) per cent; six (6) additional years' credit, ten (10%) per cent; seven (7) additional years' credit, twelve (12%) per cent; eight (8) additional years' credit, fourteen (14%) per cent; nine (9) additional years' credit, sixteen (16%) per cent; ten (10) additional years' credit, eighteen (18%) per cent; eleven (11) additional years' credit, twenty (20%) per cent; twelve (12) additional years' credit, twenty-two (22%) per cent; thirteen (13) additional years' credit, twenty-four (24%) per cent; fourteen (14) additional years' credit, twenty-six (26%) per cent; fifteen (15) additional years' credit, twenty-eight (28%) per cent. Provided that after such total amount required of such member has been determined, as hereinbefore set forth, credit thereon shall be allowed such member for any amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for such greater pro rata retirement annuity. Provided further, nothing done under the terms of this act shall create or give any contract rights to any person, except the right to receive back upon withdrawal from the association, through separation from the public service any salary deductions made or assessments paid hereunder.

As hereinbefore provided, the minimum requirements for a retirement annuity for any applicant who has attained to the age of sixty-five (65) years, shall be twenty (20) years of contributions to the retirement fund, or its equivalent, with an amount representing accrued interest earnings, as hereinbefore set forth. In the case of any member who becomes eligible for retirement at any age earlier than sixty-five (65) years, the said minimum requirements as to years of contributions before any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than then stand to his credit on the books of said association shall be granted, shall be twenty (20) years increased by one (1) year for each year that the said applicant is under the age of sixty-five (65) years, in accordance with the following schedule, to-wit: Age sixty-four (64), twenty-one (21) years; age sixty-three (63), twenty-two (22) years; age sixty-two (62), twenty-three (23) years; age sixty-one (61), twenty-four (24) years; age sixty (60), twenty-five (25) years, provided, however, that in the case of any member who shall have reached the age of 60 years on May 1, 1937, and who, prior to June 1, 1936, shall have left the public service and maintained membership by payment of assessments, the minimum requirements for a full retirement annuity shall be 20 years, regardless of the attained age at the time of any such retirement.

From and after May 1, 1937, no full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than the number of years he shall have been a member of said association shall be granted to any member of said association who has not attained to the age of sixty (60) years, and with respect to any such member said retirement board may grant only a pro rata annuity in an amount bearing the same ratio to a full retirement annuity as the period of full years of salary deductions or assessments received in lieu thereof during his membership in the association, or its equivalent, with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the following schedule of requirements as to the years of contributions for a pro rata retirement annuity at any given age of the applicant, to-wit: Age fifty-nine (59), twenty-six (26) years; age fifty-eight (58), twenty-seven (27) years; age fifty-seven (57), twenty-eight (28) years; age fifty-six (56), twenty-nine (29) years; age fifty-five (55), thirty (30) years; age fifty-four (54), thirty-one (31) years; age fifty-three (53), thirty-two (32) years; age fifty-two (52), thirty-three (33) years; age fifty-one (51), thirty-four (34) years, and age fifty (50), thirty-five (35) years.

The retirement board shall by general rule adopt regulations and schedules of rates of payments required of applicants who shall become eligible for retirement at ages earlier than sixty-five (65), which regulations shall provide for the granting of pro rata retirement annuities in amounts bearing the same ratio to a full retirement annuity as the period in full years of salary deductions, or assessments received in lieu thereof, or its equivalent with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the above schedule of minimum requirements as to years of contributions for a full retirement annuity at any given age of the applicant. Provided, however, that the retirement board shall not grant any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to the credit of the applicant until such member shall have been a member of said association for a period of five (5) full years. If the total of annuities shall during any year become greater in amount than the annual contributions, the retirement board shall proportionately reduce the amount of annuities. (Act Apr. 26, 1937, c. 466, §5.)

If the total of annuities shall during any year become greater in amount than the annual contributions, the retirement board shall proportionately reduce the amount of annuities. (Act Apr. 24, 1931, c. 307, §16; Apr. 21, 1933, c. 374, §1; Apr. 26, 1937, c. 466, §5.)

254-39. [Repealed.]

Repealed Apr. 21, 1933, c. 374, §2.

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

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

254-42. Contributions, etc., to retirement fund.—The retirement board is hereby authorized and empowered to credit to the fund any monies received in the form of contributions, donations, gifts, appropriations, bequests or otherwise; and every member of said retirement association who shall fail to demand the amount of his accumulated deductions within five (5) years after his separation or withdrawal from the public service shall be deemed to have donated the same to the retirement fund, unless he shall have retained his membership in the retirement association, as hereinbefore provided. (Act Apr. 24, 1931, c. 307, §20; Apr. 26, 1937, c. 466, §6.)

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

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

Time limits fixed by statute as to acceptance of membership may not be waived by retirement board nor may \$10 membership fee be waived. Op. Atty. Gen. (331b-1), Sept. 28, 1934.

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

254-46. Application of act.—The provisions of this act shall not apply to any county, city, village or school district, or the employes thereof, until and unless the governing body of any such county, city, village or school district, shall have duly approved by a majority vote and by a resolution in writing of salary deductions for public employes, as contemplated by Section 4 of this act, and shall have filed a duly certified copy of such resolution of approval with the proper officials of the county, city, village or school district, whose duty it is to pay or authorize the payment of salaries, and one (1) such certified copy with the secretary of the retirement board. Salary deductions for present public employes in all governmental subdivisions heretofore operating under and affected by the provisions of this act prior to January 1, 1933, shall be computed from the first day of July, 1931, and in all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, shall be computed from the first day of July, 1933. Salary deductions for present public employes in all governmental subdivisions wherein the governing body thereof has duly accepted the terms and provisions of this act subsequent to May 1, 1935, and who shall thereafter become members of the retirement association shall be computed from the first day of the first calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned. (1st) day of July, 1933. (Act Apr. 24, 1931, c. 331, §1; Apr. 21, 1933, c. 374, §1; Apr. 5, 1935, c. 147, §3.)

Municipality electing to come under provisions of law may not withdraw from its operation. Op. Atty. Gen. (331B), May 9, 1939.

MISCELLANEOUS PROVISIONS

254-47. Auto hire for municipal employes.—The maximum amount which shall be paid by the State, any department or bureau thereof, or any county, city, village, town or school district, to any officer or employe except sheriffs or deputy sheriffs, as compensation or reimbursement for the use by such officer or employe of his own automobile in the performance of his duties, shall not exceed five cents per mile. In case of sheriffs and deputy sheriffs the maximum amount so to be paid shall not exceed seven cents per mile. (Act Apr. 24, 1931, c. 307, §24; Feb. 6, 1933, c. 13; Apr. 20, 1935, c. 225, §1.)

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

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

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

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

Law applies to a sheriff driving his own automobile in criminal cases, and to a deputy sheriff, where the deputy received no salary. Op. Atty. Gen., May 18, 1931.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Court reporter is entitled to charge 5c per mile for use of automobile, but not for week-end trips home. Op. Atty. Gen., May 2, 1933.

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

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

County commissioner must itemize monthly mileage statement. Id.

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

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

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

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

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

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

If superintendent of schools hires a livery, she is entitled to be reimbursed by county for amount actually paid, provided it is usual and customary charge for such services. Op. Atty. Gen., Nov. 1, 1933.

Under this section, as amended by Laws 1933, c. 13, sheriff is not entitled to reimbursement for damages to his own automobile. Op. Atty. Gen., Dec. 11, 1933.

Where sheriff uses his own car in serving warrants in proceedings to enforce payment to delinquent motor vehicle taxes, he is entitled to reimbursement at rate of 5c per mile, though no collections are made. Op. Atty. Gen., Dec. 26, 1933.

Flat daily or monthly allowance to state employees for use of privately owned automobile on state business is prohibited. Op. Atty. Gen., Feb. 21, 1934.

This act must be construed as amending Laws 1925, c. 143, relating to allowances to members of county boards of certain counties. Op. Atty. Gen., Mar. 27, 1934.

County attorney may not use his automobile in connection with his duties as county attorney and collect mileage therefor, notwithstanding that he is required to transport other officers and witnesses. Op. Atty. Gen. (121c-4), Aug. 1, 1934.

Five cents per mile may be used as a reasonable basis for allowance for automobile expense to person taking patient to Minnesota general hospital under §4580. Op. Atty. Gen. (107b-8), Nov. 23, 1934.

County highway engineer may not charge in excess of 5c per mile for use of his automobile in connection with his official duties. Op. Atty. Gen. (104a-8), Nov. 26, 1934.

Laws 1933, c. 96, §4, should not be construed as repealing Laws 1917, c. 312, as amended by Laws 1933, c. 24, and sheriff is entitled to compensation for use of his automobile in addition to his salary, limited to \$.05 per mile by Laws 1933, c. 13. Op. Atty. Gen. (390a-12), Dec. 28, 1934.

This section does not affect mileage under §657 and 2051. Op. Atty. Gen. (104a-8), Mar. 8, 1935.

An officer or employe transporting another state officer or employe may receive compensation for the additional service in transporting the other person. Op. Atty. Gen. (359a-14), May 4, 1935.

This section governs allowance for use of automobile where specific statute does not fix rate, and governs maximum which may be allowed sheriff under §920-3. Op. Atty. Gen. (390a-11), May 29, 1935.

Laws 1935, c. 225, does not affect mileage under §6996. Op. Atty. Gen. (847a-5), July 17, 1935.

Mileage which coroner is entitled to charge for necessary travel is governed by §6995 and not this section, and this applies to deputies. Op. Atty. Gen. (103a), May 8, 1935.

Village of Crystal may not reimburse officer or employee for expenses incurred by him in use of his own automobile. Op. Atty. Gen. (359a-14), Dec. 22, 1936.

County commissioner in carrying out duties under §2139-23 is entitled to mileage under §657 and not under §254-47. Op. Atty. Gen. (124j), Jan. 19, 1937.

Members of county welfare board may not be reimbursed more than five cents per mile for use of their cars. Op. Atty. Gen. (104a-8), Oct. 13, 1937.

Sheriff may not charge auto mileage while riding with truck driver employed to haul goods and furniture of poor persons to their place of legal settlement. Op. Atty. Gen. (390a-11), March 9, 1939.

County board may determine in exercise of its judgment and discretion as to whether amount allowed sheriff should be for full maximum or a less amount. Op. Atty. Gen. (390a-11), March 15, 1939.

254-48. Construction.—This act shall be construed as amending all existing laws authorizing such allowances or reimbursements by imposing the maximum limit above set forth, and shall not be construed as permitting the payment of such allowance or the making of such reimbursement to any officer or employee where it is not now permitted or hereafter authorized by law, or by authority of the governing body of any municipality above named or by any commission or board of any county. (Act Apr. 24, 1931, c. 331, §2; Feb. 6, 1933, c. 13.)

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

A town supervisor has no legal right to charge township for use of his automobile in official business or for his personal expenses of any kind in transacting the business of the town. Op. Atty. Gen. (442a-11), June 27, 1934.

254-49. Certain persons ineligible to appointment to office.—Whenever a vacancy shall occur in any elective county, municipal or school district office, which vacancy is filled by appointment, any person who has the power of appointment, either individually or acting on any Commission or Board shall be ineligible for appointment to fill such vacancy, whether or not he resigns from his office, by reason of which he has said power of appointment, before said appointment is made. (Act Apr. 14, 1939, c. 249, §1.)

Sec. 2 provides that act shall take effect from its passage.

Member of village council though eminently qualified for position may not be appointed recorder. Op. Atty. Gen. (470i), June 6, 1939.

STATE CIVIL SERVICE

254-51. Civil Service Board created—Members—Terms—Qualifications—Removal—Vacancies—Oath—Office—Meetings—Secretary—Compensation and expenses.—The civil service board of the state of Minnesota is hereby created and established. It shall consist of three members, who shall be appointed by the governor with the consent of the senate without regard to party affiliation. The governor shall appoint the first members of the board within 30 days after the passage of this act. No member of the board shall hold any other public office or public employment whatsoever, the office of notary public or a military office excepted, and no person shall be appointed as a member of the board who has held a paid position in a political party within the two years immediately preceding his appointment. In appointing the first three members of the board the governor shall designate one member for a term expiring February 1, 1941, a second member for a term expiring February 1, 1943, and a third member for a term expiring February 1, 1945. The terms of all subsequent members of the board shall be six years and until their successors are appointed and qualified. The governor may remove a member of the board only upon written charges after said member has been given a copy of the charges against him and an opportunity to be heard publicly on such charges before

the governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state. Vacancies in the membership of the board shall be filled by the governor, with the consent of the senate. The term of a member appointed to fill a vacancy shall be for the remainder of the unexpired term of the member he is appointed to succeed, and until his successor is appointed and qualified. Each member shall take an oath of office before entering upon the duties of office. The chairman of the board shall be chosen by the members of the board from among their own number under such rules as they shall make. The chairman shall have the powers of a presiding officer.

The civil service board shall maintain its principal office in such space as shall be provided for it by the proper state officials and shall maintain its records at said principal office, and shall hold its regular meetings there, but special meetings may be held in other cities in the state when in the discretion of the chairman it is necessary to meet in some other city than the capitol city of the state in the performance of the duties of the board. Meetings of the board shall be open to the public and no meetings or hearings of the board shall be held unless at least two members of the board are present. The director of the state civil service shall act as the secretary of the board. The board shall keep records and minutes of its business and official actions, and such records and minutes shall be public records open to public inspection, subject to such rules as to hours and conditions of inspection as the board may establish. It shall be the duty of the officer or officers charged by law with the custody of the state buildings, upon written request of the civil service board, to assign suitable office space for executing the duties charged to it and to the director of the state civil service.

Each member of the board shall be paid \$15.00 per day for each day actually devoted to duties as a member of the board, but in no case shall any member be paid more than \$450.00 in any one year; provided, that this limitation shall not apply to payments on account of expenses; and provided further, that this limitation shall not apply during the first two years of the board's service. Members of the board shall be paid for expenses in travel to and from meetings and for necessary expenses incurred during meetings of the board. (Act Apr. 22, 1939, c. 441, §3.)

Editorial note.—The title of the Act of Apr. 22, 1939, attempts to enumerate amendments and repeals. The body of the act adds §53-41a to the 1938 Supplement to Mason's Minnesota Statutes, but such amendment is not mentioned in the title.

254-52. Director of State Civil Service—Appointment, qualifications, examination—Compensation and expenses—Removal.—The office of director of the state civil service is hereby created and established. The director of the state civil service shall be appointed by the civil service board on the basis of merit and fitness after an open competitive examination, open to qualified persons without regard to residence and without regard to the provisions of section 31 of this act [§257-79] or the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, sections 4368, 4369, 4369-1, and 4369-2. Within 30 days after the first members of the civil service board have been appointed and qualified, and thereafter whenever a vacancy exists in the office of the director of the state civil service, the civil service board shall appoint an examining committee of three persons to examine the qualifications of all persons applying for appointments to the office of director of the state civil service. At least two members of the examining committee shall be public personnel administrators or public personnel specialists of recognized standing, at least one of whom shall be a non-resident of the state of Minnesota. As soon as practicable after its appointment, the examining committee shall examine applicants for the position of director of the state civil service and shall certify to the civil service board the names of the three persons rated

highest in the competitive tests and found by the committee to possess the necessary qualifications for the office of director of the state civil service. The civil service board shall then appoint one of the persons so certified to the office of director of the state civil service. No person who has not been examined and certified by an examining committee as herein provided for shall be appointed to the office of director of the state civil service. The civil service board shall fix the compensation and shall authorize the payment of expenses of members of the examining committee provided for in this section.

The director of the state civil service shall be in the classified service and shall not be removed by the civil service board except under written charges and after a public hearing by the board. (Act Apr. 22, 1939, c. 441, §4.)

Commissioner of administration is in charge of personnel until a director of civil service has been appointed and has made available list of eligibles for appointment. Op. Atty. Gen. (644), June 13, 1939.

254-53. Director to be administrative and executive head—Adviser to board—Duties.—(1) The director of the state civil service shall be the executive and administrative head of the state department of civil service and shall supervise and control all examinations and the department. He shall act as the board's adviser on all matters pertaining to the civil service of this state.

(2) It shall be the duty of the director and he shall have power:

- a. to attend all meetings of the board;
- b. to prepare and recommend to the board rules and regulations for the purpose of carrying out the provisions of this act. Such rules shall provide, among other things, for current records of efficiency, and standards of performance for all officers and employees subject to the provisions of this act; the manner of completing appointments and promotions; rejection of eligible candidates; competitive examinations; creation of eligible lists with successful candidates ranked according to their rating in the examinations; leaves of absence with and without pay; transfers, reinstatements, layoffs, vacations and hours of work; public notice of examinations; procedure for changes in rates of pay; compulsory retirement at fixed ages; and other conditions of employment;
- c. to appoint temporary and permanent examiners, including a chief examiner, clerks, stenographers, and such other employees and officers as are necessary to carry out the provisions of this act. Such employees and officers shall be chosen in accordance with and shall be subject to the provisions of this act;
- d. to keep in the office of the department of civil service an official roster of the state civil service showing the employment history of each and every person who has been appointed to, employed, promoted, reduced or reinstated in any position in such service. This roster shall show in connection with each name the date of appointment, employment, promotion, reduction, reinstatement, increases or decreases in pay, the compensation and title of the position, changes in title, transfers, sick or annual leaves, and separations from the service. The director shall have access to all public records and papers, the examination of which will aid in the discharge of his duty in connection with said roster;
- e. to prepare, in accordance with the provisions of this act and the rules adopted thereunder, examinations, eligible lists, and ratings of candidates for appointment;
- f. to make certifications for appointment within the classified service, in accordance with the provisions of this act;
- g. to make investigations concerning all matters touching the enforcement and effect of the provisions of this act and the rules and regulations prescribed thereunder;

h. to make a report and submit the same to the civil service board not later than October first of each year;

i. to discharge such other duties as are imposed upon him by this act. (Act Apr. 22, 1939, c. 441, §5.)

254-54. Duties and powers of civil service board.—It shall be the duty of the civil service board and it shall have power:

a. to approve, modify, reject, or approve as modified, rules and regulations and amendments thereto prepared and recommended by the director for carrying out the purposes of this act. Such rules and regulations and any amendments thereto shall not be approved by the board until after a public hearing by the board, of which two weeks' published notice shall have been given that a hearing at a specified place and time is to be held upon the proposed rules and regulations, and that any citizen, officer or employee of the state of Minnesota may attend and participate in such hearing. Copies of all rules and regulations shall be sent to all state appointing officers, and printed copies of such rules and regulations and amendments thereto shall be prepared for public distribution;

b. after public hearing, to approve, modify, reject, or approve as modified, plans for the classification of positions in the state civil service prepared and recommended by the director of the state civil service;

c. after public hearing, to approve, modify, reject, or approve as modified, compensation schedules for positions in the state civil service prepared and recommended by the director for submission to the commission of administration and finance;

d. to make investigations either at the discretion of the governor, or upon petition of a citizen for just cause, or of its own motion, concerning the enforcement and effect of this act;

e. to prepare and transmit to the governor not later than November 15 of each year a report of the department of civil service;

f. to conduct hearings and pass upon complaints by or against any officer or employee in the classified service for the purpose of demotion, suspension, or removal of such officer or employee, in accordance with the provisions of this act;

g. to hear and pass upon such other matters as the director of the state civil service may from time to time bring before the board for determination;

h. to discharge such other duties as are imposed upon it by this act. (Act Apr. 22, 1939, c. 441, §6.)

254-55. Board or director may issue subpoenas—Contempt—Examine witnesses—Witness fees—Rules of evidence.—(1) The civil service board or the director of the civil service when authorized by a majority vote of the board may issue subpoenas to compel the attendance at such place as may be designated in this state of witnesses and the production of books and papers pertinent to any inquiry or investigation authorized by this act; or may take depositions of witnesses in the manner provided by Mason's Minnesota Statutes of 1927, sections 9820 to 9838 inclusive. Subpoenas shall also be issued at the request of the parties to the proceedings other than the board and the director. The board or any member thereof, or the director when authorized by the board, may administer oaths and take testimony. The board or the director may examine such public records as they require in relation to any matter which they have authority to investigate. All officers and other persons shall attend and testify when required to do so by the board, or by the director when authorized by the board.

(2) In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may be lawfully interrogated, the district court of any county, on application of any one of the members of the board, or of

the director when authorized by the board, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(3) Each person not in the classified or unclassified services who appears before the board or the director by order shall receive for his attendance the fees and mileage provided for witnesses in civil actions in the district court, which fees and mileage shall be audited and paid by the state upon presentation of proper vouchers. Witnesses subpoenaed at the request of parties other than the board or the director shall be entitled to compensation from the state for attendance or travel only if the board certifies that the testimony of such witnesses was relevant and material to the matter investigated.

(4) The board and the director, in conducting hearings and investigations in accordance with the provisions of this act, shall not be bound by the technical rules of evidence. (Act Apr. 22, 1939, c. 441, §7.)

254-50. Salaries and compensation of director and employees.—The salaries of the members of the staff of the state department of civil service shall be fixed in accordance with the salary schedules established as authorized by this act; provided, that, pending the establishment and adoption of such compensation schedules, their salaries shall be fixed by the civil service board, subject, however, to the approval of the department of administration and finance. The salary of the director shall be not less than \$5,000 nor more than \$7,000 per year, payable semi-monthly. (Act Apr. 22, 1939, c. 441, §8.)

254-57. Classified and unclassified service.—The civil service of the state of Minnesota is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

a. chosen by election or appointed to fill an elective office;

b. heads of departments required by law to be appointed by the governor or other elective officers and the executive or administrative heads of departments, divisions and institutions specifically established by law, except that with respect to state institutions, the provisions of Mason's Minnesota Statutes of 1927, Section 4405, are hereby continued in effect;

c. except as herein otherwise enlarged, one private secretary to each of the elective officers of this state, and in addition thereto, one deputy, clerk or employee to the secretary of state, state auditor and state treasurer;

d. all deputy registrars of motor vehicles;

e. one executive secretary and five other confidential employees in the office of the governor, and one confidential employee for the governor in the office of the adjutant general;

f. officers and employees of the senate and house of representatives of the legislature;

g. teachers, research assistants, student employees on less than half-time pay basis, presidents, deans, and administrative officers in the teachers' colleges; but this subdivision shall not be construed to include the custodial, clerical, or maintenance employees, or any administrative officers, or clerical workers performing duties in connection with the business administration of such institutions;

h. officers and enlisted men in the national guard and the naval militia;

i. election officers;

j. persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority;

k. persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or con-

duct a special inquiry, investigation, examination or installation;

l. deputy attorneys general, assistant attorneys general, legal assistants, examiners, three confidential employees, and special counsel to state departments appointed by the attorney general or employed with his authorization;

m. all courts and all employees thereof, referees, receivers, jurors and notaries public, except referees and adjusters employed by the industrial commission;

n. patient and inmate help in state charitable, penal and correctional institutions;

o. Regents of the University of Minnesota and the employees and persons under the jurisdiction of the Regents of the University of Minnesota;

p. state highway patrolmen now operating under the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, sections 2554 1/2, 2554 1/2 a, 2554 1/2 b, 2554 1/2 c, 2554 1/2 d and 2554 1/2 e; providing, however, that with respect to the method of selection and appointment only, all state highway patrolmen who shall be appointed subsequent to the effective date of this act shall be selected and appointed in accordance with the provisions hereof relating to the classified service, but in all other respects the provisions of this act shall not apply to state highway patrolmen.

(2) The classified service comprises all positions now existing or hereafter created and not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible lists prepared upon the basis of examination which so far as practicable shall be competitive. No person shall be appointed, transferred, promoted, reduced or discharged as an officer, clerk, employee, or laborer in the classified service in any manner or by any means other than those prescribed in this act and the rules adopted in accordance therewith.

(3) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of this act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate registers of eligibles maintained by the department of civil service. (Act Apr. 22, 1939, c. 441, §9.)

An employee may be in the classified service, though he is a notary public and incidentally takes acknowledgments of expense accounts of department. Op. Atty. Gen. (644), May 1, 1939.

District boiler inspectors are within the classified civil service. Op. Atty. Gen. (644), May 23, 1939.

Employees of society for prevention of cruelty are subject to civil service act. Op. Atty. Gen. (644), June 3, 1939.

Both 12 month and 10 month "industrial teachers" at state school for the feebleminded are state employees within the act. Op. Atty. Gen. (644), July 10, 1939.

Employees of State Athletic Commission are subject to state civil service act. Op. Atty. Gen. (596a), July 13, 1939.

In the Department of Labor and Industry, heads of divisions of workmen's compensation, boiler inspection, accident prevention, statistics, women and children, and voluntary apprenticeship are in the unclassified service, but division of painting standards, and steamfitting standards are in a different category, and secretaries of the boards are in the classified service. Op. Atty. Gen. (644) July 19, 1939.

Director of tourist bureau in the Department of Conservation is head of a division and on unclassified list. Op. Atty. Gen. (644), July 25, 1939.

Members of Soldiers' Home Board are in unclassified service, but employees of board are in classified service. Op. Atty. Gen. (644), July 26, 1939.

Employees of the Minnesota Live Stock Breeders' Association, the Minnesota Crop Improvement Association, and similar organizations are not state employees subject to act. Op. Atty. Gen. (644), August 2, 1939.

254-58. Existing positions.—Persons with five years service to hold over—Persons with five years service or who have taken a civil service examination—Classification—Probationary period—"Employed by the state."—(1) All persons holding offices or employ-

ments in the classified service on the effective date of this act who have been employed by the state, which employment need not be continuous, for a total of five years or more prior to the effective date of this act; and persons holding offices or employments in the Minnesota State Employment Service (a division of the Industrial Commission, not however including the employees of the Unemployment Compensation Division) who have taken and passed a civil service examination conducted by the United States Employment Service, and who are employed by the state on the effective date of this act, shall automatically receive a civil service status without examination and shall be subject to and protected by the provisions of this act, but shall first be subject to the following: (a) the general classification directed to be made by section 12 of this act [§254-60]; and, (b) the six months' probationary period provided by section 21 of this act [§254-69]. The probationary period in the case of persons holding offices or employments covered by this section shall begin to run on the effective date of this act. The words "employed by the state" as used in this subsection shall include persons employed by joint federal and state agencies administering state and federal relief funds

(2) Except as in this act otherwise specifically provided, all persons holding offices or employments in the classified service on August 1, 1939, exclusive of those persons covered by subsection (1) hereof, shall be given a qualifying examination as hereinafter provided. The director of civil service, subject to the rules and regulations of the board, shall within two years from and after August 1, 1939, prepare and give once to all such incumbents of positions in the classified service a qualifying examination which shall be non-competitive, practical and involve only the duties of the position they occupied on August 1, 1939, or the position they occupy on the date said examination is given, whichever examination the officer or employee may elect to take.

If such aforementioned incumbents are found by such qualifying examination to have such ability and capacity as will enable them to perform the duties of the position for which they were examined in a reasonably efficient manner, they shall be given a civil service status subject to the provisions of section 21 hereof. If, however, any of the aforementioned incumbents who are required by this act to take a qualifying examination shall fail to pass the same, they shall be removed from their positions at the expiration of three months following receipt of notice of failure to pass such examination. All persons who shall willfully fail or refuse to take the examination when offered, without reasonable excuse, shall be removed from their positions immediately.

(3) *Laying-off, etc. prior to Aug. 1, 1939—Incumbents who have passed merit examination.*—Except as in this act otherwise specifically provided, until August 1, 1939, all persons holding offices or employments in the classified service, may be laid off, suspended, transferred, discharged, promoted, reduced, or discharged and reinstated as temporary employees, at the will and pleasure of the authority employing them, subject, however, to such laws as are not expressly repealed by this act.

Except as in this act otherwise specifically provided, no person holding office or employment in the classified service by reason of any merit examination heretofore held pursuant to any law of this state or the regulations or order of any department thereof, shall be deemed to have acquired a civil service status by reason thereof

(4) *Same—Completion of qualifying examination.*—No person holding an office or employment in the classified service on August 1, 1939, who is required by this act to take a qualifying examination, shall be laid off, suspended, discharged or reduced in pay or position, except in accordance with the provisions of this act applicable to members of the classified serv-

ice having a civil service status, until they have completed such qualifying examination and shall have been notified of the result thereof, or unless they shall refuse to take such qualifying examination.

(5) *Seniority rights in laying off.*—In the event of necessary reductions in employment in and class or position, employees who have not acquired a permanent classified civil service status shall be laid off in accordance with their seniority within the department where they are employed. (Act Apr. 22, 1939, c. 441, §10.)

(1). Giving two weeks vacation salary to one upon termination of his employment did not have effect of continuing service for the additional two weeks after discharge. Op. Atty. Gen. (644), June 26, 1939.

(2). Employees with less than 5 years service who were on leave of absence August 1, 1939, upon their return to work are entitled to take qualifying examinations if position which they held upon taking their leave is still in existence and has not been abolished. Op. Atty. Gen. (644), July 24, 1939.

254-59. Temporary employment in absence of available eligibles.—After August 1, 1939, and prior to the time that lists of eligibles are available, appointments to offices and employments in the classified service may be made in accordance with existing laws and without regard to the provisions of this act. Persons so appointed shall not be entitled to any of the privileges set forth in this act, but they shall be permitted to apply for and take any competitive examination for which they may be eligible. Such employees may continue in such employment, notwithstanding any contrary provisions of this act, until 60 days after the director shall have certified that lists of eligibles are available for such office or employment, whereupon the employment of such person shall automatically terminate and such office or employment shall be filled from such lists of eligibles as provided in this act. (Act Apr. 20, 1939, c. 441, §11.)

254-60. Classification and grading of employees—Wage and salary schedules.—(1) *Classification—Use—Changes.*—The director of the state civil service shall, as soon as practicable, and after consultation with appointing authorities and principal supervisory officials, classify all offices, employments, and positions in the classified service according to the duties and responsibilities of each position in accordance with the appropriate line of promotion. This duty to classify shall extend to all offices, employments, and positions held by persons who may become members of the classified service under this act as provided by section 10 as well as to those offices, employments and positions held by other persons. Titles shall be established for each class of employment for use in examining and certifying names of persons for appointment under this act, and a description of the duties and responsibilities exercised by the persons appointed to each of them shall be drawn up, minimum qualifications required for satisfactory performance of the duties of each grade and class formulated, and, so far as practicable, the lines of promotion from grade to grade or class to class shall be indicated. The titles in this classification as defined by the specifications of duties and qualifications shall be used for (a) original appointments; (b) promotions; (c) pay-rolls; (d) and all other records affecting the status of personnel. The classifications, when approved by the civil service board after public hearing, shall take effect immediately, shall be sent to the commission of administration and finance and shall be used by it in the preparation of the next following and subsequent state budgets. The director of the civil service may make changes in the classification whenever he deems it necessary for the efficiency of the service; and such changes, when approved by the civil service board after public hearing, shall take effect immediately, shall be sent to the commission of administration and finance and shall be used by it in the preparation of the next following and subsequent state budgets.

(2) **Salary or wage schedule—Legislative change of.**—The director of the state civil service shall, as soon as practicable after the adoption of the classification plan, prepare a schedule of salary or wage rates and ranges for each class, grade or group of positions in the classification. Such salary and wage schedules when approved by the civil service board after public hearing shall be submitted to the commission of administration and finance, who may approve, or reject, such schedules. When approved by the commission of administration and finance, they shall be used by that commission in connection with all payrolls and accounting records and with all budget estimates for all departments or agencies of the state government. The salary schedules for each class, grade, and group shall be submitted with its recommendations, to the legislature at the opening of the next legislative session. Unless changed by the legislature the salary and wage schedules so prepared by the director of the civil service and approved by the civil service board and the commission of administration and finance shall become the current official compensation rates applicable to the various classes and grades as enumerated. Nothing in this section shall prevent the legislature from increasing or reducing the salary or wage rates of all positions in an entire grade or group uniformly but it shall not increase the rate of pay of any grade or group beyond the rate in the next higher grade or group, nor reduce the pay of any grade or group below the rate of pay fixed for the next lower grade or group in the same service.

(3) **Allocation of employees to classes.**—The director of the civil service shall allocate each office, position or employment in the classified civil service to one of the grades and classes within the classification, subject to an appeal to the board by an employee immediately affected at any time within 30 days following notice to him of his allocation, and thereafter all salary rates, schedules or compensation policies shall apply uniformly to all positions within each grade, in accordance with rules and regulations established by the civil service board.

(4) **Duration of classification and schedule.**—The classification, and salary or wage schedules applying thereto, existing at the time this act becomes effective shall continue in effect until changed in accordance with the provisions of this act. (Act Apr. 22, 1939, c. 441, §12.)

(2).

Op. Atty. Gen. (644), July 18, 1930; note under §45.

254-61. Competitive examinations—Persons eligible—Place of holding.—(1) All competitive examinations for positions in the classified service shall relate to those matters which will fairly test the capacity and fitness of the persons examined to efficiently discharge the duties of the office or employment sought by them.

(2) The competitive examinations shall, after published notice, be open to all applicants who are citizens of the United States, who have been residents of this state for two years immediately preceding the date of examination, and who meet with reasonable standards or requirements fixed by the director with regard to experience, character, age, education, physical condition, and such other factors as may be held to relate to the ability of the candidates to perform with reasonable efficiency the duties of the position. No standards or requirements shall be fixed with reference to education or physical condition except such as relate directly to the duties of the office or employment to be filled. Persons under such physical disability as not to make them ineligible by reason thereof, shall be examined in such manner as will fairly test their ability to perform the duties of the position, notwithstanding such physical disability. The director may require candidates in filing their applications to submit certificates of general or special qualifications as the good of the service may require. Examinations shall be held at such times

and places as in the judgment of the director most nearly meet the convenience of applicants, practicability of administration and the needs of the service. For positions requiring professional, technical, or unusual qualifications, the director may, subject to the approval of the board, open competitive examinations to residents of other states who are citizens of the United States and who are otherwise qualified.

(3) The director may also require candidates to undergo an examination at designated places in the state, in cases where oral tests or tests for manual skill or the use of instruments in construction work may be necessary to determine the fitness of such candidates. (Act Apr. 22, 1939, c. 441, §13.)

254-62. Same—Powers of director as to examinations—Exclusion of disqualified persons—Statement of reasons—Persons required to give bond.—(1) The director may refuse to examine an applicant, or after examination may refuse to certify an eligible, who is found to lack any of the preliminary requirements established for the examination for the position or employment for which he applies; or who is physically so disabled as to be rendered unfit for the proper performance of the duties of the position to which he seeks appointment; or who is addicted to habit-forming drugs or is an habitual user of intoxicating liquors to excess; or who has been guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct; or who has been dismissed from the public service for delinquency or misconduct; or who has made a false statement of any material fact; or who directly or indirectly shall give, render or pay, or promise to give, render or pay, any money, service, or other valuable thing to any person for, or on account of, or in connection with, his test, appointment, or proposed appointment; or who practiced, or attempted to practice, any deception or fraud in his application, in his certificate, in his examination, or in securing his eligibility or appointment; or who refuses to furnish testimony as required in section 7.

(2) Whenever the director refuses to examine an applicant, or after an examination refuses to certify an eligible, as provided in this section, then the director, upon request of the person so rejected, shall furnish to him a statement of the reasons for such refusal to examine or refusal to certify, as the case may be. In the case of any such refusal an appeal may be taken to the board in accordance with the rules to be adopted in the manner hereinbefore provided.

(3) When any position requires the appointee to furnish a bond, such requirements shall be included in the announcement of the examination for said position. (Act Apr. 22, 1939, c. 441, §14.)

254-63. Discrimination forbidden.—No discrimination shall be exercised, threatened or promised, by any person in the civil service against or in favor of any applicant, eligible, or employee in the civil service because of his political or religious opinions or affiliations. (Act Apr. 22, 1939, c. 441, §15.)

254-64. Oath of office.—Every officer or employee of the state of Minnesota and every person making application for examination under this act shall take and subscribe an oath or affirmation in writing to the effect that every such person will honestly and faithfully protect and preserve the property and money of the state of Minnesota and will abide by, uphold and defend the constitution of the United States of America and the state of Minnesota, and except as provided in said constitutions they will not take part in any movement to alter or change our form of government. (Act Apr. 22, 1939, c. 441, §16.)

254-65. Appointments to be made from certified lists.—(1) **From certified lists.**—Appointments, promotions and reinstatements to all positions in the classified service under the provisions of this act, and

the rules made in pursuance thereof, shall be made from among those certified to the appointing officer.

(2) **Duration of eligibility.**—The term of eligibility of applicants on original entrance and reinstatement lists and on promotion lists shall be one year, but the term of any list may be extended by the director. In no case, however, may eligibility be extended for a period of more than three years.

(3) **No available list—Appointment or assignment from inappropriate list.**—Appointments shall be made from the appropriate eligible list, but if no such list exists then the director may certify from such other list as he deems the next most nearly appropriate. A new and separate list shall be created for a stated position only when there is no satisfactory list. The director shall have authority to establish separate eligible lists applicable to various localities. No person shall be appointed or employed under any title not appropriate to the duties performed, and no person shall be transferred to, nor assigned to perform the duties of, any position in the classified service, unless he has previously qualified therefor under the provisions of this act. (Act Apr. 22, 1939, c. 441, §17.)

254-66. Same.—(1) **Notice of new positions and vacancies—Certification of eligibles.**—Appointing officers shall give written notice to the civil service director of their intention to establish new positions and of the existence of any vacancy to be filled in any office or employment in the classified service and, within a reasonable time after the receipt of such notice, the director shall certify from the list of eligibles, appropriate for the grade and class in which the position is classified, the three names at the head thereof, except as provided in section 23 of this act.

(2) **Probationary appointments—Noncompetitive positions.**—The appointing officer shall appoint on probation, with sole reference to merit and fitness, one of the said candidates, whose name is certified in the manner above set forth, to fill such vacancy, except as provided in section 23 of this act [§254-71]. The provisions of this section shall not apply when the office or employment is among those listed in section 20 [§254-68] for which competitive examinations are not required.

(3) **Standards of performance—Service ratings—Public inspection.**—As soon as practical after the passage of this act and after consultation with appointing authorities and other supervising officials, the director shall establish standards of performance for each class of position and shall maintain records of efficiency, character, and conduct by a system of service ratings based upon such standards. The board shall establish and enforce rules and regulations in respect to such service ratings and prescribe the extent to which such service ratings shall be considered in determining the advisability of transfers, the promotion of an employee to a higher class, the question of reduction or dismissal of any employee, increases and decreases in salary of an employee within the salary range established under this act, in all other decisions relating to the status of employees. The board may further by rule prescribe the extent to which such ratings and the reports upon which they are based shall be open to inspection by the public and by the affected employees. (Act Apr. 22, 1939, c. 441, §18.)

254-67. Same.—(1) **Filling vacancies—Promotions.**—Vacancies in positions shall be filled so far as practicable, by promotion from among persons holding positions in the classified service and, subject to such exceptions as the board may provide, from the lower class or group within the particular classification, and in accordance with section 18 [§254-66] of this act and the rules of the board. Promotions shall be based upon merit and fitness to be ascertained by competitive examinations in which the employee's

efficiency, character, conduct and seniority shall all constitute a factor.

(2) **What constitutes promotion.**—For the purpose of this section an increase in the salary or other compensation of any person holding an office or position subject to the provisions of this act beyond the limit fixed for the grade in which such office or position is classified shall be deemed a promotion.

(3) **Status of dismissed promotional appointee—Competition for original appointment.**—Any promotional appointee, who is dismissed for cause other than misconduct or delinquency on his part from the position to which he has been promoted either during the probationary period, or at the conclusion thereof by reason of the failure of the appointing authority to file a request for his continuance in the position, shall be restored to the position from which he was promoted. Nothing contained in this section shall be construed to prevent any employee of the classified service from competing for places upon registers of persons eligible for original appointments. (Act Apr. 22, 1939, c. 441, §19.)

254-68. Positions filled without competition.—Positions in the classified service may be filled without competition only as follows:

(1) Whenever there are urgent reasons for filling a vacancy in any position in the classified service and the director is unable to certify from any appropriate eligible list for the vacancy, the director may issue a provisional permit or certify a suitable person to fill such vacancy provisionally only until a selection and appointment can be made after competitive examination; but no person shall receive more than one provisional appointment nor serve more than three months in any calendar year as a provisional appointee.

(2) In case of an emergency, an appointment may be made without regard to the provisions of this act, but in no case shall continue longer than ten days, and in no case shall successive emergency appointments be made. This provision shall apply to both persons and positions. No person shall receive more than three emergency appointments in any one or different positions within one year.

(3) In case of a vacancy in a position where peculiar and exceptional qualifications of a scientific, professional or expert character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by the selection of some designated person of high and recognized attainments in such qualities, the board upon recommendation of the director may suspend the requirements of competition in such case, but no suspension shall be general in its application to such position, and all such cases of suspension shall be reported in the annual report of the department with the reasons for the same.

(4) Where the services to be rendered by an appointee are for a temporary period not to exceed three months and a proper list of eligibles is not available, the director shall certify for such temporary service any person he deems qualified. The acceptance or refusal by an eligible of a temporary appointment shall not affect his standing on the register for permanent employment, nor shall the period of temporary service be counted as a part of the probationary period in case of subsequent appointment to a permanent position. Successive temporary appointments to the same positions shall not be made under this provision; provided, however, that during the period following the passage of this act and prior to the preparation of the appropriate eligibility lists a temporary appointment may be renewed for a period not to exceed a total of six months from the date of the first temporary appointment. No person shall receive more than one temporary appointment within one year. (Act Apr. 22, 1939, c. 441, §20.)

254-69. Appointments for probationary period.—

Except as in this act otherwise provided, all original appointments to and promotions within the classified service, and offices or employments within the classified service held by persons who become members of the classified service without examination pursuant to section 10 [§254-58] of this act or by qualifying examination pursuant to section 10 of this act, shall be for a probationary period of six months, but dismissals or demotions may be made at any time during such period, subject to the provisions of section 19, subsection (3) [§254-67(3)]. At the end of the probationary period the appointing officer shall notify the director in writing whether the probationer is a satisfactory employee and should receive the status of a permanent appointee. Upon such notice the employee, if his service during the probationary period did not fall below such minimum standards as have been prescribed by the director of the civil service, shall be deemed to have a permanent classified civil service status; otherwise the employee is automatically separated from the service except as provided in section 19, subsection (3) [§254-67(3)]. (Act Apr. 22, 1939, c. 441, §21.)

254-70. Transfers—Leaves of absence—Reinstatements.—(1) Transfers in the classified service may be made from a position in one grade and class to a position in another grade and class when the duties and compensation are similar and when such action is specifically approved by the director of the civil service.

(2) Any person holding a permanent position in the classified service of this state may be granted a leave of absence on the grounds of sickness, disability or other good and sufficient reason; provided, however, that no leave shall exceed one year, except as provided in subsection (4) of this section.

(3) No leave of absence may be granted to an officer or employee holding a permanent position in the classified service to enable such person to take an appointive position in the state unclassified service.

(4) Any person who has held a position by permanent appointment in the classified service under the civil service law and rules and who has been separated from the service without any delinquency or misconduct on his part or who has been granted a leave of absence under subsection (2) of this section, may be reinstated within one year from the date of such separation or within one year from the expiration of an approved leave of absence, to a position in the same or similar grade or class in the classified service, but such action shall be subject to the approval of the director of civil service. (Act Apr. 22, 1939, c. 441, §22.)

254-71. Lay-offs—Seniority rights—Notice—Certification of reasons—Positions abolished—Seniority and preference rights of dismissed incumbent.—(1) Whenever one or more employees in the classified service are laid off because of a shortage of funds or curtailment of service or for any other reason beyond their control, the order of layoff shall be determined according to rules established by the board which shall be based on seniority within the department, and the names of such employees shall be placed at the head of the appropriate registers.

(2) In every case of layoff of a permanent officer or employee, the appointing authority shall at least 15 days before the effective date thereof give written notice to the employee and the director of civil service, and may certify to the director the reasons therefor. In any case where an appointing authority refuses to certify, or fails to certify before the effective date thereof, that the layoff was for reasons not reflecting discredit on the employee, it shall be deemed a dismissal and shall be subject to the provisions concerning dismissals, as provided in this act.

(3) Whenever positions in the classified service are abolished by statute or by administrative action, the names of the incumbents of such positions, if they

are members of the classified service, shall be placed at the head of the appropriate register, according to seniority.

(4) Persons who have been separated from the classified service because of layoff or the abolition of positions shall be given preference over all other eligibles in filling vacancies in the same or similar positions within the department in which they were employed immediately prior to their separation from the service, and the director shall certify for each vacancy only the former officer or employee whose name stands first on the appropriate eligible register. (Act Apr. 22, 1939, c. 441, §23.)

254-72. Not to be removed or suspended except for cause—Hearing—Time for—Reinstatement—Dismissal of provisional employees.—(1) No permanent employee in the classified service under the provisions of this act or the rules made pursuant thereto shall be removed, discharged, suspended without pay for more than 30 days, or reduced in pay or position except for just cause, which shall not be religious or political. In case of any such disciplinary action as enumerated above in this section, the employee shall, before such action is taken, be furnished with a statement in writing specifically setting forth the reasons for such disciplinary action. A copy of such statement shall be filed with the director of civil service prior to the effective date thereof.

Such employee, upon written request to the civil service board made within 30 days thereafter, may demand a hearing to determine the reasonableness of such action and the board shall grant the employee a hearing within 45 days after receipt of such request. In the event such hearing is not held within the 45-day period herein specified, following receipt of request for such hearing, then the employee shall be forthwith reinstated in his position with full pay for lost time, but this shall not jeopardize the right of the board to finally determine the matter at a later date. After hearing and considering the evidence for and against such disciplinary action, the board shall approve or disapprove the action. In case of approval the disciplinary action shall be deemed final as ordered. In case of disapproval the board shall reinstate the employee under such conditions as it deems proper, and may order full pay for lost time.

If the board finds that the disciplinary action was for religious or political reasons, then the employee shall forthwith be reinstated in his position and be reimbursed for any loss of pay occasioned by such disciplinary action.

(2) Provisional employees as provided for in subsection (1), emergency employees as defined in subsection (2), and temporary employees as defined in subsection (4) of section 20 [254-68] may be dismissed at any time at the discretion of the appointing officer. (Added Apr. 22, 1939, c. 441, §24.)

Veterans coming within provisions of §254-86 can only be dismissed for just cause and by following procedure laid down in this section. Op. Atty. Gen. (644), May 25, 1939.

254-73. Appointing officer shall notify director of appointments, promotions, reductions, etc.—Each appointing officer shall report to the director forthwith in writing upon any appointment or employment in the service, the name of the appointee, or employee, the title and character of his office or employment, the date of commencement of service by virtue thereof, and the salary or compensation thereof, and shall report from time to time upon the date of the official action in, or knowledge of, any separation of a person from the service or any promotion, reduction, suspension, transfer, reinstatement or other change therein, the efficiency of his subordinates and employees, and other information, in such manner as may be prescribed by the director and the rules and regulations adopted by the board. (Act Apr. 22, 1939, c. 441, §25.)

254-74. Unauthorized expenditures—Directors shall certify payrolls.—(1) Certified payrolls.—Neither the state auditor nor other fiscal officer of this state shall draw, sign or issue, or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, nor shall the treasurer or other disbursing officer of the state pay any salary or compensation to any person in the classified or unclassified service of the state, unless an estimate payroll or account for such salary or compensation containing the name of every person to be paid shall bear the certificate of the director of the civil service that the persons named in such estimate, payroll or account have been appointed, employed, reinstated or promoted and are performing service as required by law and the rules established hereunder and that the salary or compensation is within the salary or wage schedule fixed pursuant to law.

(2) Improper payments recovered by action against officer or his sureties.—Any sum wilfully paid contrary to the provisions of this section may be recovered from any officer or officers making such appointments in contravention of the provisions of law or of the rules made in pursuance of law, or from any officer signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of same, or from the sureties on the official bond of any said officers, in an action in the district court of any county within the state, maintained by the director of the civil service or any member of the civil service board. All moneys recovered in any action brought under this section when collected shall be paid into the state treasury.

(3) Recovery by person against employing officer.—Any person employed or appointed contrary to the provisions of this act and the rules thereunder whose payroll or account is refused certification shall have action against such appointing officer employing or appointing or attempting to employ or appoint him for the amount due by reason of such employment or purported employment and the costs of such action. No appointing authority, during the time of his or their official service or thereafter shall be reimbursed by the state for any sum so paid or recovered in any such action. (Added Apr. 22, 1939, c. 441, §26.)

254-75. Officers and employees shall comply with law—Penalty—Vacation of office.—All officers and employees of this state shall conform to, comply with, and aid in all proper ways in carrying into effect the provisions of this act and the rules prescribed thereunder. Any wilful violation of this act by officers, officials or employees of the state shall be deemed a misdemeanor, and shall be punished accordingly. Conviction of same shall render the public office or position held by such person vacant. (Act Apr. 22, 1939, c. 441, §27.)

254-76. Violations and penalties—Vacation of office.—Any civil service board member, director or examiner, or any other person,

(1) who wilfully or corruptly by himself or in cooperation with one or more persons, defeats, deceives, or obstructs any person with respect to his or her rights of examination or application according to this act or to any rules or regulations prescribed pursuant thereto, or

(2) who wilfully or corruptly falsely marks, grades, estimates or reports upon the examination or proper standing of any person examined, registered, certified, employed or promoted pursuant to the provisions of said sections, or aids in so doing, or who wilfully destroys any examination questions, answers or records thereon of any applicant for civil service within a period of one year after any examination has been completed, or

(3) who wilfully or corruptly makes or files any false representations concerning the persons examined, registered, certified, appointed, employed or promoted, or

(4) who wilfully or corruptly furnishes any person with any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified, being appointed, employed or promoted, or

(5) who personates any other person, or permits or aids in any manner any other person to personate him or her in connection with any examination or registration, or application or request to be examined or registered, or

(6) who wilfully or corruptly shall appoint to a position in the classified service or dismisses, suspends, reduces in rank or pay any officer or employee from any position in the classified service otherwise than in compliance with and in conformity to the provisions of this act and the rules and regulations of the civil service board adopted pursuant thereto, or

(7) who wilfully or corruptly refuses or neglects otherwise to comply with or conform to the provisions of this act and the rules and regulations made pursuant thereto, or violates any of such provisions, shall be deemed guilty of a misdemeanor and shall be punished accordingly.

Any conviction under this section shall render the public office or position held by the person or persons so convicted vacant and such person or persons shall be ineligible to hold public office for a period of five years from the date of such conviction. (Act Apr. 22, 1939, c. 441, §28.)

254-77. Political activities and executions—Resignation of candidates from classified service—Violations and penalties.—No officer or employee holding a position in the classified service of this state shall, directly or indirectly, solicit, or receive, or be in any manner concerned in soliciting, or receiving, any assistance, assessment, or subscription, whether voluntary or involuntary, for any political purpose whatsoever, or for any political party or affiliate thereof. No officer or employee in the classified service shall be a delegate or alternate to any political convention. No officer, agent, clerk or employee of this state shall directly or indirectly use his authority or official influence to compel any officer, or employee in the classified service to apply for membership in or become a member of any organization, or to pay or promise to pay any assessment, subscription or contribution, or to take part in any political activity. Any person who violates any provision of this section shall be guilty of a misdemeanor, and shall be punished accordingly, and if any officer or employee in the classified service is found guilty of violating any provision of this section, he is automatically separated from the service.

(2) Any officer or employee in the state classified service shall resign from the service upon filing as a candidate for public office. (Act Apr. 22, 1939, c. 441, §29.)

(2). Those holding elective public office at time of passage of act who are members of classified service may serve remainder of their unexpired terms of office, but may not file as candidates for public office unless they resign from classified service. Op. Atty. Gen. (644), June 29, 1939.

254-78. All offices to furnish space for examinations.—The officers having control of public buildings in political subdivisions of the state and school districts shall, upon request of the director of the civil service, furnish convenient space for examinations and necessary furniture, heat, and light for accommodation of the local examiners and for the holding of examinations. The director may request state or local officers or employees to aid in carrying out the provisions of this act, and it shall be the duty of such officers and employees, insofar as it may be consistent with their other duties, to give such aid upon written request of the director. (Act Apr. 22, 1939, c. 441, §30.)

254-79. Veterans' preference.—In all examinations under this act a veteran's preference shall be given

to soldiers, sailors, nurses, and marines honorably discharged from the army, navy or marine corps of the United States, who have served in the Civil War, Spanish American War, Philippine Insurrection, China Relief Expedition, or World War; who are citizens of the United States and have been residents of the state of Minnesota five years immediately preceding their application or who enlisted from the state of Minnesota. And the veteran thus preferred shall not be disqualified from holding any position in the classified service on account of his age or by reason of any physical disability provided such age or physical disability does not render him incompetent to perform the duties of the position.

Recognizing that training and experience in the services of the government and loyalty and sacrifice for the government are qualifications of merit which cannot be readily discovered by examination; there shall be added to the examination rating of a disabled veteran a credit of ten points, and if such augmented rating gives to such disabled veteran a passing grade and such disabled veteran is able to perform the duties of the position sought with reasonable efficiency, his name shall be placed at the head of the eligible list for such position.

There shall be added to the examination rating of all other veterans a credit of five points, and if such augmented rating gives to such veteran a passing grade and if such veteran is able to perform the duties of the position with reasonable efficiency, his name shall be placed on the list of eligibles with the names of other eligible persons. The name of a veteran with such augmented rating shall be entered ahead of a non-veteran when their ratings are the same.

Such preference is hereby extended to the widows of deceased veterans and to the spouse of a disabled veteran, who, because of such disability is unable to qualify.

The fact that an applicant has claimed a veteran's preference shall not be made known to the examiners and the preference credit shall be added to the examination rating by the director, and the records shall show the examination rating and the preference credit.

A disabled veteran is one who is rated as disabled by the United States Veterans' Administration, and which disability is existing at the time preference is claimed.

In the event of the rejection by the appointing officer of the person so preferred when certified for promotion or to fill a vacancy or a new position, the appointing officer shall forthwith file in writing with the director the reasons for such rejection and shall furnish to the rejected veteran a copy thereof. (Act Apr. 22, 1939, c. 441, §31.)

Rights of war veterans to secure and hold positions in classified service of state are now in no way affected by confidential nature of the work. Op. Atty. Gen. (644), August 14, 1939.

254-80. State Civil Service to be available to municipalities—Interchange of services.—(1) The services and facilities of the state civil service department and its staff shall be available upon request, subject to rules prescribed therefor by the board, to political subdivisions of the state. In making such service and facilities available, it shall be understood that requirements for the enforcement and administration of the provisions of this act shall be given precedence and that the political subdivisions shall reimburse the state for the reasonable cost of such services and facilities.

(2) The board may enter into arrangements with personnel agencies in other jurisdictions for the purpose of exchanging services and effecting transfers of employees. The board may also join or subscribe to any association or service having as its purpose the interchange of information relating to the technique of personnel administration. (Act Apr. 22, 1939, c. 441, §32.)

254-81. Director to co-operate in the conduct of employees training program—Leaves of absence—Apprenticeships or internships.—The director of the civil service shall devise plans for and cooperate with appointing authorities and other supervisory officers in the conduct of employee training programs to the end that the quality of service rendered by persons in the state civil service may be continually improved. Provision may be made in the rules adopted by the civil service board to permit employees in the classified service to secure leaves of absence for the purpose of enrolling in courses of training for government service; and provision also may be made in said rules to permit qualified students to serve as internes or apprentices for a period not greater than one year in the several departments and agencies concerned. (Act Apr. 22, 1939, c. 441, §33.)

254-82. Definitions.—(1) The word "eligible" as used in this act, unless the context otherwise indicates, shall mean a person who is on an employment list and qualified for appointment, a promotion, or reinstatement under this act.

(2) The "effective date" of this act shall be the date that it is approved by the governor or the date it becomes effective without his approval.

(3) The words "all persons holding offices or employments in the classified service on the effective date of this act" as used in this act in addition to their ordinary meaning shall mean and include all persons who have been employed by the state, which employment need not be continuous, for a total of five years or more prior to the effective date of this act, and who are on leave of absence on the effective date of this act.

(4) The words "commission of administration and finance" as used in this act in addition to their ordinary meaning shall mean and include the commissioner of administration in the event that such commissioner shall be authorized and appointed pursuant to any law heretofore or hereafter enacted. (Act Apr. 22, 1939, c. 441, §34.)

254-83. Citation of act.—Sections 1 to 38 inclusive [§§53-1, 53-41a, 254-51 to 254-86] shall be known and may be cited as the state civil service act. (Act Apr. 22, 1939, c. 441, §35.)

254-84. Inconsistent acts repealed.—All acts or parts of acts which are inconsistent with the provisions of sections 1 to 38 inclusive of this act [§§53-1, 53-41a, 254-86] are hereby expressly repealed to the extent of such inconsistency. (Act Apr. 22, 1939, c. 441, §36.)

254-85. Provisions severable.—The provisions of this act shall be severable and, if any of the provisions shall be held to be invalid, the decision of the court respecting such provision or provisions shall not affect the validity of any other provisions which can be given effect without such invalid provisions. It is hereby declared to be the legislative intent that this act would have been adopted by the legislature had such invalid provisions not been included herein. (Act Apr. 22, 1939, c. 441, §37.)

Persons blanketed in by this section, may be removed only for cause upon written charges, and after a hearing. Op. Atty. Gen. (644), April 28, 1939.

254-86. Laws superseded.—The provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, sections 4368, 4369, and 4369-1 are hereby superseded by section 31 [§254-79] of this act insofar as said sections 4368, 4369, and 4369-1, might be applicable to the state civil service as provided by this act; anything in the 1938 Supplement to Mason's Minnesota Statutes of 1927, section 4369-2, to the contrary notwithstanding; provided, however, that honorably discharged veterans of past wars and other persons enumerated in section 31 [254-79] hereof holding offices or employment within the classified service on the effective date of this act are hereby given a permanent classified civil service status

as of the effective date of this act, and shall thereafter be subject to and protected by the provisions of this act and shall not be subject to the probationary period provided for by section 21 hereof. (Act Apr. 22, 1939, c. 441, §38.)

Incumbent district boiler inspectors are entitled to benefit of this section. Op. Atty. Gen. (644), May 23, 1939.

Veterans coming within this section can only be dismissed for just cause and by following procedure laid down in §24. Op. Atty. Gen. (644), May 25, 1939.

Rights of war veterans to secure and hold positions in classified service of state are now in no way affected by confidential nature of the work. Op. Atty. Gen. (644), August 14, 1939.

254-87. Laws to be continued in force.—Notwithstanding the provisions of the state civil service act and the amendments to existing statutes made by this act, all existing salaries and compensation schedules, and all laws and regulations governing said salaries and compensation schedules, in force on the day previous to the effective date of this act, shall continue in force until the salary and wage schedules are approved by the commission of administration and finance as provided in the state civil service act. (Act Apr. 22, 1939, c. 441, §45.)

Salary rates, schedules, and classifications may be increased, reduced, or revised by authority prior to enactment of civil service law, until such time as salary rates and classifications are established in accordance with such act, but it must be noted that powers existing in commission of administration and finance in respect to salaries and personnel are now vested in commissioner of administration. Op. Atty. Gen. (644), July 18, 1939.

**DECISIONS
RELATING TO OFFICERS AND EMPLOYEES
IN GENERAL**

1. In General.

Officials of WPA are required to determine fitness of applicants for assigned tasks. Block v. S., (DC-Minn), 26FSupp105.

Fact that plaintiff was a needy person properly certified for assignment to WPA work did not alone entitle her to employment, but she must have been fitted to perform the assigned tasks. Id.

Liability of a public officer for nonfeasance attaches only when duty is ministerial and not mandatory. Cook v. T., 200M221, 274NW165. See Dun. Dig. 8001, 8002a.

Where officer performs duties imposed by law, he is entitled to compensation therefor fixed by law and no other, and fact that salary or compensation may be recognized as inadequate remuneration for services exacted and actually performed does not change the rule, and principle is same although his duties are greatly increased. Jerome v. B., 202M485, 279NW237. See Dun. Dig. 8008.

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

Judge of probate may also act as secretary of production credit association, organized to refinance chattel mortgage loans. Op. Atty. Gen., Feb. 23, 1934.

2. De facto officers.

There can be no de facto officer unless there is a de jure office for him to fill, but where there is a legislative act or municipal ordinance in form creating an office and an officer is elected or appointed to such office, then, though legislative act or ordinance is unconstitutional or invalid, officer is an officer de facto until act or ordinance is declared unconstitutional or invalid. State v. City of Eveleth, 189M229, 249NW184. See Dun. Dig. 8014.

3. Officials not to be interested in contracts.

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

A license is not a contract and an alderman of a city may receive a license to sell intoxicating liquors, except that he cannot vote on his own application. Op. Atty. Gen. (218g), Feb. 15, 1935.

4. Term of office.

The term of office of a city employe, appointed by city council without term, does not expire at expiration of term for which members of council appointing him were elected, unless employe was appointed for a fixed term. State v. City of Eveleth, 189M229, 249NW184. See Dun. Dig. 7988.

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

5. Vacations.

There is no statutory provision authorizing vacation pay for state employes, and no authorization for making such payment to a deceased person's estate or to his widow. Op. Atty. Gen. (359a-1), July 26, 1939.

**CHAPTER 6
Elections**

This chapter in the 1927 Statutes and the 1936 Supplement is repealed effective Aug. 1, 1939, by Act Apr. 21, 1939, c. 345, Pt. 12, §1, post §601-12. In as much as the repealing Act mentions only chapter 6 of the 1927 Statutes and the 1936 Supplement, there may be a question from a technical point of view as to whether new acts and amendments of existing acts appearing in the 1938 Supplement are also repealed.

The chapter is reenacted and appears in chapter 6A as shown in the table below.

Repealed Section	Reenacted as
255.....	601-5(1), 601-6(1), 601-6(1)a.
255-1.....	601-6(1)c.
255-2.....	601-6(1)c.
256.....	601-1(1)d, f, i, ii, j, jj, k, l, m, n, o, q, r, rr, s.
257.....	601-1(2).
258.....	601-6(4).
259.....	601-6(4)b.
260.....	601-6(3).
261.....	601-6(5)m, 601-6(5)o.
270-1.....	601-6(2)a.
270-2.....	601-6(2)b.
270-3.....	601-6(2)c.
270-4.....	601-6(2)d.
270-5.....	601-6(2)e.
270-6.....	601-6(2)f.
270-7.....	601-6(2)g.
270-8.....	601-6(2)h.
270-9.....	601-6(2)i.
270-10.....	601-6(2)j.
270-11.....	601-6(2)k.
270-12.....	601-6(2)l.
271.....	601-6(5)n.
272.....	601-6(5)n.
274.....	601-6(6)j.
275.....	601-6(7).
276.....	601-6(7)a.
277.....	601-6(7)b.
278.....	601-6(7)c.
279.....	601-6(7)d.
280.....	601-6(7)e.
281.....	601-6(5)o.
282.....	601-6(7)f.

Repealed Section	Reenacted as
283.....	601-6(7)g.
284.....	601-6(7)h.
284a.....	601-6(7)i.
285.....	601-6(7)j.
286.....	601-6(7)k.
287.....	601-5(1)b.
288.....	601-6(7)l.
290.....	601-6(7)m.
291.....	601-6(7)n.
292.....	601-6(7)o.
293.....	601-3(1), 601-6(3)a.
294.....	601-1(1)ee, 601-3(1)a.
295.....	601-1(2)c.
297.....	601-3(1)b.
298.....	601-3(1)c.
299.....	601-3(1)d.
300.....	601-3(1)e, 601-6(7)q.
301.....	601-6(7)p.
302.....	601-2(3)c.
305.....	601-6(8).
306.....	601-6(8)m.
307.....	601-6(8)n.
308.....	601-6(8)p.
310.....	601-6(9)d, 601-6(10).
311.....	601-6(9)c.
312.....	601-6(11).
313.....	601-6(11).
314.....	601-6(11)b.
315.....	601-3(1)f.
316.....	601-3(1)g.
317.....	601-3(1)h.
318.....	601-3(2).
319.....	601-3(2)a.