

GENERAL STATUTES

OF

MINNESOTA

1913

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8248. Insolvent or insufficient sureties—Whenever in its judgment any of the sureties on such bond have become insolvent, or for any cause are no longer proper or sufficient sureties, the obligee may require the contractor to furnish a new or additional bond within ten days; and thereupon, if so ordered by such obligee, all work on such contract shall cease until such new or additional bond is furnished. If such bond be not furnished within such time, the obligee may at its option determine the contract, and complete the same as the agent and at the expense of such contractor and his sureties. (4538)

Cited (33 Sup. Ct. 17, 226 U. S. 276, 57 L. Ed. —).

8249. Limit of time to bring action—No action shall be maintained on any such bond unless within ninety days after the completion of the contract and acceptance of the building by the proper public authorities, the plaintiff shall serve upon the principal and his sureties a written notice specifying the nature and amount of his claim and the date of furnishing the last item thereof, nor unless the action is begun within one year after the service of such notice. (R. L. § 4539, amended '09 c. 413 § 1)

94-45, 101+940. Effect of amendment of 1909 as to notice (115-382, 132+289).

A change in the remedy without substantial modification of the obligation of the contract is all that is effected by applying to an action on the bond of a contractor the provision of 1909 c. 413 changing the requirements in force when the bond was executed (33 Sup. Ct. 17, 226 U. S. 276, 57 L. Ed. —).

8250. Actions for fines, forfeitures, and penalties—Collusion—Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or who by special provisions of law are authorized to recover them; and, whether prosecuted by public officers or by private persons, shall be governed by the same rules as other civil actions, except as herein otherwise prescribed. When an action is brought for a penalty, the amount of which is limited by law, it may be brought for the amount so limited, and upon trial the amount recovered shall be in proportion to the offence. Recovery of a judgment for a penalty or forfeiture, by collusion between the parties and with intent to save the defendant from the consequences contemplated by law, where the same is given wholly or partly to the prosecutor, shall not prevent a recovery of the same by another person. (4540)

Section permissive, and does not exclude attorney general (101-277, 112+269, 20 L. R. A. [N. S.] 1127).

8251. Fines, how disposed of—Fines and forfeitures not specially granted or appropriated by law shall be paid into the treasury of the county where the same are incurred. (4541)

47-521, 50+700; 116-101, 133+469.

8252. Prosecution for fines, etc.—Court—Commitment—All fines and forfeitures imposed as a punishment for any offence or for the violation of any duty imposed by statute may be prosecuted for and recovered by indictment in the district court, or, when the amount or value thereof does not exceed one hundred dollars, before a justice of the peace, who shall have jurisdiction therefor concurrently with the district court; and in all cases of the imposition of a fine pursuant to statute, as punishment for any offence, the offender may be committed until the same is paid or he is otherwise discharged according to law. (4542)

29-187, 12+529; 38-143, 36+443; 55-183, 56+688; 84-367, 87+916; 117-173, 134+509.

CHAPTER 86

ACTIONS TO VACATE CHARTERS, ETC., AND TO PREVENT USURPATIONS

8253. To annul act of incorporation—Fraud—The attorney general may bring an action in the name of the state against a corporation to annul the act of incorporation, or of renewal thereof, on the ground that such act was procured upon some fraudulent suggestion, or concealment of a material fact,

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by some or all of the incorporators, or with their knowledge and consent. (4543)

88-329, 92+1112; 96-255, 104+948, 953, 1 L. R. A. (N. S.) 826, 6 Ann. Cas. 905.

8254. To vacate charter, etc.—An action may be brought by the attorney general in the name of the state to vacate the charter or annul the existence of a corporation, other than municipal, whenever such corporation:

1. Offends against any act creating, altering, or renewing it;
2. Violates any provision of law whereby it forfeits its charter by abuse of its powers;
3. Forfeits its privileges or franchises by failure to exercise its powers;
4. Does or omits any act amounting to a surrender of its corporate rights, privileges and franchise; or
5. Exercises a franchise or privilege not conferred upon it by law.

The attorney general shall bring action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved, and in every other case in which satisfactory security shall be given to indemnify the state against costs and expenses. (4544)

36-246, 258, 30+816. See 35-222, 28+245; 40-213, 224, 40+1020, 3 L. R. A. 510; 96-255, 104+948, 953, 1 L. R. A. [N. S.] 826, 6 Ann. Cas. 905.

8255. For usurpation of office, etc.—Whenever the attorney general has reason to believe that a cause of action can be proved, he may bring an action in the name of the state, upon his own information or upon the complaint of a private person, against the person offending, in the following cases:

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office or any franchise, or any office in a corporation created by authority of the state;

2. When any public officer does or suffers an act which by law causes a forfeiture of his office; or

3. When an association or number of persons acts as a corporation without being duly incorporated. (4545)

3-240, 164, 74 Am. Dec. 749; 15-221, 172, 2 Am. Rep. 116; 25-215; 25-340; 41-123, 42+858; 57-411, 59+495; 59-6, 60+676, 50 Am. St. Rep. 389; 69-108, 71+910; 82-68, 84+495. See 27-38, 6+408; 48-497, 51+613; 96-255, 104+948, 953, 1 L. R. A. (N. S.) 826, 6 Ann. Cas. 905. Common law powers of attorney general (101-277, 112+269, 20 L. R. A. [N. S.] 1127). See note under § 3186.

8256. To vacate letters patent—The attorney general may bring an action in the name of the state to vacate or annul letters patent granted by the state, whenever he has reason to believe:

1. That such letters were obtained by means of some fraudulent suggestion or concealment of a material fact, made by or with the consent or knowledge of the person to whom they were issued;

2. That such letters were issued through mistake, or in ignorance of a material fact; or

3. That the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have by any other means forfeited the interest acquired thereunder. (4546)

8257. Relator to be joined—When an action is brought by virtue of this chapter on the complaint or information of any person having an interest therein, the name of such person shall be joined with the state as plaintiff. (4547)

3-240, 164, 74 Am. Dec. 749; 41-123, 42+858.

8258. Usurping office—Complaint—Judgment—Whenever such action is brought against a person for usurping an office, the attorney general, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, and his right thereto; and in every such case judgment may be rendered upon the right of the defendant, and also upon that of the person so alleged to be entitled, if justice shall require. (4548)

41-123, 42+858.

8259. Claimant to have office—If judgment be rendered in favor of the person so alleged to be entitled, he may take upon himself the execution of

the office, and, by order of the court, may be put in possession thereof, and of the books and papers belonging thereto; and he may recover, by action, any damages sustained by him by reason of such usurpation. (4549)

41-123, 42+858.

8260. Claimants may be joined—When there are several claimants to the same office or franchise, one action may be brought against all, to determine their respective rights. (4550)

61-56, 63+176.

8261. Judgment for usurpation—Fine—When a person or corporation is adjudged guilty of usurping, intruding into, or unlawfully holding or exercising any office, franchise, or privilege, the court shall render judgment excluding the defendant from the office, franchise, or privilege, and may also impose a fine of not more than one thousand dollars. (4551)

41-123, 42+858.

8262. Corporation, when dissolved—If the court shall determine that a corporation, by neglect, abuse, or surrender, has forfeited its corporate rights, privileges, and franchises, it shall adjudge that it be excluded therefrom and be dissolved. (4552)

8263. Costs—If judgment be rendered in such action against a corporation, or against persons claiming to be such, the court may cause the costs therein to be collected by execution against such persons, or by process against the directors or other officers of such corporation. (4553)

8264. Judgment against corporation—Receiver, etc.—When such judgment is rendered against a corporation, the court may restrain it, appoint a receiver of its property, and make distribution thereof among its creditors, for which purpose the attorney general shall forthwith institute proceedings. (4554)

8265. Judgment roll—Copy filed—Upon rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, the attorney general shall forthwith cause a copy of the judgment roll to be filed with the secretary of state. (4555)

CHAPTER 87

SPECIAL PROCEEDINGS

MANDAMUS

8266. To whom issued, etc.—The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion. (4556)

1. When will lie—The writ will only lie to compel the performance of acts which the law specially enjoins as a duty resulting from an office, trust or station (92-397, 100+105). It will not lie to control the action of the governor or other executive officers of the state even as to ministerial duties (4-309, 228; 19-103, 74, 18 Am. Rep. 330; 20-363, 314; 24-517; 27-1, 6+341; 28-50, 8+902; 29-555, 12+519; 40-174, 41+817. See 3-190). It will not lie to test the right to a public office (2-180, 148; 15-221, 172, 2 Am. Rep. 116; 15-455, 369; 17-113, 90; 25-340; 51-355, 53+716); or to enforce rights which are doubtful (9-139, 130; 17-113, 90; 17-429, 406; 18-40, 21; 27-458, 8+768; 32-501, 21+722; 58-514, 60+338; 95-442, 104+556); or to control discretion (32-324, 20+238, 50 Am. Rep. 575; 38-397, 37+949; 44-549, 47+163; 60-510, 62+1135; 69-429, 72+705; 72-37, 74+1024; 74-371, 77+221. See as to compelling the exercise of discretion (58-275, 59+1015; 66-266, 68+1081; 77-302, 79+960; 86-350, 90+781); or to compel an officer to do an unauthorized act (2-346, 298; 26-521, 6+337; 27-90, 6+421; 32-275, 20+196; 33-381, 23+545; 92-397, 100+105); or where it would prove unavailing (33-381, 23+545; 43-328, 45+606); or when there is other adequate relief (see § 8267 note 2); or to control internal affairs of foreign corporation (109-168, 123+417, 134 Am. St. Rep. 764). Not a writ of right (95-442, 104+556). It will lie to compel calling of meeting of stockholders of domestic corporation (109-168, 123+417, 134 Am. St. Rep. 764). It will not lie to regulate the affairs of unincorporated societies or asso-