

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.



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the county treasurer to that effect, shall issue under his hand a certificate of such payment and the same, when recorded in the office of the register of deeds, shall release and discharge such lien of record.

(d) On or before November 15 next following the filing by the auditor of such statement, said auditor shall enter on the tax lists of the county the amount of the lien against each tract of land, all of which shall be payable as directed by the court on such tract which shall be subject to and be collected with like penalties as all other taxes.

(e) The county auditor of the county or counties wherein the proceedings are held is hereby authorized upon order of the court to issue warrants of the county to pay the official costs of such proceedings and when the costs are assessed against the lands in more than one county such costs are to be determined and apportioned between the counties affected in proportion to the benefits assessed against the lands and property in such county. The issued warrants are to draw interest at the legal rate, subject to their payment as provided under Mason's Minnesota Statutes of 1927, Section 6840-108. (Act Apr. 29, 1935, c. 369, §17.)

6602-28. Not to proceed unless funds are available.—No proceedings shall be instituted under the provisions of this act whereby the state of Minnesota shall be assessed or charged for a portion or the whole of the cost of such improvement unless at the time of the institution of such proceedings funds are avail-

able for the payment of the same. (Act Apr. 29, 1935, c. 369, §18.)

6602-29. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act except that nothing in this act shall amend, alter, supersede, or otherwise change the provisions set forth in Chapter 412, Session Laws of Minnesota 1933, or Amendments thereto or Mason's Minnesota Statutes of 1927, Sections 751, 6588, 6589, 6590, 6591, 6592, 6593, 6594, 6595, 6596, and 6597; Provided, further that the provisions of this act shall in no manner apply to public waters of an area of more than 10,000 acres, situated wholly or partially within counties now or hereafter having a population of more than 450,000 inhabitants, and an assessed valuation of more than \$450,000,000, including moneys and credits, and in which is situated a city of the first class within a distance of 20 miles from said body of public water, and provided further that as to such public waters nothing herein contained shall be construed to authorize the diversion of any water from any stream, river or lake located in any county adjoining or abutting in part upon the county wherein a major portion of such public waters are located. (Act Apr. 29, 1935, c. 369, §19.)

6602-30. Provisions severable.—The various provisions of this act are declared to be severable. If any provision thereof shall be declared unconstitutional the remaining provisions shall remain in full force and effect. (Act Apr. 29, 1935, §369, §20.)

CHAPTER 43.

Logs and Lumber

6604. Duty of surveyor general.

Authority to scale state timber is still vested in the surveyor general of logs and lumber, but is now subject to supervision of commissioner of conservation and director of division of forestry instead of state auditor. Op. Atty. Gen., June 27, 1933.

6613. Posting scales—Scribner's rule, etc.

Scribner rule prescribed by statute and not revised Scribner Decimal C log rule is to be used by surveyor

general when not otherwise agreed on. Op. Atty. Gen., Dec. 4, 1933.

Contracting private parties need not consider legal rule in purchase or sale of logs, law not requiring official scaling in private sale. Id.

In private sale of logs, in case log rule has not been agreed upon, true quantity and log scales made by competent persons would be best available evidence, but any scaling done by surveyor general would constitute strong showing to court. Id.

CHAPTER 44

Drainage

STATE DRAINAGE COMMISSION [DEPARTMENT OF DRAINAGE AND WATERS]

6634. Department of drainage and waters.

Laws 1931, c. 136, ante, §§53-23a to 53-231, 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 satis-

faction 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. ('07, c. 470, §2; G. S. '13, §5481; '15, c. 273, §1; '19, c. 471, §2; '21, c. 327, §1; '23, c. 328, §1; Apr. 25, 1931, c. 350.)

Conservation commissioner during drouth may cooperate with municipalities in the construction of dams in streams and lake outlets and so operate them as to relieve distress, and may raise the water to ordinary high water mark. Op. Atty. Gen. (983d), Aug. 14, 1934.

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., 182M375, 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., 182M375, 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., 182M375, 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. 176 M15, 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. 179 M566, 229NW878.

6684. [Repealed].

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

6696. [Repealed.]

Where lands assessed for drainage districts are not paying taxes, county commissioners may make a general levy each year to take up bonds as they mature. Op. Atty. Gen. (519r), Apr. 16, 1934.

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. County treasurer may pay ditch bonds, as presented to him for payment, notwithstanding that fund is not sufficient to pay all bonds due. Op. Atty. Gen., Feb. 12, 1933.

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.

6728-2. Certain changes in county ditch systems legalized.—Where the County Board of any county of this State has heretofore located, established and caused to be constructed a County Ditch System in pursuance of Chapter 230, of the Laws of 1905, and the acts amendatory thereof or supplemental thereto, and the County Board of said County, or the Town Board of any Town in said County wherein a portion of such ditch system is located, or such County Board and such Town Board, jointly, shall have attempted to remedy defects in the design or construction of such ditch system, or of any branch or lateral thereof, by widening or deepening any branch or lateral of such ditch system, and extending such branch or lateral, so widened and deepened, beyond the point to which it was originally located, established and constructed, so as to form a new or better outlet for such branch or lateral, and no proceedings for the widening, deepening or extension of said ditch have been taken as required by the statutes of this State, now in force, or in force at the time such changes were made, such changes are hereby legalized and validated for all purposes, as though such County Board and such Town at the time such changes were made, such changes Board had due authority to make the same in the first instance. (Act Apr. 13, 1933, c. 243, §1.)

6728-3. Not to affect pending actions.—This Act shall not affect any such changes the validity of which is questioned in any litigation now pending. (Act Apr. 13, 1933, c. 243, §2.)

Act Apr. 13, 1933, cited, provides that the act shall take effect from its passage.

6729 to 6762. [Repealed].

Annotations to §6732.

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

Annotations to §6734.

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.

Warrants issued to engineer, and attorneys in judicial ditch proceeding held to constitute a general primary obligation of county, payable out of general ditch fund. Op. Atty. Gen., July 11, 1933.

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.

6840-2. Powers of county boards and district court as to public drainage systems, etc.—(a) The county board of the several counties and the district court of the several district of the State of Minnesota, are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained, public drainage systems, drains and ditches to deepen, widen, straighten or change the channel or bed of any river, creek, or waterway following the general direction thereof, and when practical terminating therein, to extend the same into or through any city or village for the purpose of securing a suitable outlet to construct all needed dykes, dams and controlling works and also power appliances, pumps and pumping machinery when a pumping outlet is deemed necessary to drain in whole or in part, meandered lakes which have become normally shallow and of a marshy character or which are no longer of sufficient depth or volume to be of any substantial public use.

(b) When deemed necessary to control flood waters therein, the county board and court are hereby authorized and empowered to raise, lower or establish the height of water in any lake, body of water or watercourse and cause to be constructed all necessary structures and improvements to maintain the same for flood control or other public purposes, and where only a part of a meandered lake is to be drained, to cause to be constructed dykes or dams for the purpose of holding the water at the height designated by the board or court, in that part of the lake not to be drained.

(c) No meandered lake upon which any city or village is now a riparian owner shall be drained or lowered unless by the approval of a majority vote of the legal voters of said city or village at any annual or special election held for such purpose.

(d) Provided, however, that no meandered lake shall be drained except by the consent of the Commissioner of Conservation subject to such policies as the Conservation Commission may formulate from time to time to be filed in the proceedings, on or before the date of the appointment of the engineer by the board or court as provided in Section 6840-5, Mason's Minnesota Statutes for 1927. ('25, c. 415, §2; Apr. 17, 1933, c. 312, §1.)

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 a 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 of engineers—plans and specifications.—(a) The engineer shall enter all field notes made during the survey and period of construction in a field book properly ruled, and make a complete and accurate map and profile of the drainage system as surveyed by him, upon good tracing cloth; such map shall be drawn to a scale, show the number of section, township and range in which the lands affected are situated, also each station number in figures; location of bench marks, the public streets, highways and railroad right-of-ways affected, the name of the county, township and municipality in which such lands or any part thereof are situated, and all other matters necessary to the understanding of the board or court. The profile shall be drawn on a scale, show the elevation, grade, depth of cut, size of tile, and the elevation in figures of each branch and lateral at its source, outlet, and at each 100 foot stake.

(b) Said engineer shall make a complete set of plans, specifications and estimates of costs covering all the work and construction ordered by the board or court, and make a full, detailed and complete report of his work and recommendations to the board or court and shall include all maps, profiles, specifications and matters herein provided for and file the same with the county auditor or clerk of the district court, where the proceedings are pending.

(c) All plans, specifications, maps, profiles and estimates of costs herein required shall be made in triplicate and shall be filed with the auditor or clerk where the proceedings are pending, and within 5 days from the filing of such report and before further proceedings are had thereon, one of the copies of said report shall be forwarded by said auditor or clerk to the director of the division of drainage and waters of the department of conservation who, within the next 15 days shall examine and approve the same as presented and shall file with the auditor or clerk his approval thereof, or if he does not approve he shall file instead his recommendations for modifications thereon as he may deem necessary.

(d) Provided, that if for any reason the said director of the division of drainage and waters finds it impossible or impracticable to complete the examination and report on an engineer's report within the time limited herein, said director may make application to the said auditor or clerk for an extension of time, and the said auditor or clerk shall have authority to grant such extension.

(e) Upon the filing of the approval or recommendations of director of the division of drainage and waters with the auditor or clerk, said auditor or clerk shall make an order designating the time and place for the first meeting of the viewers as provided in Section 16 of this Act after which all further proceedings shall be had as provided in this Act. One copy of said engineer's report as originally filed with the auditor or clerk or as modified by the board or court at the final hearing shall be retained by said auditor or clerk, and one copy with a copy of the contract attached shall be delivered to the contractor at his request at any time after the execution of the contract.

(f) It shall further be the duty of the engineer, when the work of construction is completed, or when for any cause the engineer ceases to longer act as such, to cause all original plats, profiles and field books to be filed in the office of the county au-

ditor or clerk of the district court where such proceedings are pending, and the said county auditor or county auditors, are hereby forbidden to draw an order making final settlement with the engineer until proper proof has been supplied that the requirements of this section have been complied with by the engineer. ('25, c. 415, §12; Apr. 17, 1933, c. 312, §2.)

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.

6840-16. Viewers—appointment—time and place of meeting.—(a) As soon as conveniently can be done following the appointment of the engineer, the county board, in case of a county drainage proceeding or the district court in the case of a judicial drainage proceeding, shall make an order appointing three resident freeholders of the county or counties, not interested in the construction of the proposed work and not of kin to any of the parties known to be interested therein, as viewers, to meet at the time and place to be specified by the county auditor or clerk of the district court as hereinafter provided, preparatory to commencing their duties as hereinafter specified.

(b) It shall be the duty of the county auditor in the case of county drainage proceedings or the clerk of the district court in the case of judicial proceedings, within 5 days after the filing of the report of the director of the division of drainage and waters approving or recommending modifications of engineer's report, to make an order designating the time and place of the first meeting of the viewers, and it shall further be the duty of the county auditor or clerk of the district court within 5 days after the filing of the approval or recommendation of the director of the division of drainage and waters on the said engineer's report to issue to said viewers, if then appointed, a certified copy of the petition, the order appointing them and of the order designating the time and place of their first meeting.

(c) Provided, that if the said viewers have not been appointed at the time of the filing of the approval or recommendation of the said director of the division of drainage and waters on the said engineer's report, it shall be the duty of said auditor or clerk, within 5 days of the date of the order appointing said viewers, to make his order fixing the time and place of the first meeting of said viewers, as provided in this section.

(d) In case any of the viewers so appointed shall fail for any cause to qualify in time for the first meeting, the county auditor, in case of county drainage proceedings and the clerk of the district court in case of judicial proceedings, shall designate some other person having the qualifications above stated to take his place. ('25, c. 415, §16; Apr. 17, 1933, c. 312, §3.)

6840-17. Same—oath—statements and reports—majority may act.—(a) The viewers after taking the oath to faithfully perform their duties, shall proceed at the time set in said order, with or without said civil engineer, and shall prepare, in duplicate, a tabular statement showing as far as practicable the description of each tract of land benefited or damaged; with the name of the owners as the same appear on the last county tax duplicate of said county, the total number of acres in each said tract of land benefited or damaged, as the case may be, the number of acres added to any tract by the total or partial drainage of any meandered lake, or by the change of any water course, and the location and value of such added land; the damage, if any, to riparian rights pertaining to any tract; and the amount that each tract of land will be benefited or damaged by the construction of said work; when any drainage system established under this Act drains in whole or in part any public or corporate

road or railroad, or benefits any such road or railroad, so that the road bed or traveled track of any such road or railroad, will be made better by the construction of such system, the viewers shall estimate the benefits arising therefrom to such road, roadbeds or railroads, and report said benefits, giving the names of such roads or railroads, and other particulars necessary to identify the corporations, private or public, that will be benefited thereby and the amount of benefits to each, as a part of their tabular statement provided for in this section.

(b) The viewers shall also report as a part of such tabular statement the benefits that will result to villages or cities by way of increased drainage facilities or improvements to public health and also the damages awarded to each municipal or other corporation, and to each person, persons, or association of persons, telephone or telegraph line or other personal property, and from the necessary construction and maintenance of any bridges, culverts or other works rendered necessary by the establishment of such drainage improvement, stating the same separately; and they shall also report the total estimated benefits in respect to the entire system and branches, if any, and also whether or not, the estimated expense of the construction of such improvement, including the damages awarded therefor, are greater than the utility of the proposed drainage system, or that the construction of such a system is impracticable for any reason, stating the reason why it should not be constructed.

(c) In case the viewers are unable to agree, each viewer shall state separately in his report his findings on the matter disagreed upon.

(d) A majority of the viewers shall be competent to perform the duties required of them by this Act. ('25, c. 415, §17; Apr. 17, 1933, c. 312, §4.)

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 to be assessed.—(a) All lands, public or corporate roads, or railroads, including town, county, state aid, and trunk highways, and all villages and cities, in any manner benefited, in whole or in part, by the construction of any public drainage system under the provisions of this Act shall be assessable for the costs of the construction thereof, including the costs and expenses connected with such proceeding in proportion to the benefits received, whether such benefits result directly from the construction of said system or some part thereof, or as the same affords an outlet for drainage or prevents the overflow or otherwise directly benefits such land, roads, railroads, villages or cities, provided, that in all cases where land is assessed for an outlet and the lateral connecting the same with the main ditch or branch thereof is not constructed at the time of constructing the system, such land shall be assessed only for the estimated benefits less the estimated cost of connecting the same with said system or some part thereof.

(b) Provided, further that in any cases where drainage by pumping outlet is established, the board or court shall have authority when necessary to provide for maintenance of the pumping system by annual assessment upon the property benefited.

(c) All lands owned by the State of Minnesota or any department thereof benefited by such drainage system or any branch thereof shall be assessable for such benefit, the same as taxable land, and trunk highways, the same as town, county and state aid roads, provided that in all cases a notice of final hearing on the petition, engineer's and viewer's reports shall in case of assessment of state lands be served upon the state auditor and the director of the division of drainage and waters; and in case of assessment of trunk highways, be served on the commissioner of highways as in the case of individual land owners. ('25, c. 415, §24; Apr. 17, 1933, c. 312, §5.)

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, 215NW 204.

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.

"All lands owned by the State of Minnesota" refers to state lands sold by state under contract for deed as well as to state lands not so sold. Op. Atty. Gen., Nov. 7, 1933.

While state has authorized assessment of benefits against state land, it has not authorized bringing of action to enforce lien. Id.

6840-25. Viewers report to be filed.—Said viewers shall upon the completion of their work file with the county auditor, in the case of a county drainage proceeding or with the clerk of the district court in the case of a judicial proceeding, two copies of the report of all their doings and findings in detail, including expenses and actual time they were engaged, and within 5 days from the filing of such report one of the copies of said report shall be furnished by said auditor or clerk to the director of the division of drainage and waters, who shall file and keep the same as a part of his record in said proceedings. The said viewers shall in every case completely perform the several duties by this Act imposed upon them, at the earliest date possible following their first meeting. ('25, c. 415, §25; Apr. 17, 1933, c. 312, §6.)

6840-26. Final hearing on petition, engineers and viewers report.—(a) Within three days after the filing of the report of the viewers it shall be the duty of the county auditor in county drainage proceedings to fix a date for hearing on the petition and the engineer's and viewers reports in said proceedings, said date shall not be less than 35 or more than 50 days from the date of notice, and give to the several members of the county board the usual notice of calling a special meeting for that date in the manner provided by law, and in the case of judicial proceedings it shall be the duty of the clerk of the district court where such proceedings are pending, with the approval of the judge, to fix a time and place for hearing on the petition and engineer's and viewers reports.

(b) It shall further be the duty of said auditor or said clerk where such proceedings are pending to cause notice of the time and place of such hearing to be given to all persons interested by publication of such notice for three successive weeks prior to date of hearing in a newspaper printed and published in each county affected.

(c) Provided, that in the case of judicial proceedings extending into two or more counties, it shall not be necessary to publish in any county the description of any real estate or the names or description of any roads, railroads or municipal corporations, except such as are located in said county.

(d) Printed copies of such notices, so printed for the respective counties, shall be posted at least three weeks before such date of hearing in three public places in each township in each respective county where such work is located, and one at the front door of the court house in each respective county. Said notice shall briefly state the pendency of said petition and shall state that the engineer's and viewers reports have been made and filed with said county auditor or the clerk of the district court where such proceedings are pending, and shall state the time and place set for such hearing. Said notice shall contain a brief description of the proposed drainage system, giving in general terms the starting point of the main ditch and branches, the general course of each and terminus, and shall designate the governmental sections of land over which such system or branches or any part thereof is surveyed, as the same is shown by the report of the engineer, and shall give the names of the owners of land and the municipal and other corporations affected thereby, as shown by the engineer's and viewers reports.

(e) Within one week after the beginning of such publication the county auditor in the case of county drainage proceeding or the clerk of the district court in case of judicial proceedings shall mail a printed copy of said notice to the state auditor, Commissioner of Conservation and all persons and corporations who are the owners of land or are otherwise affected by said proposed drainage system as shown by the engineer's and viewers reports, whose address is known to such county auditor in the case of county drainage proceeding or the clerk of the district court in a judicial proceeding, or can be ascertained respectively by said auditor or clerk by inquiry at the county treasurer's office of the county wherein such lands, roads or railroads or municipal corporations are situated.

(f) Provided, that in all judicial proceedings extending into two or more counties, it shall be the duty of the clerk to mail to all persons and corporations who are the owners of lands, roads or railroads, or otherwise affected by said proceedings, not less than ten days before the date of hearing, copies of the notice printed in their respective counties.

(g) Provided, further, that in all cases in which for any cause said notice shall not be given or shall be legally defective the county auditor or clerk of the district court, as the case may be, shall cause the same to again be given so that the petition, engineer's and viewers reports and final hearing thereon may be heard at another meeting or session of said county board or district court which will occur more than seven days after the expiration of another notice by the publication, posting and mailing as provided in the first instance.

(h) Provided, further, if it shall appear at the date of said hearing before the county board or district court that said notice has been properly made, published, posted and served, as to a part of the lands, roads, railroads and corporations, public or private, named in the engineer's and viewers reports, but was legally defective, either as to publication, posting or service as to other lands, roads, railroads or corporations, or that said notice was properly made, published, served and mailed but through error certain descriptions of lands, roads, railroads or corporations, public or private, were omitted from such notice or defectively described, then or in either case said county board or district court where such proceedings are pending may adjourn or continue said hearing and order notice to be given as required in the first instance, describing such lands, roads, railroads or corporations, public or private, omitted from the first notice or with reference to which the first notice was in any manner defective, either as to form and contents or as to publication, posting or service, and in that event, the jurisdiction of said board or court shall continue as to all lands, roads, railroads or corporations, public or private, with reference to which proper notice was given, published and served, and in case of judicial proceedings, if it shall appear that proper notice was given, published, posted and mailed only as to lands, roads, railroads or corporations, public or private, within one county but defective as to one or more counties, then the proceedings may be adjourned as herein provided, but it shall not be necessary to publish, post or mail said notice except in the county or counties with reference to which notice of publication, posting or mailing was defective.

(i) Provided, further, that in all cases where service of notice is required by this section to be given by publication, posting and mailing, or otherwise, a personal service of the printed notice in the manner provided for the service of summons in district court, not less than ten days prior to the date of hearing, the same shall be considered as equivalent to and as in lieu of all other service, and in any case where a party has received a copy of the notice

required to be served not less than ten days prior to the date of the hearing, such party shall not be permitted to object because some other manner of service has not been made as provided by this Act.

(j) Provided, further, that in all cases where an adjournment of the hearing is had because of defective notice or service, the board or court may order personal service upon such party with reference to whom a previous notice or service was defective, and if personal service is made not less than ten days prior to the date of the adjourned hearing, the same shall be treated as sufficient and as in lieu of all other manner of service as required by this Act. ('25, c. 415, §26; Apr. 17, 1933, c. 312, §7.)

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

172M295, 215NW204.
Certiorari will lie in view of provision for appeal. Le Sueur and Rice Counties, etc., 180M132, 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.

6840-43. Bond issues by county boards—Procedure

—Proceeds—General ditch fund—payment of liens with bonds.—The county board of each and every county wherein any drainage system is proposed to be wholly or partly located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, are hereby authorized after the lien statement prepared by the county auditor has been filed in the office of the register of deeds, to issue the bonds, of their respective counties in such amounts as may be necessary to defray, in whole or in part, the expenses incurred or to be incurred in locating, constructing and establishing or repairing so much of any such ditch as may be located within said county; or in such relation to such county as to affect lands therein with the term of this act. All such bonds shall be sold as provided by Mason's Minnesota Statutes of 1927, Section 1943, and not otherwise. The word "expenses" shall be construed to mean and cover every item of cost of said drainage improvement from its inception to its completion, and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed 30 years from their date, and shall bear such rate of interest not to exceed six per cent per annum, payable annually or semi-annually, all as the county board shall by resolution determine; provided the time or times when said bonds shall be payable as fixed by said resolution shall conform to the order of the board or court fixing the time of payment of the principal and interest on the ditch lien, as provided by Mason's Minnesota Statutes of 1927, Section 6840-51. Each bond shall contain a recital that it is issued by authority of, and in strict accordance with the provisions of this act, and shall be signed by the county auditor, who shall keep a record thereof. Said county board shall have power to sell and negotiate said bonds, as hereinbefore provided, but for not less than their par value. The proceeds from the sale of all such bonds shall be placed to the credit of the drainage proceedings in which they are issued and shall be placed in the general ditch fund as provided in this act. The county auditor shall keep a separate account with each drainage system, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest on penalties or upon liens, charges, assessments, and

from all other sources on account of such drainage system, and which account shall be debited with every item of expenditure made on account of such drainage system. Such county board shall provide moneys for the payment of the principal and interest of said bonds as they severally mature, which moneys shall be placed in the general ditch fund, into which fund it may transfer any surplus moneys remaining in the general revenue fund or other funds of the county which can be properly used for the purpose of this act, into which fund shall be paid all moneys received from the payment of any liens under the provisions of this act. And such board is hereby authorized to pay drainage bonds issued under the provisions of this chapter out of any available funds in the county treasury, when the moneys on hand in the general ditch fund of the treasury are insufficient to meet the payment of bonds issued in ditch proceedings when the same mature, but the funds from which such money have been taken or used for the payment of bonds as they mature shall be replenished with interest at the rate of six per cent per annum from collections of unpaid assessments for drainage improvement constructed under any proceedings hereunder. Provided, the county board shall have the authority to provide in the contract for the sale of the bonds for the delivery of such bonds as the work proceeds and the funds are needed, and for the payment of interest only from the date of the delivery of such bonds. Provided, further, that such county board is hereby authorized to empower the county treasurer by proper resolution to accept in payment of liens under the provisions of this act, any outstanding bond or bonds issued on the ditch lien to be paid thereby which are legal obligations of the county under the provisions of this act, at the par value thereof plus accrued interest; and the county board shall by such resolution prescribe the manner of disposition of bonds so delivered and paid over to the county treasurer. ('25, c. 415, §43; Apr. 29, 1935, c. 345.)

County cannot accept its own drainage bonds in lieu of payment of special assessments until such bonds have matured. Op. Atty. Gen., Dec. 12, 1933.

Drainage are general county obligations and their payment, including interest thereon, is not limited to the particular ditch fund, and any money in the general fund may be used for such purpose. Op. Atty. Gen. (38c), Dec. 14, 1934.

Where interests on particular ditch bond were paid out of funds belonging to ditch fund but not to the particular ditch covered by the bond, county auditor may not file an additional lien against landowners benefited by construction of ditch in question. Id.

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.

There may be no penalties on amounts to be paid under ditch liens that are delinquent, but they shall draw interest at 6% per annum. Op. Atty. Gen., Jan. 24, 1933.

Ditch bonds may not be accepted in payment of ditch tax unless they have matured. Op. Atty. Gen., Feb. 17, 1933.

County may accept its own drainage bonds in lieu of payment of special assessments until such bonds have matured. Op. Atty. Gen., Dec. 12, 1933.

6840-51½. 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.

Expenses incurred in repairing or cleaning ditch should be paid out of funds credited to that particular project but if there is no fund to credit of particular ditch, county may clean ditch and pay cost out of general revenue fund and assess cost upon lands originally assessed. Op. Atty. Gen., May 6, 1932.

Cleaning and deepening of county ditch must be done by the county and state game and fish department may not properly use its funds for such purpose. Op. Atty. Gen., Apr. 10, 1933.

Division of game and fish has no authority to clean out and deepen an old county ditch though improvement is sought by sportsmen to furnish more ready flow of water from one lake to another. Op. Atty. Gen., Apr. 10, 1933.

(a).

Right regarding removal of trees growing in ditch and along spoil banks, discussed. Op. Atty. Gen., Dec. 11, 1933.

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.

This section requires that in all cases where cleaning out or repair or improvement of ditch will cost more than 30% of the original cost of the construction, there must be a petition signed by majority of the property owners owning 51% of the property before the county board can act. Op. Atty. Gen. (148a-16), Apr. 5, 1934.

County is not liable for materials or labor in repair of judicial drainage ditch unless procedure herein provided is followed. Op. Atty. Gen. (148b-5), Mar. 26, 1935.

Where small portion of drainage system needs repair to cost less than \$500, and there is no money in the ditch fund to pay for them, it is necessary that there be a filing of the petition, appointment of an engineer, report by engineer, appointment of viewers, etc. Op. Atty. Gen. (844c-2), July 26, 1935.

6840-55. Repair or improvement of drainage system—engineer.—(a)

Such engineer shall give bond in the manner now provided by law for the construction of county drainage systems and shall within 30 days from the date of such appointment commence such examination and surveys if necessary, and make report to the board or court, as the case may be, at as early a date as practicable, with his recommendations thereon, and he shall submit with such report a map of such drainage system or such portion thereof as is obstructed or otherwise needs improvement or extending, and include therein sufficient detail to show the nature and extent of such obstruction and necessary improvements and in case he shall recommend that such drainage system needs deepening, widening or extending, a map of the original drainage system, including all laterals or extensions, public or private, open or tiled added thereto and all lands affected by such original system and such additions and descriptions of all the land affected by such deepening, widening or extending of said system shall be submitted therewith including details, plans and specifications and estimate of the cost sufficiently complete to enable the board or court to fully understand the nature of the improvement and extent and probable cost thereof, and supply the necessary details to let a contract therefor.

(b) So far as applicable and necessary said engineer shall, in the performance of his duties comply with the requirements of Sections 10 and 12 of this Act, including the filing of a copy of his report with the director of the division of drainage and waters, and in case of a state drainage system that has been constructed other than by assessment against the property benefited the engineer's report shall cover the same ground and in addition thereto shall give the description of all lands affected thereby and so far as practicable the names of the owners thereof. ('25, c. 415, §55; Apr. 17, 1933, c. 312, §8.)

6840-61. Use of drainage systems as outlets.

This section applies only to drains constructed after its enactment. 176M339, 223NW301.

6840-81. Appeals to Supreme Court.

Certiorari will not lie in view of provision for appeal. Le Sueur and Rice Counties, etc., 180M132, 230NW481 (1).

6840-90. Consolidation of systems.

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

6840-108. County warrants—Non-payment on presentation.

Fact that this section provides that interests shall be payable annually on ditch warrants indicates that interest is only payable on other warrants when they are paid. Op. Atty. Gen. (107a-5), May 19, 1934.

6840-110. Appearance in proceedings by state and county officials.—In all proceedings under the provisions of this Act where a notice is required to be served upon the State Auditor, the director of the division of drainage and waters and the commissioner of conservation, said officials shall have the right to appear in said proceedings and represent the interests of the state and the general public, and in all judicial proceedings the county boards of the several counties affected shall have the right to appear and represent the interest of their respective counties; and all such parties at such hearings shall have the right to present and have considered in addition to other matters evidence relative to the value of any body of water as materially affecting the water supply or water level in the surrounding territory, the effect of the proposed improvement upon the conservation of the forests of the state, or as affecting the conservation of wild life of the state. ('25, c. 415, §110; Apr. 17, 1933, c. 312, §9.)

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, 215NW 204.

6840-114. Extension of time for payment of ditch liens—Powers of County board.

County board in extending time for payment of installments of ditch liens may not extend the time for payment of the lien installments as to one property owner without extending the time as to another. Op. Atty. Gen., Aug. 29, 1931.

6840-115. Same—Petition—Notice of hearing.

County auditor may not charge fee for working services rendered under this act or acts amendatory hereof. Op. Atty. Gen., July 8, 1933.

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 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, 1936, 1937, 1938 and 1939, or one or more of such years shall be extended for a specified number of years not exceeding ten and direct the county auditor 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. ('23, c. 345, §3; '27, c. 129, §1; Feb. 13, 1931, c. 16; Jan. 27, 1936, Ex. Sess., c. 108, §1.)

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., Apr. 20, 1931.

After one extension for a specified number of years there cannot be a further extension without filing of new petition, publication and hearing. Op. Atty. Gen. (921f-2), June 6, 1935.

6840-117. Same—Drainage refunding bonds—Issue and Sale.

Ditch bonds may not be accepted in payment of ditch tax unless they have matured. Op. Atty. Gen., Feb. 17, 1933.

County cannot accept its own drainage bonds in lieu of payment of special assessments until such bonds have matured. Op. Atty. Gen., Dec. 12, 1933.

6840-119. Same—Existing liens not affected.

Refunding of ditch bonds pursuant to subsections 117 and 118 of this section does not impair the lien of the county. Op. Atty. Gen., Apr. 12, 1933.

Refunding of ditch bonds would not impair lien of county. Op. Atty. Gen., Apr. 12, 1933.

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. ('27, c. 140, §1; 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. ('27, c. 140, §2; Mar. 9, 1929, c. 50, §2.)

FINANCIAL PROVISIONS

6912-1. County Board may negotiate for extension of payment of bonds.—The County Board of any county in which there is situated any drainage district having a bonded indebtedness, shall have authority to negotiate with the holders of the bonds of such drainage district for the extension of the time of payment and the reduction of the rate of interest. In the event that the holders of two-thirds of the aggregate amount of such bonds shall consent in writing to such an extension of the time of payment

or to such a reduction of the rate of interest, or to both, and the County Board shall agree to such changes in the terms of such bonds, such changes shall become binding upon such county drainage district and upon all the holders of bonds against such drainage district, who shall have consented thereto, or who shall hereafter consent thereto, in writing. (Act Apr. 1, 1933, c. 140.)

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, 216NW 229.

6913-B. Errors.

Where ditch did not provide benefits contemplated for particular land, assessments paid could be refunded and charged against drainage district. Op. Atty. Gen., Feb. 8, 1934.

CHAPTER 46

Notaries Public

6938. Term—Bond—Oath.

Owner of property had no cause of action against a notary public for wrongful and false certificate of the execution of a bill of sale which was forged, the plaintiff not being divested of his title by the forged instrument. Zitlow v. C., 175M615, 221NW244.

Official action of notary public is not affected by insolvency of surety, but impairment of bonds does not affect liability of principal. Op. Atty. Gen., Oct. 25, 1933.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. Op. Atty. Gen. (320j), Dec. 13, 1934.

6939. Seal—Register.

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in

good faith. Hartkopf v. F., 191M595, 256NW169. See Dun. Dig. 71, 1445.

6940. Powers.

Certificate of acknowledgment stating that grantor acknowledged deed is some proof of genuineness of instrument. Craig v. W., 190M499, 252NW332. See Dun. Dig. 78.

Where notary of one county takes acknowledgment in another county the venue of the certificate should be entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. Op. Atty. Gen., Feb. 10, 1933.

Notary public has power to take acknowledgment in county other than that in which he resided at time his commission was issued. Op. Atty. Gen., July 24, 1933.

6946. Misconduct.

The violation of this section as well as section 10323 did not prevent a prosecution under that section. 171 M345, 214NW262.

CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

Offices of alderman and constable in city of Le Sueur are incompatible, and where one qualified for office of constable, he automatically vacated his office as alderman, and no resignation was necessary. Op. Atty. Gen., May 9, 1933.

Resignation of a state senator may be accepted by the governor, but he need not issue a writ of election if there is to be no session of the legislature before expiration of term for which senator was elected. Op. Atty. Gen. (2801-2), Apr. 30, 1934.

6953. Vacancies.

Failure of town treasurer to qualify creates a vacancy which may be filled by appointment. Op. Atty. Gen., Mar. 21, 1929.

Whether village treasurer who has obtained a position in another state may still hold the office depends upon whether or not he has ceased to be an inhabitant of the village. Op. Atty. Gen., Mar. 4, 1931.

Removal from office takes effect irrevocably upon conviction and imposition of sentence, and the officer is not restored upon the entry of a stay of execution of the taking of an appeal. Op. Atty. Gen., Sept. 1, 1931.

With the possible exception of officers in certain villages operating under special laws, there is no provision for the removal of an elective village officer for misconduct except by securing his conviction of a felony or of an offense involving a violation of his official oath. Op. Atty. Gen., Sept. 1, 1931.

Vacancy in office of justice of the peace of city of Wayzata is to be filled by appointment of governor. Op. Atty. Gen. (266a-12), Apr. 20, 1934.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. Op. Atty. Gen. (320j), Dec. 13, 1934.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

Subd. 1.

Person appointed to fill vacancy in office of county commissioner holds only until beginning of official year

next following the next ensuing general election. Op. Atty. Gen., Feb. 13, 1934.

Person appointed to fill vacancy in office of county commissioner holds until beginning of official year next following the next ensuing general election. Op. Atty. Gen. (126h), May 2, 1934.

Subd. 2.

Question whether resignation of president of council of the village of Buhl would become effective immediately without any action on the part of the board discussed. Op. Atty. Gen., Mar. 3, 1932.

Subd. 4.

Member of water, light, power and building commission must be an inhabitant and resident of the city. Op. Atty. Gen., Feb. 2, 1934.

Subd. 5.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

A village recorder wilfully failing to perform the duties of his office may be convicted under §10028, and thus create a vacancy in his office under this section. Op. Atty. Gen., Oct. 20, 1931.

One acting as assistant assessor in city of Eveleth was not officer and there was no vacation of office by reason of his conviction of crime. Op. Atty. Gen., May 14, 1932.

There is no provision of law for removal of village trustee but his office becomes vacant upon conviction of an infamous crime or any offense involving a violation of his official oath. Op. Atty. Gen., Apr. 6, 1933.

The term "infamous crime" would not apply to a conviction of a misdemeanor such as the illegal sale of liquor. Op. Atty. Gen. (61f), Aug. 21, 1934.

Whether illegal sale of liquor by mayor of a city involves a violation of his official oath depends on the nature of his oath and the place of the sale. Id.

Subd. 6.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.