

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 }

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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.

6954. Removal by governor.

The duties of the governor under this section are not mandatory, are not merely ministerial, and cannot be coerced by mandamus. 179M337, 229NW313.

Protracted absences of justice from his town might amount to nonfeasance in office. Op. Atty. Gen., Mar. 19, 1929.

If municipal judge neglects his duties or corruptly violates his oath of office, his removal should be sought by petition to governor. Op. Atty. Gen., June 26, 1933. Governor cannot remove village constable. Op. Atty. Gen., Aug. 31, 1933.

Persistent refusal or neglect to enforce sentence imposing fine may be made basis for removal of justice of peace. Op. Atty. Gen. (266b-9), Nov. 26, 1934.

6955. Special commissioner to take testimony.

179M337, 229NW313.

6957. Appointment—How long to continue—Impeachment.

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of January following such election. State v. Borgen, 189M216, 248NW744.

The provisions of Laws 1929, c. 413, prevail over this section, and a person appointed to fill a vacancy in a village office holds until the expiration of the term, and not merely until the next municipal election. Op. Atty. Gen., Nov. 13, 1931.

Vacancy in office of county commissioner is to be filled by full membership of city council where district lies wholly within city, though only part of council are elected from district, and term of appointee expires at beginning of official year next following next general election. Op. Atty. Gen. (124k), Aug. 25, 1934.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oath of office.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

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

6965. Forms of oath, etc.

Attorneys suspended for misconduct. 177M203, 225 NW97.

6967. By whom and how administered.

List of officers authorized to administer oaths and take acknowledgments and requirements as to attachment of seal stated. Op. Atty. Gen., Mar. 23, 1933.

ACKNOWLEDGMENTS

6970. Form of certificate.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

6971. Corporate acknowledgment—Evidence.

Op. Atty. Gen., March 23, 1933; note under §6967.

6973. By whom taken in this state.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

6981. Execution according to foreign law.—All deeds and other instruments may be executed and acknowledged in a foreign country in accordance with the laws of the place of execution.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws, shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one.

3. If there be no such officer of the United States therein, then by the certificate of a counselor or diplomatic officer of any other nation with which the United States has diplomatic relations, in which case, the seal of such consular or diplomatic officer shall be certified by his Foreign Office or by the diplomatic representative of such nation in the United States.

4. Any instrument heretofore or hereafter executed, acknowledged and certified as provided herein, shall entitle such instrument to be admitted and read in evidence in all courts and elsewhere without other proof of execution. (R. L. '05, §2691; G. S. '13, §5748; Apr. 18, 1931, c. 201.)

(1).

If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. Op. Atty. Gen., Aug. 7, 1931.

6983. Acknowledgments after expiration of commission—Curative.

Laws 1929, c. 169, and Laws 1929, c. 214, legalizes acknowledgments taken by person after expiration of term.

CHAPTER 49

Fees

6987. Fees of clerk of district court.

Fees earned by clerk of district court, but outstanding on account should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

Fees received by clerk of district court under section 2097 should be included in the statement. Op. Atty. Gen., Jan. 7, 1932. (46).

This section applies to a default action to foreclose a real estate mortgage though the action is tried to the court, and clerk's fees are limited to \$4.00. Op. Atty. Gen., Apr. 27, 1931.

6987-1. Fees of the clerk of the District Court.

In any county of this state where incumbents of the office of clerk of the district court prior to the incumbent holding office at the time of the passage of this act have neglected for six years to enter or file papers or other documents or index the same in such office which should have been entered or filed by them, and as a result thereof the county records are incomplete, the board of county commissioners may agree with the clerk of the district court to properly enter or file all such papers and documents and index the

same, and for such work may pay such clerk in addition to the salary and clerk hire provided by law, the fees provided for such work by General Statutes 1923, Section 6987; provided, that no such extra fee shall be paid for the doing of any work which should have been done by such incumbent. (Act Apr. 16, 1929, c. 207.)

6990. Clerks' fees to be retained in certain counties.

Op. Atty. Gen., Jan. 15, 1934; note under §2720-127.

6991. Fees, when paid—other fees.

In order to effect a change of venue, the deposit fee must be paid within the prescribed time. 178M617, 225 NW326.

6993. Fees of sheriffs.

Special Laws 1887, c. 363, creates a fee bill for Ramsey County. It was repealed by Laws 1911, c. 147.

Special Laws 1891, c. 373, §3, establishes a fee bill for Hennepin County. This act has never been repealed. See notes under §923 enumerating local laws affecting fees and compensation of sheriffs and their deputies.