

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the
Legislature, both new and amendatory, and notes showing repeals,
together with annotations from the various courts, state
and federal, construing the constitution, statutes,
charters and court rules of Minnesota



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CHAPTER 44

Drainage

STATE DRAINAGE COMMISSION [DEPARTMENT OF DRAINAGE AND WATERS]

§6634. Department of drainage and waters.

Laws 1931, c. 186, ante, §§53-23a to 53-23i, creates the Department of Conservation and transfers to it the powers of the Department of Drainage and Waters.

§6635. Powers of commissioner of drainage and waters.—Subd. (a). The commissioner of drainage and waters established by this act, shall have power to construct as hereinafter provided, any ditch, drain or other watercourse within the State of Minnesota, and such ditch, drain or other watercourse may in whole or in part follow and consist of the bed of any creek, stream or river, whether meandered or not, and he may widen, deepen straighten, change, lower or drain the channel or bed of any creek, river, lake or other natural watercourse, whether navigable or whether meandered or not, and may construct new and additional outlets to any marshy, shallow or meandered lake for the purpose of draining the same, and may follow and extend the same into or through any city or village within the state far enough to secure a sufficient fall and flow of water to reasonably effectuate the purpose for which the work is extended, and may confine any such creek, river or other natural watercourse by means of dykes, levees and embankments to its natural or artificial bed, as laid out, and shall also, whenever it shall appear to his satisfaction that the drainage of any territory may be made more effective by the construction and maintenance of dams, or other works, for retaining and controlling the flood waters, tributary to such territory, have the power to construct or acquire such dams or other work, and flowage rights therefor, and to maintain and operate the same.

Provided, that when in any such proceedings, the waters of any creek, river or other watercourse are diverted from their natural bed by such artificial ditch or drain, such ditch or drain shall as nearly as practicable, follow the general direction of such creek, river or watercourse, and terminate therein.

And, provided further, that no meandered lake shall be drained under the authority of this act, except in case such lake is normally shallow and grassy and of a marshy character or except in case such meandered lake is no longer of sufficient depth and volume to be capable of any beneficial public use of a substantial character for fishing, boating or public water supply.

Provided further, that no meandered lake shall be drained or lowered under the authority of this act unless petitioned for by at least sixty per cent of the legal voters residing within four miles of such lake, who are freeholders, whose lands are affected as shown by the viewers' report and filed in the office of the clerk of the district court of the county in which such proceedings are had.

Subd. (b). Said commissioner of drainage and waters in addition to the authorities now granted under the provisions of said Chapter 44 of the General Statutes of 1913 [same chapter in Mason's Minn. St. 1927], is hereby authorized to make all necessary investigations to ascertain and determine the topographical features of the various watersheds of the state, viz.: the several tributaries of the Minnesota and Mississippi rivers and other rivers in the state, and ascertain and determine the works necessary to secure proper drainage outlet for the lands in each basin, and the construction of the necessary works to improve such outlet and control flood waters therein, including as near as can be ascertained, the probable run-off waters of each of said basins and the important streams entering therein and shall ascertain and secure the necessary facts to determine what streams have natural facilities adapted to the creation of water power and the extent of the horsepower that can be secured, or other information that said commissioner shall deem necessary and essential to the proper planning of the work of each basin to supply proper drainage outlet and control of flood waters, including the conservation and use of such waters.

Subd. (c). Said commissioner is also authorized to investigate into the methods employed in the manufacture of drain tile, to make research and experimentation with a view to improving the quality of drain tile; to make investigations into the cause or causes of failure that may occur in tile drains after construction, and whenever requested by the courts, county boards, or engineers in public drainage proceedings, said commissioner shall make tests for the presence of elements in the soil and soil waters destructive to drain tile and such other tests and investigations as may be requested by the said courts, county boards or engineers, said tests to be requested, made and reported in accordance with regulations to be furnished by said commissioner.

Subd. (d). All drain tile to be used in the construction of drains established in public drainage proceedings within the state shall comply with the requirements of the American Society for Testing Materials Standard Specifications For Drain Tile except where the depths to which the drains are to be laid or conditions of the soil, in the opinion of the engineer, requires tile of a special and higher quality. The commissioner shall cause said specifications to be published and made available to officials, contractors and manufacturers concerned with public drainage proceedings for their information and guidance. It shall be the duty of the commissioner to make inspection and tests of materials used in the manufacture of drain tile and of the manufactured product in any or all of the drain tile manufacturing plants located within the state where drain tile is made and/or sold to the general public, at such time or times and at such intervals as in the opinion of the commissioner may be found advisable;

to keep a record of and publish reports of the results of such tests for the information of officials concerned in public drainage proceedings, tile manufacturers and others within the state who may be concerned with land drainage. For the purpose of making said inspection and tests, the commissioner or his duly authorized representatives, shall have free access to materials, manufacturing plants and appurtenances and to the manufactured drain tile at all times, and samples on which to make tests and inspection shall be furnished by the manufacturers without cost to the state.

Subd. (e). It shall be the duty of all manufacturers of drain tile within the state who sell their products to the general public, to equip and install as a part of each manufacturing plant a first-class and up-to-date testing machine on which tests to determine the bearing strength of drain tile may be made by the commissioner, or his duly authorized representatives, the general design and capacity of which testing machine shall be approved by the commissioner and shall be erected and completed by the manufacturers ready for use within 90 days of the passage of this act, provided, however, that the original cost to any one manufacturer of drain tile by reason of the installation of the testing machine herein provided, shall in no instance be made to exceed the sum of \$250.00.

Subd. (f). Said commissioner shall also ascertain and secure the necessary information from the various parts of the state to enable him to make and furnish to engineers of the state all necessary information as to the proper size of tile and the discharge thereof under various conditions, including information as to the proper size and discharge of open ditch construction and such information shall be included in the rules to be furnished and followed as provided in section 1, chapter 441 of the Laws of 1917 [§ 6635A].

Subd. (g). Said commissioner is hereby authorized to cooperate and enter into agreement with the Minnesota State Agricultural Experiment Station and The United States government or any department thereof whenever in the opinion of said commissioner such cooperation is advisable for the purposes mentioned in this act. (As amended Apr. 25, 1931, c. 350.)

§6656. County bonds.

Laws 1929, c. 41, authorizes bonds to fund floating indebtedness incurred in cleaning and repairing ditches.

§6657. Interest—Premium on bonds.

State tax commission has authority to order a refundment of any excess of interest paid on a ditch assessment if approved by the county board. Op. Atty. Gen., July 2, 1931.

County may charge property owners 6 per cent interest on ditch assessments by resolution of the county board when the ditch in question was financed by bonds bearing 4% per cent interest. Op. Atty. Gen., July 2, 1931.

§6667. Additional powers of commission.

Act Feb. 27, 1929, c. 42, amended by Act Mar. 18, 1929, c. 74, authorizes and directs commissioner of drainage and waters to reconstruct outlet in Tamarack river of state ditch No. 2, Marshall county. Omitted as local.

COUNTY DRAINS AND DITCHES [COUNTY DRAINS AND JUDICIAL DRAINS]

§§6674 to 6676. [Repealed].

Laws 1915, c. 300.

Not unconstitutional as giving one county authority to assess property in another. Co. of Todd v. C., 234NW593. See Dun. Dig. 2820.

Laws 1915, c. 300, §6.

Laws 1915, c. 300, §6, was not repealed by Laws 1921, c. 508, §1, so as to prevent the continuance of a proceeding for the repair of a ditch under the former section. Co. of Todd v. C., 234NW593. See Dun. Dig. 2835a.

Laws 1921, c. 508, §1.

Laws 1915, c. 300, §6, was not repealed by Laws 1921, c. 508, §1, so as to prevent the continuance of a proceeding for the repair of a ditch under the former section. Co. of Todd v. C., 234NW593.

§6678. [Repealed].

Bond covers not only negligence in survey but also negligence in supervising construction and issuance of certificates through which contractors may obtain payments as work progresses. That auditor was also negligent in issuing warrants upon certificates does not relieve the surety of the engineer. Subcontractor, who received excess money, and his surety were not necessary parties to action on the bond of the engineer. 176M15, 222NW289.

Personal notice is not necessary, the notice required by the statute being sufficient to confer jurisdiction. 179M566, 229NW878.

§6681.—[Repealed].

Personal notice is not necessary, the notice required by the statute being sufficient to confer jurisdiction. 179M566, 229NW878.

§6684. [Repealed].

Personal notice is not necessary, the notice required by the statute being sufficient to confer jurisdiction. 179M566, 229NW878.

§6691. [Repealed].

Laying the tile of a county ditch at a depth substantially less than that required by the contract is a breach thereof, although done by agreement with the engineer. 175M60, 220NW423.

Failure to complete ditch—duties of county—remedies—liability of surety—waiver. 175M60, 220NW423.

§6694. [Repealed].

Bond covers not only negligence in survey but negligence in supervising construction and issuance of certificates through which contractors may obtain payments as work progresses. That auditor was also negligent in issuing warrants upon certificates does not relieve the surety of the engineer. Subcontractor, who received excess money, and his surety were not necessary parties to action on the bond of the engineer. 176M15, 222NW289.

§6699. County boards authorized to issue ditch bonds.

Bonds to fund floating indebtedness incurred in cleaning and repairing ditches authorized by Laws 1929, c. 41.

§6703. [Repealed].

A lien for an assessment for the cost of a county ditch does not attach until auditor's assessment list and statement was filed for record in the office of Register of Deeds. 173M223, 217NW101.

§6705. [Repealed].

Where auditor's assessment list and statement was not filed until eighteen months after the date of a guaranty to protect mortgagee against liens or incumbrances superior to the mortgage, held that the guaranty was not violated. 173M223, 217NW101.

§6717-2. [Repealed].

This provision provided due process of law. 177M598, 225NW909.

§6732. [Repealed].

Liability of one negligently permitting open public drain to become obstructed so as to flood his neighbor's land. 177M287, 225NW152.

§6734. [Repealed].

Claims for expense may be allowed without notice to petitioners. In the absence of fraud or mistake the determination by the county board is final unless appeal is taken. 175M8, 220NW157, 958.

Fees allowed attorney for petitioners is valid general primary charge against county, though proceedings were subsequently dismissed. Op. Atty. Gen., Feb. 14, 1929.

§§6769-6771. [Repealed].**Annotations to §6769.**

In action on bond of petitioners for a consolidated judicial ditch, the principals and sureties are liable according to its terms, though the court was without authority to carry the ditch to completion and the proceeding was dismissed. 181M481, 233NW294. See Dun. Dig. 2833.

County was entitled to recover on bond, expenses incurred after petition was filed and before its dismissal. 181M481, 233NW294.

§6840-1. Definitions.

One having a mere option to purchase land is not a "resident owner" or "resident free holder" and cannot sign a petition under section 6840-54. Op. Atty. Gen., June 2, 1931.

§6840-3. Petition—Signatures—Bond.

Petition for ditch held signed by the requisite number of qualified petitioners. 172M295, 215NW204.

Petitioners cannot withdraw their names from the petition after the court has acted upon it. 172M295, 215NW204.

Only the land over which the ditch passes is required to be described in the petition. 172M295, 215NW204.

In a proceeding to construct judicial ditch under laws 1925, c. 415, the petition need be signed only by majority of residence owners, or by owners of 51% of the land affected, not by owners of lands benefited; such lands not being known until after survey. 172M295, 216NW229.

In proceeding to establish a judicial ditch where viewers' report was referred back to them for further consideration, and they made amended report, which apparently did not include additional lands as benefited, and which was approved and adopted by court, that certain land lying at upper end of ditch and which was higher than any other in district was omitted from assessment, did not constitute reversible error. 172M295, 216NW229.

In action on bond of petitioners for a consolidated judicial ditch, the principals and sureties are liable according to its terms, though the court was without authority to carry the ditch to completion and the proceeding was dismissed. 181M481, 233NW294. See Dun. Dig. 2833, 9107.

§6840-12. Field books and maps—Plans—Modification, etc.

Act authorizes court to make changes in the improvement petitioned for as are necessary to provide efficient drainage for all lands assessable for its construction, and to direct the construction of a new and better outlet. 171M478, 214NW285.

§6840-17. Viewers—Oath—Reports—Majority may act.

Assessment of viewers approved by the court

after hearing is presumed to be correct as to the land benefited until the contrary is shown. 172M295, 215NW204.

§6840-24. All benefited lands, etc., to be assessed.

Assessment of viewers approved by the court after hearing is presumed to be correct as to the property benefited until the contrary is shown. 172M295, 215NW204.

County ditch may make use of an old ditch and assess benefits which will actually accrue to the land comprised within the old ditch system. Op. Atty. Gen., June 20, 1931.

§6840-32. Appeals from county board or district court, etc.

172M295, 215NW204.

Certiorari will not lie in view of provision for appeal. Le Sueur and Rice Counties, etc., 230NW481(1).

§6840-34. Contracts and bonds—Contents.

Failure to complete ditch—duties of county—remedies—liability of surety—waiver. 175M60, 220NW423.

§6840-38. Defaults by contractor.

Laying the tile of a county ditch at a depth substantially less than that required by the contract is a breach thereof, although done by agreement with the engineer. 175M60, 220NW423.

Failure to complete ditch—duties of county—remedies—liability of surety—waiver. 175M60, 220NW423.

§6840-50. Same—Interest on.

In determining minimum amounts of ditch liens in the Red Lake Game Preserve which must be included in the purchase price of land, interest should be calculated at six per cent. Op. Atty. Gen., June 15, 1931.

State tax commission has authority to order a refundment of any excess of interest paid on a ditch assessment if approved by the county board. Op. Atty. Gen., July 2, 1931.

County may charge property owners 6 per cent interest on ditch assessments by resolution of the county board when the ditch in question was financed by bonds bearing 4% per cent interest. Op. Atty. Gen., July 2, 1931.

§6840-51. Same—Payment of.

Method of handling or computing interest on installments under this section indicated. Op. Atty. Gen., Dec. 24, 1929.

§6840-51 1/2. Disposition of penalties and interest on ditch assessments.—All interest and penalties accruing upon any tax levied by special assessment on real estate for drainage purposes where such assessments are payable to the county ditch fund shall be apportioned to such county ditch fund and credited to the particular drainage project for which such assessment was made. (Act Apr. 13, 1929, c. 182.)

§6840-53. Repairing and cleaning—etc.

Following State v. Holmes, 162M173, 202NW440, held that the drainage laws provide the exclusive method for the owner of land, assessed for the cost of repairing and improving a county ditch, to litigate the question whether his land is benefited and, if so, the amount of the benefit. 177M598, 225NW909.

§6840-54. Repair or improvement of drainage system—Petition—Engineer.

Repair provisions authorize the improvement of an existing drainage system by enlarging its capacity and constructing a better outlet, for which it makes ample provision for notice and hearing. 171M478, 214NW285.

It takes petition of majority of landowners owning 51% of land to clean out and repair ditch where cost will exceed 30% of original cost. Op. Atty. Gen., May 23, 1929.

County board may proceed with a repair, cleaning or improvement project with less than 51% of petitioning owners until it ascertains that proposed expenditure exceeds 30%, and this includes the appointing of an engineer to make a preliminary survey and report, and county board can go on from that point if sufficient owners come in and sign the petition. Op. Atty. Gen., June 2, 1931.

One holding a mere option on land was not an "owner" who could sign petition. Op. Atty. Gen., June 2, 1931.

§6840-61. Use of drainage systems as outlets.

This section applies only to drains constructed after its enactment. 176M339, 223NW 301.

§6840-81. Appeals to Supreme Court.

Certiorari will not lie in view of provision for appeal. Le Sueur and Rice Counties, etc., 230 NW481(1).

§6840-90. Consolidation of systems.

172M295, 215NW204; 172M295, 216NW229; note under §6840-3.

§6840-112. Dismissal of proceedings.

Petitioners cannot withdraw their names from the petition after the court has acted upon it by ordering a preliminary survey, but may dismiss the proceeding in the manner provided in this section. 172M295, 215NW204.

§6840-116. Hearing—Order for extension.

—At the time and place specified in said notice, if it shall appear that a petition in due form as required by this act has been filed and the notice of said hearing duly published, said board shall have jurisdiction of all property described in the ditch lien record referred to in said petition and all parties interested therein or holding any liens or incumbrances thereon and shall have full authority to hear all parties for or against granting such petition and may adjourn said hearing from time to time as they deem proper and if it shall further appear that default has been made in the payment of the interest or principal on the installments due on the ditch lien in said proceedings or many of the parties owning land covered by such ditch lien in said proceedings are unable to pay the installments of principal due or which shall come due, or that the conditions are such that extension of the time of payment of the amounts remaining unpaid on the principal of the ditch lien is necessary to protect the credit of, or prevent loss to, the county, and said board, after full hearing, shall so find, then said board shall have full authority and may by order direct that the payment of the whole or a specified portion of the amount of the several installments of the lien which is payable under the terms of the lien statement and supplemental lien statement, if any, in such proceedings as shown on the auditor's lien record, for any or all of the years 1930, 1931, 1932, 1933, 1934, 1935 and 1936, or one or more of such years shall be extended for a specified number of years not exceeding ten and direct the county au-

ditor to enter on the ditch lien record of the county a proper notation of such extension showing the portions of the principal of such lien that is so extended and the date to which the said extension is made. The entire unpaid principal of the lien so modified and extended pursuant to this section shall draw interest as though no extension had been made. The certificate of the county auditor that the said petition contains the requisite number of signatures of property owners, together with the resolution of the county board approving said petition, shall be conclusive evidence of the sufficiency thereof. (As amended Feb. 13, 1931, c. 16.)

Under this section as amended by Laws 1931, c. 129, county board may extend the time for payment of an installment of the principal of ditch liens which was spread with the 1930 taxes and is payable in 1931. Op. Atty. Gen., April 20, 1931.

§6840-133. Counties may purchase dredges in certain cases.—In any county of this state having an area of not more than 2500 square miles and open drainage ditches heretofore constructed of not less than 240 miles in length, the board of county commissioners, with the written consent of the commissioner of drainage and waters first procured and filed in the office of the county auditor, may purchase, in the manner provided by law for the purchase of road machinery and equipment, a dredge or ditching machine for use by the county in cleaning out, in the construction of new ditches and repairing county, judicial or state ditches. (As amended Mar. 9, 1929, c. 50.)

§6840-134. May lease machines to contractors.—The county board, in any county which has purchased such dredge or ditching machine, may employ the same in cleaning out, in the construction of new ditches and repairing county road ditches and may use, or allow the use thereof by a contractor, in the construction of new ditches and in the cleaning out or repairing of any county, judicial or state ditch heretofore constructed, on such terms and conditions as to rental and maintenance charges for the use thereof as the board shall determine to be fair and reasonable. The charges for such rental and the expense of maintenance of the machine, when employed by the board on any county, judicial or state ditch-cleaning or in the construction of new ditches or repair work, shall constitute a part of the cost of such construction, cleaning and repair operation and shall be paid out of the proper ditch fund provided for the maintenance of the ditch so cleaned, constructed, or repaired, all such charges for the use of the machine to be credited to the county. (As amended Mar. 9, 1929, c. 50, §2.)

CURATIVE AND MISCELLANEOUS PROVISIONS

In a proceeding to construct judicial ditch under laws 1925, c. 415, the petition need be signed only by majority of residence owners, or by owners of 51% of the land affected, not by owners of lands benefited; such lands not being known until after survey. 172M295, 216 NW229.