

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
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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CHAPTER 18

PUBLIC EXAMINER

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Office of public examiner abolished, and powers, etc., transferred to comptroller. See § 53-44, herein.

3274. Department established—Powers and duties
 —There is hereby established and continued within the state of Minnesota the department of public examiner, which shall have the duty and power to supervise all public accounts, to prescribe and install systems of accounts and reports, to inspect all records and transactions connected with the receipt, disbursement and custody of public funds, to investigate the use and security of all public appropriations and property, to ascertain the sources and condition of the public revenue, investments, loans and debt, to verify the public funds and examine and report upon the condition and security thereof, and the chief of this department shall be known as the public examiner. ('13 c. 555 § 1) [3227]

Section 14 repeals all inconsistent laws, etc. This act supersedes R. L. c. 18, as amended 1909 c. 449, and by 1905 c. 223 1907 c. 344, 1909 c. 264, and 1913 c. 154.
 85-165. 197. 88+533.
 Supervision of co-operative marketing associations.
 '23 c. 264 § 30.

3275. Public examiner to be appointed by governor
 —**Bond**—The governor, by and with the advice and consent of the senate, shall appoint a public examiner for the term of three years and until his successor qualifies, and in case of a vacancy in such office the governor shall appoint a successor for the remainder of said term; provided, that nothing in this act shall affect the term of the present public examiner. Such examiner shall be a skilled accountant, and shall not at any time while in office hold any other public office, or own any stock or have any commercial interest in any corporation, co-partnership, property or business subject to supervision and examination by this department. He shall give bond to the state in the sum of twenty-five thousand dollars, to be approved by the governor and attorney general, conditioned for the faithful discharge of his duties. ('13 c. 555 § 2, amended '19 c. 425 § 1) [3228]

3276. Duties—State offices, institutions, properties, industries and improvements—Said examiner shall exercise a constant supervision over the books and accounts of the several public offices, institutions, properties, industries, and improvements of the state, and over the financial records and transactions of public boards, associations, and societies supported wholly or in part by state funds. In all offices where the records of such public affairs are kept and the finances thereof handled, he shall enforce, correct methods of

accountancy and, in his discretion, prescribe and install systems of accounts and financial reports. Once in each year without previous notice, he shall visit each of such offices, institutions and industries, and, so far as practicable, inspect such properties and improvements, and he shall thoroughly examine the books and accounts thereof, verifying the funds, securities and other assets, check the items of receipts and disbursements with the voucher records thereof, ascertain the character of the official bonds for the officers thereof and the financial ability of the bondsmen, inspect the sources of revenue thereof and the use and disposition of state appropriations and property, investigate the methods of purchase and sale and the character of contracts on public account, enforce a proper custody and depository for the funds and securities thereof, verify the inventory of public property and other assets, held in trust, and ascertain that all financial transactions and operations involving the public funds and property of the state comply with the spirit and purpose of the law and are for the best protection of the public interest. ('13 c. 555 § 3) [3229]

85-41. 88+412.

3277. Reports of examinations—Violations of law—He shall prepare written reports of the conditions disclosed by such examinations, together with such directions and recommendations as he may deem required, filing one copy of such report with the governor, another copy with the officer, institution or society, whose accounts are examined, and file other copies open to public inspection during office hours in the department of public examiner. If any such examinations shall disclose malfeasance or misfeasance or non-feasance in office on the part of any officer or employe, an additional copy of such report shall be made, signed and verified and it shall be the duty of the public examiner to place such report with the governor, and the governor shall transmit the same to the attorney-general and the attorney-general shall institute and prosecute such civil proceedings against such delinquent officer, or upon his official bond or both, as will carry into effect the findings resulting from such examinations and secure to the state the recovery of any funds or other assets misappropriated and he shall institute such other proceedings as may secure compliance with the law. ('13 c. 555 § 4) [3230]

3278. Examination and supervision of county offices and institutions, etc.—All the powers and duties conferred and imposed upon the public examiner in the foregoing sections shall be exercised and performed by him in respect to the offices, institutions, public property and improvements of the several counties of the state of Minnesota. At least once in each year, the public examiner shall visit, without previous notice, each of such counties and make a thorough examination of all accounts and records relating to the receipt and disbursement of the public funds and the custody of the public funds and other property. He shall prescribe and install systems of accounts and financial reports, that shall be uniform so far as practicable for the same class of offices. A copy of the report of such examination shall be filed and subject to public inspection in the office of the public examiner, and another copy in the office of the county auditor of the county

3278
 31 — 125
 31 — 246

3276
 29 — 250

thus examined; provided, that if any such examination shall disclose malfeasance, misfeasance, or non-feasance in any office of such county, such report shall be filed with the county attorney of said county, and it shall be the duty of such county attorney to institute such civil and criminal proceedings, as the law and the protection of the public interests shall require. ('13 c. 555 § 5) [3231]

3279. Cities of more than 50,000 inhabitants—All powers and duties herein conferred and imposed upon the public examiner with respect to state and county officers, institutions, property and improvements are hereby extended to cities of more than 50,000 inhabitants; provided, that for service of said examiner any such city shall pay into the state treasury the sum of \$7 per day and the expenses of such examination, such payment to be for not more than 100 days service in any one year and made to the state treasurer within thirty days after requisition therefor. Copies of the written report of the public examiner on the financial condition and accounts of such city shall be filed in his office and with the mayor, city council, and city comptroller thereof, and, with the city commissioners, if such city have such officers; provided, that, if such report disclose malfeasance, misfeasance, or non-feasance in office, copies thereof shall be filed with the city attorney thereof and with the county attorney of the county in which such city is located, and said officials of the law shall institute such proceedings, civil or criminal respectively as the law and the public interest require. ('13 c. 555 § 6) [3232]

3280. Other cities—The public examiner shall have like power and duty to supervise the accounts of all cities not included in section 7 hereof, and he shall have the authority to require in his discretion the financial officers of any city not included in said section to send all books, accounts, vouchers pertaining to the receipt, disbursement, and custody of its public funds to the office of the public examiner in St. Paul for examination. He may prescribe and install for such cities systems of accounts and reports, which shall be uniform for each class of cities and offices, and he may conduct examinations of accounts and records as he may deem the public interest to demand.

On petition of the freeholders of any such city to the number of one freeholder for each one hundred inhabitants, the public examiner shall conduct an examination of the accounts and funds of such city; the city treasurer of such city within thirty days after requisition therefor to pay to the state treasurer for such services at the rate of \$6 per day and expenses for each day of such examination. The report of such examination shall be filed with the mayor and city council or commission, and in case of violation of law shall be prosecuted, as provided in section 7 with respect to the examination of counties. ('13 c. 555 § 7) [3233]

Section 7 should read section 6, which is § 3279. herein.

3281. School districts, towns and villages—All powers and duties of the public examiner herein imposed and conferred with respect to the supervision, inspection and examination of books and accounts of cities in section 8 hereof are herewith extended to all school districts, towns and villages of this state; provided, that the public examiner shall conduct an examination of the records of any such town, village, or school district on the petition of ten freeholders thereof, and the town, village, or school receiving such examination shall pay the state for the same at the rate of \$5 per day and expenses. A copy of the report of such ex-

amination shall be filed subject to public inspection, with the clerk of the town, village, or school district receiving such examination, and an additional copy with the county auditor; provided, that if such report disclose malfeasance, misfeasance, or non-feasance in office, the public examiner, shall file such copy with the county attorney of the county in which such school district, town or village is located, and said county attorney shall institute such proceedings as the law and the public interest require. ('13 c. 555 § 8) [3234]

Section 8 should read section 7, which is § 3280; herein.

3282. Gross earnings for taxation—In like manner and with like powers, as provided by section 3 [3229] hereof, the public examiner, at least once a year, so far as practicable, shall visit all railroad and other corporations and companies which are required by law to pay taxes to the state upon a gross earnings basis, examine their books of account and all other records and papers bearing upon or evidencing their gross earnings upon which, under the law, taxes should be paid in this state, and certify to the Minnesota tax commission the amount of such taxable earnings; and in case he shall discover errors and omissions in the gross earnings as reported by such companies, he shall certify the amount of such omitted earnings, together with the additional taxes and penalties due for collection as provided by law. All evasions and violations of the law in respect to such gross earnings taxes, which the public examiner may discover he shall report to the governor, the Minnesota tax commission and attorney-general, and said officials shall institute such proceedings as the law and the public interest require. ('13 c. 555 § 9) [3235]

Section 3 [3229] is § 3276. herein.

3283. Subpœnas, witnesses, etc.—In all matters relating to his official duties, the examiner shall have the powers possessed by courts of law to issue subpœnas and cause them to be served and enforced. All state and county auditors, treasurers, and other public officials, and their respective deputies and employees, all officers, directors, and employees of all railway and other companies required by law to pay taxes to the state upon a gross earnings basis, and all persons having dealings with or knowledge of the affairs or methods of such companies, and likewise all corporations, firms and individuals having business involving the receipt, disbursement, or custody of the public funds shall at all times afford reasonable facilities for such examinations, make such returns and reports to the examiner as he may require, attend and answer under oath his lawful inquiries, produce and exhibit such books, accounts, documents, and property as he may desire to inspect, and in all things aid him in the performance of his duties. ('13 c. 555 § 10) [3236]

114-346, 131+489; 131-120, 154+752.

3284. Refusal, obstruction, etc.—Every person who shall refuse or neglect to obey any lawful direction of the examiner, or his deputy, or any of his assistants; withhold any information, book, record, paper, or other thing called for by him for the purpose of examination; wilfully obstruct or mislead him in the execution of his duties; or swear falsely concerning any matter stated under oath, shall be guilty of a felony, the minimum penalty whereof shall be a fine of one thousand dollars, or imprisonment in the state prison for one year. ('13 c. 555 § 11) [3237]

3285. Biennial reports—The examiner shall report to the governor biennially touching all his official acts,

giving abstract of the statistics and condition of the various offices, institutions, municipalities, and corporations to which his duties relate, and making such recommendations as he may deem proper, which report shall be printed and included in the volume of executive documents. ('13 c. 555 § 12) [3238]

3286
239nw 670
See
4368-69

3286. Assistants and employes and bonds to be given—For the exercise of the powers and performance of the duties imposed and conferred upon him by this act, the public examiner may appoint, and at pleasure remove, a deputy examiner, fifteen assistant public examiners, an executive clerk, and such other employes as may be necessary for whom provision is made by law. Such deputy and assistant examiners shall each give bond to the state in the sum of five thousand dollars. During the absence or disability of the public examiner, the deputy examiner shall perform the duties of the office. The duties of the assistants and

other employes shall be such as the examiner may prescribe, and any of them may be assigned to perform any special duty imposed by this chapter upon the examiner or his deputy. In such cases the assistants may exercise all the powers of his principal necessary to the proper discharge of such duty. The salaries of the public examiner and his appointees as above enumerated shall be such as are fixed by law. The salaries of the several other employes subject to appointment by the public examiner shall be such sums as the examiner may prescribe and, together with the expenses of the examiner and his deputy and assistants and other employes, necessarily incurred in the discharge of their duties and in the administration of the office, shall be paid out of the contingent fund provided for such office; and such salaries and expenses shall not exceed the aggregate sums appropriated and allowed therefor by law. ('13 c. 555 § 13, amended '19 c. 425 § 2) [3239]

CHAPTER 19

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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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Evidence held sufficient to sustain a conviction. 173M 627, 218NW110.

Where defendant was adjudged father of illegitimate child and was directed to pay certain sums for its support to a child welfare board which agreed to pay such sums to the plaintiff for boarding and caring for the child, plaintiff could sue the welfare board for sums received by it. *Saivas v. R.*, 175M484, 221NW719.

Exclusion of evidence of intercourse with third person at indefinite prior time, held proper, and evidence of promise to marry during period of illicit relation was admissible. 179M80, 228NW335.

Evidence held to support conviction. 179M436, 229NW 564.

Defendant in filiation proceeding held not entitled to dismissal for lack of speedy trial because of his own conduct contributing to delay. *State v. Hanson*, 187M 235, 244NW809. See Dun. Dig. 842, 2469.

Mother of illegitimate is not entitled to recover from adjudged father money expended by her in care and support of child, father having been ordered by district court to make periodical payments to a county welfare board. *Lawson v. M.*, 189M93, 248NW658.

Evidence in bastardy proceeding held to sustain verdict that defendant was father of child. *State v. Rasmussen*, 193M374, 258NW503. See Dun. Dig. 840.

Delay in telling of pregnancy and who is father of child is only a fact to be considered by jury in judging the truth of the charge. *State v. Thompson*, 193M364, 258NW527. See Dun. Dig. 840.

In a bastardy case state need not prove its case beyond a reasonable doubt, but only by a fair preponderance of evidence. *Id.* See Dun. Dig. 837.

In bastardy proceeding, evidence held to sustain jury's finding of defendant's guilt. *Id.* See Dun. Dig. 840.

Credibility of witnesses in bastardy case is for jury. *State v. Thorson*, 193M382, 258NW575. See Dun. Dig. 840.

Weight to be given testimony of witnesses in bastardy proceeding is for jury. *Id.*

Although a bastardy proceeding has some of the features of a criminal trial, it is substantially a civil action, and, after a verdict of not guilty, court may grant a new trial. *State v. Reigel*, 194M308, 260NW293. See Dun. Dig. 827, 2425.

A defendant in a bastardy proceeding is entitled to prove good character as to chastity and morality. *State v. Oslund*, 199M604, 273NW76. See Dun. Dig. 839.

Evidence held to sustain a verdict against defendant. *Id.* See Dun. Dig. 840.

Where there is conflicting evidence upon issue of paternity, question is for jury. *State v. Hanke*, 202M47, 277NW364. See Dun. Dig. 840.

Number of witnesses does not establish weight of evidence and a verdict may be based upon testimony of a single witness. *Id.*

Conviction in bastardy supported by adequate and ample evidence will not be disturbed. *State v. Bergeson*, 203M88, 279NW337. See Dun. Dig. 388, 852.

A judgment obtained in a competent court of this state for payments due under a judgment entered by a competent court of a sister state under the illegitimacy statutes of the latter may be enforced, when so ordered by our court, by the same means as if the judgment had been originally obtained in this state and under our laws. *Ladd v. M.*, 285NW281. See Dun. Dig. 850.

Guardian of illegitimate child may claim payments after death of father but only those that had matured at time of death. *Op. Atty. Gen.*, AUG. 21, 1933.

County attorney cannot charge for his services in suing on bonds in bastardy proceedings. *Op. Atty. Gen.* (121b-11), May 31, 1935.

County is responsible for lying in expenses and doctor bills of mother of illegitimate child. *Op. Atty. Gen.* (339d-3), July 6, 1936.

3266. Father to pay all expenses.

Lawson v. M., 189M93, 248NW658; note under §3265. Paternity proceedings should be instituted regardless of property settlement between mother and father of illegitimate. *Op. Atty. Gen.* (121b-11), Sept. 3, 1935.

3267. Application for discharge from imprisonment.

State v. Strong, 192M420, 256NW900; note under §3268.

3268. Hearing—Judgment.

Conviction of bastardy, held free from error. 181M 374, 232NW624. See Dun. Dig. 827.

Father of a bastard cannot be punished for contempt in not obeying an order to pay money which it is not in his power to obey. *State v. Strong*, 192M420, 256NW900. See Dun. Dig. 850, 1703.

Finding of paternity held sustained by evidence. *State v. Van Guilder*, 199M214, 271NW473. See Dun. Dig. 890.

3269. Who may make complaint.

Defendant in bastardy is entitled to change of venue, but mother may file complaint in any justice or municipal court in the state, and district court of county to which justice or municipal court binds defendant over has jurisdiction to determine paternity, unless defendant moves for change of venue before trial. *State v. Rudolph*, 203M 101, 280NW1. See Dun. Dig. 833a, 10116, 10117, 10118.

3270. Procedure—Warrant.

Indication by court that instructions given were requested by one of the parties, held error. 181M374, 232 NW624. See Dun. Dig. 9776(13).

3272.

3219 [1913 Stats.] is the same as 3266 [1927 Stats.].

Lawson v. M., 248NW658; note under §3265. A judgment of a sister state entered in pursuance of its illegitimacy statutes and intended for the support of the mother and child will be enforced by the courts of this state. *Ladd v. M.*, 285NW281. See Dun. Dig. 5207.

(a). State board of control or guardian may make settlement.

Paternity proceedings should be instituted regardless of property settlement between mother and father of illegitimate. *Op. Atty. Gen.* (121b-11), Sept. 3, 1935.

(c). Records private.

Confidential information given to child welfare board should be classed as privileged and its disclosure would be contrary to public interest. *Op. Atty. Gen.*, Dec. 29, 1933.

Justice of peace records are open to inspection of public except illegitimacy proceedings. *Op. Atty. Gen.* (851), July 1, 1935.

CHAPTER 18

Public Examiner

3274. Department established—Powers and duties.

Editorial note.—The powers and duties conferred by §§3274 to 3284, 3286, and 3286-1 to 3286-7, are transferred to the newly created office and department of public examiner. Section 3285 is the only section expressly repealed. See §53-1a, ante, and §§3286-8 to 3286-16, post. The old and the new provisions must be construed together.

Comptroller has no authority to comply with request to make audit of tally sheets of election. *Op. Atty. Gen.*, May 19, 1932.

Counties, cities, villages, towns, or school districts, except municipalities expressly or impliedly authorized by their charters, may not validly incur expense for examination of accounts and affairs by anyone other than the state comptroller. *Op. Atty. Gen.*, Mar. 31, 1933.

3275. Public examiner to be appointed by governor—Bond.

See note under §3274.

Since the office of public examiner was abolished by §53-44, no part of §3275 is longer in effect, and amount of bond of comptroller is to be fixed by commission of administration and finance pursuant to §53-46. *Op. Atty. Gen.* (980a-8), May 6, 1937.

3276. Duties—State offices, institutions, properties, etc.

See note under §3274.

3277. Reports of examinations—Violations of law.

See note under §3274. Petition for audit of affairs of city is not part of audit made by state examiner, and is not public record as defined in this section, but public examiner is not prohibited from divulging matter contained in such petition. *Op. Atty. Gen.*, May 28, 1932.

3278. Fees for examination of counties.—All the powers and duties conferred and imposed upon the public examiner in the foregoing sections shall be exercised and performed by him in respect to the offices, institutions, public property and improvements of the several counties of the state of Minnesota. At least once in each year, the public examiner shall visit, without previous notice, each of such counties and make a thorough examination of all accounts and records relating to the receipt and disbursement of the public funds and the custody of the public funds and other property. He shall prescribe and install systems of accounts and financial reports, that

shall be uniform so far as practicable for the same class of offices. A copy of the report of such examination shall be filed and subject to public inspection in the office of the public examiner, and another copy in the office of the county auditor of the county thus examined; provided, that if any such examination shall disclose malfeasance, misfeasance, or nonfeasance in the office of such county, such report shall be filed with the county attorney of said county, and it shall be the duty of such county attorney to institute such civil and criminal proceedings, as the law and the protection of the public interests shall require.

The county receiving such examination shall pay to the state the total cost and expenses of such examination, including the salaries paid to the examiners while actually engaged in making such examination, provided, that such salary charge shall not exceed \$10.00 per day. The appropriation accounts of the comptroller shall be credited with all collections made for any such examinations, and said moneys so collected are hereby appropriated for the use and purposes of said accounts. (G. S. '13, §3231; '13, c. 555, §5; Apr. 9, 1931, c. 125, and Apr. 20, 1931, c. 246.)

See note under §3274, ante.

Op. Atty. Gen., Apr. 13, 1933; note under §3286-1. Where county has made an excessive payment of clerk hire, county attorney has authority independent of the county board to institute an action to recover moneys disclosed by the comptroller's report to have been illegally paid out. Op. Atty. Gen., Jan. 9, 1932. A county may not hire a private auditor to investigate ditch account. Op. Atty. Gen., Apr. 13, 1933. A village may not employ a private auditor to examine alleged shortage in office of treasurer. Id.

§279. Cities of more than 50,000 inhabitants.

See note under §3274, ante. This section supersedes Duluth City Charter, §34, with reference to examination and publication of books and accounts of cities of first class. Op. Atty. Gen., Aug. 3, 1933.

§280. Other cities.

See note under §3274, ante. County attorney is not charged with the duty of instituting civil proceedings where examiner has found irregularities in the expenditure of moneys of a city of the fourth class, but need only prosecute criminal actions. Op. Atty. Gen., Apr. 1, 1931. The first reference to "Section 7" is intended to be "Section 6" and it is probable that the second reference to "Section 7" was intended to read "Section 5." Op. Atty. Gen., Apr. 1, 1931.

County attorney is not required to institute civil action on behalf of towns, villages or school districts to recover moneys illegally expended as disclosed by the report of the public examiner. Op. Atty. Gen., Aug. 14, 1931.

Council of New Ulm has right to employ private accountants to make audit of books of city. Op. Atty. Gen., Apr. 18, 1932.

This section does not prevent council from having audit made by private accountant but such private audit does not prevent subsequent audit by public examiner upon petition. Op. Atty. Gen., Mar. 24, 1933.

§281. School districts, towns and villages.

See note under §3274, ante. Op. Atty. Gen., Aug. 14, 1931; note under §3280. Op. Atty. Gen., Apr. 13, 1933; note under §3286-1. Where there are less than 10 freeholders in a school district, an examination of books and affairs may be had by resolution of board. Op. Atty. Gen., Feb. 20, 1934. School district cannot retain private accountants and pay for audit with school funds. Op. Atty. Gen. (353a-4), Aug. 15, 1935.

Where village council appoints a new water and light commission, council has no authority to examine and audit books of old commission. Op. Atty. Gen. (469b-6), Dec. 30, 1938.

§282. Gross earnings for taxation.

See note under §3274, ante. Accounting of railroad for gross earnings tax. State v. Illinois Cent. R. Co., 284NW360. See Dun. Dig. 9562.

§283. Subpoenas, witnesses, etc.

See note under §3274, ante.

§284. Refusal, obstruction, etc.

See note under §3274, ante.

§285. Biennial reports. [Repealed.]

Repealed Apr. 22, 1939, c. 431, Art. 4, §8. See §§3286-10 to 3286-14.

§286. Assistants and employees and bonds to be given.

See note under §3274, ante. Editorial note.—Limitation as to number of employees is removed by §3286-15, post.

The appointment of an assistant public examiner is at the pleasure of the comptroller, and an honorably discharged soldier was not entitled to a preference. State v. Rines, 185M49, 239NW670. See Dun. Dig. 7986.

§286-1. Examination of municipal records.—A petition for an examination under the provisions of Chapter 18, General Statutes 1923, of the books, records and accounts and affairs of any city, borough, village, town or school district shall in the case of a city, borough, village, or town be signed by at least three freeholders for each 100 inhabitants thereof, the number of which shall not be less than ten and in the case of a school district by not less than ten freeholders. Before such petition is delivered to the comptroller it shall be presented to the County Auditor of the County in which such city, borough, town, village, or school district is situated, who shall determine whether such petition is signed by the required number of freeholders and shall certify such fact thereon and such certificate shall be conclusive evidence thereof in any action or proceeding for the recovery of the costs, charges and expenses of any examination made pursuant to such petition. (Act. Apr. 19, 1929, c. 259, §1; Apr. 24, 1937, c. 415, §1.)

Sec. 2 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

See note under §3274, ante. Petition for audit of affairs of city is not part of audit made by state examiner, and is not public record as defined in this section, but public examiner is not prohibited from divulging matter contained in such petition. Op. Atty. Gen., May 28, 1932.

Unless authorized to the contrary by charter provisions, express or implied, village is not authorized to expend public funds to pay private auditors of its affairs. Op. Atty. Gen., Apr. 13, 1933.

Neither Duluth board of education nor Duluth teachers' retirement fund association were liable for cost of audit of records of retirement fund association where no request was made for its examination. Op. Atty. Gen., Oct. 9, 1933.

School district cannot retain private accountants and pay for audit with school funds. Op. Atty. Gen. (353a-4), Aug. 15, 1935.

§286-2. To be made upon written request.—Upon a written request signed by a majority of the members of the governing body of any city, village, town or school district, the comptroller shall examine the books, records, accounts and affairs of the same, but such written request shall be presented to the clerk or recording officer of such city, village, town or school district, before being presented to the comptroller, who shall determine whether the same is signed by a majority of the members of such governing body and, if found to be so signed, shall certify such fact, which certificate shall be conclusive evidence thereof in any action or proceeding for the recovery of the costs, charges and expense of any examination made pursuant to such request. (Act Apr. 19, 1929, c. 259, §2.)

See note under §3274, ante. Audit of examination by certified public accountant may not be accepted in lieu of examination by public examiner. Op. Atty. Gen., June 16, 1932.

§286-3. Municipality to pay cost of examination.—Upon the examination of the books, records, accounts and affairs of any city, including cities of the first class, village, town or school district, as provided by law, such city, village, town or school district shall be liable to the state for the total cost and expenses of such examination, including the salaries paid to the examiners while actually engaged in making such examination, provided, that such salary charge shall not exceed \$10.00 per day. The appropriation accounts of the comptroller shall be credited with all collections made for any such examinations, and said moneys so collected are hereby appropriated for the uses and purposes of said accounts. (Act Apr. 19, 1929, c. 259, §3.)

See note under §3274, ante.

3286-4. Collection for examination.—On July first of each year the state treasurer shall certify to the state auditor all uncollected drafts for the examination of any city, village, town or school district which have remained unpaid for a period of three months from the date of such draft. Upon receipt of such list the auditor shall forthwith notify the clerk or recording officer of each city, village, town or school district, against which the state has a claim, that if the same is not paid, with interest from the date of the draft, within 90 days, the full amount thereof will be certified to the auditor for the county or counties in which such city, village, town or school district is situated, for collection by special tax levy as herein provided. Such notice shall be served by registered mail and the deposit thereof in the United States mail shall constitute due and legal service thereof upon said city, village, town or school district. (Act Apr. 19, 1929, c. 259, §4.)

See note under §3274, ante.

3286-5. Municipalities may contest claim upon notice.—On or before September first following service of said notice, any such city, village, town or school district may serve notice in writing, upon the attorney general that it desires to contest the legality of the state's claim, whereupon such claim shall be withdrawn from the state auditor, and the attorney general shall forthwith file with the clerk of the district court of the county in which such city, village, town or school district, or major part thereof, is situated, a verified statement of the state's claim, duly itemized, and serve upon the clerk of such city, village, town or school district, by registered mail, a copy of such statement. Such city, village, town or school district may file with the clerk of such district court, within ten days after the service of such statement upon it, verified objections to the state's claim, and such district court shall thereupon summarily, in or out of term hear and determine the amount due the state, if any, for such examination, at a time and place fixed by the court therefor. The clerk of such court shall certify to the county auditor of the county or counties in which such city, village, town or school district is situated, the amount so determined by the court to be due to the state, if any. (Act Apr. 19, 1929, c. 259, §5.)

See note under §3274, ante.

3286-6. State Auditor to certify amount due.—On October first of each year, the state auditor shall certify the respective amounts due the state from the various cities, villages, towns and school districts, as shown by the list so filed by the treasurer, and not withdrawn therefrom, including interest computed to July first following, to the county auditor of the county in which any such city, village, town or school district is in whole or in part situated. The county auditor, upon receiving a certificate from the state auditor or a certificate from the clerk of court, as hereinbefore provided, shall include the amount of the state's claim, with 25 per cent added, in the tax levy for general revenue purposes of the municipality liable therefor, and such additional levy shall not be within any limitation imposed by law upon the amount of taxes which may be levied for revenue purposes. Upon completion of the June tax settlement following such levy the county treasurer shall deduct from the amount apportioned to the municipality for general revenue purposes, the amount due the state under this act, including interest, and remit the same to the state treasurer. (Act Apr. 19, 1929, c. 259, §6.)

See note under §3274, ante.

3286-7. Inconsistent acts repealed.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Act Apr. 19, 1929, c. 259, §7.)

See note under §3274, ante.

3286-8. Public Examiner to be appointed—Salary—Term—Bond.—The department of the public examiner

shall be under the supervision and control of the public examiner, which office is hereby created. The public examiner shall be appointed by the governor, by and with the advice and consent of the senate, for a six year term, and until his successor is duly appointed and qualifies. The term of the first public examiner shall expire February 1, 1945. His salary shall be \$5,000 per year, payable semi-monthly. He shall furnish a bond to the state in the sum of \$25,000. (Act Apr. 22, 1939, c. 431, Art. 4, §1.)

Appropriation for salary of comptroller should be transferred and used for payment of salary of public examiner for month of June, 1939. Op. Atty. Gen. (930a-14), June 13, 1939.

3286-9. Duties of Public Examiner.—The public examiner shall post-audit and make a complete examination and verification of all accounts, records, inventories, vouchers, receipts, funds, securities, and other assets of all state departments, boards, commissions, and other state agencies at least once a year and oftener if deemed necessary, or as directed by the governor or the legislature. Audits may include detailed checking of every transaction or test checking as the public examiner deems best. The books of the state treasurer and the state auditor may be examined monthly. The public examiner shall see that all requirements of this act and other provisions of law respecting the installation and use of accounting systems, books, records, and forms are complied with by all departments and agencies of the state government. (Act Apr. 22, 1939, c. 431, Art. 4, §2.)

3286-10. To file written reports.—(a) The public examiner shall file a written report covering his audits with the department concerned, the governor, and the legislature, and, if he deems necessary, present special reports to the legislative emergency committee for their consideration and action.

(b) Such audit reports shall set forth:

- (1) Whether all funds have been expended for the purposes authorized in the appropriations therefor;
- (2) Whether all receipts have been accounted for and paid into the state treasury as required by law;
- (3) All illegal and unbusinesslike practices, if any;
- (4) Recommendations for greater simplicity, accuracy, efficiency, and economy; and
- (5) Such other data, information, and recommendations as the public examiner may deem advisable and necessary. (Act Apr. 22, 1939, c. 431, Art. 4, §3.)

3286-11. Duties when violations are discovered.—If any such public examiner's examinations shall disclose malfeasance or misfeasance or nonfeasance in office on the part of any officer or employe, a copy of such report shall be signed and verified and it shall be the duty of the public examiner to file such report with the secretary of the legislative emergency committee and the attorney general. It shall be the duty of the attorney general to institute and prosecute such civil proceedings against such delinquent officer or employe, or upon his official bond, or both, as may be appropriate to secure to the state the recovery of any funds or other assets misappropriated, and he shall cause such criminal proceedings to be instituted by the proper authorities as the evidence may warrant. (Act Apr. 22, 1939, c. 431, Art. 4, §4.)

3286-12. Shall collect information from municipalities.—It shall be the duty of the public examiner or his designated agent to collect annually from all town, city, village, county and other local units of government information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, borrowing, debts, principal and interest payments on debt, and such other information as may be needful. The data shall be supplied upon such blanks as the public examiner shall prescribe and it shall be the duty of all local public officials so called upon to fill out properly and return promptly all

blanks so transmitted. If necessary the public examiner or his assistants are authorized to examine local records, in order to complete or verify the information. (Act Apr. 22, 1939, c. 431, Art. 4, §5.)

3286-13. Shall make and file annual report.—The public examiner shall make and file annually in his office a summary report of the information collected, with such compilations and analyses and interpretations as may be deemed helpful. (Act Apr. 22, 1939, c. 431, Art. 4, §6.)

3286-14. Shall investigate accounting and budgeting systems.—The public examiner shall inquire into the accounting and budgeting systems of all local units of government and shall prescribe suitable systems of accounts and budgeting, and forms, books, and instructions concerning the same. At the request of any local unit of government the public examiner may install such systems. (Act Apr. 22, 1939, c. 431, Art. 4, §7.)

3286-15. Shall be subject to prior laws—Employees—Expenses of local examinations—Repeal.—Subject to the provisions of this chapter, the public examiner shall have and exercise all the rights, powers, and duties conferred upon the former public examiner by Mason's Minnesota Statutes of 1927, Sections 3274, 3275, 3276, 3277, 3279, 3280, 3281, 3282, 3283, 3284, and 3286, and the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 3278, 3286-1, 3286-2,

3286-3, 3286-4, 3286-5, 3286-6, and 3286-7, and acts amendatory thereof or supplementary thereto, and all the provisions of said statutes shall apply to and govern all matters therein specified respecting the office and department of the public examiner created by this act, except that any limitations therein contained as to the number of employes to be appointed by the public examiner shall not apply; provided, that the public examiner shall account separately for all of the charges, receipts, and disbursements of the department of public examiner pertaining to the examining and auditing of all school districts, towns, cities, villages, and boroughs for which charges are made, and after allocating to the expense thereof a proper pro-rata share of the administrative expense, such functions of the department of public examiner shall be sustained, so far as practicable, by the funds collected therefor from such political subdivisions as otherwise provided by law. Mason's Minnesota Statutes of 1927, Section 3285, is hereby repealed. (Act Apr. 22, 1939, c. 431, Art. 4, §8.)

3286-16. Powers and duties of comptroller, board of audit and former public examiner transferred.—The powers and duties of the board of audit and of the former public examiner, heretofore transferred to, vested in, and imposed upon the comptroller, are hereby transferred to, vested in, and imposed upon the public examiner created by this act. (Act Apr. 22, 1939, c. 431, Art. 4, §9.)

CHAPTER 19

Insurance

3288-1. Public emergency declared.—It is hereby declared that a public emergency exists affecting the health, comfort, and safety of the people of this State, growing out of the abnormal disruption in economic and financial processes, the declaration of a banking holiday in this State and other states and by the Federal Government, the inability of insurers to carry on in a normal and ordinary manner the functions of their business owing to the situation now existing with reference to currency, specie and checks, and other facts and circumstances curtailing and hampering the conduct of the business of insurance in a normal and ordinary manner. (Act Mar. 13, 1933, c. 78, §1.)

3288-2. May suspend provisions of law relating to insurance—Notice.—During the period of the emergency as hereinafter defined, the Commissioner of Insurance shall have the power, with the approval of the Governor, to suspend, in whole or in part, any provision of the laws relating to insurance. In addition to such power and not in limitation thereof, he shall also have power, with the approval of the Governor, during such period to make, rescind, alter and amend rules and regulations imposing any conditions upon the conduct of the business of any insurer which may be necessary or desirable to maintain sound methods of insurance and to safeguard the interests of policyholders, beneficiaries, and the public generally during such period. In the discretion of the Commissioner of Insurance, such rules or regulations may be published in a manner to be prescribed by him or may be otherwise brought to the attention of the insurer or insurers affected in a manner to be prescribed by the Commissioner of Insurance. (Act Mar. 13, 1933, c. 78, §2.)

3288-3. Law shall supersede existing laws.—Such rules or regulations may be inconsistent with existing law, and in such event shall supersede such existing law inconsistent therewith. (Act Mar. 13, 1933, c. 78, §3.)

3288-4. Rule to become ineffective, when.—Such rules or regulations of the Commissioner of Insurance adopted pursuant to this Act shall become ineffective upon the termination of such emergency and thereupon all the existing law which may have been suspended or superseded pursuant to this Act shall become effective. (Act Mar. 13, 1933, c. 78, §4.)

3288-5. Effective—termination.—The period of the emergency herein provided for shall be from the date of the taking effect of this Act until such date as the legislature may, by joint resolution, designate to be the termination thereof or, if the legislature be not in session, the date so designated by proclamation of the Governor. (Act Mar. 13, 1933, c. 78, §5.)

3288-6. Violation a misdemeanor.—Any violation of the provisions of this Act or of any rule or regulation adopted by the Commissioner of Insurance pursuant thereto, shall be a misdemeanor. (Act Mar. 13, 1933, c. 78, §6.)

3288-7. Definitions.—The word "insurer" as used in this Act includes all corporations, associations, societies, and orders to which any provision of the laws relating to insurance is applicable. (Act Mar. 13, 1933, c. 78, §7.)

3288-8. Provisions separable.—If any provision of this Act, or the application of such provision to any insurer or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to insurers or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Act Mar. 13, 1933, c. 78, §8.)

3288-9. Effective March 15, 1933.—This Act, being an Emergency Act, shall be of no force or effect after March 15, 1935. (Act Mar. 13, 1933, c. 78, §9.)

3294. Commissioner may appoint examiner.
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.