1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 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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PREFACE

The 1940 Supplement to Mason's Minnesota Statutes makes its appearance to simplify the work of the Minnesota lawyer in his use of the Minnesota Statutes. Mason's Minnesota Statutes, 1927, in two volumes and this Supplement constitute a complete presentation of the Minnesota law down to the close of the 1939 Regular Session of the Legislature.

This Supplement obviates the use of the 1929, 1931, 1933, 1935, 1937 and 1939 General and the 1933-34, 1935-36, 1936 and 1937 Special Session Laws by combining, under one cover, ten session laws, fourteen years of annotation pamphlets, the state and federal court rules, and a complete set of conveyancing forms.

The annotations cover the period which has elapsed since the publication of Mason's Minnesota Statutes, 1927, and are derived from the U. S. Supreme Court Reports, the Federal Reporter, the Federal Supplement, the Minnesota Reports, the Opinions of the Attorney General, and the Minnesota law review.

The ninety-three standard conveyancing forms provided by Laws 1931, Chap. 272, have been incorporated in this Supplement as Appendix No. 1.

Laws of a temporary or local nature, as well as City Charters and Municipal Ordinances which could not be properly included in a general statute but which are the subject of litigation, are annotated in Appendices Nos. 2 and 3.

The Rules of the Minnesota Supreme Court and District courts, and the United States Circuit and Supreme Courts as well as the Municipal Court Rules of Duluth, Minneapolis, and St. Paul are brought to date in Appendix No. 4.

Stalland's Minnesota Curative Acts is brought to date by Appendix No. 5.

The table of Statutes indicates the disposition of the various laws contained in this Supplement.

By means of this Supplement and the quarterly continuation service Dunnell's Digest is kept to date. This is accomplished by annotating each current decision to the digest. If you wish to run to date a particular section in Dunnell's Digest turn to the "Table of References to Dunnell's Digest" beginning on page 1834, and that table will direct you from the Dunnell section which you have in mind to the section of this Supplement where later cases are to be found.

The index is complete in its scope, not only directing you to the subject matter of the statutes contained herein, but also to notes of the common law decisions which have been classified to appropriate sections and chapters of the statute scheme.

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TABLE OF CONTENTS

Mason's Minnesota Statutes, 1927, and Mason's 1940 Supplement

An analysis of statutes contained in Mason's Minnesota Statutes, 1927, and Mason's 1940 Supplement.

(For page location of contents of this volume see pg. X, this volume.)

The Fundamental Law

The General Statutes

PART I

Jurisdiction, Divisions, Civil Polity, and Internal Administration.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

PART II

Property Rights and Domestic Relations.

PART III

Civil Actions and Proceeedings.

PART IV

Crimes, Criminal Procedure, Imprisonment, and Prisons.

PART V

Construction of Statutes and Express Repeals.

TABLE OF CONTENTS

1940 Supplement

Scope of Annotations in this Supplement

Minnesota Reports	171	M		to	204	M	
Northwestern Reporter	213	NW	564	to	287	NW	337
United States Reports				to	307	US	
Supreme Court Reporter				to	59	SCR	1048
Federal Reporter				to	106	F(2d)	472
Federal Supplement				to	28	FSupp	452
Opinions of Attorney General				to	Sept. 30, 1939		
Minnesota Law Review	12	MLR	1	to	23	MLR	1010

For later decisions see Mason's Minnesota Annotations and Current Digest.

United States Constitution

Article XVIII.—PROHIBITION.

Repeal of this amendment proclaimed. See Const. Am. 21, post.

Article XX.—TERM OF PRESIDENT AND VICE PRESIDENT, SESSIONS OF CONGRESS, AND VACANCY IN OFFICE OF PRESIDENT-ELECT.

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Adoption proclaimed Feb. 6, 1933, 47 Stat. 2569.

Article XXI.—REPEAL OF EIGHTEENTH AMENDMENT; TRANSPORTATION INTO STATES CONTRARY TO LAWS THEREOF.

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Adoption proclaimed Dec. 5, 1933, that being the date of the completion of ratification of the amendment by 36 states.

Northwest Territorial Government

(ORDINANCE OF 1787)

Art. 4.

Federal court, held not to have jurisdiction of suit by riparian owner to restrain filling of navigable water. Leitch v. Chicago, (CCA7), 41F(2d)728. See Dun. Dig. 3744. Cert. den. 282US891, 51SCR106.

Village ordinance providing fee of one dollar for privilege of anchoring in navigable lake channel is void as an obstruction to a common highway. Op. Atty. Gen., (Mich), Aug. 13, 1931. See Dun. Dig. 6936.

Organic Act of Minnesota

Center of channel of boundary waters between states of Minnesota and Wisconsin is boundary line between two states, and those waters lying west of center of channel of such boundary waters within two miles of limits of city of Duluth is subject to provisions of Mason's Stats., §5509, and it may be enforced against all persons violating its provisions regardless of place from which they enter. Op. Atty. Gen. (273d-5), Oct. 14, 1937.

§4.

Legal title to University permanent trust fund land is vested in state subject to trust imposed thereon for use and benefit of University to be appropriated and applied as legislature may prescribe for use and support of the University, and in absence of legislation to that effect, department of conservation is without authority to transfer administration, sale, lease, demise, control or management of University trust fund lands to Board of Regents of the University. Op. Atty. Gen. (618c-2), Dec. 13, 1938.

§18.

Where sublessee of lessee of school land was required to pay to the state the full amount of the royalties stipulated in the original lease, the net income received by the lessee was subject to federal income tax. Wanless Iron Co. (USCCA8), 75F(2d)779, aff'g 29BTA834. Cert. den. 295US765, 55SCR924.

Western boundary of state follows main channel of Red River of the North, although changing, unless change is caused by natural violence such as flood, earthquake, etc. Op. Atty. Gen. (211d-1), Jan. 15, 1936.

Act Authorizing a State Government

Western boundary of state follows main channel of Red River of the North, although changing, unless change is caused by natural violence such as flood, earthquake, etc. Op. Atty. Gen. (211d-1), Jan. 15, 1936.

§2.

Riparian rights are subordinate to paramount right of navigation or other public use. Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902.

State of Minnesota holds the legal title to the bed of the Mississippi River in Morrison County, Minnesota, the right of the United States being limited to the control of the river and the river bed for the purposes of navigation only. Id.

The bed of a navigable stream is not subject to every public use without compensation to riparian owners, it being servient only to the paramount rights of the federal and state governments, not to right of public service corporations to build bridge piers or dams. Id.

No improvements can be made by state upon Mississippi River without consent of federal government, and such river is not a highway in same sense as other public roads of state, and it is a question of fact whether dredging in a particular place is for a public purpose or primarily for a private purpose. Behrens v. C., 199M363, 271NW814. See Dun. Dig. 9119.

The taking of muskrats in the waters of a lake forming the boundary between Minnesota and South Dakota within the closed season established by the laws of Minnesota is an offense against the laws of Minnesota irrespective of the location of the boundary line. Op. Atty. Gen., Jan. 6, 1930.

§5.

Wanless Iron Co. (USCCA8), 75F(2d)779, aff'g 29BTA 834. Cert. den. 295US765, 55SCR924.

Legal title to University permanent trust fund land is vested in state subject to trust imposed thereon for use and benefit of University to be appropriated and applied as legislature may prescribe for use and support of the University, and in absence of legislation to that effect, department of conservation is without authority to transfer administration, sale, lease, demise, control or management of University trust fund lands to Board of Regents of the University. Op. Atty. Gen. (618c-2), Dec. 13, 1938.

Act of Admission into the Union

Wanless Iron Co., (USCCA8), 75F(2d)779, aff'g 29BTA 834. Cert. den. 295US765, 55SCR924.

Constitution of the State of Minnesota

PREAMBLE

Rules governing construction of statutes are applicable to the construction of the Constitution. Badger v. H. (USCCA8), 88F(2d)208.

The test of the constitutionality of a statute is not what has been, but what may be done pursuant to its authority. State ex rel. v. Rural Credits Bureau, 182M 565, 235NW380. See Dun. Dig. 1576(43).

There must be resort to construction whenever a constitutional provision, plain on its face, becomes ambiguous when applied to its subject matter. State v. Finnegan, 188M54, 246NW521. See Dun. Dig. 1576.

Both constitutional and statutory declarations are to be interpreted in light of tacit assumptions upon which it is reasonable to suppose that language was used. State v. Flores, 197M590, 268NW194. See Dun. Dig. 1576.

Unless a constitutional provision shows upon its face that it was intended to be directory, it must be accepted as the imperative mandate of the sovereign people, and not as good advice which legislators and courts may accept or reject as they please. Freeman v. G., 287NW238. See Dun. Dig. 1580.

Article 1.—BILL OF RIGHTS.

One hundred and fifty years of the bill of rights. 23 MinnlawRev719.

1. Object of government.

A county board has no authority to purchase on behalf of the county shares of stock in a private hospital association. Op. Atty. Gen., Dec. 16, 1931.

A school district maintaining and operating a greenhouse in connection with its school gardens cannot raise plants for sale to the public, though it may sell any surplus it has. Op. Atty. Gen., Dec. 17, 1931.

A village may purchase electricity at wholesale and resell to its inhabitants at a profit if the amount charged is fair and reasonable and without discrimination. Op. Atty. Gen., Feb. 15, 1932.

2. Rights and privileges of citizens.

G. S. 1923, §1614, and ordinances passed thereunder, zoning cities, is valid. American Wood Products Co. v. Minneapolis (USDC-Minn), 21F(2d)440.

State Securities Act [Mason's Minn. St., §§3996-1 to 3996-28], does not violate this section. Northwest Bancorporation v. B. (DC-Minn), 6FSupp704, aff'd 292US606, 54SCR775. See Dun. Dig. 1695.

Laws 1935, c. 390, §1, prohibiting importation of liquors unless brands are registered in United States patent office, violates 14th amendment to U. S. Constitution. Joseph Triner Corp. v. A. (USDC-Minn), 11FSupp145.

Equal protection clause in Fourteenth Amendment to federal constitution applies to foreign corporations. Id.

Restrictions imposed by state on importation of intoxicating liquors which are not imposed alike on all similarly situated, and hence are violative of the Fourteenth Amendment to the federal constitution, are not rendered valid by the provisions of the Twenty-first Amendment. Joseph Triner Corp. v. M., (USDC-Minn), 20FSupp1019.

State banking corporations are properly placed in a class by themselves for the purposes of legislation, and *Laws 1925, c. 38, is not class or special legislation.* 174 M36, 218NW238.

Laws 1925, c. 185 (Mason's Minn. Stat., 1927, §§5015-1 to 5015-19), is valid. 174M331, 219NW167.

A city ordinance requiring licenses for open-air automobile parking places was not invalid because it did not extend to parking places for less than ten cars. 175M386, 221NW423.

Laws 1925, c. 407, known as the Forestry Act [4031-1 to 4031-35] does not offend the equality provisions of the Constitution. 176M472, 223NW912.

It was competent for the Legislature to classify counties and to impose more drastic regulations for prevention of fires in certain counties than in others. 176M472, 223NW912.

Provisions of city charter of St. Paul authorizing city council to fix and affirm amount of damages for taking of land in a condemnation proceeding with right of appeal to the district court do not violate this section. 177M146, 225NW86.

Provision of land owner to give a bond for costs in order to perfect an appeal could be held nugatory without affecting other provisions. 177M146, 225NW86.

Laws 1929, cc. 267, 424, admitting disabled veterans and court reporters to the practice of law without examination, violate this section. 178M331, 227NW179; 178 M335, 227NW180.

Basic Science Act (Mason's Minn. St. §§5705-1 et seq.), held not invalid because it exempts certain practitioners from its operation. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

A complaint, charging that the plaintiff, on entering a cafeteria for the purpose of being served food, was told that he was too dirty to be served and would have to get out, and was refused service, when in fact his clothing and person were clean, does not state a cause of action either for slander or for deprivation of any civil rights. Larson v. R., 183M393, 235NW393. See Dun. Dig. 4509.

A city selling electricity to persons outside its limits under contract may discriminate in favor of residents of the city. Guth v. Staples, 183M552, 237NW411.

Soldiers' Preference Law, (Stat., 1927, §§4368, 4369; Laws 1929, c. 57, Laws 1931, c. 347, does not deny equal protection of laws. State v. McDonald, 188M157, 246NW 900. See Dun. Dig. 6560.

A child removing with parents to Canada, where father was naturalized but returned to this country while child was still a minor, remained a citizen of Canada after father's death in this country. Koppe v. P., 188M619, 247NW41. See Dun. Dig. 1487.

Exercise of all rights of citizenship, voting at elections and holding several elective public offices, including that of judge of probate court, extending over a period of more than thirty years, is sufficient evidence to justify court in finding that contestee was a naturalized citizen. Miller v. B., 190M352, 251NW682. See Dun. Dig. 2921.

Duluth City Ordinance No. 1126, §419, making it unlawful to repair or alter any frame or brick veneered building, damaged or deteriorated more than 50%, is not unreasonable or arbitrary. Zalk & Josephs Realty Co. v. S., 191M60, 253NW8. See Dun. Dig. 6525.

Sale of nonintoxicating malt liquors is subject to regulation under police power of state; and Laws 1933, c. 116 [Mason's 1934 Supp., §§3200-5 to 3200-10], delegating to village and city councils authority to license and regulate is a valid exercise of police power. Bernick v. C., 191M128, 253NW369. See Dun. Dig. 4913.

Chapter 359, Laws 1933, providing for a lower assessed valuation on first $4,000 of actual value of real estate used for homestead purposes than on other real estate, held constitutional. Apartment Operators' Ass'n v. C., 191M365, 254NW443. See Dun. Dig. 9142.

An ordinance for regulating of auctions and auctioneers, imposing a minimum license fee of $250, is so unreasonable as to be invalid. Orr v. C., 193M371, 258NW 569. See Dun. Dig. 716, 6794.

Mason's Minn. St. Supp. 1934, §4254-3, attempting to confer upon industrial commission power to deny, upon ground that field was already sufficiently occupied, to qualified applicant right to operate an employment agency, held unconstitutional as denial of equal protection and due process of law. Engberg v. D., 194M394, 260NW626. See Dun. Dig. 1674.

Mason's Minn. St. 1927, §2150, as amended by Laws 1929, c. 266, Laws 1935, c. 246, providing for attachment, by county auditor, of rents received from real estate upon which taxes have become delinquent, is constitutional. Taxes Delinquent, 197M266, 266NW867. See Dun. Dig. 1687.

Mason's Minn. Stat. §7492-61a, giving majority of stockholders of corporation right to elect not to be bound by a prior act, which had limitations, was not invalid as impairing or taking away any vested property rights of minority stockholders or as class legislation. Muller v. T., 197M608, 268NW204. See Dun. Dig. 1669.

Mason's Minn. St. 1927, §9360-1, subjecting to garnishment money owed by state to employees in highway department, held constitutional as against objection of special legislation, lack of equal protection and due process. Franke v. A., 199M450, 272NW165. See Dun. Dig. 1675.

Whether an optometrist should be classified as a member of a learned profession or not, his optometric work is within police power of state and subject to legislative regulations in interest of public health. Williams v. M., 202M402, 278NW585. See Dun. Dig. 1608.

Workmen's Compensation Act is constitutional. Ruud v. M., 202M480, 279NW224. See Dun. Dig. 10383.

Mason's Minn. Stat., 1938 Supp., §2176-26 to §2176-34, permitting former owners of tax forfeited lands to repurchase at a discount and canceling special assessments, is constitutional. State v. Hubbard, 203M111, 280NW9. See Dun. Dig. 1675.

Mason's Stat. §389, relating to removal of name from election register does not violate this section. State v. Ferguson, 203M603, 281NW765. See Dun. Dig. 1695.

Mason's Minn. Stat. Supp. 1936, §§7774-25 to 7774-35, which permits industrial loan and thrift companies organized thereunder to charge eight per cent interest in advance on loans not to exceed one year, is not special legislation nor does it deny equal protection of law to other money lenders similarly situated because it does not distinguish between different classes of money lenders but applies same rates of interest to those organized under statute as to other lenders under general statutes. Mesaba Loan Co. v. S., 203M589, 282NW823. See Dun. Dig. 1675, 1687.

An ordinance which requires "transient merchants" selling or displaying for sale "natural products" of the farm, including such commodities as cattle, hogs, sheep, veal, poultry, eggs, butter, and fresh or frozen fish, to be licensed and to file a bond and exempts from its provisions persons selling produce raised on farms occupied and cultivated by them, and persons selling milk, cream, fruit, vegetables, grain or straw, is violative of state and federal constitutional prohibitions against class legislation. State v. Pehrson, 287NW313. See Dun. Dig. 1673.

An American who served in a Canadian army during the World War, and presumably swore allegiance to the King, is permitted to resume his citizenship, by taking the oath of allegiance of the United States, without submitting to the usual process of naturalization. Op. Atty. Gen., July 6, 1931.

Minimum wage laws for groups of municipal employees would be constitutional. Op. Atty. Gen., Feb. 9, 1933.

An act providing that personal property taxes should not become delinquent in counties having limited valuation, is unconstitutional. Op. Atty. Gen., Feb. 27, 1933.

A proposed law relating to limitations in criminal cases containing provision that it shall be "applicable to any case wherein the complaint was made after January 1st, 1931" is an ex post facto law. Op. Atty. Gen., Apr. 6, 1933.

Though, to a limited extent impairing the obligation of contracts and depriving persons of property without due process, the mortgage Moratorium Act is a justifiable exercise of the police power in the present emergency. Op. Atty. Gen., Apr. 7, 1933.

Mason's Stat., §2867-1, relating to issuance and sale of bonds, is not invalid as special legislation. Op. Atty. Gen. (86a-8), June 14, 1934.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employee of right of election. Op. Atty. Gen. (523a-13), Dec. 18, 1934.

Bill absolutely prohibiting carrying firearms immediately preceding the opening of deer season would be unconstitutional, but a law requiring that firearms be sealed when carried would be valid. Op. Atty. Gen. (82p), Feb. 26, 1935.

Veteran must be appointed if he possesses required degree of fitness, even though his non-veteran competitor has a higher rating or grade. Op. Atty. Gen. (85e), Aug. 4, 1937.

A village ordinance that no building should be rerented to nonresidents without having running water, bath room, and sewage or disposal system, violates equal protection clause of constitution. Op. Atty. Gen., (477b-3), Oct. 13, 1938.

That part of Laws 1939, c. 195, §2, amending §8688-6 which denies aid to a citizen child whose mother is not a citizen of the United States or has declared her intention to become a citizen, is unconstitutional, and may be ignored. Op. Atty. Gen. (840a-6), August 5, 1939.

Though city council is without authority to pass ordinance "based purely on aesthetic reasons", it may pass and enforce an ordinance requiring cleaning of yards in interest of public health. Op. Atty. Gen., (59a-32), Sept. 13, 1939.

Validity of municipal ordinance vesting in municipal officers power to exercise arbitrary discretion. 15Minn LawRev586.

3. Liberty of the press.

Mason's Minn. Stat., §§10123-1 to 10123-3, are valid. 174M457, 219NW770.

Mason's Minn. Stat., §§10123-1 to 10123-3, providing for abatement as nuisance of obscene publication, held valid. 179M40, 228NW326. Rev'd, 283US697, 51SCR625.

Freedom of speech and of press and municipal power of license and censorship. 23MinnLawRev375.

4. Trial by jury.

Dismissal of action upon plaintiff's refusal to proceed to trial does not violate this provision. Hineline v. M. (USCCA8), 78F(2d)854.

Mason's Minn. Stat., §§10123-1 to 10123-3, are valid. 174M457, 219NW770.

On appeal from order admitting will to probate there is no right to trial by jury, such a trial being discretionary. 180M256, 230NW781.

The provision in the Minnesota standard policy for arbitration or appraisal in case of disagreement as to loss is not violative of article 1, §§4 and 7, of the State Constitution or of the Fourteenth Amendment of the Federal Constitution. 181M518, 233NW310. See Dun. Dig. 1646, 4793(85), 5227.

Where defendant admitted facts showing he was guilty, instruction failing to tell jury that they could find him not guilty was harmless. State v. Corey, 182M 48, 233NW590. See Dun. Dig. 2490(44).

It was error to charge the jury that the only issue was whether defendant was guilty of robbery in the first degree or of an attempt to commit such robbery, for in any criminal prosecution the jury has the power to return a verdict of not guilty, even though contrary to the law and the evidence. State v. Corey, 182M48, 233NW590. See Dun. Dig. 5236.

Denial of jury trial is prejudicial where issue of fact might have been differently determined by jury. Wilcox v. H., 185M1, 239NW763. See Dun. Dig. 5227, 7074.

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. State v. Jackson, 198M111, 268NW924. See Dun. Dig. 5235.

One charged with offense of operating a motor vehicle while under influence of intoxicating liquor in violation of city ordinance is not entitled to a jury trial in municipal court of St. Paul, though conviction involves a fine of $100 or imprisonment for 90 days, and incidentally involves revocation of driver's license, and although at time of passage of ordinance, there existed a statute covering same subject matter which entitled violator to a jury trial. State v. Parks, 199M622, 273NW233. See Dun. Dig. 5235, 6907.

Municipal court of St. Paul may dispose of cases involving violations of a city ordinance without a jury trial. Id.

Right to jury trial is valuable, and therefore probate court should not have jurisdiction of a dispute between

personal representative of a decedent and his attorney as to compensation. State v. Probate Court of Hennepin County, 204M5, 283NW545. See Dun. Dig. 5227.

Neither party is entitled to a jury trial on trial of objections to taxes on real estate under §2126-5. Op. Atty. Gen. (260a-13), June 22, 1937.

Jury trial in will cases. 22MinnLawRev513.

5. Excessive bail and fines—Cruel or unusual punishment.

Mason's Minnesota Stats., §10363(3), does not provide cruel or unusual punishment. State v. Tremont, 196M36, 263NW906. See Dun. Dig. 1661.

Mason's Minn. Stat. 1927, §10448, relating to exposing poison with intent that it be taken by an animal, does not offend this section by providing for cruel and unusual punishment. State v. Eich, 204M134, 282NW810. See Dun. Dig. 1661.

6. Rights of accused.

½. In general.

Where defendant admitted facts showing he was guilty, instruction failing to tell jury that they could find him not guilty was harmless. State v. Corey, 182 M48, 233NW590. See Dun. Dig. 2490(55).

It was error to charge the jury that the only issue was whether defendant was guilty of robbery in the first degree or of an attempt to commit such robbery, for in any criminal prosecution the jury has the power to return a verdict of not guilty, even though contrary to the law and the evidence. Id. See Dun. Dig. 79, 5235 (39).

Discovery of crime and procuring of evidence by deception is not prohibited in this state. City of Duluth v. V., 186M393, 243NW394. See Dun. Dig. 2448b.

Right of defendant to appeal after plea of guilty in municipal court. Op. Atty. Gen., Dec. 9, 1930.

Multiple consequences of a single criminal act. 21 MinnLawRev805.

Plea for withdrawal of privileges. 22MinnLawRev200.

1. Speedy and public trial.

Bastardy proceeding. State v. Hanson, 187M235, 244 NW809.

Defendant's silence, in the face of numerous continuances and long delay, waives right to a speedy trial. 173M153, 216NW787.

A judge of probate as an incident to feeble-minded proceedings, may order an examination of a mentally defective person outside court room, provided the alleged incompetent has an opportunity to be fairly heard. Op. Atty. Gen. (679e), March 9, 1939.

2. To be informed of nature of accusation.

Information alleging the stealing of men's clothing in the nighttime, without alleging that it was taken from a building, charged second degree and not first degree grand larceny. 172M139, 214NW785.

Mason's Statutes, §5547, relating to possession of raw skins of fur-bearing animals and burden of proof, does not violate this section. 177M398, 225NW435.

Indictment charging that defendant did "ask, agree to receive, and receive" a bribe was not duplicitous or repugnant. 178M437, 227NW497.

Record establishes that defendant was accorded his statutory and constitutional rights of proper arraignment and notice of charge brought against him. State v. Barnett, 193M336, 258NW508. See Dun. Dig. 2439a, 4354.

It was not error to admit evidence tending to show a disposition by defendant as a witness in his own behalf, to withhold truth or conceal facts. Such evidence did not become inadmissible because it may have suggested defendant's guilt of other crimes. State v. Hankins, 193M375, 258NW578. See Dun. Dig. 2459.

A statute is unconstitutional for indefiniteness if it requires or forbids in terms so vague that men of common intelligence must guess at its meaning and differ as to its application. State v. Eich, 204M134, 282NW810. See Dun. Dig. 2417a.

Information charging that defendant unjustifiably exposed poison with intent that it should be taken by a dog held sufficiently definite to state an offense. Id. See Dun. Dig. 4354.

3. To be confronted by witnesses.

Mason's Statutes, §5547, relating to possession of raw skins of fur-bearing animals and burden of proof, does not violate this section. 177M398, 225NW435.

4. Trial by jury of county or district.

Although a bastardy proceeding has some of the features of a criminal trial, it is substantially a civil action, and, after a verdict of not guilty, court may grant a new trial. State v. Reigel, 194M308, 260NW293. See Dun. Dig. 827, 2425.

Though a defendant in a criminal case is entitled to a verdict of twelve jurors, yet, where he waives that right and agrees to accept a verdict of eleven jurors, he cannot later object. State v. Zabrocki, 194M346, 260NW 507. See Dun. Dig. 5236(55).

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. State v. Jackson, 198M111, 268NW924. See Dun. Dig. 5235.

One charged with offense of operating a motor vehicle while under influence of intoxicating liquor in violation of city ordinance is not entitled to a jury trial in municipal court of St. Paul, though conviction involves a fine of $100 or imprisonment for 90 days, and incidentally involves revocation of driver's license, and although at time of passage of ordinance, there existed a statute covering same subject matter which entitled violator to a jury trial. State v. Parks, 199M622, 273NW233. See Dun. Dig. 5235.

Municipal court of St. Paul may dispose of cases involving violations of a city ordinance without a jury trial. Id. See Dun. Dig. 5235, 6907.

Laws 1939, c. 369, giving probate court jurisdiction of preceedings to commit persons with psychopathic personalities, is not unconstitutional because it denies the patients right to a jury trial. State v. Probate Court, 287NW297. See Dun. Dig. 5227.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. Op. Atty. Gen. (605a-11), Feb. 25, 1935.

One charged with an offense under municipal ordinance is not entitled to a jury trial, unless it is expressly provided in such ordinance, or by charter or law under which city or village is operating. Op. Atty. Gen. (477a), Mar. 2, 1938.

5. Assistance of counsel.

After a defendant in jail has employed counsel, it is unethical for county attorney or sheriff or deputies to try to obtain a statement from the defendant in absence of his attorney. Op. Atty. Gen. (121b-7), Mar. 1, 1937.

7. Same—Due process of law—Bail—Habeas corpus.

½. In General.

State v. Stanley, 188M390, 247NW509, note under §2554.

Mason's Minn. Stat., §§10123-1 to 10123-3, providing for abatement as nuisance of obscene publication, held valid. 179M40, 228NW326. Rev'd 283US697, 51SCR625.

The provision in the Minnesota standard policy for arbitration or appraisal in case of disagreement as to loss is not violative of article 1, §§4 and 7, of the State Constitution or of the Fourteenth Amendment of the Federal Constitution. 181M518, 233NW310. See Dun. Dig. 1646, 4793(85), 5227.

Pharmacy law (§§5797 to 5816), regulating sale of medicines, is not arbitrary or discriminatory. State v. F. W. Woolworth Co., 184M51, 237NW817. See Dun. Dig. 1671(39).

Mason's Stat., §§7688, 7689, are not unconstitutional as attempting to deprive a bank or its stockholders of property without due process of law. American State Bank of Minneapolis v. J., 184M498, 239NW144.

Though a railroad company has constitutional right to abandon its road for reason it can be operated only at a loss, legislature has not given railroad and warehouse commission power to authorize an abandonment on that ground. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 8078(23), 8088c.

Any rate for switching services between telephone companies is confiscatory if insufficient to constitute reasonable return on value of property used and services required Western Buse Telephone Co. v. N., 188M524, 248 NW220.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Id.

Barber code was unconstitutional in so far as it prohibited beauty culturists from cutting and trimming hair of women. Johnson v. E., 285NW77. See Dun. Dig. 1655.

1. Twice in jeopardy.

The same acts may constitute an offense against a statute and also a violation of a city ordinance, in which case a conviction under one is no bar to a prosecution under the other. 171M505, 214NW479.

The procedure prescribed in Laws 1927, c. 236 (§§9931 to 9931-4), does not place the defendant twice in jeopardy. 175M508, 221NW900.

The doctrine of double jeopardy has no application in proceedings to punish for contempt, and each succeeding refusal to answer the same questions will ordinarily be a new offense. 177M200, 224NW838.

Offenses under Mason's Minn. Stat., §§10135, 10136, are continuing and former conviction does not preclude prosecution for subsequent offense. 179M32, 228NW337.

A city ordinance regulating the licensing and operating of taxicabs and providing for revocation at any time for cause, after hearing, is valid, though the charter provides in general terms that such license may be revoked at any time. National Cab. Co. v. K., 182M152, 233NW838. See Dun. Dig. 1646.

Prosecution for a sale to be given person in one county is not a bar to a prosecution for a sale to another person in a different county on a different date. State v. Robbins, 185M202, 240NW456. See Dun. Dig. 2426.

Plea of former jeopardy, that a man shall not be brought into danger of his life or limb for same offense more than once, is established maxim of common law and constitution as a fundamental right of and a safeguard to accused, and protection afforded is not against peril of second punishment, but against being again tried for same offense. State v. Fredlund, 200M44, 273NW353. See Dun. Dig. 2425.

A plea of former jeopardy will not be sustained where it appears that in one transaction two distinct crimes were committed. Id.

It is identity of offense, and not of act, which is referred to in constitutional guarantee against putting a person twice in jeopardy. Where two or more persons are injured in their persons, though it be by a single act, yet, since consequences affect, separately, each person injured, there is a corresponding number of distinct offenses, as in separate prosecutions for homicide where two persons in same automobile were killed. Id. See Dun. Dig. 2426.

Where facts constitute but one offense, though it may be susceptible of division into parts, as in larceny for stealing several articles of property at same time, a prosecution to final judgment for stealing some of articles will bar a subsequent prosecution for stealing any of articles taken at same time, and same rule applies where acquittal or conviction of a greater offense necessarily includes a lesser one. Id.

Before a defendant may avail himself of plea of former jeopardy it is necessary for him to show that present prosecution is for identical act and that crime both in law and in fact were settled by first prosecution. Id. See Dun. Dig. 2427a.

One acquitted of charge of rape where age of female is not alleged in indictment may again be tried for same act on same facts under an indictment charging carnal knowledge and abuse of a female child under eighteen years of age. State v. Winger, 204M164, 282NW819. See Dun. Dig. 2425.

A defendant's constitutional right to plead former jeopardy may be waived and if such a plea is not entered at proper time, it is waived by defendant and jurisdiction of trial court is not affected by fact that such a plea might have been interposed. State v. Utrecht, 287 NW229. See Dun. Dig. 2442.

In a habeas corpus proceeding involving a contention of former jeopardy in connection with a conviction of a state offense state court is bound to follow decisions of United States Supreme Court only so far as due process under 14th amendment is involved. Id. See Dun. Dig. 4127.

Where municipal court exceeded its jurisdiction and convicted one of unlawfully killing a deer, and on his failing to pay fine confined him in jail, and conviction was held void on habeas corpus, he could be tried again for the offense with which he was charged. Op. Atty. Gen., Feb. 20, 1931.

If state accepts plea of guilty to charge of assault with intent to kill, it is barred from filing a murder charge if wounded person dies. Op. Atty. Gen., Feb. 18, 1933.

An accused brought before one justice of the peace could not be brought before another justice after district dismissed original action. Op. Atty. Gen., Aug. 12, 1933.

Where accused was released at preliminary examination on ground there was not sufficient evidence to bind him over to district court, and thereafter a new complaint issued and accused was brought before same municipal judge, and accused bound over to district court, and district court dismissed information on motion based on lack of jurisdiction, dismissal of information was not a bar to submitting evidence to grand jury for indictment. Op. Atty. Gen. (494a-1), Mar. 2, 1938.

Multiple consequences of a single criminal act. 21 MinnLawRev805.

2. Self-incrimination.

Defendant cannot complain merely because he was called before the grand jury which indicted him, where he was not compelled to testify. 171M429, 214NW270.

Production of books and papers under Blue Sky Law. 172M328, 215NW168.

While a witness for state may not testify to a part of a transaction and then successfully claim his privilege against self incrimination to avoid giving the whole of it, a defendant cannot claim prejudice where the whole transaction was ultimately gone into by other witnesses. 173M391, 217NW343.

In proceeding to remove, held that defendant officer was deprived of his constitutional rights against self incrimination. 173M512, 217NW935.

Refusal to testify upon ground that testimony might incriminate did not justify inference of guilt. 173M512, 217NW935.

Section 9982, providing that no person shall be excused from testifying in a prosecution for bribery, etc., does not violate this section. 176M308, 223NW144.

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be compelling defendant to furnish evidence against himself. 176M238, 222NW925.

Person accused of arson was denied constitutional guaranty against self incrimination where he was subpoenaed by the fire marshal and compelled to testify as to the charge against him. 180M573, 231NW217.

The disclosure in proceedings supplementary to execution cannot be used in a criminal proceeding against the judgment debtor; but a fact shown in it may be considered in determining want of probable cause. Krienke v. C., 182M549, 235NW24. See Dun. Dig. 10339.

While a deputy public examiner should not have been interrogated as a witness for the state on direct examination concerning statements made by defendant in response to a subpoena, the examination did not go far enough along that line to prejudice defendant, both the statements in question and their truth having been established by other evidence. State v. Stearns, 184M 452, 238NW895. See Dun. Dig. 10337-10343.

A bastardy proceeding is a civil proceeding, not a criminal action, and defendant may be called by prosecution for cross-examination. State v. Jeffrey, 188M476, 247NW692. See Dun. Dig. 10337(80).

Although a bastardy proceeding has some of the features of a criminal trial, it is substantially a civil action, and, after a verdict of not guilty, court may grant a new trial. State v. Reigel, 194M308, 260NW293. See Dun. Dig. 2425.

Where, after a complaint is filed against defendant in municipal court charging him with a felony and a warrant is issued thereon, but, before hearing thereon, he is subpoenaed to appear before grand jury and compelled to give evidence as to facts upon which said charge is based, his constitutional right not to be compelled in any criminal case to be a witness against himself is violated. Defendant is entitled to have an information thereafter filed against him on such charge, by county attorney in district court, set aside. State v. Corteau, 198M433, 270NW144. See Dun. Dig. 10337.

Trial judge is permitted a wide discretion in determining whether witness may in a particular case exercise privilege of silence on ground of self-incrimination. State v. Beery, 198M550, 270NW600. See Dun. Dig. 10337.

Privilege of self-incrimination before grand jury. 15 MinnLawRev344.

Testimony in Federal proceeding involving liability under state laws. 16MinnLawRev604.

Compulsory bodily action or exhibition as violating the privilege against self-incrimination. 17MinnLawRev187.

Rules governing the allowance of the privilege against self-incrimination. 19MinnLawRev426.

4. Due process of law defined.

Owner of land abutting on navigable stream cannot be divested of his riparian rights without consent except by due process of law, and, if for public purposes, upon just compensation. Pike Rapids Power Co. v. M., (CCA8), 99 F(2d)902.

The object of the Fair Trade Act (Mason's Minn. Stat., 1938 Supp, §§3976-37, et seq.), of preventing sale of merchandise at less than cost for the purpose of injuring competitors or lessening competition is within the police power of the state, but arbitrary and discriminatory provisions therein and provisions not having a real and substantial relation to the object sought to be attained are unconstitutional. Great Atlantic & Pacific Tea Co. v. E., (DC-Minn), 23FSupp70.

Provisions making accused presumptively guilty held invalid. Id.

Neither state legislation, state decisions, nor congressional action can modify or affect requirements of due process or shelter a governmental officer, board or commission from requirement of full hearing and evidence. Western Union Telegraph Co. v. I., (DC-Minn), 24FSupp 370.

Constitutional provisions for due process and equal protection of the law yield to the police power. 175M73, 220NW425.

Due process of law is satisfied when an opportunity is afforded to invoke equal protection of law by judicial proceeding appropriate for purpose and adequate to secure end and object sought to be obtained. Zalk & Josephs Realty Co. v. S., 191M60, 253NW8. See Dun. Dig. 1641.

Burden of proof of conditions which justify a finding that an ordinance fixing minimum taxi fares is beyond police power is upon person attacking ordinance. City of St. Paul v. C., 194M183, 259NW824. See Dun. Dig. 1637.

Laws 1935, c. 47, cannot be so construed as to toll running of prior mortgage moratorium statute where title has vested in purchaser at foreclosure sale. Hjeltness v. J., 195M175, 262NW158. See Dun. Dig. 1612.

Notice and an opportunity to be heard are universally recognized as essential to due process and this applies to a junior lienholder who has not been notified of moratorium proceedings. Tomasko v. C., 273NW628. See Dun. Dig. 1637.

Class legislation, discriminating against some and favoring others, is not prohibited either by state or federal constitution, which, in carrying out a public purpose, is limited in its application, if, within sphere of its operation, it affects alike all persons similarly situated and classification is not arbitrary. State v. Hubbard, 203M 111, 280NW9. See Dun. Dig. 1668, 1669.

Police power of state may be exerted against monopolies gained through misuse of an economic advantage to direct injury of small merchants and the ultimate injury of producing and consuming classes. State v. Northwest Poultry & Egg Co., 203M438, 281NW753. See Dun. Dig. 8435.

Due process clause does not render unconstitutional a criminal statute which compels a party to act at his peril. The criterion in such cases is to examine whether common social duty would, under circumstances, have suggested a more circumspect conduct. State v. Eich, 204M134, 282NW810. See Dun. Dig. 1637.

Public officers and employees are mere agencies of government, and in absence of constitutional restriction, their compensation may be reduced and regulated by law, and contributors to pension fund have no vested right in payments deducted from their salaries which

go to make up the fund. Hessian v. E., 204M287, 283NW 404. See Dun. Dig. 8007.

Constitution limits the rate making power by prohibiting deprivation of property without due process of law or the taking of private property for public use without just compensation. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 1607a.

The just compensation assured a utility is a reasonable return on value of property at time it was used in public service. Rates which do not afford such a return are confiscatory. Id. See Dun. Dig. 1607a.

In determining whether a rate is confiscatory, judicial scrutiny must of necessity take into account entire legislative process, including reasoning and findings upon which legislative action rests; court will not interfere with exercise of rate making power unless confiscation is clearly established. Id. See Dun. Dig. 1607a.

Within limits expenditures by public utilities by way of pension to superannuated employees should be treated as an expense of operation for rate making purposes. Id. See Dun. Dig. 8078a.

Law making body is not required to legislate for all persons alike, but must treat all alike who are in same condition, and persons subject to a law may be classified if classification is not fanciful or arbitrary, though it must rest on some principle which may naturally or properly distinguish or disclose necessity or propriety of different legislation. State v. Clousing, 285NW711. See Dun. Dig. 1669.

License fees must be reasonable, but a court will not declare them unreasonable unless they are palpably so, general rule being that a license fee should be intended to cover cost of issuing it, services of officers, and other expenses directly or indirectly imposed. Id. See Dun. Dig. 6800.

In a habeas corpus proceeding involving a contention of former jeopardy in connection with a conviction of a state offense state court is bound to follow decisions of *United States Supreme Court only so far as due process* under 14th amendment is involved. State v. Utrecht, 287NW229. See Dun. Dig. 1640.

House File No. 790, making it an offense to advertise tobacco, cigars or cigarettes by depicting the likeness of any female person, would be unconstitutional if passed. Op. Atty. Gen., Mar. 26, 1931.

All money and credits owned by a federal savings and loan association doing business in the state are taxable under §2337, but not under §2026-5. Op. Atty. Gen. (614i), March 7, 1939.

Due process in valuation of local utilities. 13Minn LawRev409.

Constitutional problems arising from service of process on foreign corporations. 19MinnLawRev375.

5. Held due process of law.

Laws Minn. 1935, c. 390, forbidding importation of any brand of intoxicating liquor containing more than 25% of alcohol by volume, unless such brand was registered in the U. S. patent office, though discriminating in favor of liquor processed within the state, and not an incident of reasonable regulation of the liquor traffic, held valid under the 21st amendment. Mahoney v. T., 304US401, 58 SCR952, 82LEd1424, rev'g (DC-Minn), 20FSupp1019.

Provisions of State Securities Act [Mason's St., §§3996-1 to 3996-28], relating to investigation of dealings, do not violate this section; and it is immaterial that the acts complained of are criminal in nature. Northwest Bancorporation v. B. (DC-Minn), *6FSupp704, 54SCR720, aff'd* 292US606, 54SCR775.

Section 1614, authorizing cities to adopt comprehensive zoning plans, changeable only with consent of specified proportion of owners of property within certain distance of real estate affected, held not to permit the taking of property without due process of law. Leighton v. C., (USDC-Minn) 16FSupp101.

G. S. 1923, §3512, is constitutional, following Abramowitz v. Continental Ins. Co., 170M215, 212NW449; 175M 73, 220NW425.

§5630(6), authorizing game and fish commissioner to set aside waters for fish propagation, is valid. 172M179, 215NW215.

An *assessment greatly in excess of special benefit* is invalid, and while the test of benefit is the increase in market value of the property after the improvement is made, the Supreme Court cannot review the matter of special benefit where the evidence is not in the record, the conclusion of the municipal authorities being prima facie correct, and the burden of proof being on the objector. 172M554, 216NW318.

Denial of registration of corporate stock for sale under §3996-5 was not without due process. 174M200, 219 NW81.

Laws 1925, c. 185 (Mason's Minn. Stat., 1927, §§5015-1 to 5015-19), is valid. 174M331, 219NW167.

Laws 1927, c. 288 (Mason's Minn. Stat., 1927, §§2558-1 to *2558-4), is valid. 174M305, 219NW172.*

Tax imposed by Laws 1923, c. 226, not invalid. 175M 305, 221NW13.

G. S. 1923, §6717-2, provided due process in proceedings to assess the cost of improving and repairing a county ditch. 177M598, 225NW909.

Mason's Minn. Stat., 1927, §2292, Subd. 5, imposing inheritance tax on property subject to a power of appointment, held valid, though instrument was executed prior to passage of statute. 181M262, 232NW331. See Dun. Dig. 9571.

Basic Science Act (Mason's Minn. Stat., §5705-1 et seq.), held not invalid because it exempts certain practitioners from its operation. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Rochester City Ordinance No. 145, regulating pawnbrokers and junk dealers, held valid. 181M596, 233NW 862. See Dun. Dig. 1646, 7436.

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor is valid. State v. Hughes, 182M144, 233NW874. See Dun. Dig. 1646.

Classification for taxation of gifts taking effect in possession after death with those testamentary causa mortis and in contemplation of death is not denial of due process. Rising's Estate v. S., 186M56, 242NW459. See Dun. Dig. 1639.

Under police power legislature may reasonably regulate assignment of unearned wages or salary. Murphy v. C., 187M65, 244NW335. See Dun. Dig. 566.

Basic Science Law (§§5705-1 to 5705-23) is not unconstitutional as denial of due process or equal protection of law. State v. State Board of Examiners, 189M1, 250 NW353. See Dun. Dig. 7483.

Order of building inspector *refusing to permit repairs* and ordering building damaged by fire removed was not without due process because no notice was given and no hearing had before order was made. Zalk & Josephs Realty Co. v. S., 191M60, 253NW8. See Dun. Dig. 1646.

Minnesota Laws 1915, c. 272, as amended by Laws 1919, c. 404, as modified by Laws 1921, c. 280, giving coroner right to make autopsies in case of accidental or violent death, are constitutional. Kingsley v. F., 192M468, 257 NW95. See Dun. Dig. 1646.

Minnesota statute permitting creation of charitable trusts is constitutional. Lundquist v. F., 193M474, 259 NW9. See Dun. Dig. 1637.

Notwithstanding that surviving husband on death of wife became vested with right to take distributive share under statute, there was no denial of due process in holding that probate court erred in permitting personal representatives of husband to elect to take under statute rather than will, surviving husband having made no election during his lifetime. Carey v. B., 194M127, 260NW 320. Cert. den., 296US590, 56SCR102. See Dun. Dig. 1646.

A creditor of a state bank has no constitutional right to insist upon a particular form or method of liquidation, nor has he a vested right to demand liquidation at hands of any particular official. Timmer v. H., 194M586, 261NW456. See Dun. Dig. 1642.

Where bank stock holding company in the state holds majority of stock in numerous state and national banks in other states and has control and manages them, and its property and business, as a unit, are located in state, the bank stocks have a business situs in the state and their taxation locally as for money and credits is not a denial of due process, even as to stocks of state banks which are also taxed by domiciliary states. State v. First Bank Stock Corp., 197M544, 267NW519. See Dun. Dig. 1639. Aff'd 301US234, 57SCR677.

Mason's Minn. St. 1927, §9360-1, subjecting to garnishment money owed by state to employees in highway department, held constitutional as against objection of special legislation, lack of equal protection and due process. Franke v. A., 199M450, 272NW165. See Dun. Dig. 1646.

12 U. S. C. 1467 (e), prohibiting applicants for a loan from Home Owners' Loan Corporation from agreeing to pay mortgagee difference between market value and par value of corporation bonds, does not impair obligation of any contract nor offend against Fifth Amendment to federal constitution. Pye v. G., 201M191, 275NW615, 276NW 221. See Dun. Dig. 1644.

Statute making order of condemnation of building by state fire marshall prima facie evidence of facts recited is not denial of due process. State Fire Marshal v. S., 201M594, 277NW249. See Dun. Dig. 1639.

Mason's St., 9172, giving district court jurisdiction to create a trust in favor of a minor who has no general guardian is no infringement of probate court's constitutional jurisdiction, or a denial of due process of law. Ernst v. D., 202M358, 278NW516. See Dun. Dig. 1646.

Mason's Minn. Stat. 1927, §10448, and information thereunder charging unjustifiable exposing of poison with intent that it be taken by a dog did not violate this section. State v. Eich, 204M134, 282NW810. See Dun. Dig. 1646.

Minneapolis city ordinance requiring fuel dealers to obtain liability insurance as a condition precedent to obtaining a license to make deliveries is valid. Sverkerson v. C., 204M388, 283NW555. See Dun. Dig. 1608.

Due process clause of state and federal constitution is not contravened by fixing minimum prices for services of barbers, such services having a sufficient relation to public health warranting regulations. State v. McMasters, 204M438, 283NW767. See Dun. Dig. 1652.

Ordinance requiring a firm or corporation engaged in plastering an area in excess of 100 square yards to be licensed but permitting persons working under the direct supervision of a licensee or engaged in applying plaster on a job covering less than 100 square yards to do so without a license held not to be so discriminatory as to violate constitutional rights. State v. Clousing, 285NW 711. See Dun. Dig. 6799.

Ordinance requiring a fee of $25 per year for license to engage in business of plastering held not so unreasonable as to justify judicial notice of the fact. Id. See Dun. Dig. 1646.

Ordinance requiring persons engaged in the business of plastering to be licensed does not exceed limitations upon governmental power imposed by state and federal constitutions. Id. See Dun. Dig. 1646.

Gross earnings tax computed according to Burlington formula violates no constitutional provisions. State v. Illinois Cent. R. Co., 286NW359. See Dun. Dig. 9140a, 9562.

Decision of state court holding market agency located in one state liable in conversion for selling cattle mortgaged in another state does not violate any constitutional provision. Mason City Production Cr. Ass'n v. S., 286 NW713. See Dun. Dig. 1646.

Laws 1939, c. 369, providing for commitment of persons with psychopathic personalities and sexual inclinations by proceedings in the nature of guardianship in the probate court, is constitutional. State v. Probate Court, 287NW297. See Dun. Dig. 1646.

State is not legally liable to refund inheritance taxes levied and voluntarily paid by estates of nonresidents holding stock in Minnesota corporations, though such taxes are unconstitutional. Op. Atty. Gen., Jan. 25, 1933.

Minimum wage laws for groups of municipal employees would be constitutional. Op. Atty. Gen., Feb. 9, 1933.

A bill to preserve shore lines, rapids, water falls, beaches and other natural features in an unmodified state of nature by regulating construction of dams in Cook, Lake and St. Louis Counties would not violate this section. Op. Atty. Gen., Mar. 6, 1933.

Though, to a limited extent impairing the obligation of contracts and depriving persons of property without due process, the Mortgage Moratorium Act is a justifiable exercise of the police power in the present emergency. Op. Atty. Gen., Apr. 7, 1933.

Statute authorizing zoning of certain areas of state for conservation purposes, permitting continued operation of farms already established there but excluding entry of others for purpose of farming, would be valid. Op. Atty. Gen., Dec. 9, 1933.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employee of right of election. Op. Atty. Gen. (523a-13), Dec. 18, 1934.

City council may pass ordinance permitting revocation of malt liquor licenses without notice. Op. Atty. Gen. (217b-1), Jan. 25, 1935.

A city may regulate but cannot prohibit billboards on private property, regulation includes power to prohibit billboards in residential sections. Op. Atty. Gen., (59a-32), Dec. 23, 1938.

A judge of probate as an incident to feeble-minded proceedings, may order an examination of a mentally defective person outside court room, provided the alleged incompetent has an opportunity to be fairly heard. Op. Atty. Gen. (679e), March 9, 1939.

6. Held not due process of law.

Laws 1935, c. 390, prohibiting importation of liquor unless brands are registered in U. S. Patent Office, violates 14th Amendment to U. S. Constitution. Joseph Triner Corp. v. A. (USDC-Minn), 11FSupp145.

Service of process may not be made upon officers of foreign corporation unless it is doing business in the state, though they reside in state. Truck Parts v. B., (DC-Minn), 25FSupp602.

Minneapolis ordinance imposing liability on adjoining owners to sheath-pile in making excavation so as to protect walls on the adjoining property held invalid. 172M428, 215NW840.

The venue statute as to foreign corporations (§9214, Mason's Minn. Stat., 1927) must be construed so as to place such corporations within the equal protection clause of the Fourteenth Amendment of the federal Constitution, as held in Power Mfg. Co. v. Saunders, 274US 490, 47SCR678, 71LEd1165. Olson v. Osborne & Co., 30M 444, 15NW876, and Eickhoff v. Fidelity & Casualty Co., 74M139, 76NW1030, being in conflict with the decision of the Supreme Court of the United States, are overruled. 178M19, 225NW915.

Laws 1929, c. 361, imposing on express companies license tax on vehicles in addition to gross earnings tax, held invalid. 180M268, 230NW815.

A railroad cannot be compelled to keep in operation at a permanent net loss. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 1647.

As against fee owner of real property, in possession thereof at time of its enactment, chapter 378, Laws 1929 [Mason's 1931 Supp., §9633, note], purporting to validate a prior void foreclosure sale of property, is unconstitutional. Fuller v. M., 187M447, 245NW617. See Dun. Dig. 1651.

Burden of showing that an act is arbitrary and unreasonable is on complaining party. State v. City of Minneapolis, 190M138, 251NW121. See Dun. Dig. 1604.

Minneapolis ordinance requiring that all pasteurized milk sold within city must be pasteurized within city limits is unconstitutional. Id.

Justification for a zoning ordinance lies in police power exerted in public interest, and legislature may not unreasonably and arbitrarily restrict use of private property, neither may it permit a use of property which unreasonably and arbitrarily infringes rights of others as by creation of a nuisance. Gunderson v. A., 190M245, 251NW515. See Dun. Dig. 6525.

Zoning ordinance attempting to permit maintenance of funeral home near residences, held void as being unreasonable and arbitrary. Id. See Dun. Dig. 6525.

Where defendant was not doing business in this state of such a nature and character as to subject it to jurisdiction of state court, attempted service of summons on its soliciting agent was not due process of law, and jurisdiction was not obtained. Gloeser v. D., 192M376, 256NW666. See Dun. Dig. 1647.

An ordinance of city prescribing hours when barber shops may be open for business violates due process clauses of state and Federal Constitutions. State v. Johannes, 194M10, 259NW537. See Dun. Dig. 1647.

Mason's Minn. St. Supp. 1934, §4254-3, attempting to confer upon industrial commission power to deny, upon ground that field was already sufficiently occupied to qualified applicant right to operate an employment agency, held unconstitutional as denial of equal protection and due process of law. Engberg v. D., 194M394, 260NW626. See Dun. Dig. 1647.

Denial of right to judicial review of an order of a commission fixing street railway rates affecting a substantial right because order was temporary in nature would be violation of due process clause. State v. St. Paul City Ry. Co., 196M456, 265NW434. See Dun. Dig. 1642.

A statute requiring purchasers of certain farm products for manufacture or resale to deduct from purchase price paid "actual cost of transportation by wagon or truck" from point of purchase to the locality of manufacture or sale is so uncertain that it denies due process of law. State v. Northwest Poultry & Egg Co., 203M438, 281NW753. See Dun. Dig. 1647.

A judgment rendered by a state court without jurisdiction acquired by service of process upon defendant within the state is lacking in due process of law and is absolutely void, even in state of its rendition. Garber v. B., 285NW723. See Dun. Dig. 1647.

A city ordinance prohibiting sale of non-intoxicating malt liquors to students over 21 years of age would be invalid. Op. Atty. Gen., Apr. 11, 1933.

City ordinance prohibiting operation of a restaurant in connection with a drug store would violate due process clause. Op. Atty. Gen. (59a-32), June 13, 1935.

7. Habeas corpus.

An application for a writ of habeas corpus is an independent proceeding to enforce a civil right and is a collateral attack upon a criminal judgment. State v. Utrecht, 287NW229. See Dun. Dig. 4132.

8. Remedies for wrongs.

State v. Stanley, 188M390, 247NW509; note under §2554. Nelson v. B., 188M584, 248NW49; note under §2554.

Certiorari is a proper remedy to review the judgment of the municipal court of Minneapolis rendered on removal from conciliation court though statute says that there shall be no appeal and that judgment shall be final; there being under constitution a right of review of a judicial determination by trial court. Ridgway v. V., 187 M552, 246NW115. See Dun. Dig. 1394, 6906.

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. Eschenbach v. B., 195M 378, 263NW154. See Dun. Dig. 4288b, 7305b.

10. Unreasonable searches and seizures.

Evidence obtained by unlawful search by state officers not acting in behalf of the federal government is admissible in a federal prosecution Balman v. U S., (CCA8), 94F(2d)197.

Orders of the securities commission for investigation of the operations of a bank stock holding company, suspending exempt status of stock and dealer's licenses, do not violate this section. Id.

State Securities Act providing for investigation of dealers in securities [Mason's Minn. St., §3996-19], does not violate this section. Northwest Bancorporation v. B., (DC-Minn), 6FSupp704, aff'd 292US606, 54SCR775. See Dun. Dig. 8707.

It would not have been prejudicial error to permit liquor seized without a warrant to be introduced in evidence. 172M130, 214NW778.

Production of books and papers under Blue Sky Law. 172M328, 215NW186.

Fact that liquor was unlawfully taken from possession of defendant does not prevent its use in evidence against him. State v. Kaasa, 198M181, 269NW365. See Dun. Dig. 2468i, 3239.

If an intoxicating liquor inspector is rightfully within a place where non-intoxicating liquors are sold, he may seize intoxicating liquor for purpose of using same for evidence in a prosecution, but he may not search premises for intoxicating liquors, and in such case a search warrant is not necessary. Op. Atty. Gen. (218f), Feb. 5, 1935.

A sheriff cannot enter a home by force for purpose of levying an execution, but debtor is guilty of resisting an officer in refusing to give up the property. Op. Atty. Gen. (390a-6), Feb. 7, 1935.

Provision in nonintoxicating malt liquor ordinance permitting search of place of business of licensee and seizure of intoxicating liquors without a warrant is valid. Op. Atty. Gen. (218f-3), Dec. 21, 1937.

Recent developments in the law of search and seizure. 13MinnLawRevi.

11. Attainder—Ex post facto laws—Impairment of contracts.

1. Ex post facto laws.
Laws 1927, c. 236 (§§9931 to 9931-4), is constitutional. *175M508, 221NW900.*

One does not have vested right to continue to maintain lumber yard free from restrictions or regulations imposed by municipal legislative authority pursuant to the lawful exercise of its delegated police power. State v. Clousing, 198M35, 268NW844. See Dun. Dig. 1612.

2. Held to impair contract.
Workmen's Compensation Act establishes a contractual relationship between the employer, insurer and employee, and obligations cannot be changed by legislation subsequent to a husband's death. Warner v. Z., 184M598, 239 NW761. See Dun. Dig. 10388(24), 10391.

Rights of parties to a contract settled by judgment cannot be changed by legislative enactment. Twenty Associates v. F., 273NW696. See Dun. Dig. 1622.

A bill prohibiting recovery of deficiency judgment on indebtedness secured by real estate mortgage would be invalid as to existing mortgages but probably not as to mortgages subsequently executed. Op. Atty. Gen. (82 l), Jan. 26, 1937.

Impairment of contract. 19MinnLawRev210.

3. Held not to impair contract.
Parties to contract have no vested right to benefits of statute of limitations repealed before cause of action arose. Wunderlich v. N., (DC-Minn), 24FSupp640.

Laws 1925, c. 38, does not tend to impair obligation of contract. 174M36, 218NW238.

Valid laws in force at the time a contract is made cannot be said unconstitutionally to impair the obligation of the contract. 174M36, 218NW238.

Mason's Minn. Stat., 1927, §2292, Subd. 5, imposing inheritance tax on property subject to a power of appointment, held valid, though instrument was executed prior to passage of statute. 181M262, 232NW331. See Dun. Dig. 9571.

Laws 1933, c. 44, authorizing sheriff to adjourn mortgage foreclosure sales, is valid. State v. Moeller, 189M 412, *249NW330.* See Dun. Dig. 207 to 209, 1628.

Laws 1933, c. 339, extending time for redemption from mortgage forclosure sales, impairs obligation of contract but is valid in view of economic emergency. Blaisdell v. H., 189M422, 249NW334. See Dun. Dig. 1605, 8931.

Laws 1933, c. 339, extending period of redemption under *mortgage foreclosure on land not homestead, is constitutional.* Grace v. L., 189M450, 249NW672. See Dun. Dig. 1628.

Mason's Stats., §2164-1, extending time for redemption from delinquent tax sale after service of notice of expiration of time, is constitutional. State v. Erickson, *191M636, 191M188, 253NW529.* See Dun. Dig. 9142.

Provision in a lease requiring payment of rents in gold coin of its then weight and fineness or its then equivalent in purchase power is of no effect and rent is now payable in any dollar which is legal tender. E. E. Atkinson & Co. v. N., 193M175, 259NW185. See Dun. Dig. 1634.

A creditor of a state bank has no constitutional right to insist upon a particular form or method of liquidation, nor has he a vested right to demand liquidation at hands of any particular official. Timmer v. H., 194M586, 261NW456. See Dun. Dig. 1628.

Valid laws in force at time contract is made enter into and become a part thereof, and cannot be said unconstitutionally to impair obligations assumed subsequent to its enactment. Id. See Dun. Dig. 1631a.

Mason's Minn. Stat. §7492-61a, giving majority of stockholders of corporation right to elect not to be bound by a prior act, which had limitations, was not invalid as impairing or taking away any vested property rights of minority stockholders or a class legislation. Muller v. T., 197M608, 268NW204. See Dun. Dig. 1619.

General laws providing for extension of corporate existence do not confer contract rights to corporations organized thereunder to have their existence extended *in same manner and on same conditions as when organized,* as power to alter or modify general law in that respect should be regarded as reserved to state. Wm. Warnock Co. v. H., 200M196, 273NW710. See Dun. Dig. 1997.

12 U. S. C. 1467(e), prohibiting applicants for a loan from Home Owners' Loan Corporation from agreeing to pay mortgagee difference between market value and par value of corporation bonds, does not impair obligation of any contract nor offend against Fifth Amendment to federal constitution. Frye v. G., 201M191, 275NW615, 276NW 221. See Dun. Dig. 1630.

The beneficiary has no vested right in a pension granted by government except as payments become due him absolutely under the law. Hessian v. E., 204M287, 283NW404. See Dun. Dig. 1612.

Procedure provided for termination of right of redemption under Laws 1935, c. 278, Mason's Minn. Stat. Supp. 1938, §§2164-5 to 2164-18, while different from the procedure prescribed by Mason's Minn. Stat. 1927, §2163, falls within permissible legislative changes respecting remedy and does not substantially impair any contract obligation. State v. Aitkin County Farm Land Co., 204M 495, 284NW63. See Dun. Dig. 1617(11, 12).

A public officer has no constitutional right to a continuance or the *salary specified at the beginning of his* official term, but the legislature is free to reduce it if it sees fit to do so. Op. Atty. Gen., June 23, 1931.

Though, to a limited extent impairing the obligation of contracts and depriving persons of property without due process, the Mortgage Moratorium Act is a justifiable *exercise of the police power in the present emergency.* Op. Atty. Gen., Apr. 7, 1933.

12. Imprisonment for debt—Exemption from execution.

1. Imprisonment for debt.
A proceeding to coerce payment of money is for a civil contempt. Imprisonment cannot be imposed on one who is unable to pay. 173M100, 216NW606.

2. Exemption of property.
Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185M347, *241NW388.* See *Dun. Dig. 4207.*

Sections of Probate Code which deprive probate court of jurisdiction over claims against homestead and which confer such jurisdiction upon district court are not in violation of constitutional provision which gives probate court exclusive jurisdiction of estates of deceased persons. *Peterson's Estate, 198M45, 268NW707.* See Dun. Dig. 7770c.

"Any debt incurred to any laborer or servant for labor or service performed," does not include a claim by an automobile salesman for unpaid wages and commissions earned while an employee of the homestead *owner. Fletcher v. S., 201M609, 277NW270.* See Dun. Dig. 4209.

3. ——Proviso.
The provision making a homestead non-exempt from debts incurred for work or materials used in construction, repair, or improvement thereof, is self executing. *A claim for such debts does not amount to a lien until* proceedings or steps are taken to make it a lien. 172M 198, 215NW197.

The right to pursue the homestead is lost by not reducing the claim to a lien prior to debtor's discharge in bankruptcy, under Mason's U. S. Code, Tit. 11, §§35, 103. 172M198, 215NW197.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meanings of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221NW534.

Order directing special execution on judgment constituting lien against homestead, held proper. 179M30, 228NW168.

A mechanic's lien established by judgment a month prior to filing of voluntary petition in bankruptcy is not affected and may be enforced by special or general execution. Nadeau v. Ball, 176M6, 228NW168.

One furnishing material for improvement on farm lands may resort to the farm for payment though it is a homestead. Steinke-Seidl Lbr. Co. v. N., 183M491, 237 NW194. See Dun. Dig. 4209.

13. Private property for public use.
State v. Stanley, 188M390, 247NW509; note under §2554.

Highways are "private property," and township was entitled to compensation from United States for flowage of roads from raising of level of Lake of the Woods, and "just compensation" was difference between the cost of maintaining roads on lower and higher levels. U. S. v. Wheeler Tp. (CCA8), 66F(2d)977.

In condemning lands bordering on the Lake of the Woods by the government, pursuant to treaty, federal statutes, and Minnesota constitution, the element of flowage damage is not to be considered as a separate unit, such use of the lands being potential only. Olson v. U. S. (CCA8), 67F(2d)24, aff'd 292US246, 54SCR704.

Owner is entitled not only to compensation for property taken, but also to compensation for damages to remaining property. U. S. v. Chicago, B. & Q. R. Co., (US CCA8), 82F(2d)131. Cert. den., 298US689, 56SCR957.

Damages to railway maintaining road along bank of navigable stream in which government built dam determined. Id.

Owners of land bordering on Lake of the Woods which federal government agreed to keep between certain levels pursuant to treaty, held to have retained absolute right to make such use of their lands below required elevation as could be made of them with the lake under control as provided by the treaty. Karlson v. U. S., (USCCA8), 82 F(2d)330.

Measure of compensation to which they were entitled was difference between fair market value of lands just before and just after the imposition of the easement. Id.

"Fair market value," is amount that would, in all probability, have been arrived at between an owner willing to sell and a purchaser desiring to buy. Id.

Consent of Congress to the building of railroad bridge over river confers upon the railroad no right to infringe riparian rights without compensation, and such rights and liabilities respecting same depend upon the laws of the state. Pike Rapids Power Co. v. M., (CCA8), 99F (2d)902.

G. S. 1923, §1614, relating to the zoning of cities, and ordinances passed thereunder, held valid. American Wood Products Co. v. Minneapolis (USDC-Minn), 21F (2d)440.

Setback lines in zoning ordinances, originating from the police power, and not from contract or eminent domain, may cast an uncompensated burden on property. 171M231, 213NW907.

Property may not be taken in a condemnation proceeding without compensation, or land of another assessed for benefits without a judicial hearing. 171M297, 214NW30.

The amount of traffic on a highway is an element to be considered as bearing upon loss of time and inconvenience to one whose land is divided by such highway. 171M369, 214NW653.

Land taken for a public cartway is taken for a public purpose although the one to whose land the cartway extends has other access to a public highway. 175M395, 221NW527.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226NW398.

Where lease provided that it should terminate on taking of property under power of eminent domain the lessee could not recover for the unexpired term on condemnation of the entire property by the city. 178M562, 623, 228NW162.

Relief by injunction against the laying out of a public street, where nothing has been done except the adoption by the city council of a preliminary resolution appointing commissioners to view the premises and assess benefits and damages, is premature. Heller v. S., 182M353, 234NW461. See Dun. Dig. 4480.

While the measure of damage in a highway condemnation case is difference between fair market value before and after taking, presence of a valuable deposit of sand and gravel is relevant. State v. Horman, 188M252, 247NW4. See Dun. Dig. 3054.

Where commissioner of highways, trespasses upon or appropriates land outside right of way, he becomes liable to owner thereof for damage thereto. Nelson v. B., 188M584, 248NW49: note under §2554.

Filling station owner was entitled to damages where state highway department made substantial change in highway in such manner as to require such owner to reconstruct filling station and driveway. Apitz v. C., 189M205, 248NW733. See Dun. Dig. 3049.

Eminent domain is a right possessed by state in its sovereign capacity. It is not conferred by the constitution, but is restricted by it. Its exercise rests exclusively in legislature. Judicial power comes into play only to extent that constitution guarantees owner of property right to compensation. State v. Severson, 194M644, 261 NW469. See Dun. Dig. 3012, 3013, 3014, 3080.

Courts will review eminent domain proceedings to see that constitutional requirements have been complied with, but have no power to interfere with exercise of a purely legislative function. power of eminent domain being an incident of sovereignty, but legislature may use court as an instrumentality in which to initiate proceedings without being guilty of an unconstitutional delegation of its powers to judicial branch. Barmel v. M., 201M622, 277NW208. See Dun. Dig. 3014.

Just compensation is market value at time of taking contemporaneously paid in money, to be arrived at upon just consideration of all uses for which land is suitable; and highest and most profitable use for which property is adaptable and needed, or likely to be needed, in reasonably near future, is to be considered to extent that prospects of demand for such use affect market value while property is privately held, but that value does not include any element resulting subsequently to or because of taking. Minneapolis-St. Paul Sanitary Dist. v. F., 201M442, 277NW394. See Dun. Dig. 3054.

Easements for light and air for view were not invaded by erection of a viaduct on a street not adjacent to property. McCarthy v. C., 203M427, 281NW759. See Dun. Dig. 95b.

Where private property is not taken but is damaged for public use without compensation first paid or secured, the owner has his cause of action in tort. Id. See Dun. Dig. 3017, 3128.

Purpose is to allow recovery in same circumstances and manner against corporation having power of eminent domain as against persons not enjoying that power. Id. See Dun. Dig. 3047.

Property owners cannot recover for diminution in value of their property caused by the noise and vibration of street cars operating over bridge. Even though the street car tracks had been on the street in front of their property there would not have been an additional servitude. Id. See Dun. Dig. 3049, 3067.

Generally, owner of private property has no action against city for erection of a public improvement unless as to him it amounts to a private nuisance. Id. See Dun. Dig. 3128.

Constitution limits the rate making power by prohibiting deprivation of property without due process of law or the taking of private property for public use without just compensation. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 1607a.

Exercise of right of eminent domain by condemnation proceedings is an exertion of legislative power, and judicial power comes into play only to extent that constitution guarantees to owner of propery right to compensation. State v. May, 204M564, 285NW834. See Dun. Dig. 3014, 3079.

City could not require railroad, without compensation, to open up street across its right of way. Op. Atty. Gen., Oct. 31, 1930.

A village is liable to the owner of private property for any damage resulting from the improvement of a street. Op. Atty. Gen., June 5, 1931.

Charter provisions of the City of Ely with respect to condemnation of land outside city are valid. Op. Atty. Gen., June 15, 1931.

County engineer cannot take surplus materials used in the improvement of a county road and use them on another county highway without compensating the abutting owner for the dirt taken. Op. Atty. Gen., Oct. 6, 1931.

A bill to preserve shore lines, rapids, water falls, beaches and other natural features in an unmodified state of nature by regulating construction of dams in Cook, Lake and St. Louis Counties would not violate this section. Op. Atty. Gen., Mar. 6, 1933.

Property already devited to a public use cannot be taken for another public use without compensation. Op. Atty. Gen. (387b-9), May 14, 1936.

Where sewer in one block has been constructed and paid for by assessments and is operating satisfactorily, no assessment can be made in that block for relaying old sewer in order to get sufficient grade and depth to permit extension into another block, unless improvement has effect of enhancing value of property. Op. Atty. Gen. (387b), Mar. 24, 1938.

General rule is that property already devoted to a public use cannot be taken for another public use, but this rule does not apply where second use does not materially or seriously interfere with first use. Op. Atty. Gen. (700d-12), Aug. 26, 1937.

Where tax delinquent land was condemned for state highway and state warrants for damages were issued jointly to owner and county, and thereafter land became forfeited to state for taxes, county auditor should not endorse warrants to private owners until ordered to do so by court. Op. Atty. Gen. (450f-6), Aug. 30, 1937.

Railway cannot be compelled to pay costs of underpass necessitated solely by change in natural channel of river in connection with WPA project. Op. Atty. Gen. (370b), Oct. 14, 1937.

The measure of compensation in eminent domain. 17 MinnLawRev461.

15. Tenure of lands.

Strutwear Knitting Co. v. O., (USDC-Minn.) 3FSupp384.

Provision in Laws 1933, c. 412, permitting perpetual lease of water dam rights is invalid. Op. Atty. Gen., Aug. 7, 1933.

Legal title to University permanent trust fund land is vested in state subject to trust imposed thereon for use and benefit of University to be appropriated and applied as legislature may prescribe for use and support of the University, and in absence of legislation to that effect, department of conservation is without authority to transfer administration, sale, lease, demise, control or management of University trust fund lands to Board of Regents of the University. Op. Atty. Gen. (618c-2), Dec. 13, 1938.

16. Rights reserved—Religious freedom.

Requiring the reading of the Old Testament in every school room, but permitting pupils to leave, during the reading, infringes no constitutional provision. 171M142, 214NW18.

Where testator willed $2,000 to a church, to be paid by residuary legatees, residuary legatees to take subject to payment of this $2,000, devise to the church is a charge or lien upon share going to residuary legatees; residuary legatees are personally liable for payment of $2,000 if they accept residuary devise; but if residuary legatees do accept, requirement that they pay $2,000 to church does not violate article 1, §16, of constitution, for nothing compels legatees to accept. Lundquist v. F., 193M474, 259NW9. See Dun. Dig. 1653, 10286, 10287h.

17. No religious tests.

Voters at bond elections may not be limited to taxpayers. Op. Atty. Gen. (59a-7), June 4, 1934.

Provision in home rule charter of city of Worthington requiring city assessor to be a freeholder contravenes this section. Op. Atty. Gen. (12a), Apr. 28, 1937.

Proposed city charter amendments requiring person to be owner of real estate and a resident for 3 years to be eligible to elective office is invalid. Op. Atty. Gen. (59a-11), Feb. 21, 1938.

One need not be a freeholder to be eligible for township office. Op. Atty. Gen. (434b-4), Mar. 16, 1938.

City ordinance requiring assessor to be a freeholder is invalid. Op. Atty. Gen. (771), Apr. 11, 1938.

A village ordinance requiring village officer to own real estate would be unconstitutional. Op. Atty. Gen., (184l), June 14, 1938.

18. No license to peddle.

An ordinance which requires "transient merchants" selling or displaying for sale "natural products" of the farm, including such commodities as cattle, hogs, sheep, veal, poultry, eggs, butter, and fresh or frozen fish, to be licensed and to file a bond and exempts from its provisions persons selling produce raised on farms occupied and cultivated by them, and persons selling milk, cream, fruit, vegetables, grain or straw, is violative of state and federal constitutional prohibitions against class legislation. State v. Pehrson, 287NW313. See Dun. Dig. 1673.

Municipality may inspect milk of both producers and dealers in milk and require payment of inspection fee. Op. Atty. Gen., Dec. 11, 1929.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. Op. Atty. Gen., Oct. 23, 1931.

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell produce may be exercised, so long as no license is required, and conditions are reasonable. Op. Atty. Gen. (477b-21), Oct. 16, 1935.

Article 2.—NAME AND BOUNDARIES.

1. State name and boundaries.

Western boundary of state follows main channel of Red River of the North, although changing, unless change is caused by natural violence such as flood, earthquake, etc. Op. Atty. Gen. (211d-1), Jan. 15, 1936.

Intoxicating liquors may not be sold without a license on a barge anchored in a river or lake or in international waters. Op. Atty. Gen., (218j), Sept. 6, 1938.

2. Jurisdiction on boundary rivers.

Attachment by Delaware corporation having its principal office and place of business in Minnesota of a vessel owned by a Delaware corporation having its principal office in Ohio, while such vessel was unloading at Duluth, Minnesota, to recover damage to a grain shipment, held not an undue burden on interstate commerce, though the chief witnesses resided in other states. International Milling Co. v. C., 292US511, 54SCR797. See Dun. Dig. 4897. Rev'g 189M507, 250NW186.

Center of channel of boundary waters between states of Minnesota and Wisconsin is boundary line between two states, and those waters lying west of center of channel of such boundary waters within two miles of limits of city of Duluth is subject to provisions of Mason's Stats., §5509, and it may be enforced against all persons violating its provisions regardless of place from which they enter. Op. Atty. Gen. (273d-5), Oct. 14, 1937.

3. Acceptance of enabling act.

Legal title to University permanent trust fund land is vested in state subject to trust imposed thereon for use and benefit of University to be appropriated and applied as legislature may prescribe for use and support of the University, and in absence of legislation to that effect, department of conservation is without authority to transfer administration, sale, lease, demise, control or management of University trust fund lands to Board of Regents of the University. Op. Atty. Gen. (618c-2), Dec. 13, 1938.

Article 3.—DISTRIBUTION OF THE POWERS OF GOVERNMENT.

1. Departments of the Government.

Provisions of State Securities Act [Mason's St., §§3996-2(10), 3996-19], relating to suspension of license and investigation of dealings, do not violate this section. Northwest Bancorporation v. B. (DC-Minn), 6FSupp704, aff'd 292US606, 54SCR776. See Dun. Dig. 1590.

A statute which attempts to give to the court administrative or legislative powers is unconstitutional. Chicago, M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430. See Dun. Dig. 1592.

Section 1614, authorizing cities to adopt comprehensive zoning plans, changeable only with consent of specified proportion of owners of property within a designated area of the real estate affected, held not an unlawful delegation of legislative power. Leighton v. C., (USDC-Minn), 16FSupp101.

The question of how state power shall be distributed among various governmental branches of the state is usually for the state to determine. Western Union Telegraph Co. v. I., (DC-Minn), 24FSupp370.

Laws 1927, c. 288 (Mason's Minn. Stat. 1927, §§2558-1 to 2558-4), is valid. 174M305, 219NW172.

Laws 1921, c. 518 [M. S. §106], does not violate this section. 174M583, 219NW916.

It is no objection to an ordinance for the licensing of open-air automobile parking places that it does not prescribe any standards to control the granting and refusing of licenses. 175M386, 221NW423.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

Laws 1929, cc. 267, 424, admitting certain disabled veterans and court reporters to the practice of law without examination, violate this article. 178M331, 227NW 179; 178M335, 227NW180.

Mason's Stat., §§7688 and 7689, are not unconstitutional as attempting to delegate judicial power to the commissioner of banks. American State Bank of Minneapolis v. J., 184M498, 239NW144.

Laws 1931, c. 364 (Mason's Minn. Stat., §10723, relating to release of insane, is not invalid for imposing administrative duties upon court. State v. District Court, 185M396, 241NW39. See Dun. Dig. 1592.

Laws 1931, c. 360 (§§5416-5418), relating to bovine tuberculosis testing, does not delegate legislative power in commanding its enforcement by county boards only upon condition of petition from cattle owners. State v. Board of Com'rs, 186M524, 243NW851. See Dun. Dig. 1599.

Rate making is a legislative and not a judicial function. Western Buse Tel. Co. v. N., 188M524, 248NW220.

Court authorized to admit attorneys to practice has inherent jurisdiction to suspend or disbar them, which power may not be defeated by legislative or executive department. Greathouse, 189M51, 248NW735. See Dun. Dig. 666, 1587.

Power to admit applicants to practice law is judicial and not legislative, and is vested in courts only, but courts have acquiesced in all reasonable provisions relating to qualifications enacted by legislatures. Id. See Dun. Dig. 1589.

Executive order issued by Governor directing sheriffs to refrain from conducting mortgage foreclosure sales was an attempt to exercise legislative power and not within his power. State v. Moeller, 189M412, 249NW330.

If reasonableness of a zoning ordinance is debatable, courts will not interfere with discretion which is primarily legislature's, but court is free to find and determine facts upon which reasonableness of a zoning ordinance depends. Gunderson v. A., 190M245, 251NW515. See Dun. Dig. 6525.

Legislative policy respecting education cannot be disturbed except by legislative enactment. State v. Erickson, 190M216, 251NW519. See Dun. Dig. 8656, n. 20.

Since power to determine what shall constitute contempt and to punish therefor is inherent in court, it is doubtful whether legislature has power to determine what acts constitute a contempt of court. State v. Binder, 190M305, 251NW665. See Dun. Dig. 1702.

Legislature may delegate legislative power to city councils. Zalk & Josephs Realty Co. v. S., 191M60, 253 NW8. See Dun. Dig. 1597.

Duluth City Ordinance, No. 1126, held not to delegate legislative power to building inspector. Id.

Sale of nonintoxicating malt liquors is subject to regulation under police power of state; and Laws 1933, c. 116 [Mason's 1934 Supp., §§3200-5 to 3200-10], delegating to village and city councils authority to license and regulate is a valid exercise of police power. Bernick v. C., 191M128, 253NW369. See Dun. Dig. 4913.

When litigation properly presents a question whether a proposed administrative action of an executive or administrative official is within the law, constitutional or statutory, both the subject of inquiry and the function of decision are automatically removed from the field of executive to that of judicial action and duty, subject to the exception that, if the question be political rather than legal, the courts will have nothing to do with it. Rockne v. O., 191M310, 254NW5. See Dun. Dig. 1588, 1589.

Court must take statute as it finds it and is not at liberty to add to it by a process which would be an amendment, and, in effect, judicial legislation. Ross v. S., 193M407, 258NW582. See Dun. Dig. 8940.

A bequest to a church for promotion of foreign and inner missions was not invalid because it authorized court to exercise judicial cy pres doctrine. Lundquist v. F., 193M474, 259NW9. See Dun. Dig. 9885.

Doctrine of contributory negligence must be enforced by courts until repealed by appropriate legislative enactment, and until this is done courts cannot amend it in interests of any one. Johnston v. T., 193M635, 259NW 187. See Dun. Dig. 1594.

Eminent domain is a right possessed by state in its sovereign capacity. It is not conferred by the constitution, but is restricted by it. Its exercise rests exclusively in legislature. Judicial power comes into play only to extent that constitution guarantees owner of property right to compensation. State v. Severson, 194M 644, 261NW469. See Dun. Dig. 3012, 3013, 3014, 3080.

Question whether such an emergency exists as justifies exercise of police power in enacting a moratorium statute is primarily for legislature to determine, and court must give due weight to its judgment. National Bank of Aitkin v. S., 195M273, 262NW689. See Dun. Dig.1610.

Where presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district, governor may not designate an outside judge to preside thereat, it appearing that regular and properly designated judge is competent to act, that there is not accumulation of business before court, and that delay of trial is not probable. State v. Montague, 195M278, 262NW684. See Dun. Dig. 1587.

Constitutional separation of authority into legislative, executive, and judicial departments forbids interference of one with other within their respective spheres. Id.

Courts have judicial control over acts of an executive state officer where such acts are ministerial in their nature and do not necessarily pertain to functions of office as granted by constitution. Id. See Dun. Dig. 1593.

No matter what individual judgment of a judge may be, his desire to aid in extending human life cannot be

employed to extent of making law. Reilly v. S., 196M376, 265NW284. See Dun. Dig. 1587.

Whether or not contributory negligence should be abolished as a defense in automobile accident is a question for the legislature and it is immaterial what the view of the court may be. Cogin v. I., 196M493, 265NW 315. See Dun. Dig. 1587.

Mason's Minn. St. 1927, §5697, subd. 2, providing a 2-year period of limitation for bringing of disciplinary proceedings against an attorney, held unconstitutional as an attempted invasion by legislature of judicial field. Tracy, 197M35, 266NW88. See Dun. Dig. 1596.

Mason's Minn. St. 1927, §2150, as amended by Laws 1929, c. 266, Laws 1935, c. 246, providing for attachment, by county auditor, of rents received from real estate upon which taxes have become delinquent, is constitutional. Taxes Delinquent, 197M266, 266NW867. See Dun. Dig. 1587.

Ordinance giving to city council power to issue or withhold permits for erection and maintenance of lumber yards and buildings held constitutional as against attack that it was unlawful delegation of power to city council without restriction or limitation. State v. Clousing, 198 M35, 268NW844. See Dun. Dig. 1597.

It is exclusive province of legislature to declare what acts are deemed inimical to public welfare and to impose punishment, and judicial consideration is limited to inquiry whether constitutional rights of citizens are thereby violated or impaired. State v. Bean, 199M16, 270NW 918. See Dun. Dig. 2407.

It is exclusive province of legislature to declare what acts, deemed inimical to public welfare, shall constitute a crime, to prohibit same, and to impose appropriate punishment for violation thereof. Judicial consideration of such enactments is limited to inquiry whether constitutional rights of citizens are thereby violated or impaired. State v. Sobelman, 199M232, 271NW484. See Dun. Dig. 2407.

Wisdom or expediency of a proposed expenditure of public moneys is to be determined by legislature or local authorities but whether a given expenditure is for a public purpose may be determined by court. Behrens v. C., 199M363, 271NW814. See Dun. Dig. 1589.

Where legislaure has not prescribed any method for assessing shares of a resident holder, in event of corporation having part of its property located in this state and part outside state, court is not warranted in supplying same by decree. Holmes v. B., 200M97, 273NW 623. See Dun. Dig. 8940.

In so far as Mason's Minn. St. 1927, §§158 or 9218, assume to empower Governor to designate a judge of another district to discharge duties of a district judge, it is in contravention of §1 of article 3 and beyond authority of §5 of article 6 of Constitution. State v. Day, 200M77, 273NW684. See Dun. Dig. 4961.

Judgment of municipal officers in execution of powers conferred on them by law or charter is not subject to control and correction by courts, in absence of fraud. Ambrozich v. C., 200M473, 274NW635. See Dun. Dig. 6697, 6700.

Courts will not inquire into wisdom or necessity for exercise of corporate powers by officers of a municipal corporation. Id.

Courts will review eminent domain proceedings to see that constitutional requirements have been complied with, but have no power to interfere with exercise of a purely legislative function, power of eminent domain being an incident of sovereignty, but legislature may use court as an instrumentality in which to initiate proceedings without being guilty of an unconstitutional delegation of its powers to judicial branch. Barmel v. M., 201M622, 277NW208. See Dun. Dig. 1594, 3014.

Ordinarily public policy of state should be determined by legislature and not by courts. Equitable Holding Co. v. E., 202M529, 279NW736. See Dun. Dig. 1587.

Compulsory insurance to provide compensation to persons injured because of fault in operation of motor vehicles requires legislative action, and in absence of such action, court must take insurance policies as parties have made them. Giacomo v. S., 203M185, 280NW653. See Dun. Dig. 8940.

Economic policy of legislation is not properly reviewable by judiciary. State v. Northwest Poultry & Egg Co., 203M438, 281NW753. See Dun. Dig. 1587.

Letting of contract for construction of power plant was invalid where made in connection with an ordinance which attempted to delegate to trustee or to a receiver appointed by court powers to take over and manage plant in certain contingencies, thereby removing management and control thereof from city. City of Bemidji v. E., 204M90, 282NW683. See Dun. Dig. 1597.

Nature, character, and extent of punishment to be imposed for criminal conduct are matters to be determined almost entirely by the legislature, and court must respect powers conferred upon that department of government. State v. Eich, 204M134, 282NW810. See Dun. Dig. 1595.

It is not for courts to determine wisdom or expediency of police legislation. Sverkerson v. C., 204M388, 283NW 555. See Dun. Dig. 1605.

Court may not review policy of statutory law except as it transgresses constitutional limitations. Lichterman v. L., 204M75, 283NW752. See Dun. Dig. 1589.

Wisdom of legislation is for the legislature and not the court. State v. McMasters, 204M438, 283NW767. See Dun. Dig. 1589.

Ascertainment of facts and fixing of a minimum price for barbers' services based thereon imposed upon governor, or upon a board of commission, is not an unlawful delegation of legislative powers. Id. See Dun. Dig. 1597.

Where legislature itself fixes rates, acting within field of legislative discretion, its determinations are conclusive; and where legislature establishes rate fixing body to act within this same field, it may endow such body with power to make findings of fact which are conclusive, provided requirements of due process are met by according a fair hearing and acting upon evidence and not arbitrarily. Judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 1595.

Rate making for the future is an inherently legislative act whether done by legislature directly or by an administrative body to which is delegated duty of fixing rates in detail, and orders of such tribunals are subject to same tests and command same regard as enactments of legislature. Id. See Dun. Dig. 8078e.

When properly challenged as exceeding limitations, acts of legislature or its agent in rate making are necessarily subject to judicial review upon the facts and the law. Id. See Dun. Dig. 8082.

Wisdom of change in statute is not a matter for court to determine. State v. Minneapolis Fire Department Relief Ass'n, 285NW479. See Dun. Dig. 1594.

Objection to ordinance empowering city council to grant or refuse licenses on ground that arbitrary power is thereby delegated cannot be made until application for a license has been refused. State v. Clousing, 285NW711. See Dun. Dig. 6799.

Decision of state court holding market agency located in one state liable in conversion for selling cattle mortgaged in another state does not violate any constitutional provision. Mason City Production Cr. Ass'n v. S., 286NW713. See Dun. Dig. 1593.

Out of deference to legislative authority, court must give effect to all its enactments, according to its intentions, so far as court has constitutional right and power. State v. Probate Court, 287NW297. See Dun. Dig. 1595.

Mason's Stat., §8258, authorizing district court to appoint an examiner of titles and deputy examiner of titles, is constitutional. Op. Atty. Gen. (374j), Aug. 13, 1934.

Provision in legislative act declaring all provisions to be inseparable and that if any clause is invalid, then whole act shall be invalid will be considered by the court to determine intent of legislature, but court is not necessarily controlled thereby. Op. Atty. Gen. (724r), Feb. 21, 1935.

Laws 1935, c. 216, §7, permitting railroad and warehouse commission to make rules and regulations relating to weighing, grading and inspection of livestock, is not a delegation of legislative power. Op. Atty. Gen. (82o), Mar. 21, 1935.

Members of board of regents are to be appointed by the governor and not the legislature. Op. Atty. Gen. (213f), July 8, 1935.

Legislature may incorporate law of another jurisdiction by reference, providing such laws at time of incorporation are existing laws and fixed and certain in their provisions. Op. Atty. Gen. (280), Aug. 17, 1935.

Power to regulate advertising given liquor control commissioner, and authority given him to make rules and regulations, is not an unconstitutional delegation of legislative power, and violation of regulation is a misdemeanor. Op. Atty. Gen. (82u), Apr. 15, 1937.

Minneapolis Board of Education has no legal right to delegate its discretionary power to an arbitration committee in a labor dispute, but may appoint a committee to confer with a labor union to make proposals of adjustment. Op. Atty. Gen. (270d-9), March 23, 1939.

Validity of statute conferring on judiciary power to set aside revocation of driver's license. 19MinnLawRev 701.

Delegation of legislative power. 19MinnLawRev763.

Validity of state statute conferring legislative powers on federal government. 20 MinnLawRev 311.

Article 4.—THE LEGISLATIVE DEPARTMENT.

1. Two houses—Sessions.

A congressional apportionment act must be submitted to the Governor for his approval. Smiley v. Holm, 285 US355, 52SCR397, rev'g 184M647, 238NW494. See Dun. Dig. 8901.

In making a congressional apportionment, the state legislature acts exclusively under the U. S. Const. art. 1, §4, and does not act strictly in the discharge of legislative duties as a lawmaking body, but as an agency responding to a federal mandate. State v. Holm, 184M 228, 238NW494. See Dun. Dig. 1587.

The majority vote of the Senate and House of Representatives in redistricting the state for congressional purposes under U. S. Const. art. 1, §4, was effectual, though the matter was put in the form of a bill, in the form of a law. State v. Holm, 184M228, 238NW494. See Dun. Dig. 1587.

Parol evidence is inadmissible to show that a legislative bill was passed at a time other than that stated in the legislative journals. Op. Atty. Gen., May 1, 1931.

March 25, 1933, is the last date for introduction of new bills in either house except on written request of Governor. Op. Atty. Gen., Feb. 16, 1933.

April 19, 1933, is last date to which session of legislature may continue. Op. Atty. Gen., Feb. 16, 1933.

Twenty-day provision relative to introduction of bills only with governor's consent during last twenty days of session is applicable only to regular sessions. Op. Atty. Gen., Dec. 11, 1933.

Last date for introduction of new bills in legislature, except on written request or message of the governor, for the 1935 session of legislature is April 1, 1935. Op. Atty. Gen. (280j), Mar. 4, 1935.

Last date to which regular 1935 session of the legislature may continue is April 25, 1935. Id.

All days upon which legislature could legally sit and excluding Sundays and holidays determine the 90-day term. Op. Atty. Gen. (280j), Mar. 17, 1937.

It is necessary to have request of governor in writing to introduce committee bills, appropriation bills, or any other bills that might be introduced during last twenty days of session. Op. Atty. Gen. (280b), Apr. 15, 1937.

Parol evidence is inadmissible to show that bill was not passed by legislature at time record shows it was passed, even though legislature has moved clock back on last day for passage of bills. Op. Atty. Gen., (280), April 17, 1939.

Nebraska's new legislature. 22MinnLawRev60.

3. Election—Quorum.

Supreme court is not authorized to determine eligibility of a candidate for state senate who holds a certificate of nomination for that office issued by canvassing board of a primary election duly held and canvassed, and may not order county auditor to desist or refrain from placing his name upon official general election ballots. State v. Erickson, 203M390, 281NW366. See Dun. Dig. 1595.

Commissioner of registration has no power to determine qualifications of a candidate for the legislature. Op. Atty. Gen., (183r), Oct. 6, 1938.

4. Rules.

Laws 1937, c. 461, relating to issuance of bonds by certain independent school districts, is constitutional. Op. Atty. Gen. (82w), Aug. 12, 1937.

Electrical voting system, indicating vote by members by colored lights on board, is legal, at least to extent of votes on passage of bills. Op. Atty. Gen. (280), Jan. 9, 1939.

5. Officers—Journal.

The regularity of the enactment of a statute may be inquired into by examining the legislative journals to ascertain whether there has been compliance with constitutional requirements. Bull v. K., 286NW311. See Dun. Dig. 8898.

State is committed to "journal entry rule", under which regularity of enactment of a statute may be inquired into by examining legislative journals to ascertain whether there has been a compliance with constitutional requirements. Freeman v. G., 287NW238. See Dun. Dig. 8898, 8936a.

Laws 1935-36, Sp. Sess., ch. 44, relating to issuance of municipal employment project bonds of city of Duluth, was legally passed though second and third readings and votes were had on the same day, though legislative journal did not show that there was a vote to constitutional rule requiring a reading on three separate days. Op. Atty. Gen. (82q), May 1, 1935.

6. Adjournments.

Legal holidays are to be included in computing the three-day period. Op. Atty. Gen., Feb. 9, 1931.

House of Representatives could not legally adjourn in the afternoon of Feb. 11, 1931, until the forenoon of Feb. 16, 1931, without the consent of the Senate, it being immaterial that February 12 is holiday. Op. Atty. Gen., Feb. 10, 1931.

Prohibition against recess for more than 3 days applies to a special session. Op. Atty. Gen., Dec. 16, 1933.

7. Compensation.

Legislature may appropriate legislative expense fund in a lump sum, and the senate may by a resolution authorize payment of voucher to a particular senator for expenses, without a concurrence by the house. Op. Atty. Gen. (9a-23), Apr. 9, 1935.

Legislature at special session may adopt an act increasing compensation of both representatives and senators to become effective first day of next session, though members of senate who helped pass bill will still have two more years to serve after increase becomes effective. Op. Atty. Gen. (280d), May 26, 1937.

9. Members not to hold certain offices.

State senator cannot hold office of county commissioner, and art. 7, §7, is merely the general rule to which this section creates an exception. 180M246, 230 NW637.

Member of legislature cannot occupy position as member of civil service board of Minneapolis. Op. Atty. Gen., June 25, 1929.

A member of the legislature may be appointed as a local appraiser for the department of rural credit. Op. Atty. Gen., Jan. 21, 1930.

State may enter into contracts with members of the legislature for architectural service, consulting engineering service, and construction work. Op. Atty. Gen., May 12, 1931, and May 8, 1931.

Member of the legislature appointed to an office to which he is eligible may become a de facto officer, but does not become a de jure officer upon the termination of his disqualification. Op. Atty. Gen., June 5, 1931.

The office of a member of the 1929 legislature did not terminate until January 1, 1931, and he cannot be eligible to serve as a member of the state building commission created by Laws 1929, c. 301, until January 1, 1932. Op. Atty. Gen., June 5, 1931.

Members of the state legislature are not eligible to serve as members of the state building commission. Op. Atty. Gen., June 5, 1931.

Offices of village attorney and state representative are incompatible. Op. Atty. Gen., Dec. 4, 1931.

Op. Atty. Gen., Apr. 1, 1932; note under §481, statutes.

Member of legislature cannot hold office of director of school board. Op. Atty. Gen., Feb. 27, 1933.

Member of legislature may not be delegated to convention to ratify or revoke Eighteenth Amendment. Op. Atty. Gen., May 5, 1933.

Member of legislature cannot be also member of charter commission of city. Op. Atty. Gen., Nov. 1, 1933.

State senators and representatives may not hold the position of conciliation commissioner under the new federal bankruptcy law. Op. Atty. Gen. (280h), July 16, 1934.

Office of member of water, light, power and building commission of a city is incompatible with office of state representative. Op. Atty. Gen. (358e-1), May 15, 1937.

Legislature at special session may adopt an act increasing compensation of both representatives and senators to become effective first day of next session, though members of senate who helped pass bill will still have two more years to serve after increase becomes effective. Op. Atty. Gen. (280d), May 26, 1937.

Member of legislature is ineligible to hold office of deputy sheriff. Op. Atty. Gen. (280h) Oct. 7, 1937.

Member of legislature is eligible for employment as truck and bus inspector for the Minnesota Railroad and Warehouse Commission. Op. Atty. Gen. (280h) Oct. 8, 1937.

Member of legislature may be appointed as an assistant agricultural extension specialist, where duties are to act as field agent in connection with dairy industry organization campaigns, such position being one of employment and not an office. Op. Atty. Gen. (280h), Apr. 13, 1938.

Member of legislature may hold position as investigator for State Board of Barber Examiners. Op. Atty. Gen. (280h), Aug. 9, 1938.

Offices of member of water and light commission of city of Breckenridge and state representative are incompatible. Op. Atty. Gen. (280h), Dec. 16, 1938.

Township assessor is disqualified from acting after his election as state representative. Op. Atty. Gen. (280h), Jan. 10, 1939.

Offices of member of legislature and village attorney are incompatible. Op. Atty. Gen. (358e-3), Feb. 21, 1939.

Member of legislature may not serve on county welfare board either as an appointee of state board of control or of board of county commissioners. Op. Atty. Gen., (358a), April 5, 1939.

Member of legislature may accept employment from highway department and receive fees for examining titles in condemnation proceedings. Op. Atty. Gen., (280h), June 24, 1939.

Legal status of reserve officers. 21MinnLawRev162.

Eligibility for other office as affected by membership in legislative body providing retirement benefits. 23Minn LawRev376.

10. Revenue bills to originate in house.

Laws 1933, c. 389, is not unconstitutional as a revenue act originating in senate, though it provides for levy of tax. Op. Atty. Gen., June 7, 1933.

An unemployment insurance bill providing for assessments against employers and employees would not be a revenue raising measure within this section. Op. Atty. Gen. (724t), Jan. 13, 1936.

Bills for raising revenue may be passed either at a regular session or at an extra session. Op. Atty. Gen. (280b), Apr. 22, 1937.

11. Approval of bills by governor—Veto power.

Smiley v. Holm, 285US355, 52SCR397, rev'g 184M228, 238NW494.

In computing the three-day period in which a bill must be returned, Sunday—not holidays—is the only day to be excluded. 172M162, 215NW200.

The requirement that the bill be returned to the house in which it originated does not mean that it must be returned while such house is in session, but the return may be made to the presiding officer, secretary, clerk or to any member of such house. 172M162, 215NW200.

The bill presented to the governor for approval must be same in substance and legal effect as bill passed by the legislature, but immaterial errors will be disregarded. Bull v. K., 286NW311. See Dun. Dig. 8901.

Where there is a discrepancy between bill passed by legislature and bill approved by governor, construction may be resorted to for purpose of determining whether

or not latter differs from former in substance and legal effect. Id. See Dun. Dig. 8901.

Bill presented to governor for his approval must be same bill which was passed by legislature, and if there be a material variance between bill passed by legislature and that approved by governor entire enactment falls. Freeman v. G., 287NW238. See Dun. Dig. 8901.

Laws 1939, c. 444, is unconstitutional for noncompliance with this section. Id. See Dun. Dig. 8901.

Resolution by one branch of the legislature is not effective as a law but a commission referred to therein may act favorably thereon. Op. Atty. Gen., Jan. 29, 1934.

Laws 1935, c. 357, Old Age Pension, is unconstitutional due to material change in bill after passage by legislature and before approval by governor. Op. Atty. Gen. (82r), May 8, 1935.

Governor has three days after legislature adjourns to act on any enrolled bill delivered to him on any of the last three days of the session, and in reckoning these three days Sundays are to be excluded and holidays included. Op. Atty. Gen. (213c), Apr. 23, 1937.

Act increasing minimum compensation of deputy oil inspectors without making appropriations therefor did not contemplate reduction of needed personnel to efficiently administer an important revenue producing tax law, and though an act ordinarily becomes effective day following approval, such act would not become effective until after an appropriation had been made by legislature, in absence of administrative means of making salary and wage adjustment to compensate for minimum salaries prescribed. Op. Atty. Gen. (9a-27), May 10, 1937.

Electrical voting system, indicating vote by members by colored lights on board, is legal, at least to extent of votes on passage of bills. Op. Atty. Gen. (280), Jan. 9, 1939.

Sundays are to be excluded in reckoning three days following adjournment. Op. Atty. Gen., (280), April 17, 1939.

Term "passed" includes passing by legislature, enrollment, signing by presiding officers of two houses and delivery to the governor. Id.

Holidays are not to be excluded in reckoning three-day period following adjournment. Id.

Governor has three days after legislature adjourns to act on any enrolled bill delivered to him on any of the last three days of the session. Id.

12. Appropriations, how made.

Act appropriating money for conservation, for establishment, maintenance and improvement of state and semi-state activities. Laws 1931, c. 395.

Legislature may appropriate legislative expense fund in a lump sum, and the senate may by a resolution authorize payment of voucher to a paritcular senator for expenses, without a concurrence by the house. Op. Atty. Gen. (9a-23), Apr. 9, 1936.

13. Enacting clause—Majority vote.

Laws 1935-36, Sp. Sess., ch. 44, relating to issuance of municipal employment project bonds of city of Duluth, was legally passed though second and third readings and votes were had on the same day, though legislative journal did not show that there was a vote to constitutional rule requiring a reading on three separate days. Op. Atty. Gen. (82q), May 1, 1936.

15. Exclusion of convicts from civil rights.

Secretary of state cannot refuse to place name of candidate upon ballot where he files usual affidavit, though he has been advised that candidate served term in federal prison and has not been restored to civil rights. Op. Atty. Gen., May 5, 1932.

Conviction of a felony does not render certified public accountant: ineligible to hold certificate. Op. Atty. Gen. (882e), Oct. 6, 1937.

17. Vacancies—Contested elections.

Governor may not fill vacancy by appointment. Op. Atty. Gen., Feb. 18, 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.

It is mandatory that the governor call a special election following regular term of legislature to fill vacancies caused by death if a special session of the legislature is to be called. Op. Atty. Gen. (2801-2), June 21, 1935.

Where state representative dies while special session of legislature is in session, governor should issue writ of election under §270-3 rather than §270-4. Op. Atty. Gen. (2801-2), June 9, 1937.

Vacancy in office of state senator was created by death of senator elect before qualifying, which could be filled by calling special election by governor. Op. Atty. Gen. (2801-2), Dec. 22, 1938.

20. Reading bills.

Legislature may incorporate law of another jurisdiction by reference, providing such laws at time of incorporation are existing laws and fixed and certain in their provisions. Op. Atty. Gen. (280), Aug. 17, 1935.

Laws 1935-36, Sp. Sess., ch. 44, relating to issuance of municipal employment project bonds of city of Duluth, was legally passed though second and third readings and votes were had on the same day, though legislative journal did not show that there was a vote to constitutional rule requiring a reading on three separate days. Op. Atty. Gen. (82q), May 1, 1936.

21. Enrolling and signing bills.

Parol evidence is inadmissible to show that bill was not passed by legislature at time record shows it was passed, even though legislature has moved clock back on last day for passage of bills. Op. Atty. Gen. (280), April 17, 1939.

22. Bills not to pass on last day of session.

Parol evidence is inadmissible to show that a legislative bill was passed at a time other than that stated in the legislative journals. Op. Atty. Gen., May 1, 1931.

April 18, 1933, is last date upon which bills may be passed by either house. Op. Atty. Gen., Feb. 16, 1933.

If session of legislature is held on Good Friday last day upon which a bill could be passed was April 17, 1933. Op. Atty. Gen., Apr. 12, 1933.

Last date upon which bills may be passed by either house of the legislature at the regular 1935 session is April 24, 1935. Op. Atty. Gen. (280j), Mar. 4, 1935.

All days upon which legislature could legally sit and excluding Sundays and holidays determine the 90-day term. Op. Atty. Gen. (280j), Mar. 17, 1937.

Parol evidence is inadmissible to show that bill was not passed by legislature at time record shows it was passed, even though legislature has moved clock back on last day for passage of bills. Op. Atty. Gen. (280), April 17, 1939.

23. Census—Apportionment.

Smiley v. Holm, 285US355. 52SCR397, rev'g 184M228, 238NW494.

The alteration of ward lines in a city by the city council cannot affect the boundaries of legislative districts. Op. Atty. Gen., Mar. 20, 1931.

While the legislature may not undertake to reapportion a part of the state without dealing with the rest of the state, still it may change the boundaries of certain particular legislative districts. Op. Atty. Gen., Mar. 20, 1931.

25. Qualifications of members.

One not a resident of a legislative district was not eligible to be elected as a representative from that district. 175M393, 221NW245.

27. Laws to embrace but one subject.

State Securities Act [Mason's St., §§3996-1 to 3996-28], does not violate this section. Northwest Bancorporation v. B. (DC-Minn), 6FSupp704, aff'd 292US606, 54SCR775. See Dun. Dig. 8920.

The title to the Blue Sky Law (Laws 1925, c. 192) satisfies requirement of this section. 171M191, 213NW 904.

The title of Laws 1925, c. 426, "An act in relation to the organization of the state government," satisfies constitutional requirements. 171M191, 213NW904.

Title of Laws 1927, c. 394, does not express the subject of the act in so far as it refers to change of age of consent, and act is ineffective to that extent. 173M 221, 217NW108.

Title of Laws 1925, c. 339, is not defective. 173M322, 217NW342.

Laws 1923, c. 226, is properly entitled and does not offend Const. art. 4, §27. 175M305, 221NW13.

Section 10132 applies only to conduct toward male and female persons under 14 years of age, as the amendment of 1927 was invalid as far as it attempted to change ages, in view of insufficiency of title. 176M234, 249, 223 NW98.

The subject of chapter 407, Laws 1925, known as the Forestry Act, is sufficiently expressed in its title. 176 M472, 223NW912.

Mason's Stats., §5547, imposing burden of proof upon possessor of furs of fur-bearing animals did not violate this section. 177M398, 225NW435.

Laws 1929, c. 258, does not embrace more than one subject. 178M244, 226NW842.

The classification of counties by chapter 365, Laws 1929, is sufficiently germane to the object of the act to sustain its constitutionality. Tousley v. H., 182M447, 234NW673. See Dun. Dig. 8920.

"An ordinance relating to disorderly houses and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. State v. McDow, 183M115, 235NW637. See Dun. Dig. 6783 (33).

The purpose of Laws 1931, c. 306, §7, is sufficiently indicated in the title of the act. State v. King, 184M 250, 238NW334. See Dun. Dig. 8920.

Special Laws 1885, c. 175, relating to construction and maintenance of bridges in Mower County, held to have a sufficient title. State v. County of Mower, 185M390, 241NW60. See Dun Dig. 8920.

The police civil service commission law (Laws 1929, c. 299 [§§1933-48 to 1933-63]) is valid. Naeseth v. V., 185 M526, 242NW6. See Dun. Dig. 8920.

Title to Laws 1931, c. 360, amending Laws 1923, c. 269, held germane to subject-matter. State v. Board of Com'rs, 186M524, 243NW851. See Dun. Dig. 8920.

Laws 1931, c. 322 (§§7035-2, 7035-3), attempting by amendment of statute relating to weight, to require sanitary wrapping of bread, violated this section. Egekvist Bakeries v. B., 186M520, 243NW853. See Dun. Dig. 8921.

Mason's Stat., §§4135 to 4137, are not unconstitutional because they apply to both wages and salaries, regulating assignment thereof. Murphy v. C., 187M65, 244NW 335. See Dun. Dig. 566, 8920.

Stats., 1927, §§1726-6 to 1726-12, relating to detachment of territory from cities of fourth class, is valid though all of its provisions are not applicable to same cities. Wesley, 188M237, 246NW905. See Dun. Dig. 8910.

To constitute duplicity of subjects, an act must embrace two or more dissimilar and discordant subjects that by no intendment can be considered as having any legitimate connection with or relation to each other. Id.

Beauty culturists act (§§5846-27 to 5846-47) embraces only one subject. Luzier Special Formula Laboratories v. M., 189M151, 248NW664.

Title to Laws 1933, c. 339, extending time for redemption from foreclosure of mortgages during economic emergency, contains only one subject. Blaisdell v. H., 189M422, 249NW334.

Title to chapter 205, Laws 1931, is not objectionable in that it purports to amend two consecutively numbered sections in Mason's Minn. Stat. 1927, said sections covering but one subject. Sweet v. R., 189M489, 250NW 46. See Dun. Dig. 8920.

Mason's Stats., §§4401-10 to 4401-20, providing an appropriation for direct relief, work relief and employment to needy, destitute, and disabled persons, is constitutional. Moses v. O., 192M173, 255NW617. See Dun. Dig. 8920.

Minnesota Laws 1915, c. 272, as amended by Laws 1919, c. 404, as modified by Laws 1921, c. 280, giving coroner right to make autopsies in case of accidental or violent death, are constitutional. Kingsley v. F., 192NW468, 257 NW95. See Dun. Dig. 8920.

Substance of Laws 1927, c. 297, amending §10648, is sufficiently stated in the title. State v. Heffelfinger, 197 M173, 266NW751. See Dun. Dig. 8918.

That part of Laws 1933, c. 359, reducing rates at which homesteads shall be valued for taxation, but preserving former and highest rates for purpose of figuring "tax limitations," held not to amend a provision of a city charter limiting a school tax to 22 mills on dollar, purpose being not to amend charter but to provide for valuing homesteads at former rates for purpose of applying tax limitation, and it is constitutional as so construed. 510 Groveland Ave. v. E., 201M381, 276NW287. See Dun. Dig. 8920.

Police retirement act is constitutional. Nichols v. C., 204M352, 283NW539. See Dun. Dig. 8908.

To constitute duplicity of subject matter, an act must embrace two or more dissimilar and discordant subjects which cannot reasonably be said to have any legitimate connection. Sverkerson v. C., 204M388, 283NW555. See Dun. Dig. 8910.

An amendatory act must remain not only within title, but also germane to subject matter of amended act. Id. See Dun. Dig. 8918.

Minneapolis city ordinance requiring fuel dealers to obtain liability insurance as a condition precedent to obtaining a license to make deliveries is valid. Id. See Dun. Dig. 8920.

Minneapolis city ordinance requiring plasterers to have a license does not exceed restrictions of title. State v. Clousing, 285NW711. See Dun. Dig. 8908.

Object of provision relating to expressing objects of act in title is to prevent "log-rolling legislation", or "omnibus bills", by which a large number of different and disconnected subjects are united in one bill and then carried through by a combination of interests; and also to prevent surprise and fraud upon the people and legislature. State v. Probate Court, 287NW297. See Dun. Dig. 8906.

Section is mandatory but is to be given a liberal and not a strict construction. Id. See Dun. Dig. 8907.

Term "subject" is to be given a broad and extended meaning, so as to allow legislature full scope to include in one act all matters having a logical or natural connection. Id. See Dun. Dig. 8908.

A title broader than statute, if it is fairly indicative of what is included in it, does not offend the constitution, and whether or not a title is expressive of subject matter must be determined with reference to practical considerations, purpose of constitutional provision, approach adopted by supreme court to problem in past, and disposition of other cases involving titles of similar brevity. Id. See Dun. Dig. 8908.

Title of Laws 1939, c. 369, relating to "psychopathic personalities", is sufficient to indicate manner and mode by which law is to operate. Id. See Dun. Dig. 8920.

Title of act relating to "natural products of the farm" was sufficient to cover legislation concerning butter. State v. Pehrson, 287NW313. See Dun. Dig. 8920.

Laws 1931, c. 382, §§1 and 2, relating to appointment of an assistant attorney general for the division of securities, etc., are invalid as not being embraced within the title of the act. Op. Atty. Gen., July 17, 1931.

Laws 1933, c. 414, amending §2139, Mason's Minn. Stat., is constitutional. Op. Atty. Gen., Sept. 20, 1933.

A bill with short title in one house and long title in the other was not unconstitutional where both titles sufficiently showed contents of bill. Op. Atty. Gen. (86a-8), Oct. 18, 1934.

Laws 1933, c. 219, does not apply to Clearwater County and §1 thereof is not within title of act. Op. Atty. Gen. (104a-3), Feb. 5, 1935.

Laws 1933, c. 373, is unconstitutional insofar as it purports to amend subdivisions (1), (2), and (3) of §10935. Op. Atty. Gen. (314b-3), May 17, 1935.

30. Elections viva voce.

Electrical voting system, indicating vote by members by colored lights on board, is legal, at least to extent of votes on passage of bills. Op. Atty. Gen. (280), Jan. 9, 1939.

31. Lotteries.

Whether bank night at a theatre constitutes a lottery *is a question of fact.* State v. Stern, *201M139, 275NW626.* See Dun. Dig. 5719.

32a. Submission of laws for taxation of railroads.

There is no other constitutional or statutory provision under which referendum of any question may be had. Op. Atty. Gen., Nov. 7, 1933.

Railroads which pay a gross earnings tax to the state are not exempt from state income tax. Op. Atty. Gen., Nov. 13, 1933.

33. Special legislation prohibited.

1. Prior to amendment of 1892.

State v. Mower County, 185M390, 241NW60.

2. Subsequent to amendment of 1892.

Laws 1927, c. 147, providing for funding by certain counties of road and bridge indebtedness and issuance of bonds, is valid. 171M312, 213NW914.

State banking corporations are properly placed in a class by themselves for the purpose of legislation and Laws 1926, c. 38, is not class or special legislation. 174 M36, 218NW238.

Laws 1927, c. 288 (Mason's Minn. Stat. 1927, §§2558-1 to 2558-4), is valid. 174M305, 219NW172.

Laws 1913, c. 545, providing that the voters of the district at the annual town meeting may fix the salaries of their school officers in ten town school districts having less than thirty schools and a high school, is constitutional. 175M316, 221NW231.

Laws 1929, cc. 208, 303, relating to certain villages, do not violate this section. 178M337, 227NW41; 178M342, 227 NW202.

Laws 1929, cc. 267, 424, admitting certain disabled veterans and court reporters to the practice of law without examination, violate this section. 178M331, 227NW179; 178M335, 227NW180.

A statute which limits its operation to those who are within its provisions at the time of its passage or within a limited time thereafter is special legislation. 178M335, 227NW180.

Mason's Minn. Stat., §§1726-1 to 1726-5, providing for detachment of lands from a city and school district, held invalid as special legislation. 179M358, 229NW346.

Laws 1929, c. 15, is invalid. 180M44, 230NW115.

A law is general and uniform in its operation if it operates uniformly upon all subjects within a proper class, but the classification must be based on a substantial distinction. 180M44, 230NW115.

Basic Science Act (Mason's Minn. Stat., §5705-1 et seq.), held not invalid because of limitation of operation to certain medical practitioners. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Chapter 67, Laws 1929, permitting the electors of a school district to reimburse its treasurer for moneys paid by him to it on account of loss of school funds in *an insolvent bank is* valid. 181M523, 233NW802. See Dun. Dig. 1691.

Laws 1929, c. 57, relating to firemen's civil service commission in cities of a certain population, held valid. 180M352, 232NW830(2).

Mason's Stat. 1927, §1726-6 et seq., providing for detachment of farm land from cities, is not unconstitutional as class or special legislation. Clinton Falls Nursery Co., 182M427, 236NW195. See Dun. Dig. 1675, 1692, 6521.

Special Laws 1885, c. 175, relating to the building and maintaining of bridges in Mower County, was not repealed by Laws 1913, c. 235, or Laws 1921, c. 323. State v. County of Mower, 185M390, 241NW60.

The legislature may repeal, but cannot extend, amend, or modify any existing special or local law. State v. County of Mower, 185M390, 241NW60. See Dun. Dig. 1685, 1688.

Laws 1931, c. 87, requiring counties of certain population to build and maintain all bridges, held special and local legislation. State v. County of Mower, 185M390, 241NW60. See Dun. Dig. 1692.

Mason's Minn. Stat., 1931 Supp., §§1933-48 to 1933-63, held not invalid. Neaseth v. V., 185M526, 242NW6. See Dun. Dig. 1691.

Laws 1929, c. 142, amending Laws 1923, c. 129, held constitutional in so far as act relates to highways to be established connecting roads with navigable streams. County of Becker v. S., 186M401, 243NW433. See Dun. Dig. 1691.

Statute fixing compensation of school treasurer is not unconstitutional as special legislation because based upon number of schools within territory. County Board

of Education v. F., 186M554, 244NW56. See Dun. Dig. 1691.

Laws 1921, c. 417, fixing $60 per capita as the maximum tax levy in all school districts in state, is not unconstitutional as special legislation. Independent School Dist. No. 35 v. B., 187M539, 246NW119. See Dun. Dig. 1689.

Laws 1921, c. 292, is valid, though it may apply only to one school district in state. State v. Brown, 189M257, 248NW822.

Laws 1933, c. 339, extending time for redemption from mortgage foreclosure sale is general and not special or class legislation. Blaisdell v. H., 189M422, 249NW334.

Laws 1921, c. 292, is not unconstitutional as a modification of Special Laws 1866, c. 29, as amended by Special Laws 1889, c. 132. State v. Brown, 189M257, 249NW 569. See Dun. Dig. 1685.

Laws 1933, c. 339, permitting extension of time for redemption on mortgage foreclosure, is valid. Blaisdell v. H., 189M448, 249NW893. See Dun. Dig. 1684.

Laws 1933, c. 181 [Mason's 1934 Supp., §§255-3, 255-4], is unconstitutional as special in its regulation of affairs of cities of less than 3500 inhabitants operating under Laws 1895, c. 8. Hiler v. C., 189M618, 250NW579. See Dun. Dig. 1683.

Legislature is presumed to have acted with knowledge of all facts necessary to make an intelligent classification of persons and things. Board of Education v. B., 192M367, 256NW894. See Dun. Dig. 1677-1679.

Construing Laws 1921, c. 332, as superseding §3014 and as applying to the city of Duluth, it is constitutional. Id. See Dun. Dig. 1691.

A law is general if it operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to such class; and mere fact that members of such class are limited, or that class consists of only a single member, object, or thing, is unimportant. Id. See Dun. Dig. 1683.

Minnesota Laws 1915, c. 272, as amended by Laws 1919, c. 404, as modified by Laws 1921, c. 280, giving coroner right to make autopsies in case of accidental or violent death, are constitutional. Kingsley v. F., 192M468, 257 NW95. See Dun. Dig. 1691.

The classification of unorganized territories based upon area and assessed valuation is not violative of this section. County Board v. B., 193M525, 259NW67. See Dun. Dig. 1679, 1681.

Extra Session, Laws 1933-1934, c. 45 (§§2867, 2867-1), providing for issuance of bonds by certain unorganized territories and sale thereof to United States government, is not unconstitutional because operating upon only one member of class created. Id. See Dun. Dig. 1679, 1681.

Fact that an act may apply to only one or only to a few municipalities is unimportant, if classification is not arbitrary or special but applies generally and uniformly throughout state. State v. Severson, 194M644, 261NW469. See Dun. Dig. 1677.

Laws 1933, c. 363, which amended Mason's Minn. St. 1927, §651, by adding a proviso that no city of second class shall be in more than two commissioner districts, is not unconstitutional as arbitrary and capricious classification. State v. Cooke, 195M101, 262NW163. See Dun. Dig. 1679.

Mason's Minn. St. 1927, §2150, as amended by Laws 1929, c. 266, Laws 1935, c. 246, providing for attachment, by county auditor, of rents received from real estate upon which taxes have become delinquent, is constitutional. Taxes Delinquent, 197M266, 266NW867. See Dun. Dig. 1677.

Mason's Minn. St. 1927, §9360-1, subjecting to garnishment money owed by state to employees in highway department, held constitutional as against objection of special legislation, lack of equal protection and due process. Franke v. A., 199M450, 272NW165. See Dun. Dig. 1684.

Section 2, c. 212, Laws 1935, adding subdivision 4 to §39, c. 300, Laws 1933 (§7492-39), violates §33, art. 4 of constitution, classification of corporations in said subdivision 4 being arbitrary and without any reasonable basis. Wm. Warnock Co. v. H., 273NW710. See Dun. Dig. 1997.

That part of Laws 1933, c. 359, reducing rates at which homesteads shall be valued for taxation, but preserving former and higher rates for purpose of figuring "tax limitations," held not to amend a provision of a city charter limiting a school tax to 22 mills on dollar, purpose being not to amend charter but to provide for valuing homesteads at former rates for purpose of applying tax limitation and it is constitutional as so construed. 510 Groveland Ave. v. E., 201M381, 276NW287. See Dun. Dig. 1679.

That part of Laws 1921, c. 362, which provides that municipal court of city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county, is unconstitutional. State v. Gibbons, 202M421, 278NW578. See Dun. Dig. 1686.

That part of the act which provides that municipal court of city of St. Paul shall have exclusive jurisdiction of misdemeanors and conduct preliminary examinations in criminal cases in Ramsey county is unconstitutional as local or special legislation. Id. See Dun. Dig. 5270.

Whether a law shall apply generally throughout state or only to a class or locality, is a question of legislative poicy for determination of legislature, and when legislature has determined that a sufficient distinction exists between two classes of persons to justify applying rules to one class which do not apply to other, such determination is binding upon courts, unless they can point out that distinction is purely fanciful and arbitrary and that no substantial or logical basis exists therefor. State v. Hubbard, 203M111, 280NW9. See Dun. Dig. 1668, 1669.

Class legislation, discriminating against some and favoring others, is not prohibited either by state or federal constitution, which, in carrying out a public purpose, is limited in its application, if within sphere of its operation, it affects alike all persons similarly situated and classification is not arbitrary. Id.

Mason's Minn. Stat. 1938 Supp., §2176-26 to §2176-34, permitting former owners of tax forfeited lands to repurchase at a discount and canceling special assessments, is constitutional. Id.

Mason's Minn. Stat. Supp. 1936, §§7774-25 to 7774-35, which permits industrial loan and thrift companies organized thereunder to charge eight per cent interest in advance on loans not to exceed one year, is not special legislation nor does it deny equal protection of law to other money lenders similarly situated because it does not distinguish between different classes of money lenders but applies same rates of interest to those organized under statute as to other lenders under general statutes. Mesaba Loan Co. v. S., 204M589, 282NW823. See Dun. Dig. 1675, 1687.

A statute which applies to loans thereunder same rate of interest permitted by general statutes is not a special law regulating rate of interest. Id. See Dun. Dig. 1683.

Chapter 170, Laws 1935, §1828-16¾ et seq., Mason's 1938 Supp., providing for a police retirement fund in cities of fourth class having an assessed valuation of over eight million dollars is not vulnerable to a charge of unconstitutionality on ground that classification of cities is not germane to subject matter of act, or that it is based upon present population and assessed valuation as distinguished from those cities which may subsequently come within its classification, or because it keeps permanently within its provisions a city which has elected to come under them, regardless of its subsequent change of status. Nichols v. C., 204M352, 283NW 539. See Dun. Dig. 1679.

Special Laws 1878, c. 69, did not continue the Minnesota Central University in existence, but created a new corporation, now Pillsbury Academy, whose property could not lawfully be made exempt from taxation. Trustees of Pillsbury Academy v. S., 204M365, 283NW727. See Dun. Dig. 1679.

An ordinance which requires "transient merchants" selling or displaying for sale "natural products" of the farm, including such commodities as cattle, hogs, sheep, veal, poultry, eggs, butter, and fresh or frozen fish, to be licensed and to file a bond and exempts from its provisions persons selling produce raised on farms occupied and cultivated by them, and persons selling milk, cream, fruit, vegetables, grain or straw, is violative of state and federal constitutional prohibitions against class legislation. State v. Pehrson, 287NW313. See Dun. Dig. 1673.

A special law such as Laws 1864, c. 15, creating Faribault school district, may not be amended as to limits of district or terms or manner of election of officers. Op. Atty. Gen., Jan. 31, 1933.

Special laws may be amended by general legislation. Op. Atty. Gen., Feb. 14, 1933.

Legislature has authority to make special appropriation to county to reimburse it for money paid by county to state which had been lost by closing of county depositary. Op. Atty. Gen., Feb. 17, 1933.

Legislature cannot repeal a special or local law in part by a special law. Op. Atty. Gen., Feb. 24, 1933.

Laws 1933, House File No. 55, providing that personal property taxes should not become delinquent, but excepting counties having certain valuation, denies equal protection of laws. Op. Atty. Gen., Feb. 27, 1933.

Laws 1931, c. 212, amending Mason's Minn. Stat. 1927, sec. 10305 by permitting members of village or city councils, town or school boards to designate banks in which they are interested as public depositaries, contravenes this section. Op. Atty. Gen., March 23, 1933.

An act reducing salaries of all public officials except those employed in certain counties would be invalid as special legislation. Op. Atty. Gen., Apr. 21, 1933.

Laws 1933, c. 372, is not invalid as a special law. Op. Atty. Gen., May 3, 1933.

Section does not prohibit general laws relating to affairs of cities. Op. Atty. Gen., Aug. 3, 1933.

Provision in Laws 1933, c. 412, premitting perpetual lease of water dam rights is invalid. Op. Atty. Gen., Aug. 7, 1933.

State may engage in selling and distribution of intoxicating liquors. Op. Atty. Gen., Oct. 25, 1933.

Laws 1933, c. 181 (§§255-3, 255-4), changing time for holding city elections in certain counties operating under Laws 1895, c. 8, is unconstitutional. Op. Atty. Gen., Dec. 12, 1933.

Municipality had no power to grant perpetual franchise to electrical utility. Op. Atty. Gen., Dec. 28, 1933.

Mason's Stat., §2867-1, relating to issuance and sale of bonds, is not invalid as special legislation. Op. Atty. Gen. (86a-8), June 14, 1934.

This section does not prohibit legislature from enacting general laws relating to affairs of cities operating under home rule charter, notwithstanding provisions in their charters may be inconsistent with legislation. Op. Atty. Gen. (785E), Nov. 16, 1934.

An assistant cashier of bank owning stock in the bank may serve on city council though bank is designated as city depository, but exception as to bankers may be unconstitutional. Op. Atty. Gen. (90c-2), Mar. 11, 1936.

Proposed amendments to §7774-4(e) so as to authorize investments in shares or deposits of a certain credit union corporation would violate this section. Op. Atty. Gen. (29a-19), Feb. 24, 1937.

Laws 1937, ch. 99, permitting certain cities of fourth class with home rule charger in county of certain population and certain number of townships to compromise judgments due from personal sureties on depository bonds, is constitutional. Op. Atty. Gen. (86a-8), Apr. 14, 1937.

Laws 1937, ch. 40, providing for loan to take up outstanding warrants, is constitutional, although it applies only to one county. Op. Atty. Gen. (37a-8), May 28, 1937.

Office of attorney general must abide by decision of district court holding statute unconstitutional, in absence of an appeal and a different conclusion on part of supreme court. Op. Atty. Gen. (82f), June 1, 1937.

This section does not interfere with exercise of powers given to state geographic board by Laws 1937, ch. 63. Op. Atty. Gen. (230), July 2, 1937.

Laws 1937, c. 461, relating to issuance of bonds by certain independent school districts, is constitutional. Op. Atty. Gen. (82w), Aug. 12, 1937.

Laws 1937, c. 286, providing for reimbursement to towns, cities and villages of expenditures for poor purposes, but excluding counties having cities of first class, is valid. Op. Atty. Gen. (339o-5), Oct. 11, 1937.

Police Civil Service Commission Act (Laws 1935, c. 170), is constitutional. Op. Atty. Gen. (785e-3), Apr. 19, 1938.

Laws 1931, c. 156, providing for concellation of general taxes and deed of land by city of St. Cloud, is constitutional. Op. Atty. Gen. (82*l*), June 22, 1938.

Constitutionality of Laws 1939, c. 395, amending §3200-30, discussed. Op. Atty. Gen. (218G), April 26, 1939.

That part of Laws 1939, c. 195, §2, amending §8688-6 which denies aid to a citizen child whose mother is not a citizen of the United States or has declared her intention to become a citizen, is unconstitutional, and may be ignored. Op. Atty. Gen., (840a-6), August 5, 1939.

34. General laws.

Laws 1927, c. 147, providing for funding by certain counties of road and bridge indebtedness and issuance of bonds, is valid. 171M312, 213NW914.

174M36, 218NW238, note under §33.

Laws 1929, cc. 208, 303, relating to certain villages, do not violate this section. 178M337, 227NW41; 178M342, 227 NW202.

Laws 1929, c. 15, is invalid. 180M44, 230NW115.

A law is general and uniform in its operation if it operates uniformly upon all subjects within a proper class, but the classification must be based on a substantial distinction. 180M44, 230NW115.

Laws 1929, c. 57, relating to firemen's civil service commission in cities of a certain population, held valid. 180M352, 230NW830(2).

Basic Science Act (Mason's Minn. Stat., §5705-1 et seq.), held not invalid because of limitation of operation to certain medical practitioners. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Chapter 67, Laws 1929, permitting the electors of a school district to reimburse its treasurer for moneys paid by him to it on account of loss of school funds in an insolvent bank is valid. 181M523, 233NW802. See Dun. Dig. 1691.

*Mason's Stat. 1927, §1726-6 et seq., providing for de*tachment of agricultural lands from cities, is not unconstitutional as class or special legislation. Clinton Falls Nursery Co., 182M427, 236NW195. See Dun. Dig. 1675, 1692, 6521.

Laws 1931, c. 87, requiring counties of certain population to build and maintain all bridges, held special and local legislation. State v. County of Mower, 185M 390, 241NW60. See Dun. Dig. 1683.

Police civil service commission law (Laws 1929, c. 299, [Mason's Minn. Stat. 1931, Supp., §§1933-48 to 1933-63]) is not invalid as lacking uniformity of operation. Naeseth v. V., 185M526, 242NW6. See Dun. Dig. 1683.

Laws 1933, c. 181 [Mason's 1934 Supp., §§255-3, 255-4], is unconstitutional as special in its regulation of affairs of cities of less than 3500 inhabitants operating under Laws 1895, c. 8. Hiler v. C., 189M618, 250NW579. See Dun. Dig. 1683.

A law is general if it operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to such class; and mere fact that members of such class are limited, or that class consists of only a single member, object, or thing, is unimportant. Board of Education v. B., 192M367, 256NW 894. See Dun. Dig. 1683.

Legislature is presumed to have acted with knowledge of all facts necessary to make an intelligent classification of persons and things. Id. See Dun. Dig. 1677-1679.

Construing Laws 1921, c. 332, as superseding §3014 and as applying to the city of Duluth, it is constitutional. Id. See Dun. Dig. 1691.

Fact that an act may apply to only one or only to a few municipalities is unimportant, if classification is not arbitrary or special but applies generally and uniformly throughout state. State v. Severson, 194M644, 261NW 469. See Dun. Dig. 1677.

Mason's Stats. 1927, §6557–1, is not special legislation because it limits time for appeal in condemnation proceedings brought by state to acquire rights of way for trunk highways without requiring notice to start running of 30-day limitations, as is required in other condemnation proceedings. Id.

Laws 1933, c. 363, which amended Mason's Minn. St. 1927, §651, by adding a proviso that no city of second *class shall be in more than two commissioner districts,* is not unconstitutional as arbitrary and capricious classification. State v. Cooke, 195M101, 262NW163. See Dun. Dig. 1679.

Mason's Minn. St. 1927, §9360-1, subjecting to garnishment money owed by state to employees in highway department, held constitutional as against objection of special legislation, lack of equal protection and due process. Franke v. A., 199M450, 272NW165. See Dun. Dig. 1675.

Chapter 170, Laws 1935, §1828-16¾ et seq., Mason's 1938 Supp., providing for a police retirement fund in cities of fourth class having an assessed valuation of over eight million dollars is not vulnerable to a charge of unconstitutionality on ground that classification of cities is not germane to subject matter of act, or that it is based upon present population and assessed valuation as distinguished from those cities which may subsequently come within its classification, or because it keeps permanently within its provisions a city which has elected to come under them, regardless of its subsequent change of status. Nichols v. C., 204M352, 283NW 539. See Dun. Dig. 1679.

Laws 1933, c. 372, is not invalid as a special law. Op. Atty. Gen., May 3, 1933.

Section does not prohibit general laws relating to affairs of cities. Op. Atty. Gen., Aug. 3, 1933.

Laws 1933, c. 181 (§§255-3, 255-4), changing time for holding city elections in certain counties operating under Laws 1895, c. 8, is unconstitutional. Op. Atty. Gen., Dec. 12, 1933.

Mason's Stats., §§2867, 2867-1, providing for issue of bonds by school district which had previously applied to federal government for loan, is constitutional. Op. Atty. Gen. (159a-5), July 17, 1934.

This section does not prohibit legislature from enacting general laws relating to affairs of cities operating under home rule charter, notwithstanding provisions in their charters may be inconsistent with legislation. Op. Atty. Gen. (785E), Nov. 16, 1934.

Fact that Mason's Stats., §§1607-31 to 1607-34, apply only to the city of Duluth does not render them unconstitutional. Op. Atty. Gen. (387b-9), Nov. 20, 1934.

Laws 1937, ch. 99, permitting certain cities of fourth class with home rule charter in county of certain population and certain number of townships to compromise judgments due from personal sureties on depository bonds, is constitutional. Op. Atty. Gen. (86a-8), Apr. 14, 1937.

Laws 1937, c. 286, providing for reimbursement to towns, cities and villages of expenditures for poor purposes, but excluding counties having cities of first class, is valid. Op. Atty. Gen. (339o-5), Oct. 11, 1937.

Police Civil Service Commission Act (Laws 1935, c. 170), is constitutional. Op. Atty. Gen. (785e-3), Apr. 19, 1938.

Constitutionality of Laws 1939, c. 395, amending §3200-30, discussed. Op. Atty. Gen. (218G), April 26, 1939.

36. Cities and villages may adopt charters—Classification of cities for legislative purposes.

Amendment proposed Mar. 25, 1937, c. 493, defeated at general election, Nov. 8, 1938.

Amendment proposed as to publication of suggested charter amendments, to be submitted at the 1939 general election. Act Apr. 13, 1939, c. 447.

The validity of a charter provision adopted under this section, held not required to be tried before a court of three judges as required by Mason's Code 28, §380. 32F (2d)748.

This section held not to authorize a city to pass an ordinance requiring landowners to sheath-pile excavation so as to protect walls on adjoining property. 172M 428, 215NW840.

Section 6578-1 sufficiently protects landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

Laws 1929, c. 57, relating to firemen's civil service commission in certain cities, held valid. 180M352, 230 NW830(2).

Minneapolis home rule charter, c. 13, §4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. *181M576, 233NW834. See Dun. Dig. 3656.*

An ordinance of the city of St. Paul providing for the punishment of a person convicted of driving an automobile while under the influence of intoxicating liquor, is valid. State v. H., 182M144, 233NW874. See Dun. Dig. 1682.

The legislature by express legislation may supersede or change the provisions of home rule charters. Guaranteed Concrete Co. v. G., 185M454, 241NW588. See Dun. Dig. 1685.

Submission of Charter Amendment No. 8 to voters of Minneapolis on Nov. 8, 1932, was a special election notwithstanding it was not so designated by city council. Godward v. C., 190M51, 250NW719. See Dun. Dig. 6543.

Blank ballots at special election were properly rejected by trial court in computing total number of voters at special election on charter amendment. Id. See Dun. Dig. 2973a, n. 29.

Legislative policy respecting education cannot be disturbed except by legislative enactment. State v. Erickson, 190M216, 251NW519. See Dun. Dig. 8656, n. 20.

Existence of freehold population is not a condition precedent to incorporation or reincorporation of a municipality. State v. City of Fraser, 191M427, 254NW 776. See Dun. Dig. 6517, 6526a.

Motives of electors at a city charter election are not to be considered so long as their actions are within the law. Id. See Dun. Dig. 6543.

A freeholder is one having title to real estate, however small its value. Id. See Dun. Dig. 6560.

Members of board of freeholders though land was conveyed to them as a gift for sole purpose of qualifying them. Id. See Dun. Dig. 6560.

There is no constitutional bar to amalgamation of legislative and executive power in a city, as is provided by commission form of government in city of St. Paul. State v. Goodrich, 195M644, 264NW234. See Dun. Dig. 1601.

A city cannot, by a home rule charter, abrogate such general rules of equity as those of laches and estoppel to deny liabilities under contracts. City of Staples v. M., 196M303, 265NW58. See Dun. Dig. 1601.

Adoption of a home-rule charter does not preclude court from determining whether territory included in city is lawfully included. State v. City of Chisholm, 199 M403, 273NW235. See Dun. Dig. 6535.

Chapter 179, Laws 1935, §1828-16¾ et seq., Mason's 1938 Supp., providing for a police retirement fund in cities of fourth class having an assessed valuation of over eight million dollars is not vulnerable to a charge of unconstitutionality on ground that classification of cities is not germane to subject matter of act, or that it is based upon present population and assessed valuation as distinguished from those cities which may subsequently come within its classification, or because it keeps permanently within its provisions a city which has elected to come under them, regardless of its subsequent change of status. Nichols v. C., 204M352, 283 NW539. See Dun. Dig. 1689.

Implied repeals are no more favored in charter amendments than in statutory amendments. Tamte v. E., 285 NW720. See Dun. Dig. 8927.

Provision in home rule charter recognizing validity of municipal contract in which officer is interested is unconstitutional, in view of Mason's Minn. Stat., §10305. Op. Atty. Gen., Feb. 10, 1930.

Charter provisions of the city of Ely with respect to condemnation of land outside city are valid. Op. Atty. Gen., June 15, 1931.

Laws 1909, c. 236, providing that a new or revised home rule charter can be submitted in the manner of a new Charter provisions of the city of Ely with respect to July 31, 1931.

A village may not adopt a charter pursuant to this provision and still remain a village. Op. Atty. Gen., Oct. 14, 1932.

Proposed revision of home rule charter must be published for at least 30 days in three newspapers of general circulation in city or village affected. Op. Atty. Gen., Jan. 12, 1933.

Thirty days' publication of proposed revision of home rule charter must be once each week in weekly papers and daily in daily papers. Op. Atty. Gen., Jan. 12, 1933.

Minimum wage laws for groups of municipal employees would be constitutional. Op. Atty. Gen., Feb. 9, 1933.

The offices of city auditor and poor commissioner of city of Breckenridge would be incompatible. Op. Atty. Gen., Feb. 16, 1933.

Home rule charter city may compel inspection of records of public utilities for rate making purposes. Op. Atty. Gen., Apr. 21, 1933.

Neither charter commission nor city council have authority to revise or supervise charter amendments presented to commission by petition, and courts have no jurisdiction to determine constitutionality until electors have acted. Op. Atty. Gen., Aug. 25, 1933.

Right of city of fourth class operating under home rule charter to abandon the same and thereafter be governed by general law is an open question in this state. Op. Atty. Gen., Oct. 2, 1933.

Mason's Stats., §§212 to 236, relate to municipal courts, supersede home rule charter provisions insofar as inconsistent. Op. Atty. Gen., Jan. 25, 1934.

City having only two newspapers must nevertheless publish amendment to home rule charter in three newspapers having general circulation. Op. Atty. Gen., Mar. 17, 1934.

Electors of city of Minneapolis may not amend its charter so that it would conflict with any general legislation concerning pension systems for employees. Op. Atty. Gen. (335d), Aug. 22, 1934.

City of Waseca under its home rule charter has authority to condemn land outside city for airport. Op. Atty. Gen. (817f), Aug. 3, 1934.

Any inconsistent statute supersedes charter provisions. Op. Atty. Gen. (172), Sept. 14, 1934.

Where legislature enacts general law applying to all cities, city operating under a home rule charter need not amend inconsistent provisions in charter in order to come under new law. Op. Atty. Gen. (785E), Nov. 16, 1934.

Term of judge of municipal court may not be changed by home rule charter. Op. Atty. Gen. (307k), Dec. 1, 1934.

City of Chisholm is legally incorporated as a city of the fourth class with a home rule charter. Op. Atty. Gen. (59a-51), Feb. 4, 1936.

Vacancy in office of city justice of the peace may be filled by appointment by governor pursuant to terms of city charter. Op. Atty. Gen. (266a-12), Feb. 7, 1936.

City of International Falls by adoption of home rule charter without providing for election of justice of the peace abolished that office. Op. Atty. Gen. (306a), Apr. 9, 1936.

Charter amendment must be accepted by three-fifths of qualified voters voting at a special election at which such amendment is submitted. Op. Atty. Gen. (63h-4), June 2, 1936.

Electors may adopt amendment providing for oiling of streets upon Resolution of council without filing of petition by benefited property owners. Op. Atty. Gen. (59a-11), July 29, 1936.

Laws 1937, ch. 99, permitting certain cities of fourth class with home-rule charter in county of certain population and certain number of townships to compromise judgments due from personal sureties on depository bonds, is constitutional. Op. Atty. Gen. (86a-8), Apr. 14, 1937.

Provision in Worthington Home-Rule charter requiring city assessor to be a free-holder contravenes Constitution, art. 1, §17. Op. Atty. Gen. (12a), Apr. 28, 1937.

A city adopting a home-rule charter has all legislative powers of legislature with respect to every matter of municipal concern, save as such powers are expressly or impliedly withheld by constitutional or statutory provisions. Op. Atty. Gen. (519h), May 18, 1937.

City may adopt a proposed new or revised charter in same manner that original home rule charter is adopted, and it is not necessary to publish new or revised charter in any newspaper. Op. Atty. Gen. (59a-11), July 30, 1937.

Amendments to a home rule charter may be submitted pursuant to constitution, article 4, §36, and Mason's Stats., §§1284 and 1286, and not pursuant to terms of home rule charter, and may be submitted at special election, and it is not required that all newspapers be published in city if they have general circulation there. Op. Atty. Gen. (58c), Oct. 18, 1937.

It is necessary to publish amendments in three newspapers although only two newspapers are published in city. Id.

Publication of proposed charter amendments once each week for a period of 30 days in a weekly newspaper is sufficient, but if a daily newspaper is used it must be published in each issue of such paper for requisite 30 day period. Id.

An election on proposed amendment to city charter is a special election, though voted on same date as general election, and only those voting on amendment are to be counted in determining result of election, and blank ballots are not to be considered as votes against amendment. Op. Atty. Gen. (59a-11), Feb. 4, 1938.

Where two sets of petitions are filed, it is mandatory on part of council to submit both amendments in form proposed, even though they are inconsistent. Op. Atty. Gen. (59a-11), Feb. 4, 1938.

Proper method of submitting alternative proposals is to submit them in such a manner that voters may vote for only one. Op. Atty. Gen. (59a-11), Feb. 21, 1938.

If only one newspaper is published in city, in addition to publishing proposed amendment in such paper, publication must also be made in two other newspapers having a general circulation in the city. Op. Atty. Gen. (59a-11), Feb. 21, 1938.

Proposal to amend a number of sections of city charter may be submitted as one amendment where passage would effect only method of choosing water and light commissioners, their terms of office, and method of filling vacancies. Op. Atty. Gen. (59a-11), Feb. 21, 1938.

City charter may provide for payment of hospital bonds in hospital services rather than in money. Op. Atty. Gen. (59b-5), Apr. 21, 1938.

"Proportional representation voting" in proposed city charter, known as the "choice voting" and the "Hare system" is of doubtful constitutionality. Op. Atty. Gen. (28a), Feb. 17, 1939.

Reference in Laws 1939, c. 447, proposing amendment to this section, to the 1939 general election is a palpable error and amendment may be submitted at 1940 general election. Op. Atty. Gen., (86a), June 2, 1939.

Curative Act.

Laws 1929, c. 40, legalizes certain appropriations made by cities of the first class for promoting industrial and commercial development.

For validation of bonds authorized by vote on a proposition providing for the issuance of an aggregate for two or more distinct improvements, see Laws 1929, c. 112; Laws 1929, c. 126.

Port Authority created for cities of over 50,000 population. See Laws 1929, c. 61.

Airports. See Laws 1929, c. 125; c. 217; c. 379.

Act relating to certain charter elections held under this section. Laws 1931, c. 145.

Act legalizing conveyances of city of fourth class operating under home rule charter pursuant to this section. Laws 1931, c. 361.

Laws 1935, c. 203, first class cities operating under Minn. Const. Art. IV, §36, may condemn land for municipal forest.

Article 5.—THE EXECUTIVE DEPARTMENT.

1. Courts.

Discretion of attorney general as to what litigation shall be instituted by him is beyond control of any other department of government. State v. City of Fraser, 191M427, 254NW776. See Dun. Dig. 8845.

Where in a mandamus proceeding against state auditor on relation of a private party, he has signed and verified his return or answer also signed by private legal counsel employed at his own expense, attorney general does not have absolute right to have such return or answer stricken, and counsel of auditor ousted from participating in proceeding, where real controversy is between different departments of the state and auditor believes that an attempt is being made to compel him to do an unlawful act. State v. District Court, 196M44, 264NW227. See Dun. Dig. 1593.

4. Powers and duties of governor.

Strutwear Knitting Co. v. O., (USDC-MINN.), 13FSupp 384.

Minnesota's governor, charged with seeing that its laws are executed, is authorized to use militia when his judgment deems it necessary, which judgment is conclusive, and means employed by governor and commanding officer of troops in restoring law and order are not subject to control of judiciary unless arbitrary and capricious. Powers M. Co. v. O., (USDC-Minn), 7FSupp 865. See Dun. Dig. 8843.

Whether martial law, in the sense of government by executive edict, while the courts are open and the civil authorities still functioning, although unable to cope with an outbreak of violence, can be maintained in Minnesota must be finally determined by the state's supreme court. Id.

Under military rule, constitutional rights of individuals must give way to the necessities of the situation; and the deprivation of such rights, made necessary in order to restore the community to order under the law, cannot be made the basis for injunction or redress. Id.

Where civil authorities and deputies could not adequately protect life and property from mob violence actual and threatened, governor's proclamation for martial law in such community was justified and could not be invalidated, and his orders regulating the movements of trucks under such circumstances could not be enjoined. Id.

Assuming regents of university to be "officers," they have been removed from scope of that general rule by special constitutional provision confirming and perpetuating original franchises, which included election by legislature of regents, to hold franchise and insure intended succession. State v. Quinlivan, 198M65, 268NW858. See Dun. Dig. 8964.

Vacancy in office of village justice is to be filled by village council. Op. Atty. Gen., Dec. 20, 1929.

Powers of pardon board extend only to offenses against the state, and do not apply to municipal ordinances. Op. Atty. Gen., Apr. 8, 1931.

Twenty-day provision relative to introduction of bills only with governor's consent during last twenty days of session is applicable only to regular sessions. Op. Atty. Gen., Dec. 11, 1933.

It is not necessary that a formal commission of appointment be issued to acting commissioner of bank. Op. Atty. Gen. (29a-6), July 14, 1939.

Governor may appoint successors to public officers appointed by former governor but not confirmed by senate at previous session. Op. Atty. Gen. (213f), Jan. 9, 1939.

Governor's constitutional powers of appointment and removal. 22MinnLawRev451.

8. 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.

Executive secretary of county welfare may not be required to execute a fidelity bond, but it would not be unlawful for board of control to pass a resolution providing that it is desirable that such secretary give a fidelity bond to be filed as other bonds and paid for by county, and a bond so voluntarily given would be enforceable. Op. Atty. Gen. (104a-2), Aug. 25, 1937.

Article 6.—THE JUDICIARY.

1. Courts.

Martin v. M., 247NF515; note under art. 6, §7.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

Mason's Stat., §§7688 and 7689 are not unconstitutional as attempting to delegate judicial power to the commissioner of banks. American State Bank of Minneapolis v. J., 184M498, 239NW144.

Interpretation of state constitution by state supreme court is conclusive and final. Reed v. B., 191M254, 253 NW102. See Dun. Dig. 8819.

Judges of municipal court are state officers and not officers of the municipality electing them, and where a municipal judge was elected to a term commencing on the first secular day of February, 1928, his term of office did not expire until four years thereafter, and his term of office could not be changed by adoption of home rule charter changing dates of election, and where the only proper general election of a city next preceding first secular day of February, 1932, was in November, 1930, at which the same judge was elected, his four-year term of office under the second election began the first secular day of February, 1932. State v. Bensel, 194M55, 259NW 389. See Dun. Dig. 6899a.

Legislature has power to determine how many justices there shall be in any county and what shall be their duties, and that there shall be no justice of the peace in any given county or portion thereof and may restrict constitutional jurisdiction, and may establish inferior courts and confer exclusive jurisdiction upon them and abolish jurisdiction of justices conferred upon such inferior courts, but Laws 1921, c. 362, in so far as it provides that the municipal court of city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county, is unconstitutional, as local or special legislation. State v. Gibbons, 202M421, 278NW578. See Dun. Dig. 5270.

Parties cannot confer jurisdiction by consent upon a court of any subject matter which is denied to it by law. State v. Probate Court of Hennepin County, 204M5, 283 NW545. See Dun. Dig. 2348.

Manner in which jurisdiction conferred by constitution on any court or officer shall be exercised when not prescribed by constitution itself, or power to regulate it vested elsewhere, may be regulated by legislature. State v. Probate Court, 287NW297. See Dun. Dig. 2345.

Probate judge must keep record of proceedings in insanity and juvenile matters. Op. Atty. Gen., Mar. 27, 1933.

There is nothing in the constitution to prevent legislature from establishing a municipal court partly in one county and partly in another, or to give such court jurisdiction in more than one county. Op. Atty. Gen. (206a-4), April 21, 1939.

2. Supreme Court.—The supreme court shall consist of one chief justice and six associate justices. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court. It shall hold one or more terms in each year, as the legislature may direct, at the seat of government, and the legislature may provide, by a two-thirds vote, that one term in each year shall be held in each or any judicial district. It shall be the duty of such court to appoint a reporter of its decisions. There shall be chosen, by the qualified electors of the state, one clerk of the supreme court, who shall hold his office for the term of four years, and until his successor is duly elected and qualified; and the judges of the supreme court, or a majority of them, shall have the power to fill any vacancy in the office of clerk of the supreme court until an election can be regularly had.

Amendment proposed by Laws 1929, c. 430. Adopted at election held Nov. 4, 1930. Promulgated Nov. 20, 1930.

A violation of a city ordinance is an offense against the city and a right of appeal may be denied. 175M222, 220NW611.

Judicial power of supreme court has its origin in constitution, but it came into existence with inherent power to protect itself and make rules of practice. Greathouse, 189M51, 248NW735. See Dun. Dig. 1587.

On review of judgment of district court affirming county board, finding discharged veteran incompetent, supreme court is limited to a determination of whether there is evidence reasonably sufficient to sustain finding, and it does not weigh evidence or pass upon credibility of witnesses. State v. Eklund, 196M216, 264NW682. See Dun. Dig. 411.

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. State v. Jackson, 198M111, 268NW924. See Dun. Dig. 2501.

Writ of prohibition will not be granted upon contention that criminal complaint does not charge a public offense for reason that alleged contemptuous publication related to matters which had been finally determined by court, since court had jurisdiction of person and of offense attempted to be charged and of determination of whether or not complaint stated a public offense. State v. Laughlin, 204M291, 283NW395. See Dun. Dig. 7840.

4. Judicial districts—District court judges.

Legislature may impose limitations upon the manner in which district judges shall exercise their judicial power. 173M271, 217NW351.

Op. Atty. Gen., Nov. 9, 1929; note under Const. art. 6, §12.

5. Jurisdiction of district courts.

Federal and not state law determines the power and jurisdiction of the circuit court of appeals to review by certiorari an order of the district court refusing to remand a case removed from a state court. City of Owatonna v. Interstate Power Co. (CCA8), 67F(2d)298. Certiorari denied 291US673, 54SCR458.

A violation of a city ordinance is an offense against the city and a right of appeal may be denied. 175M222, 220NW611.

Petitions filed in federal court seeking naturalization after controversy arose as to citizenship of officer, held not conclusive on question of contestee's citizenship, under prior claimed naturalization. Miller v. B., 190M352, 251NW682. See Dun. Dig. 2921.

Authority to "any judge of any judicial district" when "the convenience or interest of the public or the interest of any litigant shall require" substitution, has for its basis a determination of facts, and such duty is judicial or at least quasi judicial. State v. Montague, 195M278. 262NW684. See Dun. Dig. 4961.

Where presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district, governor may not designate an outside judge to preside thereat, it appearing that regular and properly designated judge is competent to act, that there is no accumulation of business before court, and that delay of trial is not probable. Id.

A notice of appeal from probate court to district court is not "process," and service on election day is not prohibited. Dahmen's Estate, 200M126, 273NW364. See Dun. Dig. 7797.

In so far as Mason's Minn. St. 1927, §§158 or 9218, assume to empower Governor to designate a judge of another district to discharge duties of a district judge, it is in contravention of §1 of article 3 and beyond authority of §5 of article 6 of constitution. State v. Day, 273NW684. See Dun. Dig. 4961.

Where bank made loan to residuary legatee and took assignment of borrower's interest in estate as security, and its claim on note was allowed in probate court in proceeding to administer estate of such residuary legatee, district court had plenary jurisdiction of an action by bank against personal representative of the residuary legatee to enforce lien on interest of such legatee in the first estate and to determine ownership of fund distributed to such legatee by decree of probate court, probate court having no jurisdiction in such matters. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 3658, 7770, 7776, 7779.

District court had no jurisdiction to suspend a criminal judgment of a justice of the peace where no appeal had been taken and time therefor had expired at the time of application for suspension. Op. Atty. Gen., Jan. 12, 1932.

6. Judges of supreme and district courts—Qualifications—Compensation.

Municipal judges need not be attorneys. Op. Atty. Gen., Feb. 9, 1933.

Supreme court, state district court and probate court judges are liable to pay income tax on salaries, such payment not amounting to a diminution of their salaries. Op. Atty. Gen. (531h), Apr. 7, 1934.

Salary of municipal judge appointed to fill vacancy can neither be increased nor diminished during term for which deceased judge was elected. Op. Atty. Gen. (307k), July 30, 1935.

Statute requiring municipal judge to be an attorney at law, would be unconstitutional. Op. Atty. Gen. (307g), Jan. 20, 1939.

Laws 1935, Ex. Sess., c. 88, creating municipal court for St. Cloud and Benton and Sherburne Counties, is constitutional, except in so far as it requires judges to be persons learned in the law and duly admitted to practice as attorneys. Op. Atty. Gen. (30a-4), April 21, 1939.

7. Probate courts.

District court has right to determine title to homestead pending proceeding in probate court to administer estate of decedent. 171M182, 213NW736.

The probate court has authority to direct guardians of minors and incompetent persons to require bonds to secure deposits of funds of their wards in banks. 176M 541, 224W152.

The presentation of a claim by the guardian in probate court against the estate of his deceased ward, after his final account as guardian had been settled, whereby the guardian seeks to recover compensation for services rendered to his ward in addition to the allowance made to him for services in the order settling his account, is a collateral attack on such order. Trapp v. T., 182M537, 235NW29. See Dun. Dig. 4125a(21).

An order duly made by the probate court settling the final account of a guardian is conclusive on the guardian, and cannot be attacked collaterally by him. Trapp v. T., 182M537, 235NW29. See Dun. Dig. 4125a(21).

Proof of an understanding or agreement of the parties that plaintiff's claim need not be included in the guardian's account would be permissible only in a direct attack upon the order of the probate court settling the account. Trapp v. T., 182M537, 235NW29. See. Dun. Dig. 4125a(21).

The probate court has jurisdiction to order co-administrators to hold and distribute estate funds jointly. Wilson v. S., 183M374, 236NW701. See Dun. Dig. 7771, 7778.

When a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court. In re Martinson, 184M29, 237NW596. See Dun. Dig. 99.

Probate court has power to hear and determine applications for restoration to capacity by patients in insane hospitals. State v. O'Brien, 186M432, 243NW434. See Dun. Dig. 4528.

A conflict between probate courts of two counties as to which shall exercise jurisdiction over the estate of a person deceased held a question of venue rather than jurisdiction. Martin v. M., 188M408, 247NW515. See Dun. Dig. 7773(94).

Jurisdiction of a probate court over an estate, once properly invoked, precludes subsequent exercise of jurisdiction over same matter by another probate court, unless and until first proceeding is dismissed or discontinued. Id.

Dependent, neglected, or delinquent children are proper subjects to be placed under guardianship by the probate court. State v. Patterson, 247NW573, 188M492, 249NW187. See Dun. Dig. 1646.

District court has no jurisdiction to enjoin administrator from selling land under license of probate court. Mundinger v. B., 188M621, 248NW47. See Dun. Dig. 7770c.

Op. Atty. Gen., Mar. 20, 1934; note under art. 6, §10.

Where alleged revocation of will is effected by four "living trusts," so called, and validity and efficacy of latter are challenged by issue properly framed, probate court has jurisdiction to determine that issue in order to get at ultimate one, of which it is only court with original jurisdiction, whether will is entitled to probate. O'Connor, 191M34, 253NW18. See Dun. Dig. 7770.

Assessment of inheritance taxes is so far related to and a part of the administration of estate of deceased person as to be within constitutional jurisdiction of probate court. Robinson, 192M39, 255NW486. See Dun. Dig. 1592, 7770, 9571.

General jurisdiction of probate court attaches at once upon presentation to it of a proper petition by some person entitled to take such action. Notice and opportunity to be heard is a matter of legislative favor and not essential to jurisdiction and power of court to administer estate. Gilroy's Estate, 193M349, 258NW584. See Dun. Dig. 1641, 7783e.

Probate court, by virtue of broad grant of power bestowed by the constitution and in conformity with statutory enactment directing its exercise, may appoint an administrator d. b. n. with or without notice, when a proper petition, made by one authorized by statute so to do, is presented to it, provided authority of prior representative has been extinguished and there remains property theretofore unadministered. Id. See Dun. Dig. 1641, 3583, 7783e.

Probate court has exclusive original jurisdiction of estates of deceased persons and persons under guardianship by virtue of constitutional investment. Legislature may not curtail or limit general jurisdiction thus conferred, but exercise thereof may be regulated by statute. Id. See Dun. Dig. 7770b.

Sections of Probate Code which deprive probate court of jurisdiction over claims against homestead and which confer such jurisdiction upon district court are not in violation of constitutional provision which gives probate court exclusive jurisdiction of estates of deceased persons. Peterson's Estate, 198M45, 268NW707. See Dun. Dig. 7770c.

Original jurisdiction of administration proceedings, and matters necessarily incident thereto, is exclusively and completely vested in probate court. State v. Probate Court of Hennepin County, 199M297, 271NW879. See Dun. Dig. 7770c.

Probate court held without jurisdiction to hear and determine petition of executrix to have contract made by her with third parties annulled for fraud. Id. See Dun. Dig. 7771.

In administering estate probate court applies equitable principles and exercises equitable powers; but it is not possessed of independent jurisdiction in equity over controversies between representative of estate with strangers to proceedings, claiming adversely, nor of collateral actions. Id. See Dun. Dig. 7776.

Probate court has exclusive original jurisdiction of estates of deceased persons, but manner in which that jurisdiction is exercised is subject to regulation by legislature, and it may constitutionally limit jurisdiction of probate court to hear certain kinds of claims, and time to present claims, and probate court does not have power to extend time for filing claims which become absolute during period limited for filing claims beyond one year and six months from time notice of order was given, nor may compliance with statute be waived by a representative. Flewell, 201M407, 276NW732. See Dun. Dig. 3592a, 7770b.

With probate court lies exclusive jurisdiction to construe and determine validity of wills and provisions thereof for purposes of administration, and to determine amount of distributive shares thereunder. Peterson's Estate, 202M31, 277NW529. See Dun. Dig. 7771, 7778, 7770d, 7770c.

Jurisdiction of district court is limited to appeals seasonably taken in accordance with statutory directions, jurisdiction being statutory only, and not founded upon constitutional grant. Id. See Dun. Dig. 7770e, 7784a, 7795.

Mason's St., §9172, giving district court jurisdiction to create a trust in favor of a minor who has no general guardian is no infringement of probate court's constitutional jurisdiction, or a denial of due process of law. Ernst v. D., 202M358, 278NW516. See Dun. Dig. 7770e.

Probate courts are courts of record and their orders and judgments are not subject to collateral attack in field entrusted to them by constitution, but a motion by a ward to expunge erroneous statements from record is not a collateral attack. Carpenter's Guardianship, 203M 477, 281NW867. See Dun. Dig. 7774.

Probate court is by constitution vested with complete jurisdiction over estates of deceased persons and persons under guardianship. State v. Probate Court of Hennepin County, 204M5, 283NW545. See Dun. Dig. 7770.

Probate court in administering estate applies equitable principles and exercises equitable powers, it possesses no independent jurisdiction in equity or at law over controversies between representatives of estate, or those claiming under it, with strangers claiming adversely, nor of collateral actions. Id. See Dun. Dig. 7776.

Specific performance of a contract to make a will disposing of property may be granted in the district court by a judgment against the representative, heirs, legatees, and devisees without interfering with the probate court's exclusive jurisdiction of estates of decedents. Jannetta v. J., 285NW619. See Dun. Dig. 8789a.

Jurisdiction of our probate court is founded upon constitutional grant. The powers so granted are plenary, and the jurisdiction of that court is to be liberally construed. Its jurisdiction over persons under guardianship is in its origin exclusive, where person alleged to be incompetent was found by probate court to be competent, and on appeal district court reversed, finding person incompetent, and inasmuch as probate court never passed upon or decided question of who should be guardian of such incompetent person, district court should have remanded case to probate court for appointment of guardian, as its jurisdiction is appellate only, not original. Strom's Guardianship, 286NW245. See Dun. Dig. 7771a.

Probate court possesses no independent jurisdiction in equity or at law over controversies between the representative of an estate, or those claiming under it, with strangers claiming adversely nor of collateral actions. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 3658, 7779.

Where bank made loan to residuary legatee and took assignment of borrower's interest in estate as security, and its claim on note was allowed in probate court in proceeding to administer estate of such residuary legatee, district court had plenary jurisdiction of an action by bank against personal representative of the residuary legatee to enforce lien on interest of such legatee in the first estate and to determine ownership of fund distributed to such legatee by decree of probate court, probate court having no jurisdiction in such matters. Id. See Dun. Dig. 3658, 7770, 7776, 7779.

Laws 1939, c. 369, giving probate court jurisdiction over persons with psychopathic personalities with sexual irresponsibility, is constitutional. State v. Probate Court, 287NW297. See Dun. Dig. 7771a.

Probate judge must keep record of proceedings in insanity and juvenile matters. Op. Atty. Gen., Mar. 27, 1933.

Legislature cannot consolidate offices of judge of probate or clerk of district court with other elective offices because such offices are created by the constitution. Op. Atty. Gen., Apr. 3, 1933.

Vacancy to be filled by next election where appointee is appointed more than 30 days prior thereto. Op. Atty. Gen., Feb. 9, 1934.

Statute giving probate court authority to commit insane person is constitutional. Op. Atty. Gen. (248b-3), Feb. 19, 1935.

Person appointed to fill vacancy in office of probate judge holds office until first Monday in January following general election in November, and there can be no short term between November and January. Op. Atty. Gen. (347k), May 29, 1936.

Person elected to fill vacancy in office of probate judge is elected for full four year term, commencing first Monday in January following election, and not for completion of unexpired term of judge who died. Op. Atty. Gen., (347j), August 16, 1938.

Salary of probate judge may be reduced by legislative act during term. Op. Atty. Gen. (347i), March 10, 1939.

8. Justices of the peace.

Justice of the peace in Golden Valley has no jurisdiction of an offense committed in Minneapolis by waiver or otherwise. 174M608, 219NW452.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of $100 or by imprisonment in excess of three months. State ex rel. v. Morical, 182M368, 234NW 453. See Dun. Dig. 6900b(63).

Legislature has power to determine how many justices there shall be in any county and what shall be their duties, and that there shall be no justice of the peace in any given county or portion thereof, and may restrict constitutional jurisdiction, and may establish inferior courts and confer exclusive jurisdiction upon them and abolish jurisdiction of justices conferred upon such inferior courts, but Laws 1921, c. 362, in so far as it provides that the municipal court of city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county, is unconstitutional, as local or special legislation. State v. Gibbons, 202M421, 278NW578. See Dun. Dig. 5270.

Vacancies in offices of village justices created by Laws 1929, c. 413. Op. Atty. Gen., Dec. 20, 1929.

If there is no special act of the legislature requiring justices, a particular city may abolish the office on drafting a home rule charter. Op. Atty. Gen., Oct. 3, 1931.

A constable is not a constitutional officer, and city charter may abolish the office. Op. Atty. Gen., Oct. 3, 1931.

Office of defeated justice of the peace is vacant where newly elected justice is not qualified and old justice does not hold over. Op. Atty. Gen., Feb. 3, 1933.

Justices of the peace and municipal courts have jurisdiction for violations of liquor laws under Laws 1933, c. 115, §3. Op. Atty. Gen., Apr. 12, 1933.

Village incorporated under Laws of 1885 may not fix compensation of village justice of the peace. Op. Atty. Gen. (266a-13). Sept. 7, 1934.

There should have been elected in December, 1929, in St. Louis Park two justices and two constables, the justices to hold only for two years under the constitution and the constables to hold office for two years and until election and qualification of successors, and any vacancy in office must be filled by council and there can be no election in even-numbered years to fill vacancy. Op. Atty. Gen. (472q), Jan. 17, 1935.

Term of justice of peace is constitutionally limited to two years and he may not hold office until successor is chosen. Op. Atty. Gen. (266a-11), Jan. 31, 1936.

City of International Falls by adoption of home rule charter without providing for election of justice of the peace abolished that office. Op. Atty. Gen., (306a). Apr. 9, 1936.

Justice appointed to fill vacancy holds office only to next town election, and not until end of term of predecessor. Op. Atty. Gen. (266a-12), Oct. 23, 1936.

Vacancy in office of town justice of the peace is to be filled by town board until next annual town meeting, term of office of a judge is for two years. Op. Atty. Gen. (266a-12), Jan. 20, 1937.

Justice court has no jurisdiction where penalty is both fine and imprisonment. Op. Atty. Gen. (266b-16), Jan. 20, 1937.

Justice court has no jurisdiction where penalty exceeds three months' imprisonment. Op. Atty. Gen. (266b-21), July 15, 1937.

Term of office of justice of the peace is for two years and does not extend until successor is elected and qualified. Op. Atty. Gen. (266a-11), April 12, 1939.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

9. Election of other judges.

Laws 1935, c. 253, creating municipal court at New York Mills, is constitutional so far as creation of courts is involved, but is unconstitutional in so far that it requires judge to be an attorney at law. Op. Atty. Gen. (307g), March 17, 1939.

10. Vacancies.

Section furnishes the only guide in determining when and under what circumstances governor may appoint a judge to fill a vacancy, but power to fill vacancy does not include power to declare one. State v. Holm, 202M500, 279NW218. See Dun. Dig. 4954, 7990.

Where judge presented to governor his petition for retirement on Sept. 30, 1936, and requested that his retirement, if granted, be made effective prior to Nov. 15, 1936, and he found facts required by retirement act and made an order directing retirement to become effective at close of Nov. 15, 1936, no vacancy existed until Nov. 15, which governor could fill by appointment, and no new judge was elected at general election held on Nov. 3, where no notice was given and only a negligible number of electors exercised right to vote for that office. Id. See Dun. Dig. 4954.

Provision in Mason's Stat. 1927, §217, for filling of vacancy by appointment "for the unexpired term" conflicts with this section. Op. Atty. Gen., May 23, 1929.

Vacancies in office of village justice are to be filled by village council. Op. Atty. Gen., Dec. 20, 1929.

Where judge of district court resigns after primary, but more than thirty days before November general election, his position should be filled by voters at general election. Op. Atty. Gen., May 11, 1932.

Where judicial district has two judges and only one is nominated at primary, but other judge resigns before November general election, candidates nominated at primary may run only for single district judgeship, and other position should be voted upon separately. Op Atty. Gen., May 11, 1932.

Municipal court judge appointed by governor to fill vacancy under Mason's Stats., 1929, §217, only holds office until next general election and not for full term of predecessor. Op. Atty. Gen., Oct. 14, 1933.

Vacancy to be filled by next election where appointee is appointed more than 30 days prior thereto. Op. Atty. Gen., Feb. 9, 1934.

In case of vacancy in office of judge of probate, same is filled by appointment by governor but appointee holds only until next general election. Op. Atty. Gen., Mar. 20, 1934.

Term of office of one appointed to fill vacancy in office of municipal judge expires at first annual village election, and not with expiration of term of former judge. Op. Atty. Gen. (307L), Sept. 27, 1934.

Where no special municipal judge was elected at last municipal election, it cannot be said that there is a vacancy which may be filled by the governor. Op. Atty. Gen. (213f), May 1, 1935.

Municipal judge appointed to fill vacancy in office, holds office only until next annual election. Op. Atty. Gen. (307k), July 30, 1935.

Vacancy in office of city justice of the peace may be filled by appointment by governor pursuant to terms of city charter. Op. Atty. Gen. (268a-12), Feb. 7, 1936.

Person appointed to fill vacancy in office of probate judge holds office until first Monday in January following general election in November, and there can be no short term between November and January. Op. Atty. Gen. (247k), May 29, 1936.

Person elected to fill vacancy in office of probate judge is elected for full four year term, commencing first Monday in January following election, and not for completion of unexpired term of judge who dies. Op. Atty. Gen., (347j), Aug. 16, 1938.

Vacancy in office of judge of municipal court is to be filled by appointment by governor, notwithstanding provisions of city charter. Op. Atty. Gen., (307*l*), Nov. 17, 1938.

One appointed to fill a vacancy in office of probate judge holds office until first Monday in January following general election. Op. Atty. Gen., (347k), Nov. 25, 1938.

12. Change of judicial districts.

Legislature in rearranging judicial districts cannot vacate the office of any judge, but such judge may be assigned to a certain district even be filled by village council. Op. Atty. Gen., Nov. 9, 1929.

13. Clerk of district court.

Op. Atty. Gen., Apr. 3, 1933; note under §7 of this article.

14. Pleadings—Process—Conclusion of indictments.

District court rule permitting objections to language of closing arguments to be seasonably taken at close thereof, is reasonable. Jovaag v. O., 189M315, 249NW676. See Dun. Dig. 2773.

In so far as Mason's Minn. St. 1927, §§158 or 9218, assume to empower Governor to designate a judge of another district to discharge duties of a district judge, it is in contravention of §1 of article 3 and beyond authority of §5 of article 6 of constitution. State v. Day, 200M77, 273NW684. See Dun. Dig. 4961.

District court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon the parties and rendering their subject-matter res judicata. That such a judgment is based upon consent of beneficiaries does not lessen its force or effect as a judgment. Melgaard's Will, 200M493, 274NW641. See Dun. Dig. 9893.

Distinction between judicial jurisdiction or power and mere duty. Reid v. I., 200M599, 275NW300. See Dun. Dig. 2345.

Summons is not process and need not run in name of state. Schultz v. O., 202M237, 277NW918. See Dun. Dig. 7798.

A summons is not a process within meaning of this section, but a notice to a defendant that an action has been instituted against him by plaintiff to obtain a judgment if he fails to defend. Griffin v. F., 203M97, 280NW7. See Dun. Dig. 7802.

Doctrine of stare decisis, wise or unwise in its origin, has worked itself by common acquiescence into tissues of our law, and is too deeply rooted to be ignored. Melin v. A., 285NW830. See Dun. Dig. 8819.

15. Court commissioners.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. Op. Atty. Gen. (128b), June 21, 1935.

Only power given to a court commissioner by Laws 1935, c. 246, amending §2150, is power to issue an attachment for rent, and he does not have authority to pass upon leasing of tax delinquent lands. Op. Atty. Gen. (128b), Aug. 2, 1937.

Where court commissioner was elected in 1926 and office became vacant in 1929, and vacancy was not filled by appointment and in 1932 election there was an election to that office and in 1934 blank place was left following words "for court commissioner" and incumbent was again voted for, and same thing occurred in 1936, and same blank space was left in 1938 but a different person was voted for, person receiving most votes in 1938 was entitled to certificate of election. Op. Atty. Gen. (128e), April 17, 1939.

Article 7.—ELECTIVE FRANCHISE.

1. Persons entitled to vote.

Op. Atty. Gen., Mar. 20, 1934; note under art. 6, §10.

Alien woman who married citizen in 1929 and entered the United States in 1936 was not entitled to citizenship on one year's residence as provided by the original 1922 act, but three years' citizenship as required by the 1934 amendment was necessary, as the words "after the passage of this act, as amended" referred to the original act and not to the amendment, and hence required three years' residence by alien who married citizen after the passage of the original act. In re Eklund, (USDC-Minn), 20FSupp786.

One who commenced to move from precinct in which vote was cast into another precinct was entitled to vote where he had not completed moving, but had moved some of his furniture, including his bed, and had slept several nights at new location. Pye v. H., 200M135, 273 NW611. See Dun. Dig. 2919.

If Mason's Minn. Stat., §839, be construed as requiring a county commissioner, who is a candidate for the office of county treasurer, to resign his office before the primary election, it is unconstitutional. Op. Atty. Gen., Mar. 22, 1930.

The right to vote should not be denied on account of mere technicalities, such as the failure to designate a polling place and election officers. Op. Atty. Gen., May 22, 1930.

Blank lines should be provided below the names of candidates in elections under §§1805 to 1811. Op. Atty. Gen., Dec. 2, 1930.

Persons moving from one precinct to another in a city less than thirty days before any election cannot vote at such election. Op. Atty. Gen., Mar. 31, 1930.

Op. Atty. Gen., Mar. 29, 1932; note under §2.

Non-resident cannot be employed as village marshal. Op. Atty. Gen., June. 6, 1932.

Otherwise qualified elector could sign referendum petition under Albert Lea Home Rule Charter, §40, notwithstanding that he was not registered pursuant to permanent registration act. Op. Atty. Gen., Sept. 17, 1932.

A bill which in effect would prohibit "sticker" candidates at a general election if such candidates had been defeated at the primary election, contravenes this section. Op. Atty. Gen., Feb. 4, 1933.

One defeated in primary cannot be prohibited by legislative act from running as sticker candidate at general election. Op. Atty. Gen., Feb. 4, 1933.

American woman marrying an alien and residing in this country after September 22, 1922, is a citizen and may vote unless she renounced such citizenship. Op. Atty. Gen., Mar. 10, 1933.

Thirty days' residence does not mean continuous presence every day during 30-day period. Op. Atty. Gen., May 20, 1933.

Indians who may vote at township election. Op. Atty. Gen., Mar. 27, 1933.

Where an elector has moved from one residence to another within same precinct and lives in new residence for less than 10 days prior to election, he is entitled to vote. Op. Atty. Gen., Oct. 25, 1933.

Mason's Stats., §1828-28, insofar as it conflicts with this section is invalid. Op. Atty. Gen., Nov. 7, 1933.

Residence and not temporary character of employment determines right to vote. Op. Atty. Gen., Dec. 20, 1933.

Men in CCC camps are not entitled to vote in election districts where such camps are located unless they intend to remain permanently within such districts. Op. Atty. Gen. (639j), Apr. 6, 1934.

Voters at bond elections may not be limited to taxpayers. Op. Atty. Gen. (59a-7), June 4, 1934.

Though residence of a single man shall be considered to be where he usually sleeps, there is a second requirement that he intends to make it his home. Op. Atty. Gen. (490a), June 22, 1934.

Indians who have been residents of state for at least six months and residents of established election district for at least 30 days are entitled to vote at school elections. Op. Atty. Gen. (490g), Sept. 21, 1934.

If school teacher regards place where she is teaching as her home and intends to remain there indefinitely, she may properly be regarded as a resident thereof and entitled to vote. Op. Atty. Gen. (490L), Oct. 16, 1934.

Men in CCC camp having no intention of remaining in that place permanently, but having another home to which they intend to return after their employment in such camp, are not ordinarily considered residents and are not entitled to vote. Op. Atty. Gen. (490j-2), Oct. 24, 1934.

If school teacher regards place where she is teaching as her home and intends to remain there indefinitely, she may properly be regarded as a resident thereof entitled to vote. Op. Atty. Gen. (490L), Nov. 2, 1934.

Where circumstances are such that a person may claim his legal residence at either one of two places, place he *regards as his home will be his residence for purpose of* voting. Op. Atty. Gen. (490L), Nov. 2, 1934.

Persons living on tax exempt property can vote if they have constitutional qualifications. Op. Atty. Gen. **(187a-9), Apr. 29, 1935.**

Prior to amendment in 1896, persons who had declared their intention to become citizens of the United States could vote in Minnesota, but since such amendment, voting privileges are restricted to citizens. Op. Atty. Gen. (490h), Aug. 16, 1935.

Indians owning tribal allotment lands are not qualified to petition for formation of school district. Op. Atty. Gen. (240w), July 7, 1936.

Persons receiving poor relief are not disqualified to vote. Op. Atty. Gen. (339r), Oct. 17, 1936.

Settlement for purpose of relief has nothing to do with residence for purpose of voting. Op. Atty. Gen. (490j), Oct. 19, 1936.

Alien child adopted by citizens does not acquire citizenship. Op. Atty. Gen. (68f), Nov. 5, 1936.

Men actually establishing their residence in city have a right to vote though they are engaged in work of a temporary nature. Op. Atty. Gen. (172c-5), Nov. 6, 1936.

Removal of a councilman from one ward to another *ward in city does not automatically vacate his office, un*less such removal constitutes a change of residence, and a resident of a particular ward is not entitled to vote in ward in which he intends to move or to be elected to office in such ward. Op. Atty. Gen. (63a-1), Mar. 29, 1938.

One moving from farm and renting city house to obtain medical treatment for wife, intending to return as soon as possible, was entitled to retain his voting privileges at the farm. Op. Atty. Gen. (232d), May 31, 1938.

Statutory provision requiring that polling place in an unorganized territory may not be located less than ten miles from another polling place should not be construed in such manner as to interfere with constitutional right to vote. Op. Atty. Gen., (185a-5), June 17, 1938.

Voters for supervisors of soil conservation districts must be qualified under this section. Op. Atty. Gen., (705a-20(c)), June 1, 1938.

Men temporarily employed in CCC camp are entitled to vote in precinct where camp is located if they are otherwise qualified as electors and their residence is not merely temporary. Op. Atty. Gen., (490j-1), Aug. 27, 1938.

Temporary character of residence rather than temporary character of employment determines eligibility *for voting purposes. Op. Atty. Gen., (490j-1), Sept. 2,* 1938.

After final discharge person committed as insane has right to vote. Op. Atty. Gen., (490h), Nov. 3, 1938.

Proportional representation method of election, known *as the "choice voting" and also the "Hare system" pro*posed in the new Minneapolis charter, is unconstitutional. Op. Atty. Gen. (64), Feb. 1, 1939.

"Proportional representation voting" in proposed city charter, known as the "choice voting" and the "Hare system" is of doubtful constitutionality. Op. Atty. Gen. (28a), Feb. 17, 1939.

American woman marrying alien since March 3, 1931, is a citizen, unless she has renounced her citizenship. Op. Atty. Gen. (68j), March 18, 1939.

Children born in United States of alien parents are citizens. Id.

2. Persons not entitled to vote.

Person confined in jail for a misdemeanor may cast his *ballot under the absent voters' law. Op. Atty. Gen., May* 31, 1930.

A guardianship of the person, as distinguished from guardianship of the estate, disqualifies from voting. Op. Atty. Gen., July 3, 1930.

Person convicted in federal court cannot vote or hold office. Op. Atty. Gen., Apr. 3, 1930; Apr. 21, 1930.

One not adjudged insane or mentally incompetent by the court is entitled to vote, notwithstanding that his property might be subject to the control of a guardian. *Op. Atty. Gen., Mar. 18, 1931.*

One pleading guilty to felony, but not sentenced or had judgment passed upon him, is entitled to vote. Op. Atty. Gen., Mar. 29, 1932.

Secretary of State cannot refuse to place name of candidate upon ballot where he files usual affidavit, though he has been advised that candidate served term in federal prison and has not been restored to civil rights. Op. Atty. Gen., May 5, 1932.

A resident of Minnesota imprisoned in the reformatory for a felony continues to be a resident of Minnesota but is not a citizen until restored as provided in §§10772 and 10773. Op. Atty. Gen., Apr. 7, 1933.

Felony committed in state against a federal law has *same effect on criminals' right to vote and hold office* as violation of a state law. Op. Atty. Gen., May 2, 1933.

A federal mail fraud is a felony, but conviction results only in loss of right to vote, and not loss of citizenship. Op. Atty. Gen., May 11, 1933.

A person does not lose his rights to vote or to hold elective office where he is convicted of a felony in federal court by plea of guilty and later is sentenced and sentence is suspended. Op. Atty. Gen. (490d), Aug. 21, 1934.

Governor may not restore a person convicted of a felony in federal court, who can only be restored to his civil rights in the state by a presidential pardon. Op. *Atty. Gen. (68h), Feb. 1, 1937.*

Conviction for liquor offense does not prohibit one from holding office of councilman of city of Chaska unless right of citizenship has been lost and not restored. Op. Atty. Gen. (63a), Feb. 15, 1937.

Conviction of a felony does not render certified public accountant ineligible to hold certificate. Op. Atty. Gen. (882e), Oct. 6, 1937.

Person convicted of a felony in Minnesota under federal law forfeits his right to vote. Op. Atty. Gen. (490d), April 3, 1939.

3. Residence not lost.

Op. Atty. Gen., Apr. 7, 1933; note under §2 of this article.

Person confined in jail for misdemeanor may cast his ballot under the absent voters' law. Op. Atty. Gen., May 31, 1930.

If a person has not lost his residence for purposes of voting, he has not lost his residence for purpose of hospitalization for insanity. Op. Atty. Gen., May 11, 1933.

Residence for voting purposes of person employed by federal government in Washington is not lost because tenant moved into building where such person formally *lived. Op. Atty. Gen. (490j-2), Sept. 23, 1936.*

4. Soldiers and sailors.

The Motor Vehicle Registration Tax Law, held valid and applicable to vehicles owned by members of the *military forces of the United States residing on the Fort* Snelling military reservation and using the highways of the state for their personal business and pleasure. 283 US57, 51SCR354, aff'g 180M281, 230NW572. See Dun. Dig. 4167a, 9576d.

6. Elections to be by ballot.

"Proportional representation voting" in proposed city charter, known as the "choice voting" and the "Hare system" is the doubtful constitutionality. Op. Atty. Gen. *(28a), Feb. 17, 1939.*

7. Eligibility to office.

Office of county attorney and member of conservation commission are not incompatible. See §925-1.

Offices of county commissioner and treasurer of school district are incompatible. 157M263, 196NW467.

Art. 4, §9, creates an exception to this section. State ex rel. v. Erickson, 180M246, 230NW637.

Offices of member of school board and village recorder held not incompatible. State v. Johnson, 201M219, 275NW 684. See Dun. Dig. 7995.

Where village recorder resigned a few weeks before regular election, and trustee of village was appointed to perform duties of recorder until election, and be accepted only on understanding that he did not have to vacate his office as trustee and did not take oath of office of recorder or accept compensation, court did not abuse its discretion in denying petition for leave to file an information in nature of quo warranto on ground that respondent forfeited his office as trustee by performing incompatible duties of office of recorder. State v. Ingelbretson, 201M 222, 275NW686. See Dun. Dig. 7995.

Offices of county commissioner and court bailiff (deputy sheriff) are incompatible. Op. Atty. Gen., Dec. 31, 1930.

Offices of county surveyor and county highway engineer are incompatible. Op. Atty. Gen., Jan. 10, 1930.

The office of member of state live stock sanitary board and the office of member of state fair board of managers are not incompatible. Op. Atty. Gen., Jan. 13, 1930.

The office of deputy clerk of the district court and the office of court commissioner are not incompatible. Op. Atty. Gen., Jan. 31, 1930.

The office of city attorney and that of judge of probate are not incompatible. Op. Atty. Gen., Mar. 7, 1930.

If Mason's Minn. Stat., §839, be construed as requiring a county commissioner who is a candidate for the office of county treasurer to resign his office before the primary election, it is unconstitutional. Op. Atty. Gen., Mar. 22, 1930.

The office of village recorder is incompatible with that of county auditor. Op. Atty. Gen., Apr. 16, 1930.

The office of justice of the peace and the office of guard at the state reformatory are not incompatible. Op. Atty. Gen., May 7, 1930.

Blank lines should be provided below the names of candidates in elections under §§1805 to 1811. Op. Atty. Gen., Dec. 2, 1930.

Office of member of school board and that of mayor *or member of city council are not, as a matter of law,* incompatible, but the holding of the two offices might be embarrassing in case of contract between school board and city council. Op. Atty. Gen., Dec. 27, 1930.

Person convicted in federal court cannot vote or hold *office. Op. Atty. Gen., Apr. 3, 1930; Apr. 21, 1930.*

Offices of village marshal and street commissioner are not incompatible. Op. Atty. Gen., Feb. 25, 1931.

House File No. 1122, providing that any officer having alcoholic beverages in his possession shall forfeit his office, would be unconstitutional if passed. Op. Atty. Gen., Mar. 30, 1931.

Office of judge of municipal court organized under Laws 1895, c. 229, §34, is not incompatible with office of member of school board of an independent school district. Op. Atty. Gen., Apr.15, 1931.

Offices of city attorney and member of board of regents of state university are not incompatible. Op. Atty. Gen., Apr. 27, 1931.

Offices of county attorney and city or village attorney of a municipality within the county are incompatible, but a city or village may employ a county attorney on a specific case which does not affect the county. Op. Atty. Gen., May 7, 1931.

A county commissioner, or any other county officer, may accept employment from a school board as driver of a school bus. Op. Atty. Gen., July 15, 1931.

Op. Atty. Gen., Mar. 29, 1932; note under art. 7, §2.

Op. Atty. Gen., May 5, 1932; note under art. 7, §2.

Janitor of a school may also be employed as a state boiler inspector. Op. Atty. Gen., Aug. 18, 1931.

The offices of justice of the peace and town supervisor are incompatible. Op. Atty. Gen., Sept. 11, 1931.

Offices of village attorney and state representative are incompatible. Op. Atty. Gen., Dec. 4, 1931.

The offices of village trustee and village assessor are incompatible. Op. Atty. Gen., Dec. 19, 1931.

Member of water, light and power commission of a village may also hold village office of justice of the peace. Op. Atty. Gen., Feb. 11, 1932.

Office of village treasurer and that of street commissioner are not incompatible. Op. Atty. Gen., Apr. 5, 1932.

Offices of police officer and manager of waterworks of village of Swanville are compatible with elective office of village assessor. Op. Atty. Gen., Apr. 7, 1932.

Justice of peace may hold also office of city assessor. Op. Atty. Gen., Apr. 18, 1932.

County commissioner may also hold office of district boiler inspector. Op. Atty. Gen., May 27, 1932.

Same person may hold offices of county coroner and member of school board in independent school district. Op. Atty. Gen., June 27, 1932.

Offices of member of city council and school board are incompatible where city furnishes water to school district at rate fixed by city council. Op. Atty. Gen., July 15, 1932.

Offices of game warden and constable are not incompatible. Op. Atty. Gen., Aug. 25, 1932. See Dun. Dig. 7995.

Op. Atty. Gen., Feb. 4, 1933; note under §1 of this article.

Offices of county commissioner and town clerk are incompatible. Op. Atty. Gen., Jan. 6, 1933.

The offices of city auditor and poor commissioner of city of Breckenridge would be incompatible. Op. Atty. Gen., Feb. 16, 1933.

One defeated in primary cannot be prohibited by legislative act from running as sticker candidate at general election. Op. Atty. Gen., Feb. 4, 1933.

Special municipal judge need not resign before becoming candidate for regular position as municipal judge. Op. Atty. Gen., Mar. 25, 1933.

Offices of justice of the peace and city clerk are not incompatible where the city clerk is not a member of the city council. Op. Atty. Gen., Apr. 17, 1933.

Office of justice of peace is not incompatible with office of city clerk where city clerk is not member of city countil. Op. Atty. Gen., Apr. 17, 1933.

Where government of city and government of school district are separate in all things, office of city attorney and member of school board are not incompatible. Op. Atty. Gen., Apr. 25, 1933.

Offices of constable and councilman of Le Sueur are incompatible. Op. Atty. Gen., May 1, 1933; May 9, 1933.

Felony committed in state against a federal law has same effect on criminals' right to vote and hold office as violation of a state law. Op. Atty. Gen., May 2, 1933.

A federal mail fraud is a felony, but conviction results only in loss of right to vote, and not loss of citizenship. Op. Atty. Gen., May 11, 1933.

One having home in village may be resident entitled to hold office of councilman, though he has a home in another city where he stays most of the year, it being a matter of intent. Op. Atty. Gen., July 12, 1933.

Offices of town supervisor and school director are not incompatible. Op. Atty. Gen., July 14, 1933.

Offices of alderman and constable are incompatible. Op. Atty. Gen., May 9, 1933.

Offices of special municipal judge and school director are not incompatible. Op. Atty. Gen., Aug 1, 1933.

Positions of member of library board and member of school board are not incompatible. Op. Atty. Gen., Aug. 1, 1933.

Contractor and city engineer's supervisor are incompatible. Op. Atty. Gen., Oct. 4, 1933.

Offices of village attorney and president of village council are incompatible. Op. Atty. Gen., Nov. 29, 1933.

Offices of village marshal and village constable are not incompatible. Id.

One may be candidate for township supervisor while still holding office of assessor, though it would not be competent for him to hold both offices at same time. Op. Atty. Gen., Dec. 21, 1933.

Member of library board may not appoint himself as librarian. Op. Atty. Gen., Jan. 10, 1934.

Offices of county commissioner and assistant manager of county of national reemployment service are not incompatible. Op. Atty. Gen., Jan. 15, 1934.

Offices of village attorney and village treasurer are incompatible. Op. Atty. Gen., Jan. 18, 1934.

Same person cannot hold offices of police civil service commissioner and firemen's civil service commissioner. Op. Atty. Gen., Jan. 22, 1934.

Office of president of village council or mayor of municipality is incompatible with that of county commissioner. Op. Atty. Gen., Jan. 22, 1934.

Offices of county attorney and special assistant United States attorney to assist in securing flowage easements are not incompatible. Op. Atty. Gen., Feb. 7, 1934.

State or county officer need not resign in order to be a candidate for a county office. Op. Atty. Gen., Mar. 3, 1934.

Offices of member of city council and member of county board are incompatible. Op. Atty. Gen. (358a-3), Apr. 16, 1934.

Offices of councilman and school board member are incompatible. Op. Atty. Gen. (63a-3), Apr. 19, 1934.

Offices of member of city counsel of St. Cloud and member of board of county commissioners are incompatible. Op. Atty. Gen. (63a-3), Apr. 30, 1934.

There is no legal requirement that would prohibit an employee of the state or federal government from holding any type of State or Federal position from the date of filing for the office of representative. Op. Atty. Gen. (184i), May 4, 1934.

Offices of chairman of county board and township fire warden are incompatible. Op. Atty. Gen. (202), May 17, 1934.

Offices of town supervisor and member of school board are not incompatible. Op. Atty. Gen. (358f), Aug. 6, 1934.

Offices of village constable and village marshal are not incompatible. Op. Atty. Gen. (471k), July 20, 1934.

Offices of county attorney and clerk of village incorporated under Special Laws 1881, c. 46, are incompatible. Op. Atty. Gen. (358a-1), July 26, 1934.

Offices of county attorney and school treasurer are incompatible. Id.

Office of member of Water, Light and Building Commission of a village and postmaster for village are not incompatible. Op. Atty. Gen. (307L), Sept. 27, 1934.

A person does not lose his rights to vote or to hold elective office where he is convicted of a felony in federal court by plea of guilty and later is sentenced and sentence is suspended. Op. Atty. Gen. (490d), Aug. 21, 1934.

County attorney and village attorney are incompatible. Op. Atty. Gen. (358a-1), Dec. 27, 1934.

School board of city of West St. Paul may elect as clerk of board superintendent of schools secretary. Op. Atty. Gen. (356f), Dec. 27, 1934.

Member of city council may not be appointed as member of water and light commission during his term as councilman. Op. Atty. Gen. (358e-1), Jan. 17, 1935.

Office of county highway engineer and that of surveyor are incompatible and may not be occupied by same person. Op. Atty. Gen. (358a-7), Jan. 26, 1935.

Member of osteopathic board seeking appointment on basic science board need not resign from osteopathic board prior to his being appointed to basic science board. Op. Atty. Gen. (326), Jan. 28, 1935.

Offices of county highway engineer and county surveyor are incompatible, and approval and filing of county highway engineer bond by one who has already qualified as county surveyor constitutes an election to vacate latter office. Op. Atty. Gen. (358a-7), Jan. 31, 1935.

Offices of county attorney and park district attorney are incompatible. Op. Atty. Gen. (358a-1), Feb. 5, 1935.

Alderman moving from ward from which he was elected may be candidate for office of alderman in new ward without resigning his old office, but election and qualification for the new office automatically forfeits the old office. Op. Atty. Gen. (63b-5), Feb. 23, 1935.

Offices of village attorney and justice of the peace are incompatible. Op. Atty. Gen. (358d-5), Mar. 12, 1935.

Offices of clerk of school board and member of town board are incompatible where town board is also local health board. Op. Atty. Gen. (358-e-6), Mar. 29, 1935.

Offices of justice of the peace and city assessor of Wabasha are not incompatible unless there is some provision in city's charter imposing duties upon justice incompatible with those imposed upon assessor. Op. Atty. Gen. (358d-5), Apr. 16, 1935.

Offices of village clerk and justice of the peace are incompatible. Op. Atty. Gen. (358d), Apr. 27, 1935.

Offices of township supervisor and member of school board are incompatible. Op. Atty. Gen. (437a-9), July 13, 1935.

Offices of county coroner and school board member are not incompatible. Op. Atty. Gen. (358a-4), July 23, 1935.

Resident of village entirely surrounded by township which is separated for assessment and election purposes is not qualified to hold office of township justice of the peace. Op. Atty. Gen. (266a-12), July 27, 1935.

Offices of membership on school board and county attorney are incompatible. Op. Atty. Gen. (358a-1), Aug. 2, 1935.

Offices of justice of the peace and coroner are not incompatible. Id.

Offices of municipal court judge and director of independent school district are not incompatible. Op. Atty. Gen. (358b-2), Aug. 28, 1935.

Offices of county attorney and examiner of titles are not incompatible. Op. Atty. Gen. (358a-1), Oct. 7, 1935.

This section applies to municipal officers. Op. Atty. Gen. (184i), Nov. 12, 1935.

A person holding one office cannot resign before becoming candidate for another office, qualifying for new office automatically vacating old office. Id.

Offices of justice of the peace and village attorney are incompatible. Op. Atty. Gen. (358d), Nov. 13, 1935.

Where candidate receiving highest number of votes for mayor of a village was not eligible because he was a citizen of the United States for less than 3 months, a vacancy in office resulted, but the city council after passage of sufficient time could appoint such previously ineligible candidate to office. Op. Atty. Gen. (184i), Dec. 12, 1935.

Offices of member of city council and volunteer paid fireman are incompatible. Op. Atty. Gen. (358e-4), Dec. 20, 1935.

Offices of county treasurer and city mayor are not incompatible. Op. Atty. Gen. (358a-8), Dec. 24, 1935.

Offices of county auditor and city mayor are incompatible. Op. Atty. Gen. (358a-2), Dec. 31, 1935.

Offices of village recorder and clerk of municipal court are incompatible. Op. Atty. Gen. (358e-7), Feb. 1, 1936.

Offices of town assessor and village clerk are incompatible where village is within township and not separated for election and assessment purposes. Op. Atty. Gen. (358e-6), Feb. 3, 1936.

Offices of village attorney and justice of the peace are incompatible. Op. Atty. Gen. (358d-4), Feb. 13, 1936.

Residence was in village where house builder thought he was constructing his dwelling, and where he intended to vote, though boundary line between two villages passed through his dwelling. Op. Atty. Gen. (490j-1), Feb. 14, 1936.

Receiving local, state or federal relief does not disqualify a person from holding a township office. Op. Atty. Gen. (434b-16), Mar. 5, 1936.

Offices of member of school board and township supervisor are incompatible. Op. Atty. Gen. (358f), Mar. 14, 1936.

Offices of judge of probate and member of school board of an independent school district are compatible. Op. Atty. Gen. (358f), Apr. 7, 1936.

Offices of city council member and member of power commission of city of Austin are incompatible. Op. Atty. Gen. (358e-1), Apr. 15, 1936.

Offices of assistant county engineer and county surveyor are not incompatible. Op. Atty. Gen. (358a-7), July 29, 1936.

Community committeeman under National Soil Conservation Program may run for county commissioner, though it might render him ineligible to continue acting as committeeman under federal statutes. Op. Atty. Gen. (184i), Sept. 2, 1936.

Fact that offices of village recorder and justice of the peace may be incompatible does not prevent a person from running for both offices, but he can qualify only for one. Op. Atty. Gen. (470g), Nov. 23, 1936.

Village trustee can run for office of village president without resigning as member of council, but if he is elected to that office a vacancy is automatically created when he qualifies, which vacancy should be filled by village council for remainder of term. Op. Atty. Gen. (471h), Nov. 23, 1936.

Offices of county commissioner and school board member are incompatible, but offices of county commissioner and town treasurer are not incompatible. Op. Atty. Gen. (358a-3), Dec. 1, 1936.

Offices of director on board of state teachers' college and member of Duluth board of education are not incompatible. Op. Atty. Gen. (358f), Jan. 12, 1937.

Offices of city treasurer and city clerk of city of Stillwater are incompatible. Op. Atty. Gen. (358e-1), Jan. 15, 1937.

Offices of township supervisor and member of school board are incompatible. Op. Atty. Gen. (437a-9), Apr. 6, 1937.

Offices of city treasurer and city clerk of city of Glenwood are incompatible under city charter. Op. Atty. Gen. (358e-1), Apr. 7, 1937.

Offices of city and town assessor and city recorder are incompatible where city is within township and not separated for assessment purposes. Op. Atty. Gen. (358e-1), Apr. 20, 1937.

Office of member of water, light, power and building commission of a city is incompatible with office of state representative. Op. Atty. Gen. (358e-1), May 15, 1937.

Offices of member of school board and member of water, light and power commission are incompatible. Id.

Sale of home by alderman and his removal to another city did not create vacancy in the office of alderman, if he intends to return to his ward and build a new home, ultimate test being whether he still remains a resident for purposes of voting. Op. Atty. Gen. (63a-1), June 4, 1937.

County commissioner may run for office of probate judge and may continue to be a commissioner until he is elected and qualifies for office of Probate Judge. Op. Atty. Gen. (184c-1), July 16, 1937.

Subject to specific exception, a state officer, before his term expires, may file for election to another state office without resigning position he holds. Op. Atty. Gen. (184i), Mar. 16, 1937.

Offices of county coroner and village marshal are incompatible. Op. Atty. Gen. (358e-8), July 26, 1937.

Offices of member of school board and city health officer are incompatible. Op. Atty. Gen. (358f), July 26, 1937.

Offices of clerk of district court and treasurer of school district are compatible. Op. Atty. Gen. (358b-1), Aug. 23, 1937.

Member of legislature is ineligible to hold office of deputy sheriff. Op. Atty. Gen. (280h), Oct. 7, 1937.

Member of legislature is eligible for employment as truck and bus inspector for the Minnesota Railroad and Warehouse Commission. Op. Atty. Gen. (280h), Oct. 8, 1937.

Offices of clerk of court of Cook county and ordained minister are not incompatible. Op. Atty. Gen. (358b-3), Nov. 22, 1937.

Whether offices of a member of park board and a member of library board in city of Anoka are incompatible with office of city commissioner depends upon inconsistency in functions of two offices and whether or not commissioners receive compensation for their services as members of such boards. Op. Atty. Gen. (358e-1), Jan. 13, 1938.

Offices of member of board of Crosby-Ironton School District and mayor of Ironton are incompatible. Op. Atty. Gen. (358f), Jan. 18, 1938.

School board member and street commissioner are not incompatible offices. Op. Atty. Gen. (358f), Jan. 18, 1938.

School board member and health officer of village included in district are incompatible offices. Op. Atty. Gen. (358f), Jan. 18, 1938.

Proposed city charter amendments requiring person to be owner of real estate and a resident for 3 years to be eligible to elective office in invalid. Op. Atty. Gen. (59a-11), Feb. 21, 1938.

One need not be a freeholder to be eligible for township office. Op. Atty. Gen. (434b-4), Mar. 16, 1938.

Offices of village assessor and village constable are not incompatible. Op. Atty. Gen. (358e-8), Mar. 25, 1938.

Offices of constable and deputy sheriff are incompatible. Op. Atty. Gen. (358e-1), Mar. 29, 1938.

Removal of a councilman from one ward to another ward in city does not automatically vacate his office, unless such removal constitutes a change of residence, and a resident of a particular ward is not entitled to vote in ward in which he intends to move or to be elected to office in such ward. Op. Atty. Gen. (63a-1), Mar. 29, 1938.

Offices of mayor and health officer of Lake City are incompatible. Op. Atty. Gen. (358c-1), May 3, 1938.

Offices of city clerk of Owatonna and clerk of municipal court of that city are not incompatible. Op. Atty. Gen. (358b-2), May 6, 1938.

Offices of county attorney and village attorney of a village in same county are incompatible. Op. Atty. Gen. (358a-1), May 27, 1938.

A village ordinance requiring village officer to own real estate would be unconstitutional. Op. Atty. Gen., (184i), June 14, 1938.

Offices of member of school board and member of board of health are incompatible. Op. Atty. Gen., (358f), July 14, 1938.

Offices of member of city council and school board in same city are not incompatible, but holding of two offices by one person may interfere with right to enter into contracts between the two bodies. Id.

Police civil service commissioner may not hold office of school trustee. Op. Atty. Gen., (785d), July 18, 1938.

County coroner may act as medical examiner in insanity hearing and receive fee. Op. Atty. Gen., (248b-5), Aug. 1, 1938.

Offices of county auditor and member of city council of city of Madison are incompatible. Op. Atty. Gen. (358a-2), Aug. 8, 1938.

Member of legislature may hold position as investigator for State Board of Barber Examiners. Op. Atty. Gen. (280h), Aug. 9, 1938.

Village justice of the peace must be a resident of the village. Op. Atty. Gen. (266a-8), Aug. 10, 1938.

Municipal judge may be candidate for county attorney and any incompatibility does not arise until qualification for office of county attorney. Op. Atty. Gen., (184), Sept. 27, 1938.

Offices of village attorney and village clerk are incompatible. Op. Atty. Gen., (470g), Sept. 30, 1938.

Offices of register of deeds and member of city council without compensation are not incompatible. Op. Atty. Gen., (358e-1), Nov. 22, 1938.

Clerk of school district may be employed to do legal work for district, not being member of board. Op. Atty. Gen., (162c), Dec. 5, 1938.

Offices of village marshal and manager of village municipal liquor store are incompatible. Op. Atty. Gen. (358e-8), Dec. 12, 1938.

On election of village justice to office of president of village council, and his qualification therefor, his office as justice is automatically vacated, and vacancy may be filled by village council. Op. Atty. Gen. (358d-5), Dec. 13, 1938.

Offices of member of school board and mayor or member of village council are not incompatible, but occupancy of both offices by same person frequently results in seri-

ous handicap in matter of entering into contracts. Op. Atty. Gen. (471d), Dec. 13, 1938.

Offices of member of water and light commission of city of Breckenridge and state representative are incompatible. Op. Atty. Gen. (280h), Dec. 16, 1938.

Offices of city and county attorney are incompatible. Op. Atty. Gen. (358a-1), Dec. 22, 1938.

Township assessor is disqualified from acting after his election as state representative. Op. Atty. Gen. (280h), Jan. 10, 1939.

Offices of superintendent of Bureau of Criminal Apprehension and superintendent of Highway Patrol are not incompatible. Op. Atty. Gen. (213f), Jan. 14, 1939.

Statute requiring municipal judge to be an attorney at law would be unconstitutional. Op. Atty. Gen. (307g), Jan. 20, 1939.

County attorney may accept appointment as attorney for charter commission of a city. Op. Atty. Gen. (358a-1), Feb. 14, 1939.

Offices of member of legislature and village attorney are incompatible. Op. Atty. Gen. (358e-3), Feb. 21, 1939.

Offices of village attorney and member of school board are not incompatible. Id.

Offices of member of school board and member of city council are not incompatible, but occupancy of both offices by same person might result in serious handicap in matter of entering into contracts between school district and city. Op. Atty. Gen. (358f), March 14, 1939.

Alien cannot be appointed village marshal but de facto marshal may make legal arrest. Op. Atty. Gen. (3f), March 24, 1939.

Offices of member of city council and member of school board are not incompatible as a matter of law. Op. Atty. Gen. (59g-12), March 28, 1939.

Person convicted of a felony in Minnesota under federal law forfeits his right to vote. Op. Atty. Gen. (490d), April 3, 1939.

Member of legislature may not serve on county welfare board either as an appointee of state board of control or of board of county commissioners. Op. Atty. Gen. (358a), April 5, 1939.

Offices of justice of the peace and deputy state oil inspector are not incompatible. Op. Atty. Gen. (358d-3), April 6, 1939.

Offices of town assessor and town constable are not incompatible. Op. Atty. Gen. (358e-6), April 12, 1939.

Offices of county attorney and member of a school board are incompatible, but a village attorney may be a member of a school board. Op. Atty. Gen. (358f), May 1, 1939.

Offices of township supervisor and member of school board in a district comprising part of area of township are incompatible. Id.

Offices of county treasurer and treasurer of independent school district are not incompatible. Op. Atty. Gen. (358f), May 3, 1939.

Offices of deputy sheriff and member of school board are not incompatible. Op. Atty. Gen. (358f), May 15, 1939.

Offices of paid volunteer fireman and member of school board are not incompatible. Id.

Offices of county attorney and member of school board of a district are not incompatible. Op. Atty. Gen. (35a-1), June 13, 1939.

Offices are incompatible where performance of duties of each reults in antagonism and a conflict of duty so that incumbent of one cannot discharge with fidelity and propriety duties of both. Op. Atty. Gen. (358a-3), July 7, 1939.

Offices of city assessor and county commissioner are incompatible. Id.

Offices of county attorney and city attorney are incompatible, though there are some rare instances where county attorney may be employed to represent city in a single case. Op. Atty. Gen. (358a-1), July 27, 1939.

Offices of city council member and school board member are not incompatible, but are inconsistent if contractual relations exist between school district and city, though incompatibility may exist where city council is empowered by special act or otherwise to review tax levies of school districts. Op. Atty. Gen. (358f), July 27, 1939.

Offices of village attorney and justice of the peace are incompatible, even though it is not practice in village for attorney to prosecute violations of ordinances, rules and by-laws. Op. Atty. Gen. (358d-5), August 4, 1939.

Register of deeds may appoint as a deputy a woman 18 years of age. Op. Atty. Gen. (373a-2), August 8, 1939.

Offices of member of town board and school board are incompatible. Op. Atty. Gen., (358e-6), August 10, 1939.

Mere election to a second incompatible office does not vacate prior office, but acceptance of incompatible office vacates first office. Id.

Offices of school board clerk and village clerk are not incompatible, but it would be inadvisable for same person to hold both offices where school purchases water from village. Op. Atty. Gen. (358f), August 12, 1939.

9. Official year—Terms of office—General elections.

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, 248 NW744.

Judges of municipal court are state officers and not officers of the municipality electing them, and where a municipal judge was elected to a term commencing on the first secular day of February, 1928, his term of office did not expire until four years thereafter, and his term of office could not be changed by adoption of home rule charter changing dates of election, and where the only proper general election of a city next preceding first secular day of February, 1932, was in November 1930, at which the same judge was elected, his four-year term of office under the second election began the first secular day of February, 1932. State v. Bensel, 194M55, 259NW 389. See Dun. Dig. 6899a.

County officers whose terms expire on first Monday of January are entitled to compensation for days of service rendered in month of January up to time that their successors qualify and take office. Op. Atty. Gen. (104a-9), Dec. 1, 1934.

County officers whose terms expired on first Monday in January are entitled to compensation for days of service rendered in that month up to time their successors qualify and take office, to be prorated on a basis of number of days served in that month. Op. Atty. Gen. (104a-9), Feb. 2, 1935.

Person appointed to fill vacancy in office of probate judge holds office until first Monday in January following general election in November, and there can be no short term between November and January. Op. Atty. Gen. (247k), May 29, 1936.

One appointed to fill a vacancy in office of probate judge holds office until first Monday in January following general election. Op. Atty. Gen., (347k), Nov. 25, 1938.

Clerk hire on Jan. 1 and Jan. 2 at end of term of county officer should be charged to clerk hire account for the current year, and not to account of retiring officer. Op. Atty. Gen. (104a-9), Feb. 2, 1939.

Article 8.—SCHOOL FUNDS, EDUCATION AND SCIENCE.

1. Uniform system of public schools.

Minneapolis home rule charter, c. 13, §4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. 181M576, 233NW834. See Dun. Dig. 8656.

Maintenance of public schools is a matter of state and not local concern. State v. Erickson, 190M216, 251NW 519. See Dun. Dig. 8656.

Construing Laws 1921, c. 332, as superseding §3014 and as applying to the city of Duluth, it is constitutional. Board of Education v. D., 192M367, 256NW894. See Dun. Dig. 8656.

State confers on school officers discretionary power to furnish free transportation of pupils, and this discretion cannot be controlled by mandamus. State v. School Dist. No. 70, 204M279, 283NW397. See Dun. Dig. 8675.

School board may rule that hot lunches be served to all students at noon. Op. Atty. Gen., Jan. 17, 1934.

Hiring of unqualified teacher does not deprive school of its public nature, but does deprive school of right to apportionment aid while such teacher is employed. Op. Atty. Gen. (8b), Oct. 6, 1937.

2. School and swamp lands—School funds from sale of.

Where sublessee of lessee of school land was required to pay to the state the full amount of the royalties stipulated in the original lease, the net income received by the lessee was subject to federal income tax. Wanless Iron Co. (USCCA8), 75F(2d)779, aff'g 29BTA834. Cert. den. 295US765, 55SCR924.

Adoption by constitutional amendment, of an existing statutory method of appraisal and sale of state land, included whole scheme, terms of sale, form of certificate of sale, and rights thereby conferred on purchaser. State v. Finnegan, 188M54, 246NW521. See Dun. Dig. 1576, 7964.

Laws 1931, c. 186 [Mason's 1931 Supp., §53-23½ et seq.], creating a department of conservation and transferring functions of state auditor, is valid. State v. Finnegan, 188M54, 246NW521. See Dun. Dig. 8846d.

Provision in Laws 1933, c. 412, permitting perpetual lease of water dam rights is invalid. Op. Atty. Gen., Aug. 7, 1933.

When a portion of a parcel of trust land sold by state under contract is taken by eminent domain, entire award must be applied on indebtedness due state up to amount of such indebtedness before any portion is applied on taxes or expenses of condemnation proceedings. Op. Atty. Gen. (700d-12), Sept. 19, 1936.

Apportionment under §2993 cannot be made on basis of per capita in cities of first class. Op. Atty. Gen. (8b), Jan. 5, 1937.

No right to repurchase by former owner of trust fund lands was authorized by Laws 1937, c. 485, or Laws 1937, Ex. Sess., c. 88, since such lands became absolute property of state on forfeiture for taxes and could only be resold at public sale. Op. Atty. Gen. (525), Aug. 11, 1937.

State Board of Investment is authorized to invest money in school trust funds in bonds of Federal Farm Mortgage Corporation. Op. Atty. Gen. (928b), Jan. 4, 1938.

In acquiring title to school and swamp land for purpose of transfering it to U. S. for use as wild life refuge,

state must bring condemnation proceedings and cannot arrange to transfer by private sale. Op. Atty. Gen. (700d-28), Jan. 17, 1938.

3. Public schools in each township—No appropriation for sectarian schools.

Requiring the reading of the Old Testament in every school room, but permitting the pupils to absent themselves during the reading, does not infringe this provision. 171M1142, 214NW18.

Minneapolis home rule charter, c. 13, §4, held not to apply to a school building and hence the board of education is not required to submit the location and design of the building to the planning commission for approval. 181M576, 233NW834. See Dun. Dig. 8656.

Maintenance of public schools is a matter of state and not local concern. State v. Erickson, 190M216, 251NW 519. See Dun. Dig. 8656.

Construing Laws 1921, c. 332, as superseding §3014 and as applying to the city of Duluth, it is constitutional. Board of Education v. D., 192M367, 256NW894. See Dun. Dig. 8656, 8657.

Teacher's tenure act should not be strictly construed as against a teacher, but should be construed liberally to effect general purpose of act to protect educational interests of state. McSherry v. C., 202M102, 277NW541. See Dun. Dig. 8688b.

State confers on school officers discretionary power to furnish free transportation of pupils, and this discretion cannot be controlled by mandamus. State v. School Dist. No. 70, 204M279, 283NW397. See Dun. Dig. 8675.

Independent school districts cannot levy taxes for support of parochial schools. Op. Atty. Gen., Sept. 30, 1933.

Op. Atty. Gen., Jan. 17, 1934: note under art. 8, §1.

Special school district in South St. Paul has authority to expend public moneys for transportation of pupils. Op. Atty. Gen., Feb. 1, 1934.

A "congressional" township in a statute generally is used in opposition to term "fractional township," meaning a township containing 36 sections. Op. Atty. Gen. (441g), Mar. 18, 1935.

Home rule charter limitation of levy of taxes for school purposes cannot be exceeded in absence of emergency preventing adequate system of public schools within the tax limits, and this involves a question of fact. Op. Atty. Gen. (519m), Oct. 9, 1937.

Owner of school bus may transport parochial students if school district expends no funds therefor. Op. Atty. Gen. (159b-13), Dec. 10, 1937.

School board may permit bibles to be placed in school without expense to district. Op. Atty. Gen. (170f-1), Aug. 23, 1938.

Holding of religious baccalaureate services in state schools is permissible if there is no advocacy of tenets of any particular creed or sectarian belief. Op. Atty. Gen. (170f-4), March 20, 1939.

A closed school transporting all of its pupils to a parochial school could not receive special state aid, but is entitled to that aid where it retains its organization, and transports part of its students to a public school. Op. Atty. Gen. (168), August 17, 1939.

4. *University of Minnesota.*

The board of regents, in the management of the University, is constitutionally independent of all other executive authority, and Laws 1925, c. 426, is unconstitutional insofar as it attempts to subject the control of University finances to the commission of administration and finance, in view of Laws 1851, c. 3. 175M259, 220NW951.

The Constitution vests the government of the University of Minnesota in the board of regents, following State v. Chase, 175M259, 220NW951; and in the exercise of its granted power of government, so long as it keeps within the limits of its grant, it is not subject to legislative or executive interference or judicial control at the suit of a taxpayer. Fanning v. U. of M., 183M222, 236NW 217. See Dun. Dig. 8694.

In the exercise of its power of government, the board of regents may construct a dormitory upon the University campus without legislative authority. Fanning v. U. of M., 183M222, 236NW217. See Dun. Dig. 8694.

Provision perpetuated "rights, immunities, franchises and endowments" held by university under territorial laws confirmed by constitution, including administration by a board of 12 regents, who themselves were the "body corporate," to be elected by the two Houses of the Legislature in joint convention. State v. Quinlivan, 198M65, 268NW858. See Dun. Dig. 8694.

Laws 1923, c. 429, §1 (Mason's Minn. St. 1927, §3110), attempting to make three state officers ex officio regents, and to vest in Governor power to appoint others, is unconstitutional. Id.

If it be assumed that under supposed law of its being, organization of University of Minnesota was defective, or even invalid and hence there was no corporation even de facto, it became a corporation de jure by constitutional confirmation of "existing laws" under which it was organized and functioning when the State Constitution was adopted. Id. See Dun. Dig. 8693a.

Special Laws 1878, c. 69, did not continue the Minnesota Central University in existence, but created a new corporation, now Pillsbury Academy, whose property could not lawfully be made exempt from taxation. Trustees of Pillsbury Academy v. S., 204M365, 283NW727. See Dun. Dig. 9141.

University may insure property against fire and tornado regardless of legislative action, if premiums are not paid out of legislative appropriations. Op. Atty. Gen., Nov. 4, 1929.

Order of industrial commission requesting changes in nurses' home on University campus for fire protection purposes is of no legal effect. Op. Atty. Gen., May 26, 1933.

Ordinances of Minneapolis requiring lathers and plasterers to have licenses are without force upon university grounds. Op. Atty. Gen., Feb. 5, 1934.

To extent that regents may insure property at university, they may place same with mutual companies. Op. Atty. Gen. (88b), Aug. 27, 1934.

Members of board of regents are to be appointed by the governor and not the legislature. Op. Atty. Gen. (213f), July 8, 1935.

Legislature does not have power to require board of regents of university to grant free tuition to any class of students. Op. Atty. Gen. (618a-5), Nov. 13, 1936.

University of Minnesota purchasing procedure, including manner of securing competitive bids, is vested in Board of Regents. Op. Atty. Gen. (618a-5), Aug. 11, 1938.

Legal title to University permanent trust fund land is vested in state subject to trust imposed thereon for use and benefit of University to be appropriated and applied as legislature may prescribe for use and support of the University, and in absence of legislation to that effect, department of conservation is without authority to transfer administration, sale, lease, demise, control or management of University trust fund lands to Board of Regents of the University. Op. Atty. Gen. (618c-2), Dec. 13, 1938.

5. Loan of school funds.

Town which levied tax to pay principal and interest on bonds sold to the state cannot apply the money to something else, even though it may be able to refund bonds. Op. Atty. Gen. (43B-3), July 5, 1939.

6. Investment of school funds.

Act to legalize real estate mortgages made to school district trustees. Laws 1931, c. 230.

Maximum amount that state board of investment may loan to a village cannot exceed 15% valuation of its real and personal property. Op. Atty. Gen. (928a-8), Apr. 25, 1934.

State board of investment may lend money to city of Chisholm to refund outstanding certificates of indebtedness, and city may issue bonds without vote of electors. Op. Atty. Gen. (59a-51), Feb. 4, 1936.

City of Chisholm has power to refund certificates of indebtedness without a vote of its electors, and state board of investment has authority to purchase such bonds. Id.

Ditch bonds being general obligations of county are a part of entire bonded indebtedness. Op. Atty. Gen. (37b-2), July 10, 1936.

7. Forests.

Cutting and sale of dead, down and standing timber for forest fire protection on state trust fund lands within state forests is authorized, and department of conservation may sell such timber as an ordinary sale of timber product and may pay federal CCC agency such part thereof as may be required to meet its regulations as part of project costs. Op. Atty. Gen. (27b), Aug. 4, 1938.

Legislation providing for yearly deduction of a percentage of new trust fund to be derived from income in mines and timber departments for purpose of paying administrative expenses would be unconstitutional. Op. Atty. Gen. (928B), Feb. 20, 1939.

8. Exchange of public lands. Any of the public lands of the state, including lands held in trust for any purpose, may, with the unanimous approval of a commission consisting of the governor, the attorney general and the state auditor, be exchanged for lands of the United States and/or privately owned lands in such manner as the Legislature may provide, and the lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject, and the state shall reserve all mineral and water power rights in lands so transferred by the state. (Added Nov. 8, 1938, by affirmative vote at election held on that date.)

Purpose of amendment is to authorize legislature to provide exchanging of any of public lands of state for lands of United States and land privately owned, including school lands, swamp lands and state internal improvement lands, and to make it possible for the state to acquire compact areas of land for forestry and other conservation purposes. Op. Atty. Gen. (86a-34), May 1, 1934.

Words "public lands" includes tax forfeited lands, lake shore lands, land purchased by the state and rural credit lands, but exchange of lands withdrawn from sale by statute might require amendment of existing statutes. Op. Atty. Gen. (700d), Feb. 28, 1939.

Article 9.—FINANCES OF THE STATE AND BANKS AND BANKING.

1. Power of taxation.—The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value $200, for each household, individual or head of a family, and household goods and farm machinery, as the legislature may determine:

Provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation, and provided further, that nothing herein contained shall be construed to affect, modify or repeal any existing law providing for the taxation of the gross earnings of railroads.

As amended by Laws 1933, c. 442. Ratified at election of Nov. 6, 1934. Proclaimed Nov. 30, 1934.

Amendment proposed by Laws 1935, c. 394, rejected at 1936 general election.

1. In general.

174M509, 219NW872.

The term "Church Property" has reference to the use of the property for the purposes of the church organization, and where a lot and dwelling owned by a church is rented for dwelling purposes and the rental used by the church in support of its religious exercises, it is not exempt from taxation. 173M40, 216NW326.

City ordinance requiring license fee of $100 per year be paid for the operation of a gasoline filling station, held unreasonable and invalid. 177M539, 225NW904.

Laws 1929, c. 258, establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226NW633.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. In re Lands Polk Co., 182M437, 234NW691. See Dun. Dig. 9151a.

Rule of assessment properly ignoring both use and value was condemned because it adopted a combination of factors of frontage and depth in such fashion as to cause discrimination in favor of undivided lots. Third Street Widening, 184M170, 240NW365. See Dun. Dig. 6860.

Property purchased by a church as a site for new church buildings is exempt at least from time architect is employed to prepare plans. State v. Second Church of Christ, Scientist, 185M242, 240NW532. See Dun. Dig. 9152.

Fact that church purchasing site for new buildings receives some small incidental revenue from the property was not sufficient ground for denying tax exemption. State v. Second Church of Christ, Scientist, 185M 242, 240NW532.

Laws 1931, c. 420, proposing an amendment to constitution to extend scope of taxation, held not multifarious. Winget v. H., 187M78, 244NW331. See Dun. Dig. 1571.

Power of taxation is inherent in sovereignty and reposes in legislature, except as limited by state or national Constitution, and except as so limited, it is exhaustive and embraces every conceivable subject of taxation. Reed v. B., 191M254, 253NW102. See Dun. Dig. 9115.

It is clear that it was not intended to confine exemptions from taxation only to property owned by public, nor was it intended that mere access to, use of, or patronage by the public was to be sole and only test of exemption. State v. Browning, 192M25, 255NW254. See Dun. Dig. 9151a. 9153.

A hospital owned by an individual and operated with an intent to make private profit is not exempt from taxation. Id.

Mason's Stats., §§4401-10 to 4401-20, providing an appropriation for direct relief, work relief and employment to needy, destitute, and disabled persons, is constitutional. Moses v. O., 192M173, 255NW617. See Dun. Dig. 9140, 9142.

Fact that waterworks is not actively used but is held as a reserve plant does not make land taxable as long as plant has not been abandoned or land sold to private party or put to other use. Anoka County v. C., 194M554, 261NW588. See Dun. Dig. 9151a.

Sale of water by city to two other municipalities, and to other consumers outside city, revenue derived therefrom being about one-tenth of total revenue, is not determinative consideration and does not remove exemption, word "exclusively" meaning "substantially all" or "for greater part." Id.

Portion of land owned by city and used as a part of waterworks but not leased to private parties is public property used exclusively for a public purpose and is exempt, though land is located outside corporate limits of city and in another county. Id. See Dun. Dig. 9152.

Portion of the land which city owns for waterworks plant but leases to private parties who farm same and pay city a stipulated rental is not exempt from taxation as such portion is not used for a public purpose despite fact that rentals go into general fund used to operate waterworks. Id. See Dun. Dig. 9153.

Chapter 183, Laws of 1913, as amended by chapter 300, Laws of 1925, now 1 Mason's Minn. Stat. 1927, §§1774, 1776, violates the provision of §1, article 9 of constitution, that taxes shall be uniform upon same class of subjects, and is invalid. State v. Scott County, 195M111, 261NW863. See Dun. Dig. 9130.

Taxation is a burden or charge imposed by legislative power upon persons or property to raise money for public purposes, with essential characteristic that it is not a voluntary payment or donation but an enforced contribution. Bemis Bro. Bag Co. v. W., 197M216, 266NW 690. See Dun. Dig. 9114.

Power of taxation is inherent in sovereignty and reposes in the legislature except as it is limited by state or national constitution. Id. See Dun. Dig. 9115.

Mason's Minn. St. 1927, §2150, as amended by Laws 1929, c. 266, Laws 1935, c. 246, providing for attachment, by county auditor, of rents received from real estate upon which taxes have become delinquent, is constitutional. Taxes Delinquent, 197M266, 266NW867. See Dun. Dig. 9130.

Constitutional provisions relating to taxation are not grants of power but rather and only limitations thereon. Cherokee State Bank v. W., 202M582, 279NW410. See Dun. Dig. 9115.

Power of taxation is inherent in sovereignty and reposes with legislature and is limited only by state and national constitutions. Id. See Dun. Dig. 9115.

Power of taxation is inherent in sovereignty and reposes in legislature, except as limited by constitutional prohibition. State v. Aitkin County Farm Land Co., 204 M495, 284NW63. See Dun. Dig. 9114.

To render property exempt it must not only be used for a charitable purpose but it must be held by an institution of purely public charity. A trust instrument devoting certain lands to use as a summer camp for various children's organizations, held not obligatory so as to render the land exempt from taxation. Op. Atty. Gen., May 19, 1930.

Property used by a church for Sunday school classes, for doing social work, and for the publication of a church paper, held exempt. Op. Atty. Gen., May 20, 1930.

Bonds and notes given by a church for money borrowed by it are not exempt in the hands of investors. Op. Atty. Gen., June 16, 1930.

Whether houses and lots occupied by employees of Carleton college as a part of their compensation are exempt is a question of fact dependent on the necessity of the college furnishing the residences in order to operate the institution. Op. Atty. Gen., July 7, 1930.

Land owned and used by Boy Scouts of America is not exempt from taxation. Op. Atty. Gen., Aug. 11, 1930.

Property of Young Men's Christian Association used for boys' camp is not exempt from taxation. Op. Atty. Gen., Aug. 11, 1930.

State may adopt an income tax law without constitutional amendment. Op. Atty. Gen., Feb. 17, 1931.

Property purchased by an institution under a contract for a deed is not exempt from taxation. Op. Atty. Gen., July 20, 1931.

Buildings owned by a city upon leased land are exempt from taxation though the land is not. Op. Atty. Gen., July 30, 1931.

Where University leases land to faculty members under long term leases to be used for dwellings constructed by the lessee, the leasehold interest and the buildings are taxable as real estate. Op. Atty. Gen., Nov. 27, 1931.

A church building upon real estate owned by a non-exempt person is exempt from taxation. Op. Atty. Gen., Dec. 24, 1931.

Hospital held not exempt from taxation. Op. Atty. Gen., Mar. 11, 1933.

State may engage in selling and distributing intoxicating liquors. Op. Atty. Gen., Oct. 25, 1933.

An assembly hall maintained by church on parcel of land distant from church is exempt from taxation, though it is occasionally rented to other organizations for a small charge. Op. Atty. Gen., Dec. 27, 1933.

Purpose of amendment proposed by Laws 1933, c. 442, is to grant legislature power to exempt household goods and farm machinery from taxation. Op. Atty. Gen. (86a-34), May 1, 1934.

Purpose of amendment proposed by Laws 1933, c. 444, is to mention specifically and define definitely the property of academies, colleges, universities, and seminaries of learning which shall be exempt from taxation. Op. Atty. Gen. (86a-34), May 1, 1934.

Bill authorizing taxation of municipal property located outside of the limits of a municipality would be unconstitutional. Op. Atty. Gen. (851), Feb. 4, 1935.

Laws 1935, c. 50, §1, providing for loan for seed to destitute farmers, is constitutional. Op. Atty. Gen. (86a-44), Mar. 13, 1935.

Laws 1935, c. 50, the seed loan act, is constitutional. Op. Atty. Gen. (833d), Mar. 29, 1935.

Whether city money may be expended to further activities of private organization, such as Girl Scouts and Boy Scouts depends largely upon nature and scope of activities. Op. Atty. Gen. (59a-22), May 8, 1935.

City may not expend money to assist baseball team representing city. Id.

City erecting municipal building larger than necessary for purpose of obtaining extra space to rent to industry *coming to city, had no power to leave such extra space.* Op. Atty. Gen. (63b-11), July 31, 1935.

Office furniture and equipment and money and credits of Lutheran Brotherhood are tax exempt. Op. Atty. Gen. (414d-8), May 11, 1936.

Whether part of village park platted by village for purpose of sale was subject to taxation dependent upon whether it could still be considered used for a public purpose. Op. Atty. Gen. (414a-11), Nov. 6, 1936.

Whether aid to a local baseball club would be for a public purpose would depend on whether a private purpose was involved. Op. Atty. Gen. (59a-22), Apr. 27, 1937.

Contribution by hospitals to unemployment compensation fund is a tax. Op. Atty. Gen. (885g-4), Aug. 18, 1937.

Village may not use public money for erection and operation of a cold storage locker plant. Op. Atty. Gen. (469a-12), March 9, 1939.

2. Special assessments.

173M67, 216NW607.

Foundation for authority to levy special assessments is benefit which object of assessments confers upon owner of benefited property, theory being that owner does not in fact pay anything in excess of what he received by reason of improvement. Judd v. C., 198M590, 272NW577. See Dun. Dig. 6860.

A corner lot may be assessed for a sewer on two sides. Op. Atty. Gen., Apr. 15, 1931.

City of Austin under its charter could not re-surface a paved street and pay for it out of the general fund, but must assess the cost against property benefited. Op. Atty. Gen., Apr. 28, 1931.

Constitutional exemption of church property from taxation has no application to special assessments for local improvements. Op. Atty. Gen., Sept. 21, 1932. See Dun. Dig. 9151.

Constitutional exemption of church property from taxation has no effect upon manner of collection of special assessments which are to be collected in same manner as against real estate generally. Op. Atty. Gen., Sept. 21, 1932.

4. Equality and uniformity.

Where evidence indicates that assessor attempted to proceed scientifically and fairly, his determination should not be disturbed in absence of a showing that his valuation is clearly too high. State v. Federal Reserve Bank, (DC-Minn), 25FSuppl4.

Both large and small taxpayers must be accorded same treatment within the law. Hall Hardware Co. v. G., 197 M619, 268NW202. See Dun. Dig. 9140.

That part of Laws 1933, c. 359, reducing rates at which homesteads shall be valued for taxation, but preserving former and higher rates for purpose of figuring "tax limitations," held not to amend a provision of a city charter limiting a school tax to 22 mills on dollar, purpose being not to amend charter but to provide for valuing homesteads at former rates for purpose of applying tax limitation and it is constitutional as so construed. 510 Groveland Ave. v. E., 201M381, 276NW287. See Dun. Dig. 9140.

State of Minnesota may tax residents of Wisconsin upon income derived from business or property located in Minnesota or personal services performed there, though it results in double taxation of income. Hughes v. W., 227Wis. 274, 278NW403. App. dism'd, 58SCR1047. Reh. den., 59SCR58.

A state statute levying a tax upon all bank stock is not rendered unlawfully discriminatory against state bank because its operation might be invalid as applied to national banks. Cherokee State Bank v. W., 202M582, 279NW410. See Dun. Dig. 9140.

Prohibits only arbitrary but allows reasonable classification for tax purposes. Id. See Dun. Dig. 9140.

Power to classify property for purposes of taxation rests primarily with legislature and laws passed by it should not be declared invalid by the courts unless it is made to appear clearly that they transgress constitution. Id. See Dun. Dig. 9135.

Whether a law shall apply generally throughout state or only to a class or locality, is a question of legislative policy for determination of legislature, and when legislature has determined that a sufficient distinction exists between two classes of persons to justify applying rules to one class which do not apply to other such determination is binding upon courts, unless they can point out that distinction is purely fanciful and arbitrary and that no substantial or logical basis exists therefor. State v. Hubbard, 203M111, 280NW9. See Dun. Dig. 1668, 1669.

A co-operative telephone company may be exempted from paying gross earnings tax and being taxed according to number of telephones in use. Op. Atty. Gen., Mar. 17, 1933.

Gross earnings tax on telephone companies may be graduated according to size of incomes. Op. Atty. Gen., Mar. 17, 1933.

State may impose larger privilege tax on fire insurance companies doing business in cities of first class than on companies doing business in smaller cities and villages throughout the state. Op. Atty. Gen., Dec. 7, 1933.

Bill relieving cities of first class from payment of gasoline tax without relieving other municipalities would probably be unconstitutional. Op. Atty. Gen. (86a-49(a)), June 17, 1937.

Exemption of $2,000 from money and credits would be constitutional. Op. Atty. Gen. (421b), July 6, 1937.

Exemption of $2,000 of moneys and credits would not violate either state or federal constitution. Op. Atty. Gen. (614G), March 31, 1939.

5. Classification—Uniformity.

Laws 1927, c. 228 (Mason's Minn. Stat. 1927, §§2558-1 to 2558-4) is valid. 174M305, 219NW172.

Tax imposed by Laws 1923, c. 226, not invalid. 175M305, 221NW13.

Laws 1929, c. 361, excepting from the operation of the gross earnings tax on express companies the license tax on vehicles using the highways, held unconstitutional. 180M268, 230NW815.

Laws 1921, c. 417, fixing $60 per capita as maximum tax levy in all school districts, is not unconstitutional because population may be determined from last federal census or by special local census. Independent school Dist. No. 35 v. B., 187M539, 246NW119. See Dun. Dig. 1680.

Requirement of equality and uniformity does not demand an impossible nicety of exactness. Independent School Dist. No. 35 v. B., 187M539, 246NW119. See Dun. Dig. 9140.

Chapter 58, Laws 1931 [Mason's Supp., 1931, §2674], relating to the taxation of automobiles of dealers in new and unused motor vehicles, is valid, and does not offend any constitutional provision. City of Minneapolis v. A., 188M167, 246NW660. See Dun. Dig. 9143.

Provision that taxes shall be uniform upon same class of subjects, is no more restrictive upon legislature's power to tax or classify than is Fourteenth Amendment to Constitution of the United States. Reed v. B., 191M254, 253NW102. See Dun. Dig. 9140.

Chapter 359, Laws 1933, providing for a lower assessed valuation on first $4,000 of actual value of real estate used for homestead purposes than on other real estate, held constitutional. Apartment Operators' Ass'n v. C., 191M365, 254NW443. See Dun. Dig. 9142.

Laws 1933, c. 359, providing for lower assessed valuation on first $4,000 of actual value of homesteads than on other real estate, is constitutional. Logan v. Y., 191M 340, 254NW446. See Dun. Dig. 1646.

Power to classify subjects for taxation is primarily with legislature whose classification must not be unreasonable, arbitrary, or discriminatory, but must operate equally and uniformly upon all persons in similar circumstances. Id. See Dun. Dig. 9133.

Double taxation is not forbidden by the state or national Constitution unless it results in lack of uniformity or offends the due process or equal protection clauses. Id. Dun. Dig. 9146.

Legislature may make such classes of taxable subjects as it chooses and they will not be disturbed by the court unless clearly unreasonable, fanciful, or arbitrary. State v. Luecke, 194M246, 260NW206. See Dun. Dig. 9140.

In determining reasonableness of a classification, court will not concern itself with question of public policy and expediency of the measure, but a legitimate object for court's consideration is practical effect classification is bound to have on business and organized society generally. Id. See Dun. Dig. 9134.

Laws 1931, c. 129, and Laws 1933, c. 414, are invalid insofar as they provide that taxes which are current *or merely delinquent may be satisfied in full by payment* of a fraction of amount originally assessed. Id. See Dun. Dig. 9141.

Uniformity clause applies to distribution of taxes levied and collected as well as to levy itself. Village of Robbinsdale v. C., 199M203, 271NW491. See Dun. Dig. 9140.

Mason's Minn. St. 1927, §3195, providing for reimbursement to cities, towns, or villages of third and fourth class for part of expense of administering their local relief under town system, held unconstitutional in violation of uniformity clause. Id. See Dun. Dig. 9141.

Any classification for purpose of taxation is permissible *which has a reasonable relation to some permitted end* of governmental action. State v. Hubbard, 280NW9. See Dun. Dig. 1668, 1669.

Mason's Minn. Stat., 1938 Supp., §2176-26 to §2176-34, permitting former owners of tax forfeited lands to repurchase at a discount and canceling special assessments, is constitutional. Id.

A gross sales tax which classifies chain store owners for the imposition of a varying rate of taxation solely by reference to volume of their transactions denies equal protection provision of U. S. Const. Am. XIV, and is likewise violative of Minn. Const. Art. 9, §1. National Tea Co. v. S., 286NW360. See Dun. Dig. 1674, 9140.

Power of state to classify for taxation is of wide range and flexibility, provided always that the classification be reasonable, not arbitrary. Id. See Dun. Dig. 9130.

The commission did not violate the uniformity clause of the state constitution by granting the application for abatement of taxes. Calhoun Beach Holding Co., 287 NW317. See Dun. Dig. 9130, 9577a.

Legislature has power to enact a graduated progressive income tax without constitutional amendment. Op. Atty. Gen., Feb. 25, 1933.

An act exempting rural telephone company not organized or operated for profits, from payment of gross earnings tax, would not violate this section. Op. Atty. Gen., Mar. 7, 1933.

Laws 1933, c. 356, relating to taxation of agricultural lands in independent districts, is valid. Op. Atty. Gen., July 17, 1933.

The enumeration of compulsory exemptions does not forbid making others which do not offend uniformity clause or federal constitution. Id. See Dun. Dig. 9149.

Community hall owned by club and used partially for town purposes is not exempt from taxation. Op. Atty. Gen., Mar. 22, 1934.

A chain farm graduated tax could not be held constitutional if based upon any other classification than number of farms, rather than size or income therefrom. Op. Atty. Gen. (82 1), Jan. 22, 1937.

City is not authorized to provide that person constructing new building will only be required to pay a fraction of taxes paid by owner of a building already constructed for a limited time. Op. Atty. Gen. (86a-49 (g)), Sept. 15, 1938.

Exemption of homesteads owned by recipients of old age pensions would violate uniformity clause. Op. Atty. Gen. (413a-13), Feb. 3, 1939.

License ordinance for dogs is not invalid because they are also assessed as personal property. Op. Atty. Gen. (146d-4), July 19, 1939.

Requirement of territorial uniformity in distribution of proceeds of taxation. 20MinnLawRev234.

Discrimination against federal securities by a state tax on shares of stock of trust company. 20 MinnLaw Rev318.

6. Income tax.

Provision may legally be inserted in a statutory income tax statute, taking incomes of officers and employees of state municipalities. Op. Atty. Gen., Mar. 6, 1933.

Graduated income tax [Mason's Stat., 1934 Supp., §§ 2394-1 to 2394-58] is constitutional. Reed v. B., 191M254, 253NW102. See Dun. Dig. 9143.

7. Gross earnings.

A gross earnings tax may validly be imposed on owners of radio broadcasting stations in lieu of other taxes. Op. Atty. Gen., Mar. 3, 1933.

Legislature may impose a gross earnings tax on pipe line company transporting gasoline differing in rate from that imposed upon pipe line companies transporting natural gas. Op. Atty. Gen. (82 1), Mar. 12, 1937.

8. Particular property, persons or institutions.

Generally, corporation and stockholders are separate in tax matters. George A. Hormel & Co. v. United States, (USDC-Minn), 10FSupp623.

Evidence shows that real estate has since 1928 been continuously occupied and used as a seminary of learning, and hence is exempt from taxation. State v. Northwestern College, 193M123, 258NW1. See Dun. Dig. 9152.

A hospital organized to operate on a non-profit basis was tax exempt, though it charged for services and did not pretend to care for charity patients without charge. State v. H. Longstreet Taylor Foundation, 198M263, 269 NW469. See Dun. Dig. 9152.

Wisdom or expediency of a proposed expenditure of public moneys is to be determined by legislature or local authorities, but whether a given expenditure is for a public purpose may be determined by court. Behrens v. C., 199M363, 271NW814. See Dun. Dig. 1589.

Generally a resident taxpayer has sufficient property interest in municipal funds to seek to enjoin the illegal expenditure thereof by municipal officers. Id. See Dun. Dig. 7315.

Where primary purpose of expenditure of funds raised by taxation is to promote a private interest, purpose is not public. Id. See Dun. Dig. 9119.

No improvements can be made by state upon Mississippi River without consent of federal government, and such river is not a highway in same sense as other public roads of state, and it is a question of fact whether dredging in a particular place is for a public purpose or primarily for a private purpose. Id.

A state income tax upon salary of governor of a federal reserve bank is invalid as a direct and palpable burden on exertion of governmental sovereign powers. Geery v. M., 202M366, 278NW594. See Dun. Dig. 9120.

Limitation of power to tax shares in national banks does not deprive state of its power to tax corporations created under its own laws. Cherokee State Bank v. W., 202M582, 279NW410. See Dun. Dig. 9120.

A state has no inherent power to tax stock in national banks, these being agencies of national government, hence power to tax is limited to and must conform with restrictions fixed by Congress. Id. See Dun. Dig. 9120

Special Laws 1878, c. 69, did not continue the Minnesota Central University in existence, but created a new corporation, now Pillsbury Academy, whose property could not lawfully be made exempt from taxation. Trustees of Pillsbury Academy v. S., 204M365, 283NW727. See Dun. Dig. 9141.

Salary of governor of federal reserve bank is not immune from state income taxes. Geery v. M., 204M622, 285 NW614. See Dun. Dig. 9153.

Funds of fraternal beneficiary association are exempt from taxation. Op. Atty. Gen. (414d-8), Apr. 3, 1934.

Home for aged asking contributions from those who enter was not exempt from taxation. Op. Atty. Gen. (414c-1), Apr. 20, 1934.

Church property when not used for minister's residence or in connection with its religious or charitable work or activities is not exempt from taxation. Op. Atty. Gen. (414d-6), May 25, 1934.

Church parsonage was exempt though part thereof was rented and income applied on salary of minister. Op. Atty. Gen. (414d-12), Apr. 28, 1936.

Real property of St. Paul Society for the Prevention of Cruelty is tax exempt. Op. Atty. Gen. (414d-17), Apr. 28, 1936.

Where church owned two parsonages, one just acquired, of which it was about to take possession, and one which was used as a parsonage on May 1st and has since been sold, both were exempt for the year. Op. Atty. Gen. (414d-6), Sept. 15, 1936.

A municipally owned power plant and distributing system leased to a private company is taxable. Op. Atty. Gen. (414e), Dec. 9, 1936.

Personal property belonging to an individual or corporation located on United States government land, not deeded by state legislature, is not exempt from taxation, even though used under contract with government. Op Atty. Gen. (414a-2), Jan. 20, 1937.

Tax exempt hospitals may charge municipality a fee for treating indigent persons. Op. Atty. Gen. (1001d), Feb. 19, 1937.

If a particular hospital is subject to federal unemployment contribution or tax, it would not benefit hospital to claim exemption under this section from payment of contributions under Minnesota unemployment compensation act. Op. Atty. Gen. (885q-4), Mar. 18, 1937.

Dog ambulance owned and used by Humane Society of St. Paul, is not exempt from motor vehicle license tax. Op. Atty. Gen. (632e-12), Apr. 5, 1937.

A "public hospital" must allow free access to public without discrimination and should be operated for benefit of public rather than for benefit of a private individual, corporation or group of individuals, but it need not be owned by the public and may charge a fee for services rendered. Op. Atty. Gen. (414d-10), July 2, 1937.

There is no tax upon sale of surplus electric energy outside of corporate limits of a city, even though in another county. Op. Atty. Gen. (624c-13), Aug. 12, 1937.

"Public hospital" is one that is operated without intent to make profit, but it may charge fee for services rendered. Op. Atty. Gen. (885g-4), Aug. 18, 1937.

Pioneer memorial home, incorporated, a Minnesota corporation, held not exempt from taxation as institution of purely public charity. Op. Atty. Gen. (414a10), Sept. 2, 1937.

A municipal power plant located outside city and in another county is exempt from taxation, though it is a "stand-by plant for the city," and though surplus energy is sold to a cooperative association. Op. Atty. Gen. (414a-13), Sept. 20, 1937.

Exemption of hospital is not lost because title is transferred to nonprofit corporation organized under laws of another state. Op. Atty. Gen. (414d-10), Dec. 28, 1937.

Municipally owned electric light and power plant lines used for purpose of furnishing electricity to persons residing outside of municipality are exempt from taxation. Op. Atty. Gen. (414a-13), Feb. 2, 1938.

House owned and maintained by school district as a home for superintendent of schools, rental being deducted annually from superintendent's salary, is not exempt from taxation. Op. Atty. Gen. (622a-11), Feb. 10, 1938.

City may not enter into an agreement exempting privately owned property used for a public purpose from taxation. Op. Atty. Gen. (414a-9), Feb. 11, 1938.

While inclined to view that church and parsonage owned by a religious congregation which rents them to another religious congregation are exempt, department refuses to give legal opinion. Op. Atty. Gen. (414d-6), Apr. 12, 1938.

Municipal liquor store cannot be taxed. Op. Atty. Gen. (218k), May 14, 1938.

Residence owned by church but located several blocks therefrom, furnished to a janitor for a residence, is exempt from taxation. Op. Atty. Gen. (414d-6), Dec. 31, 1938.

Pioneer Memorial Home is not exempt from taxation. Op. Atty. Gen. (414a-10), Jan. 27, 1939.

A public hospital is one that allows free access to public without discrimination and is operated for benefit of public rather than for a private individual, corporation, or group of individuals, but mere fact that a fee is charged does not preclude exemption if there is no intent to make private profits. Op. Atty. Gen. (414d-10), March 31, 1949.

Liability of county for sidewalk and curb work done on property owned by county in connection with village WPA project. Op. Atty. Gen. (480a), March 31, 1939.

A building forming part of a charitable institution would become subject to taxation if it were leased to an educational institution to be used as a dormitory. Op. Atty. Gen. (414B-2), May 25, 1939.

A farm devised to city to be used for benefit of a city hospital managed by a hospital board operated by a tenant and "any income there might be from such operation would be employed as directed by the said will", is not exempt from taxation. Op. Atty. Gen. (414a-11), July 7, 1939.

An auxiliary landing field owned by a city was not exempt from taxation where small grain and alfalfa

were grown thereon on share crop basis, though it did not interfere with its use as a landing field. Op. Atty. Gen. (414a-11), July 24, 1939.

Where department of rural credit acquired title to real estate by foreclosure on July 10, 1938, and on October 25, 1938, and prior to time taxes were spread thereon, department sold land by contract for deed, former owner and mortgagor occupied farm as a tenant until November 1, 1938, property is not subject to taxes for 1938. Op. Atty. Gen. (770G), July 24, 1939.

Where telephone company constructed new office building and rented old building to the state free of rent on condition that it pay taxes and maintenance costs, property is subject to ad valorem tax. Op. Atty. Gen. (216G), August 17, 1939.

Under proposed certificates of incorporation of Old Frontenac Point, Methodist Campus, real estate and personal property of which is to be used exclusively by members of the church, is exempt from taxation so long as property is used in accordance with such certificate, and receipt of some fee for use of property would not necessarily change its right to exemption. Op. Atty. Gen. (414d-5), Sept. 8, 1939.

3. Property subject to taxation.

1. In general

Legislature has power to enact a graduated progressive income tax law without constitutional amendment. Op. Atty. Gen., Feb. 25, 1933.

Office furniture and equipment and money and credits of Lutheran Brotherhood are tax exempt. Op. Atty. Gen. (414d-8), May 11, 1936.

2. Exemptions.

Special Laws 1878, c. 69, did not continue the Minnesota Central University in existence, but created a new corporation, now Pillsbury Academy, whose property could not lawfully be made exempt from taxation. Trustees of Pillsbury Academy v. S., 204M365, 283NW727. See Dun. Dig. 9141.

5. Public debt; gasoline tax; disposition of proceeds.—For the purpose of defraying extraordinary expenditures, the state may contract public debts, but such debts shall never, in the aggregate, exceed two hundred and fifty thousand dollars; every such debt shall be authorized by law, for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the Legislature, to be recorded by yeas and nays on the journals of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt, and also a tax sufficient to pay the principal of such debt within ten years from the final passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation and taxes shall not be repealed, postponed, or diminished, until the principal and interest of such debt shall have been wholly paid . The state shall never contract any debts for works of internal improvements, or be a party in carrying on such works, except as authorized by Section 16 of Article 9, and by Article 16 of this Constitution, but it may levy an excise tax upon any substance, material, fluid, force or other means or instrumentality, or the business of dealing in, selling or producing any or all thereof, used or useful, in producing or generating power for propelling motor or other vehicles used on the public highways of this state, and shall place two-thirds of the proceeds of such tax in the trunk highway fund provided for in Section 2 of said Article 16, and one-third thereof in the state road and bridge fund, and further except in cases where grants of land or other property shall have been made to the state, especially dedicated by the grant to specific purposes, and in such cases the state shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

Proposed amendment (Mason's Statutes 1927, pp. XLI, XLII) adopted November 6, 1928. Promulgated Dec. 20, 1928.

For act relating to use of money accruing from tax imposed on use of gasoline, see Laws 1929, c. 283 (§§2720-88 to 2720-99).

Laws 1919, c. 341, as amended by Laws 1921, c. 109 (§§5604-5609), does not contravene the constitutional provision forbidding the state to engage in works of internal improvement. 173M559, 218NW123.

Laws 1929, c. 258 (§§5620-1 to 5620-13), establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226 NW633.

Mason's Stats., §§4401-10 to 4401-20, providing an appropriation for direct relief, work relief and employment to needy, destitute, and disabled persons is constitutional. Moses v. O., 192M173, 255NW617. See Dun. Dig. 8847.

Laws 1933, c. 389, authorizing purchase by state of bonds of municipalities, is not invalid as lending of state's credit. Op. Atty. Gen., June 7, 1933.

State may engage in selling and distributing intoxicating liquors. Op. Atty. Gen., Oct. 25, 1933.

A snow plow may be purchased out of moneys received by county representing proceeds of gasoline tax paid into road and bridge fund, but this equipment cannot be used on state aid or other roads except county aid roads. Op. Atty. Gen., Nov. 3, 1933.

Establishment of wild life refuges and development of natural resources such as growth of forests is a public purpose and not in violation of this section. Op. Atty. Gen., Dec. 21, 1933.

Construction of drainage ditches, by protecting public health and promoting general welfare, is for public purpose and can be aided by state and same is true as to flood control, water diversion and control of erosion. Id.

An issue of certificates of indebtedness in excess of $250,000 would be invalid if full faith and credit of state were pledged for payment but if holder of certificates merely has right to demand proceeds of a certain specific tax, the full faith and credit of the state is not pledged. Op. Atty. Gen., Jan. 5, 1934.

Necessary engineering expenses of county engineer in surveying and preparing land for county aid road may be paid out of fund derived from gasoline tax. Op. Atty. Gen. (380b-1), Jan. 21, 1935.

Laws 1935, c. 50, §1, as amended cannot be claimed to be unconstitutional by a farmer borrowing funds for seed. Op. Atty. Gen. (86a-44), Mar. 13, 1935.

Laws 1935, c. 50, the seed loan act, is constitutional. Op. Atty. Gen. (833d), Mar. 29, 1935.

Department of rural credits does not have authority to spend money to pay salaries of its employees transferred to another department. Op. Atty. Gen. (770c-5), May 13, 1936.

Logging of timber on state land and planting of trees on cutover areas by state itself is not a violation of constitution. Op. Atty. Gen. (700d-31), Dec. 10, 1936.

Effect of special fund doctrine on debt limitations. 23 MinnLawRev391.

6. Bonds for public debt.

Laws 1929, c. 258 (§§5620-1 to 5620-13), establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226 NW633.

7. Public debt to repel invasion or suppress insurrection.

Department of rural credits does not have authority to spend money to pay salaries of its employees transferred to another department. Op. Atty. Gen. (770c-5), May 13, 1936.

8. Application of loans.

Laws 1929, c. 265 (§§3036-10 to 3036-16), held to violate this section because of the attempt to divert interest received from rural credit loans to the aid of school districts. State ex rel v. Sageng, 182M565, 235NW380. See Dun. Dig. 8848.

Board of Regents of the University may appropriate net earnings of the dormitory and pledge rentals and earnings to the payment of money advanced for dormitory construction and undertake that they shall be so applied, and may evidence its pledge by bonds. Fanning v. U. of M., 183M222, 236NW217. See Dun. Dig. 8694.

Department of rural credits does not have authority to spend money to pay salaries of its employees transferred to another department. Op. Atty. Gen. (770c-5), May 13, 1936.

9. Payments out of treasury.

Where state intervenes and joins plaintiffs in suits in equity by taxpayers to cancel contracts for paving of state trunk highways, entered into by commissioner of highways, and for injunctions to restrain contractors and commissioner from proceeding with carrying out of such contracts, and for purpose of recovering for state moneys illegally paid out or to be paid out under such contracts, state subjects itself to jurisdiction of court and may be required by court to pay to plaintiffs, taxpayers, out of funds recovered and saved to state, reasonable and necessary expenditures and attorneys' fees incurred by such plaintiffs in carrying on litigation. Regan v. B., 196 M243, 264NW803. See Dun. Dig. 8848.

Liquor control commission has power to expend money from sale of tax stamps to administer various acts but cannot use revenue obtained by issuance of licenses, permits and sale of labels. Op. Atty. Gen., Feb. 20, 1934.

Industrial commission may only pay items provided for in current appropriations and cannot pay telephone charges, postage, rent, furniture, etc., entered into without authority by citizens serving on committee without pay. Op. Atty. Gen. (9-a-21), May 28, 1934.

There is no appropriation which would warrant any state department from entering into agreement with federal government to assume liability for injuries to federal emergency relief workers, and in absence of such appropriation no such agreement may be made. Op. Atty. Gen. (523g-6), June 4, 1934.

Signing of application for approval of emergency relief administration work projects, containing an agreement to carry workmen's insurance to protect workers, would be entering into a contract between the state and the federal government, which contract must be signed by the department of administration and finance and no other department of the state government, and even such department would have no authority to sign such an application in the absence of an appropriation by the legislature. Op. Atty. Gen. (517n), June 7, 1934.

Where legacy was paid into state treasury before inheritance tax of sister state was paid, such inheritance tax cannot be paid without an appropriation by the legislature. Op. Atty. Gen. (9a-10), May 31, 1939.

Insufficiency of state appropriations for aid to defendant children does not relieve county of primary duty to pay aid as provided by law, and state may not exceed the appropriation, and insufficiency of state funds does not affect amount of federal aid, which is based upon aggregate of aid furnished by state and county. Op. Atty. Gen. (640a), June 28, 1939.

10. State credit not to be loaned.

Bjerke v. A., 203M501, 281NW865; note under §6040.

Laws extra sess. 1919, c. 35 (§§125, 126), does not authorize the State Board of Relief to take a note for seed grain furnished by the state to a farmer without such grain or means to procure it, because of the excessive floods which occurred in Marshall County in 1919, and hence is valid. 172M344, 215NW510.

Laws 1929, c. 258 (§§5620-1 to 5620-13), establishing a state wild life preserve in certain counties and authorizing acquisition by the state of unredeemed delinquent lands, etc., does not violate this section. 178M244, 226 NW633.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. In re Lands Polk Co., 182M437, 234NW691. See Dun. Dig. 8848.

Mason's Stats., §§4401-10 to 4401-20, providing an appropriation for direct relief, work relief and employment to needy, destitute, and disabled persons, is constitutional. Moses v. O., 192M173, 255NW617. See Dun. Dig. 8848.

There is nothing unconstitutional about a legislative appropriation wherewith to refund inheritance taxes improperly collected by the state, and Laws 1933, c. 335, is but a recognition by legislature of a just demand against state, and making of provision for its payment. Monfort's Estate, 193M594, 259NW554. See Dun. Dig. 8848.

Purpose of proposed amendment is to give legislature power to authorize taxing of land and assessment of benefits for improvements, though state owns such land through operation of system of rural credits or otherwise. Op. Atty. Gen. (86a-34), May 1, 1934.

Contingent liability growing out of taking out mutual insurance is not the lending of credit. Op. Atty. Gen. (487c-5), Dec. 28, 1934.

This prohibition refers only to state itself and has no application to various political subdivisions of the state. Id.

Laws 1935, c. 50, §1, as amended cannot be claimed to be unconstitutional by a farmer borrowing funds for seed. Op. Atty. Gen. (86a-44), Mar. 13, 1935.

Laws 1935, c. 50, the seed loan act, is constitutional. Op. Atty. Gen. (833d), Mar. 29, 1935.

City erecting municipal building larger than necessary for purpose of obtaining extra space to rent to industry coming to city, had no power to leave such extra space. Op. Atty. Gen. (63b-11), July 31, 1935.

Department of rural credits does not have authority to spend money to pay salaries of its employees transferred to another department. Op. Atty. Gen. (770c-5), May 13, 1936.

12. State and school funds.

Where city treasurer has made deposits in excess of collateral securities given by bank in lieu of a depository bond under §1973-1, city did not have a preferred claim on the theory that the over-deposit was a criminal offense. 172M324, 215NW174.

Const., art. 9, §12, is not self-executing, and what are "suitable laws" is a legislative question. 174M286, 219 NW163.

The rigid rule making absolute the liability of a school district treasurer for school funds may be relaxed by the Legislature. State ex rel. v. Kaml, 181M523, 233NW802. See Dun. Dig. 8678(58).

13. Banking law.

(3).

Liability of stockholders in state banks. Bank of D. v. M., 183M127, 235NW914. See Dun. Dig. 796(83).

Simons, 192M43, 155NW241; note under §8815. See Dun. Dig. 3593.

14b. Municipal debts in aid of railroads.

Effect of special fund doctrine on debt limitations. 23 MinnLawRev391.

16. State road and bridge fund.

Laws 1933, c. 325, amending Laws 1929, c. 283 [1931 Supp., §§2720-93, 2720-94], by authorizing, and in certain cases compelling, use of money distributed to counties from gasoline taxes, for payment of county road or bridge bonds, is valid. Op. Atty. Gen., Mar. 29, 1933.

Article 10.—CORPORATIONS HAVING NO BANKING PRIVILEGES.

3. Liability of stockholders.—The Legislature shall have power from time to time to provide for, limit and otherwise regulate the liability of stockholders or members of corporations and co-operative corporations or associations, however organized. Provided every stockholder in a banking or trust corporation or association shall be individually liable in an amount equal to the amount of stock owned by him for all debts of such corporation contracted prior to any transfer of such stock and such individual liability shall continue for one year after any transfer of such stock and the entry thereof on the books of the corporation or association.

Amendment proposed by Laws 1929, c. 429, adopted at election held Nov. 4, 1930. Promulgated Nov. 24, 1930.

Act prescribing liability of stockholders under this section; Laws 1931, c. 210 (§§7465-1, 7465-2).

32F(2d)665, 180M250, 230NW645(2).

Whether a corporation was organized exclusively for doing a manufacturing business depends on its articles of incorporation and extrinsic evidence is not admissible to show the actual business in which it engaged, the burden of proof to show exemption of the corporation being on a stockholder against whom an assessment was made. Saetre v. Chandler, (CCA8), 57F(2d) 951.

Nature of corporate business is determined by articles of incorporation, and corporation organized for purpose of "canning of vegetables" is a manufacturing corporation under this section prior to its amendment. Henry v. M. (CCA8), 68F(2d)554. See Dun. Dig. 2080.

Omission to file affidavit of publication of amendment to articles of incorporation, held not to preclude the corporation from having a de facto existence, stockholders and creditors being estopped to deny that such articles were ineffective. Id.

This provision, as it originally stood, was repealed by the 1930 amendment. Badger v. H., (USCCA8), 88F(2d) 208.

This provision, as it existed prior to the 1930 amendment, was self-executing. It seems clear that the 1930 amendment is not entirely self-executing. Id.

Where old corporation, organized in 1920, incurred indebtedness in 1928, unpaid in 1935, after the incorporation of a new company in 1930, that took over the assets and liabilities of the old company, a receiver appointed for the companies in 1935 was entitled to enforce the double liability of the stockholders in the old company, but the stockholders in the new company were not subject to such a liability. Id.

Liability of stockholders to creditors under this provision, prior to the 1930 amendment, was contractual and could not be impaired by repeal. Id.

Commissioner of banks was authorized to enforce the individual liability of stockholders, and to attach property held in trust for stockholders. 172M83, 214NW771.

Laws 1925, c. 333, authorizing corporations to issue non par stock, does not contravene Const., art. 10, §3. 172M303, 215NW185.

Where increase of stock was invalid, there was no double liability as to the increase. 172M334, 215NW428.

The test as to whether a Minnesota corporation is authorized to do an exclusively manufacturing business so that its stockholders are not subject to a double liability, is whether, under its articles of incorporation, the corporation can maintain the right to conduct other than a manufacturing business against the objection of the state or dissenting stockholders. 172M394, 215NW521.

Exploring for iron and other ores, and dealing in mineral lands as an incident, is not a "manufacturing business" nor so closely related to manufacturing as to be incidental thereto. The articles of incorporation in this case held to permit the defendant corporation to engage in other than a manufacturing business or a mechanical business incidental thereto, and its stockholders are subject to double liability. 173M1, 216NW325.

The superadded liability is contractual in its nature and is assumed by one becoming a stockholder. 173M603, 218NW121.

The provision for a superadded stockholder's liability creates a substantive right, enforceable in any court of competent jurisdiction as an incident of a receivership. 173M603, 218NW121.

A federal court has jurisdiction to empower a receiver of a Minnesota corporation appointed by it to institute actions in state court to enforce constitutional liability, using the remedy provided by state statute. 173M603, 218NW121.

Stockholder cannot offset corporation's indebtedness to him. 174M387, 219NW452.

Provision in Mason's Stat., §7836, for forfeiting and retiring stock of offending stockholder does not free him from double liability. 174M427, 219NW466.

The creditors may waive right to resort to constitutional liability of stockholders and such defense is not determined by the order of assessment, but may be interposed when the receiver brings suit. 175M44, 219NW 945.

A voluntary composition agreement between a corporation and its creditors, whereby the corporation transfers all of its property in consideration of being released from all liability on the amounts owing the creditors, waives and releases the constitutional liability of the stockholders. 175M382, 221NW426.

Stockholders were not liable where manufacturing corporation was converted into a mercantile corporation by amendment of the charter. 176M588, 224NW245.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent and may resort to stockholders' double liability. 177M72, 224NW454.

Court acquired jurisdiction to assess stockholders of insolvent co-operative corporation, even though there was an obvious misprint of the year in the published notice of hearing and no proper proof of personal service of notice. 177M211, 225NW22(2).

Defense that judgment upon which sequestration proceeding was based, was obtained by fraud or collusion, cannot be set up in action to collect assessment. 177M 526, 225NW649.

One who was a director of a certain company, was estopped to claim that he was induced through deceit to accept stock in the company and believed that he was stockholder in another company with a similar name. 178M9, 225NW927.

No rights arose in receiver in sequestration proceedings from the fact that corporation issued stock to stockholders as security for a loan, there being no creditor whose claim did not come into existence until after the corporation gave its notes for and canceled the stock. 178M179, 226NW513.

A corporation may buy and sell its own shares provided it does so in good faith without intent to injure and without in fact injuring its creditors. 178M179, 226 NW513.

Representation that corporate stock was not subject to assessment was one of law and there was no larceny. 178M446, 227NW495.

Where stockholder, prior to bankruptcy of corporation, offered to surrender his stock on ground of fraudulent representation, but took no steps to perfect rescission, he had no defense which he could urge against receiver suing to enforce assessment. 179M259, 228NW917.

One who subscribes to the stock of one corporation and receives that of another does not become a stockholder, and he is not estopped to deny that he is liable as such. 181M316, 232NW519. See Dun. Dig. 2080a.

Where a purchaser of stock from corporation which has not complied with the Blue Sky Law may recover the money paid, he cannot defend a suit brought by the receiver of the corporation to enforce the stockholders' liability, and it is immaterial that a certificate of stock has not been issued to him. 181M327, 232NW523. See Dun. Dig. 2061.

An active director of a corporation was estopped to deny that he was a stockholder, as respected double liability. Johnson v. B., 182M385, 234NW590. See Dun. Dig. 2080, 2080a.

Limitations was not tolled, as against liability of stockholder accruing at appointment of receiver, by reason of continuances and negotiations, on the theory of estoppel, or otherwise. Miller v. A., 183M12, 235NW622. See Dun. Dig. 2080.

If cause of action for double liability of stockholder accrued at time receiver was appointed, action was barred six years thereafter. Miller v. A., 183M12, 235NW622. See Dun. Dig. 2080.

Liability of stockholders in state banks. Bank of D. v. M., 183M127, 235NW914. See Dun. Dig. 796(84).

A bona fide transferor of stock is not liable for the debts of the bank incurred after the transfer. He is liable for those existing at the time of the transfer and not afterwards paid. Bank of D. v. M., 183M127, 235NW 914. See Dun. Dig. 803(13).

The amendment of this section cannot be said to impair the obligation of contracts with respect to pre-existing liability, since it merely confers on the legislature the power to define the liability, and in such definition to preserve existing contract rights. Id.

Assessment of stockholders of a state bank, authorized by Mason's Stat., §7684 et seq., creates a fund which is an asset of the bank which cannot be applied to discharge double liability of stockholders. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 2080.

Constitutional double liability of stockholders of bank is for benefit of creditors, and bank has no authority over the fund created by its enforcement. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 2080(45).

Corporation quarrying stone and marketing rough products held not engaged in manufacturing or mechanical business. Veigel v. M., 186M182, 242NW621. See Dun. Dig. 2080.

Complaint in action to enforce stockholders' liability was not demurrable because of absence of allegation that complaint in action resulting in sequestration alleged that debt accrued prior to repeal. Miller v. R., 188 M35, 246NW465. See Dun. Dig. 2142, 2161, 2170.

A corporation organized for purpose of "buying, selling, manufacturing and dealing in milk, cream, ice cream, cheese and butter, handling, managing, owning, operating, and controlling a creamery or creameries in usual course of such business, and to do and perform all acts and things usual, requisite and necessary on premises," is not an exclusively manufacturing corporation whose stockholders were exempt from liability. Olivia Creamery & Produce Ass'n., 188M52, 246NW480. See Dun. Dig. 2080(58).

Petition and notice of hearing for order of assessment against stockholders were not vitiated by some palpably inadvertent errors therein. Mutual Trust Life Ins. Co. v. A., 196M226, 265NW48. See Dun. Dig. 2080.

No substantial right of defendant, a stockholder in insolvent domestic corporation, was adversely affected by failure to file order of assessment of shares of stock until after commencement of action to enforce payment; order being on file before trial began and there being ample time to commence another action had pending action been dismissed. Hatlestad v. A., 196M230, 265NW60. See Dun. Dig. 2080.

Finding that purchases by retailer corporation constituted but one continuing account upon which payments made were directed to be applied to earliest maturing obligations held supported by evidence. Martin Brothers Co. v. L., 198M321, 270NW10. See Dun. Dig. 2080.

Validity and effect of order for enforcement of liability in suit in foreign state to enforce order. Chandler v. M., 13Pac(2d)(Wash)22. See Dun. Dig. 5207.

The state securities commission of a sister state cannot take away the protection to creditors afforded by this section. Cox v. Updegraff, 14Pac(2d)(Ore)280. See Dun. Dig. 1698.

The liability imposed by this section as it existed prior to the adoption of the Amendment of 1930 was a contractual one. Op. Atty. Gen., 1931.

The constitutional liability of stockholders who acquired their stock prior to the date the Amendment of 1930 became effective exists in favor of creditors who became such prior to that date. Op. Atty. Gen., 1931.

There is no liability of stockholders in corporations organized since the amendment of 1930 other than banks or trust companies, the old constitutional provision being impliedly repealed, and there will be no such liability until the legislature creates it. Op. Atty. Gen., 1931.

The amendment of this section in 1930 was in fact a substitute rather than an amendment for the existing constitutional provision. Op. Atty. Gen., 1931.

No constitutional liability attaches to purchasers of stock who became such subsequent to the date the Amendment of 1930 became effective, though the corporation had been doing business for several years and had existing liabilities on that date. Op. Atty. Gen., 1931.

Stockholders of elevator company are not subject to double liability of debts thereof, unless incurred prior to Nov. 4, 1930. Op. Atty. Gen., Feb. 18, 1933.

Laws 1933, c. 55, does not contemplate finding of insolvency by reason of declaration of emergency by directors of bank and contingent liability of stockholder does not become absolute. Op. Atty. Gen., Mar. 10, 1933.

Since the 1930 amendment preferred stock of state banks cannot be made non-assessable. Op. Atty. Gen., Mar. 31, 1933.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

Insurance company may issue preferred stock which shall not be subject to any double liability, but such stock may not be exempted from assessment to make up impairment of capital. Op. Atty. Gen., Sept. 26, 1933.

Stockholders who acquired their stock prior to Nov. 24, 1930, are constitutionally liable to extent of amount of their stock, as to those creditors who became such prior to Nov. 24, 1930, but no constitutional liability attaches to purchases of stock subsequent to Nov. 24, 1930, even though corporation had existing liabilities at that date. Op. Atty. Gen. (93a-25), Feb. 8, 1939.

Articles of incorporation may be such as to give creditors contractual rights against stockholders. Id.

Shares in a cooperative organized after 1931 are not assessable or liable in case of dissolution under present law, but legislature has power to limit and regulate liability of stockholders and members of corporations and cooperatives, regardless of how organized. Op. Atty. Gen. (93a-18), June 30, 1939.

Liability of shareholders of a holding company on bank stock held in corporate name. 20 MinnLawRev312.

4. Lands taken for public way.

Lot owners have no constitutional right to damages for an obstruction of a street by a railroad embankment simply because the embankment is within the same plat as their lots. Locascio v. N., 185M281, 240NW661. See Dun. Dig. 3049(14).

ARTICLE 11.—COUNTIES AND TOWNSHIPS.

3. Organization of townships.

Fact that township owned telephone system is also operated in part for governmental purposes, for protec-

tion from forest and prairie fires, promoting public welfare, public health, and public safety, and facilitating work of public improvements, does not exempt town from liability for negligence in operating a public utility. Storti v. T., 194M628, 261NW463. See Dun. Dig. 9658.

Where an organized township constructs and maintains a town telephone system, under §§5312 to 5316 and furnishes ordinary telephone service thereby to private residents of township, town is engaged in operating a public utility and is liable for negligence of its officers and agents in so doing. Id.

Article 13.—IMPEACHMENT AND REMOVAL FROM OFFICE.

1. Impeachment of certain state officers.

House File No. 1122, providing that any officer having alcoholic beverages in his possession shall forfeit his office, would be unconstitutional if passed. Op. Atty. Gen., Mar. 30, 1931.

2. Removal.

House File No. 1122, providing that any officer having alcoholic beverages in his possession shall forfeit his office, would be unconstitutional if passed. Op. Atty. Gen., Mar. 30, 1931.

County auditors and other officers issuing certificates for payment of wolf bounties on fox violate both §6258 and §10053 and may be removed from office. Op. Atty. Gen. (47f), Mar. 17, 1938.

Governor's constitutional powers of appointment and removal. 22MinnLawRev451.

Article 14.—AMENDMENTS TO THE CONSTITUTION.

1. Submission to the people.

Under Mason's Minn. Stats. 1927, §347, supreme court is authorized to direct secretary of state to refrain from preparing, printing and distributing ballots containing a proposed amendment to constitution forbidden by last provision in this section. Winget v. H., 187M78, 244NW331. See Dun. Dig. 1573.

Laws 1931, c. 420, proposing an amendment to constitution to extend scope of taxation, held not multifarious. Winget v. H., 187M78, 244NW331. See Dun. Dig. 1573.

Article 16.—TRUNK HIGHWAY SYSTEM.

1. Creation of system.

Reimbursement of counties for money expended by them through boroughs, villages or cities in improving trunk highways. See Laws 1929, c. 122; Laws 1931, cc. 67, 168.

Proposed amendment relating to trunk highway system by Laws 1933, c. 439, rejected at the 1934 general election. State v. Stanley, 188M390, 247NW509; note under §2554.

Murphy v. G., 189M109, 248NW715. See Dun. Dig. 8120, 8121.

Condemnation by the state for relocation of constitutional highway number 1, of allotted lands in Grand Portage Indian Reservation cannot be maintained without the consent of the Secretary of the Interior. U. S. v. State of Minnesota, (CCA8), 95F(2d)468. Aff'd, 59SCR 292.

The amount of traffic on a highway is an element to be considered as bearing upon loss of time and inconvenience to one whose land is divided. 171M369, 214NW 653.

When a permanent trunk highway is located by the highway commissioner the practicable road along the general location is not thereby vacated, but reverts to the control of the county or town board as the case may be. 171M369, 214NW653.

Jury properly permitted to determine acreage involved in determining damages, and verdict held not excessive. 171M369, 214NW653.

This amendment clearly provides that trunk highways shall not extend within the limits of cities of the first class. 175M103, 220NW408.

Subdivisions 3 and 4 of §13, c. 323, Laws 1921, are entirely consistent with the provisions of the Constitution, art. 16. 175M103, 220NW408.

The title of c. 530, Laws 1919, submitting this amendment is general and in no way intimates that trunk highways should or should not enter cities. 175M103, 220NW 408.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226 NW398. Followed in 178M430, 227NW357(2).

An enlargement by the court against objection, of condemnation proceedings to include easements over lands or lots not sought in the state's petition, is an unwarranted interference with properly delegated legislative functions. State v. Erickson, 185M60, 239NW908. See Dun. Dig. 4158(71).

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated routed. It is the exercise of a legislative function constitutionally delegated to the commissioner by the legislature and is conclusive on the courts as to the necessity of the taking. State v. Erickson, 185M60, 239NW908. See Dun. Dig. 4158(71).

Sections 1 and 2 permit state to reimburse counties out of trunk highway fund only for "permanently improving" roads. State v. Babcock, 186M132, 242NW474. See Dun. Dig. 8452.

Purchasing or acquiring of right of way for new road is not "improving" or improvement of road. State v. Babcock, 186M132, 242NW474.

It is duty of railroad to construct and maintain roadbeds and approaches where track crosses trunk highway on grade. Engstrom v. D., 190M208, 251NW134.

Where county under plan approved by state highway department constructed underpass under trunk highway for use of an ice company, leaving open excavation on each side of paved portion of highway, into which a pedestrian fell in nighttime, ice company was not liable, being under no duty to take precautions or protective measures for safety of traveling public. Otten v. B., 198 M356, 270NW133. See Dun. Dig. 8452.

When highway commissioner acts within limits and in manner prescribed by law, no court may properly interfere. State v. Werder, 273NW714. See Dun. Dig. 8452.

Purpose of amendment proposed by Laws 1933, c. 439, is to confirm establishment of all new routes added to trunk highway system by 1933 legislature and to give legislature unrestricted authority to add new routes after 75% of total mileage has been constructed and permanently improved. Op. Atty. Gen. (86q-34), May 1, 1934.

Commissioner of highways may install lights on trunk highways at intersections in cities and villages and pay for cost out of highway funds. Op. Atty. Gen. (229e-2), Feb. 3, 1937.

Commissioner of highways may legally enter into agreement with proper authorities of the U. S. concerning maintenance, repairs, and reconstruction of trunk highways within the Fort Snelling Reservation, including bridge constructed by war department over Mississippi river. Op. Atty. Gen. (229k), Feb. 15, 1938.

Route No. 3.

The two cities of Minneapolis and St. Paul adjoining, there is no space or occasion for building any trunk highway to connect one with the other. 175M103, 220NW 408.

Routes 73 to 211, inclusive.

See §§2662-2½, 2662-2½a.

2. Fund.

State v. Babcock, 186M132, 242NW474; notes under art. 16, §1.

Laws 1929, c. 394, appropriating money out of the trunk highway fund to pay damages to persons injured through negligence of highway department held invalid. 181M409, 232NW718. See Dun. Dig. 8452.

Where lands are purchased by commissioner of highways for a use other than trunk highway purposes, state auditor has no right or authority to issue a warrant on trunk highway fund in payment thereof. State v. District Court, 196M44, 264NW227. See Dun. Dig. 8452.

Expenses of motor vehicle division of Department of Secretary of State cannot be paid from funds derived from collection of motor vehicle taxes. Op. Atty. Gen., Feb. 7, 1931.

Laws 1931, c. 306, §7, item 4, an appropriation for the motor vehicle department, violates this section. Op. Atty. Gen., June 29, 1931.

Laws 1937, c. 480, permitting personal injury and property damages to be paid out of trunk highway fund, is unconstitutional. Op. Atty. Gen. (229a), Jan. 25, 1939.

Payment of damage claims against highway department for relocation of highway may not be paid from trunk highway fund. Op. Atty. Gen. (229a), Jan. 27, 1939.

3. Taxation of motor vehicles.—The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property; provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village, and except that the legislature may impose such tax upon motor vehicles of companies paying taxes under gross earnings system of taxation and upon the right to use such vehicles upon the public highways notwithstanding the fact that earnings from such vehicles may be included in the earnings of such companies upon which such gross earnings taxes are computed. Any such law may, in the discretion of the legislature,

provide for the exemption from taxation of any motor vehicle owned by a nonresident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid in to said trunk highway sinking fund. Adopted Nov. 2, 1920. Amended, Election Nov. 8, 1932. Proclaimed Nov. 28, 1932.

The Motor Vehicle Registration Tax Law, held valid and applicable to vehicles owned by members of the military forces of the United States residing on the Fort Snelling Military Reservation and using the highways of the state for their personal business and pleasure. Storaasli v. State, 283US57, 51SCR354, aff'g 180M281, 230NW 572. See Dun. Dig. 4167a, 9576d.

Nature of tax. 173M72, 216NW542.

Citizen and resident of the state must pay motor vehicle tax therein, although he spends the major portion of the year with his car in another state. State v. White, 176M183, 222NW918.

Taxation of motor vehicles in hands of dealers on May 1st. 178M300, 227NW43.

Laws 1929, c. 361, (§§2673-2, 2673-3), excepting from the operation of the gross earnings tax on express companies the license tax on vehicles using the highways, held unconstitutional. 180M268, 230NW815.

Laws 1931, c. 306, §7, appropriating motor vehicle license moneys to defray expenses of issuing licenses, does not contravene this article. State v. King, 184M250, 238NW334. See Dun. Dig. 9576d.

Chapter 58, Laws 1931 [Mason's Supp., 1931, §2674], relating to the taxation of automobiles of dealers in new and unused motor vehicles, is valid, and does not offend any constitutional provision. City of Minneapolis v. A., 188M167, 246NW660. See Dun. Dig. 9143.

Laws 1931, c. 306, §7, item 4, appropriating $400,000 for the year 1931 and $420,000 for the year 1932, from the receipts of the state tax on motor vehicles, is unconstitutional. Op. Atty. Gen., June 29, 1931.

Section 2672, as amended, providing for classification of trucks for purposes of taxation, is constitutional. Op. Atty. Gen. (632e-34), June 12, 1934.

Dog ambulance owned and used by Humane Society of St. Paul is not exempt from motor vehicle license tax. Op. Atty. Gen. (632e-12), Apr. 5, 1937.

Combination motor vehicle and feed grinder permanently attached to motor vehicle is subject to motor vehicle tax, but is exempt from personal property tax. Op. Atty. Gen. (632e-2), Aug. 1, 1938.

4. Bonds.

Laws 1929, c. 412, authorizes issues of bonds to retire maturing county highway bonds during the years 1930, 1931, and 1932.

ARTICLE 17.—ABATEMENT AND PREVENTION OF FOREST FIRES.

1. Authority to contract debts, pledge, credit, assess benefits, and pay damages.

Cutting and sale of dead, down and standing timber for forest fire protection on state trust fund lands within state forests is authorized, and department of conservation *may sell such timber as an ordinary sale of* timber product and may pay federal CCC agency such part thereof as may be required to meet its regulations as part of project costs. Op. Atty. Gen. (27b), Aug. 4, 1938.

SCHEDULE

2. Territorial laws continued.

Provision perpetuated "rights, immunities, franchises and endowments" held by university under territorial laws confirmed by constitution, including administration by a board of 12 regents, who themselves were the "body *corporate," to be elected by the two Houses of the Legis*lature in joint convention. State v. Quinlivan, 198M65, 268NW858. See Dun. Dig. 8694.

Assuming regents of university to be "officers," they have been removed from scope of that general rule by special constitutional provision confirming and perpetuating original franchises, which included election by legislature of regents, to hold franchise and insure intended succession. Id.