

1936 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 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.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1936

of a misdemeanor and it shall be the duty of the county attorney of each county to prosecute all violations of this act within his county. (Act Apr. 20, 1935, c. 226, §10.)

5887-71. Application of act.—The provisions of this act shall not apply to anyone culling his own poultry flocks, or to approved poultry extension spe-

cialists or county agricultural agents or home demonstration agents. (Act Apr. 20, 1935, c. 226, §11.)

Chapter 35A.—COLLECTION AGENCIES.

5888. To file bond with secretary of state—Conducting agency, etc.

A justice of the peace cannot act as collection agent without license. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

CHAPTER 36

Protection against Fire, and Regulation of Hotels and Restaurants

HOTELS, THEATERS AND OTHER BUILDINGS

5903. Defining hotels, restaurants, lodging houses, boarding houses, places of refreshment, and original container—religious and college buildings.—Every building or structure or enclosure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public to be an enclosure where sleeping accommodations are furnished to the public whether with or without meals and furnishing accommodations for periods of less than one week shall for the purpose of this act be deemed an hotel.

Every building or other structure or enclosure, or any part thereof and all buildings in connection, kept, used or maintained as, or advertised as, or held out to the public to be an enclosure where meals or lunches are served without sleeping accommodations, and furnishing accommodations for periods of less than one week, shall for the purpose of this act be deemed to be a restaurant, and the person or persons in charge thereof, whether as owner, lessee, manager or agent, for the purpose of this act shall be deemed the proprietor of such restaurant, and whenever the word "restaurant" shall occur in this act, it shall be construed to mean such structure as described in this section.

Every building or structure, or any part thereof, kept, used as, maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished to the public as regular roomers, for periods of one week or more, and having five or more beds to let to the public, shall, for the purpose of this act, be deemed a lodging house.

Every building or structure or enclosure, or any part thereof, used as, maintained as, or advertised as, or held out to be an enclosure where meals or lunches are furnished to five or more regular boarders for periods of one week or more, shall for the purpose of this act, be deemed a boarding house. Every building or structure, or any part thereof, used as, maintained as, or advertised as, or held out to be a place where confectionery, ice cream, sandwiches, or drinks of various kinds are made, sold or served at retail, shall, for the purpose of this act, be deemed to be a place of refreshment. Provided, however, that a general merchandise store or grocery store retailing or serving ice cream, soft drinks or foods of any kind, if such foods and soft drinks are sold and delivered to the public in an original container and the purchaser thereof consumes the contents directly from the original container, shall not be deemed a place of refreshment within the meaning of this act. The term "original container," as used in this act, shall be construed to mean any carton, box, wrapper, package, pail, can, jar, keg, glass, bottle, or other thing in which the manufacturer, wholesaler, or distributor has placed and entirely enclosed said ice cream, drinks, or other refreshments, before delivery to the retailer and shall also be construed to include any straw, spoon, fork, or other eating and drinking utensil, placed in the container by the manufacturer, wholesaler, or distributor at his place of business and before delivery to the retailer. This act shall not be construed to apply to any building constructed and primarily used for religious worship, nor to any building used for the housing of college or university stu-

dents in accordance with regulations promulgated by such college or university. ('19, c. 499, §1; Mar. 29, 1935, c. 77; Apr. 24, 1935, c. 274, §1; Jan. 18, 1936, Ex. Ses., c. 36, §1.)

Act Apr. 24, 1935, c. 274, §1, purports to amend the last two paragraphs as a part of §5905. This is immediately followed by a paragraph amending §5905. This seems to be the result of a clerical error in preparing the enrolled bill. This defect is cured by the amendment of Jan. 18, 1936, cited.

It would seem that this section is not limited to stores wherein confectionery is sold to be consumed on premises. Op. Atty. Gen., Mar. 7, 1933.

Park board of village of Excelsior may be licensed to sell non-intoxicating malt liquors. Op. Atty. Gen., Apr. 22, 1933.

Whether particular business is restaurant within meaning of beer law is primarily question of fact to be determined by governing body of municipality. Op. Atty. Gen., June 26, 1933.

Whether a residence advertised as a tourist rooming house is a hotel is question of fact. Op. Atty. Gen., Aug. 14, 1933.

Laws 1935, c. 77, amending this section was in turn repealed by Laws 1935, c. 274, the two acts being absolutely inconsistent. Op. Atty. Gen. (238d), May 16, 1935.

The first amendment to §5905 as contained in Laws 1935, c. 274, was intended as an amendment of the last two paragraphs of this section and should be considered as an amendment thereof. Op. Atty. Gen. (238d), May 16, 1935.

5905. Hotels, restaurants, lodging houses, boarding houses, and places of refreshment to be licensed—fees.—Within sixty days after the passage of this act and each year thereafter, every person, firm or corporation now engaged in the business of conducting an hotel, restaurant, lodging house, boarding house or place of refreshment, and every person, firm or corporation who shall hereafter engage in conducting such business, must procure a license for each hotel, restaurant, lodging house, boarding house, or place of refreshment, so conducted, provided that one license shall be sufficient for a combination of an hotel and restaurant, lodging house, boarding house, and place of refreshment, where such businesses are conducted in the same enclosure and under the same management. Each license shall expire on the 31st day of December next following its issuance, and any proprietor who operates a place of business as defined herein after January 1st following, without first having made application for a license and without having made payment of the fee thereof, shall have violated the provisions of this act and is subject to prosecution as provided herein, and in addition thereto, a penalty of one dollar and fifty cents (\$1.50) shall be added to the amount of the license fee and paid by the proprietor as provided herein if the said application has not reached the office of the Division of Hotel Inspection of the State Board of Health on or before January 31st following the expiration of license, or, in the case of a new business, thirty days after the opening date of such business. The Hotel Inspector shall furnish to any person, firm or corporation desiring to conduct an hotel, restaurant, lodging house, boarding house or place of refreshment, an application blank to be filled out by such person, firm, or corporation for a license therefor, and which shall require such applicant to state the full name and address of the owner of the building, structure or enclosure, the lessee and manager of such hotel, restaurant, lodging house, boarding house or place of refreshment, together with a full description of the

enclosure to be used or proposed to be used for such business, the location of the same, the name under which such business is to be conducted, and such information as may be required therein by the Hotel Inspector to complete such application for license, and such application shall be accompanied by a license fee of \$3.50 and all such fees shall be turned into the State Treasury on the first day of January, April, July and October of each year. '19, c. 499, §3; Apr. 24, 1935, c. 274; Jan. 18, 1936, Ex. Ses., c. 36, §1.)

Section 4367 does not exempt war veterans from payment of fees for licenses, for hotels, restaurants, lodging houses, boarding houses, or places of refreshment. Op. Atty. Gen., May 25, 1932.

Operators of hotels, restaurants and places of refreshment within boundaries of Red Lake Reservation who do not confine their trade to Indian wards but who are either white men or Indians not under federal control must have licenses under this section. Op. Atty. Gen., May 19, 1933.

Right to lien upon baggage is not predicated on license. Op. Atty. Gen., Mar. 19, 1934.

Municipal liquor store must have refreshment license. Op. Atty. Gen. (238g), May 21, 1934.

"On Sale" liquor establishment must obtain a refreshment license from inspection department. Op. Atty. Gen. (218g-6), June 5, 1934.

The first amendment to this section as contained in Laws 1935, c. 274, was intended as an amendment to the last two paragraphs of §5903 and should be given that effect. Op. Atty. Gen. (238d), May 16, 1935.

5907. Plumbing, lighting, heating, etc.

A guest in a hotel, injured by stumbling down a short, unlighted stairway in hallway just outside door of his room, held entitled to recover as for negligence. *Gustafson v. A., 261NW447.* See Dun. Dig. 4513.

5908. Fire protection to be provided.

Section 5908 applies to hotels and lodging houses two stories in height while §5909 applies to hotels and lodging houses more than two stories in height. Op. Atty. Gen., Jan. 2, 1934.

5909. Additional fire protection in larger hotels, etc.

Op. Atty. Gen., Jan. 2, 1934: note under §5908. This section supersedes §1630-56 insofar as it refers to outside standpipes in hotels and lodging houses. Op. Atty. Gen., July 24, 1933.

5910. Iron stairways for exit, and other provisions.

Fire escape which has as only exit a room containing a door which may be locked does not comply with statute. Op. Atty. Gen., May 8, 1933.

Hotel inspector being satisfied that interior stairway is fireproof may cancel outstanding fire escape order. Op. Atty. Gen., Aug. 23, 1933.

5911. Revocation of license.—It shall be the duty of the State Hotel Inspector to revoke a license, if and when it be found by the Hotel Inspector that a place of business as defined herein is being operated in violation of the provisions of this Act so as to constitute a filthy, unclean and unsanitary condition and dangerous to public health, or if the owner or proprietor persistently refuses or fails to comply with the provisions of this Act. Upon such revocation of license, the said place of business shall be immediately closed to public patronage until such a time that the owner or proprietor shall have complied with the provisions of this Act, as certified to by the issuance of a new license.

The third such revocation of license in any one year and on any one proprietor shall be made permanent for a period of one year from the date of the last revocation. ('19, c. 499, §9; Apr. 24, 1935, c. 274.)

Where a license is granted to a proprietor after revocation of a previous one, it is proper to collect another fee of \$3.50 for the new license. Op. Atty. Gen. (238f), May 29, 1935.

Licensee should be served with a written notice specifying charges against him and setting a date for a hearing at which licensee may be heard. *Id.*

MOVING PICTURES

5934. Style of seats.

Injury to patron from falling of disconnected seat. 181M109, 231NW716.

5940. Licenses for operation of moving picture machines or exhibition of moving pictures—Application for—Fees—Issue of licenses—Transfer—Itinerant exhibitions—Permits—Bonds—Fees.—On and

after the first day of September, 1917, it shall be unlawful for any person to operate a moving picture machine or to exhibit moving pictures in any building, theatre or hall to which the public is admitted or in any other place of public entertainment or amusement within this state unless the owner, lessee, occupant or agent of said place has been licensed by the state fire marshal to use such place for such purpose. The application shall be made and presented at least 30 days prior to the date when the license is desired to go into effect, to the end that the fire marshal may make the necessary investigation and inspection before the license issues. The license fee shall be five dollars for the year and each application shall be accompanied by the license fee. Every license shall expire on the first day of September each year. The state fire marshal upon application therefor shall furnish to any person desiring a license an application blank upon which the applicant shall state the full name and address of the applicant or applicants and if it be a corporation, the names and addresses of the principal officers thereof, whether such applicant be the owner, lessee, occupant or agent of the building for which a license is desired, the location and a full description of the property and the building and the room within the building to be used or proposed to be used for the exhibition of moving pictures, and such other information as may be required to be contained therein by the state fire marshal. Every application shall be verified by the applicant for such license and such verified application shall be prima facie proof of the facts therein stated.

Upon receipt of such application, the state fire marshal shall make such investigation as he shall deem necessary and shall grant a license to such applicant unless it appears to him that the provisions of this act are being violated or are about to be violated. The license thus granted shall not be transferable to any other building, room or place than that stated in the license. The state fire marshal in his discretion and under such regulations and conditions as he may prescribe therefor, may grant a permit for the exhibition of moving pictures in an unlicensed building, and without a formal license therefor, for not more than seven consecutive days, such exhibitions are to be given solely for religious, benevolent, educational or scientific purposes. No license shall be granted except after examination by the state fire marshal or his authorized deputy or agent, provided, however, that the state fire marshal may issue a temporary license upon the verified application herein provided for, which shall be good until revoked for cause or until a permanent license is substituted therefor. There shall be deducted from the fee for such permanent license a part thereof proportionate to the unexpired portion of the year for which the temporary license was granted. Provided that all public exhibition of moving pictures in any place except a building shall be subject to such rules, conditions and regulations in addition to those provided by law with reference to the safety of the public as the fire marshal may deem necessary. Any person, firm or corporation giving such public exhibitions of moving pictures in any place except a building shall be classified as itinerant moving picture exhibitions. No such person, firm or corporation shall give any such public moving picture exhibition at any place except under a permit from the fire marshal authorizing such exhibition, and after said person or firm or corporation has made and executed a bond of indemnity to the state of Minnesota in such sum as the fire marshal may approve, conditioned to pay any and all liability for damages ensuing through the negligence of such exhibitor. The fee for each such permit shall be five dollars. Provided, however, that no licenses nor bond shall be required nor necessary to operate a moving picture machine or to exhibit moving pictures by any firm, person, association or corporation in any village having a population of less than 700 inhabitants where no admission charge is made therefor and where there

is no licensed moving picture business. ('17, c. 466, §21; '25, c. 399; Apr. 11, 1935, c. 155.)

An application for motion picture operator's license can be made by mail. Op. Atty. Gen., Mar. 6, 1933.

Parent and teachers' associations may show motion pictures without obtaining license, but must obtain permit from fire marshal. Op. Atty. Gen., Mar. 20, 1933.

Fire marshal in granting license to itinerant motion picture exhibitor need not consider §§1929-1 to 1929-5. Op. Atty. Gen. (197d), June 25, 1934.

Fee having once been paid, it may not be refunded, or the subject of a credit upon a subsequent license, even though the theatre in connection with which a license was issued never opened for business and license was returned at request of fire marshal. Op. Atty. Gen. (197d), Aug. 15, 1934.

STATE FIRE MARSHAL

5957. Power to summon and compel, etc.

Act of fire marshal in compelling person suspected of arson to testify under subpoena, held to violate the constitutional right of such person against self incrimination. 180M573, 231NW217.

5960. May enter any building within reasonable hours.

State fire marshal may not use force to effect entry on premises for purpose of making inspection, but owner padlocking premises so that inspection may not be made is guilty of offense of resisting, delaying and obstructing a public officer in discharge of his duties. Op. Atty. Gen. (197c), May 9, 1935.

5961. May order certain buildings repaired or torn down.

City ordinance making it unlawful to alter or repair building damaged or deteriorated more than 50% does not conflict with state statute prescribing powers and duties of state fire marshal. Zalk & Josephs Realty Co. v. S., 191M60, 253NW8. See Dun. Dig. 6525.

DRY CLEANING AND DRY DYEING BUILDINGS AND ESTABLISHMENTS

5984. Dry cleaning and dyeing establishments must be licensed.

Use of liquid for cleaning hats and limited quantities of wearing apparel requires no license unless it is one

of the liquids referred to in this section, such being question of fact. Op. Atty. Gen., May 24, 1933.

One may be conducting a dry cleaning or dry dyeing business although not advertised as conducting such a business. Op. Atty. Gen. (197b), Feb. 28, 1935.

6001. Use of gasoline engines forbidden in certain cases.—No gas or gasoline engine, steam generator or heating device nor any electrical dynamo or motor except such motors as have been approved as explosion-proof by the State Fire Marshal shall be located, maintained or used inside of, nor within a distance of ten feet of any building used for the business of dry cleaning and dry dyeing as above defined except that an electrical motor may be placed within such ten feet, but without a solid fireproof wall.

Any dry cleaning or dry dyeing business located in any village or city of the fourth class may install and maintain two 2½-gallon fire extinguishers of anti-freezing liquid, to be approved by and installed as directed by the state fire marshal, in lieu of compliance with the provisions of Section 13 of this chapter providing for the extinguishment of fire in such business or establishment. ('21, c. 459, §18; Laws 1927, c. 402; Apr. 20, 1931, c. 268.)

6001-1. Must have fire extinguishers.—Any dry cleaning or dry dyeing business located in any village or city of the fourth class may install and maintain two 2½ gallon fire extinguishers of anti-freezing liquid to be approved by and installed as directed by the State Fire Marshal, in lieu of compliance with the provisions of this chapter providing for the prevention of fire in such business or establishment. (Act Apr. 26, 1929, c. 402, §2.)

CHAPTERS 37-38

Agriculture and Rural Credits

DEPARTMENT OF AGRICULTURE

6024. Powers and duties.

(b).

Town assessor is entitled to \$4.00 for each day's services including time spent in taking farm census. Op. Atty. Gen., July 5, 1933.

Assessor is entitled to compensation for extra time spent in taking farm census, but such services must be performed during the months of May and June. Op. Atty. Gen. (12c-1), July 10, 1934.

6025. Commissioner of Agriculture to enforce acts.

Commissioner of Agriculture, Dairy and Food in discharging the duties incumbent upon him under §10390 may exercise the powers conferred by this section. Op. Atty. Gen., Oct. 15, 1931.

6026. Attorney general to advise Commissioner.

Op. Atty. Gen., Oct. 15, 1931; note under §6025.

6027. Commissioner to publish information.

Op. Atty. Gen., Oct. 15, 1931; note under §6025.

RURAL CREDITS

6030. Definitions.—The following words and phrases in this act shall unless the same be inconsistent with the context be construed as follows:

The word "Department" shall mean the "Department of Rural Credit," and the word "Conservator" shall mean the "Conservator of Rural Credit."

The terms "bond," "certificate of indebtedness" and "tax levy certificate" shall include all such evidences of indebtedness issued under authority of this act, whenever issued.

The term "loan" shall mean loans made by the state under authority of this act, and the term "mortgage" shall mean mortgages taken by the state to secure such loans.

Whenever used in this act the masculine gender shall be held to include the feminine gender. ('23, c. 225, §1; Apr. 22, 1933, c. 429, §1.)

6031. Purposes.—(a) The Department of Rural Credit created and established by this act, as amended by Article XV of Chapter 426, Laws 1925, is hereby continued. The rural credit bureau created by said article shall hereafter be known as the Conservator of Rural Credit and shall consist of a single member. The offices of chairman, secretary and assistant attorney general heretofore constituting the rural credit bureau are hereby abolished.

(b) The Conservator shall be a person well qualified to perform the duties of the office, shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of six years at an annual salary of \$7,000 payable in semi-monthly instalments, and may be removed for cause after notice and hearing on the charges made against him. He shall before entering upon his duties take and subscribe the oath prescribed by law and give a bond to the State in the sum of \$25,000 or such larger sum as the Governor may at any time determine to be necessary to indemnify the State against loss, which bond shall be conditioned, approved and filed as now provided by law."

(c) In all matters arising under this act the State may sue and be sued as a natural person. ('23, c. 225, §2; Apr. 22, 1933, c. 429, §2.)

Assistant attorney general member of rural credit bureau holds an office created by statute and thereby designated as "without term," and serves at pleasure of attorney General. State v. Poirier, 189M200, 248NW747.

The provision creating original rural credit bureau fixing stated terms of office for members, and providing for their removal only on charges made, notice, and hearing, is in conflict with Reorganization Act and was repealed thereby. Id.

6032. Appointment of conservator.—The Conservator shall have the power to provide such furniture,