

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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Mason's Minnesota Statutes

Part I. Jurisdiction, Divisions, Civil Polity and Internal Administration

CHAPTER 1

Sovereignty and Jurisdiction

1. Extent.

Chicago Sanitary District authorized pursuant to stipulation with states bordering on Great Lakes to increase diversion of water for specified purpose. States of Wisconsin, Minnesota, Ohio, Pennsylvania, Michigan and New York v. Illinois, 309US569, 636, 61SCR155. See also 311US107, 61SCR154, 85LEd73; 61SCR831, 832. Petition dism'd 313US547, 61SCR1090, 1091.

Dominant power of federal government extends to entire bed of stream, which includes lands below ordinary high water mark, and exercise of such power is not invasion of any property right in such lands for which United States must pay compensation. U. S. v. Chicago, M. St. P. & P. R. Co., 312US592, 61SCR772, 85LEd1064, rev'g (CCA8), 113F(2d)919.

Boundary locations and disputes belong to the sovereign power of the nation, and are not for a state, county or taxpayer to determine. Pettibone v. C., (DC-Minn), 31FSupp881.

The commerce clause of the federal constitution gives Congress exclusive jurisdiction and authority over all matters pertaining or relating to interstate commerce. Madden v. Truckaway Corp., (DC-Minn), 46FSupp702. See Dun. Dig. 4895.

Exercise of either taxing power or police power by a state will not be sustained if effect is to establish an economic barrier between the states. State v. Ernst, 209M586, 297NW24, 134ALR643. See Dun. Dig. 1604.

That tribal Indians residing on a reservation owned and rode in automobiles or were married by a justice of the peace in the reservation did not establish that they had abandoned their tribal relation and became citizens of the state, subject to its laws. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 4347.

Tribal Indians residing on a reservation may go anywhere and get married, by anyone, including a justice of the peace, and return to the reservation and there become divorced according to usages and customs of the tribe, and without compliance with any state law. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 4347a.

Sovereign power and jurisdiction of a state is not limited to the ground, and an airplane in the air over territory of a state is within the state and subject to its sovereign power. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 249a, 8824.

The question of what constitutes local or intrastate business is largely one of fact to be determined by the circumstances presented in each particular case. Cohn-Hall-Marx Co. v. Feinberg, 214M534, 8NW(2d)825. See Dun. Dig. 4894.

State may and does own property, both real and personal, to which the general public has no right of use, but rather to which the attributes of private ownership have attached and are exercised, and a roadway from a parking lot on state owned land opposite the state penitentiary is a "private road or driveway" within meaning of traffic laws. Merriott v. Stuve, 215M44, 9NW(2d)329. See Dun. Dig. 8329.

Where a subject is national in its character, involves a matter of public policy, and requires uniformity of regulation, congress alone has the prerogative to provide the needed regulations. Union Brokerage Co. v. Jensen, 215M207, 9NW(2d)721. See Dun. Dig. 4895.

The fact that Congress has been silent in respect to a matter of national character has been held to be a declaration that the particular commerce should be free from regulation. Id. See Dun. Dig. 4895.

Where a business may to some extent affect interstate commerce, but where no substantial effect upon the commerce appears, absent congressional regulation, the states are free to act, though when Congress does act the exercise of its authority overrides all conflicting state regulations where the exercise of such power has a real or substantial relation to some part of the commerce itself. Id. See Dun. Dig. 4895.

If the effect of intrastate transactions under interstate commerce is only remote and does not encroach substan-

tially thereon, such transactions remain within the province of state power. Id. See Dun. Dig. 4894.

Business of a customhouse broker is intrastate rather than interstate in character. Id. See Dun. Dig. 4894.

The control of Congress over interstate business is exclusive, and any attempt on the part of the states to regulate or interfere with such commerce is void. Id. See Dun. Dig. 4895.

If the federal constitution secures to employees the right to picket in the manner complained of, it is determinative of controversy in state court regardless of what the state law is. Glover v. Minneapolis Building Trades Council, 215M533, 10NW(2d)481, 147ALR1071. See Dun. Dig. 1586.

Sheriff may not arrest a soldier on military reservation at Fort Snelling under a warrant for a felony under state law, but may arrest him any other place or while he is on furlough for purpose of investigating complaint against him. Op. Atty. Gen. (310j), May 23, 1941.

Indian rights and the federal courts. 24MinnLawRev 145.

2. Jurisdiction over waters.—All courts and officers now or hereafter having and exercising jurisdiction in any county which is now or may hereafter be formed in any part of this state bordering upon Big Stone Lake, Lake Traverse, Bois de Sioux River, or the Red River of the North, shall have and exercise jurisdiction in all civil and criminal cases upon such waters concurrently with the courts and officers of other states bordering on such waters, so far and to such extent as any of these bodies of water form a common boundary between this state and any other state. (As amended Apr. 9, 1943, c. 349, §1.)

3. Waters included.—The concurrent jurisdiction of any county now or hereafter formed and of all courts and officers exercising jurisdiction throughout the county shall extend over such water area as would be included if the boundary lines of the county were produced in the direction of their approach and extended across these waters to the opposite shore. (As amended Apr. 9, 1943, c. 349, §2.)

3-1. Subdivision 1. Jurisdiction of state and United States concurrent.—Except as otherwise expressly provided, the jurisdiction of the United States over any land or other property within this state now owned or hereafter acquired for national purposes is concurrent with and subject to the jurisdiction and right of the state to cause its civil and criminal process to be executed therein, to punish offenses against its laws committed therein, and to protect, regulate, control, and dispose of any property of the state therein.

Subdivision 2. Land exchange commission may concur.—In any case not otherwise provided for, the consent of the State of Minnesota to the acquisition by the United States of any land or right or interest therein in this state desired for any authorized national purpose, with concurrent jurisdiction as defined in subdivision 1, may be given by concurrence of a majority of the members of the Land Exchange Commission created by the Constitution of the State of Minnesota, Article 8, Section 8, upon finding that such acquisition and the methods thereof and the exercise of such jurisdiction are consistent with the best in-

terests of the state, provided application for such consent is made by an authorized officer of the United States, setting forth a description of the property, with a map when necessary for proper identification thereof, and the authority for, purpose of, and method used or to be used in acquiring the same. The commission may prescribe the use of any specified method or methods of acquisition as a condition of such consent.

In case of acquisition by purchase or gift, such consent shall be obtained prior to the execution of any instrument conveying the lands involved or any interest therein to the United States. In case of condemnation, such consent shall be obtained prior to the commencement of any proceeding therefor. (Act Apr. 7, 1943, c. 343, §1.)

[1.041]

3-2. Subdivision 1. Consent of state given.—The consent of the State of Minnesota is hereby given in accordance with the Constitution of the United States, Article I, Section 8, Clause 17, to the acquisition by the United States in any manner of any land or right or interest therein in this state required for sites for customs houses, courthouses, hospitals, sanatoriums, post-offices, prisons, reformatories, jails, forestry depots, supply houses, or offices, aviation fields or stations, radio stations, military or naval camps, bases, stations, arsenals, depots, terminals, cantonments, storage places, target ranges, or any other military or naval purpose of the United States.

Subdivision 2. Jurisdiction ceded to United States.—So far as exclusive jurisdiction in or over any place in this state now owned or hereafter acquired by the United States for any purpose specified in subdivision 1 is required by or under the constitution or laws of the United States, such jurisdiction is hereby ceded to the United States, subject to the right of the state to cause its civil and criminal process to be executed on the premises, which right is hereby reserved to the state. When the premises abut upon the navigable waters of this state, such jurisdiction shall extend to and include the under-water lands adjacent thereto lying between the line of low-water mark and the bulkhead or pier-head line as now or hereafter established. (Act Apr. 7, 1943, c. 343, §2.)

[1.042]

Exclusive uses do not embrace operation of a wild rice reserve or an Indian reservation of any character. Op. Atty. Gen. (240r), Aug. 17, 1943.

3-3. Jurisdiction not to vest until United States has acquired title.—The jurisdiction granted or ceded to the United States over any place in this state under section 1 or section 2 shall not vest until the United States has acquired the title to or right of possession of the premises affected, and shall continue only while the United States owns or occupies the same for the purpose or purposes to which such jurisdiction appertains as specified in those sections. (Act Apr. 7, 1943, c. 343, §3.)

[1.043]

3-4. Consent of state for establishment of upper Mississippi wild life and fish refuge given.—Consent of the State of Minnesota is given to the acquisition by the United States by purchase, gift, or lease of such areas of land or water, or both, in this state as the United States may deem necessary for the establishment of the Upper Mississippi River Wild Life and Fish Refuge in accordance with and for the purposes of the act of congress approved June 7, 1924, entitled "An act to establish the Upper Mississippi River Wild Life and Fish Refuge," reserving to the state full and complete jurisdiction and authority over all such areas not incompatible with the maintenance and control thereof by the United States for the purposes and under the terms of that act of congress. (Act Apr. 7, 1943, c. 343, §4.)

[1.044]

3-5. Consent of state given to acquire certain lands.—Consent of the State of Minnesota is given to the acquisition by the United States in any manner authorized by act of congress of lands lying within the original boundaries of the Chippewa National Forest and the Superior National Forest for any purpose incident to the development or maintenance of those forests, subject to concurrent jurisdiction of the state and the United States as defined in section 1. (Act Apr. 7, 1943, c. 343, §5.)

[1.045]

3-6. Consent to be evidenced by certificate of Governor.—The consent of the state given by or pursuant to the provisions of this act to the acquisition by the United States of any land or right or interest therein in this state or to the exercise of jurisdiction over any place in this state shall be evidenced by the certificate of the governor, which shall be issued in duplicate, under the great seal of the state, upon application by an authorized officer of the United States and upon proof that title to the property has vested in the United States. The certificate shall set forth a description of the property, the authority for, purpose of, and method used in acquiring the same, and the conditions of the jurisdiction of the state and the United States in and over the same, and shall declare the consent of the state thereto in accordance with the provisions of this act, as the case may require. When necessary for proper identification of the property a map may be attached to the certificate, and the applicant may be required to furnish the same. One duplicate of the certificate shall be filed with the secretary of state. The other shall be delivered to the applicant, who shall cause the same to be recorded in the office of the register of deeds of each county in which the land or any part thereof is situated. (Act Apr. 7, 1943, c. 343, §6.)

[1.046]

3-7. United States to bring condemnation proceedings in state courts.—In any case where consent to the acquisition by the United States of any land or any right or interest therein by condemnation is given by or under the provisions of this act, the United States may effect such condemnation in the courts of this state in accordance with the laws of this state relating to eminent domain, or may effect such condemnation in the courts of the United States, as may be authorized by act of congress; provided, that in any case where consent by the Land Exchange Commission is required under section 1 the commission may specify which method of condemnation shall be used as a condition of such consent. (Act Apr. 7, 1943, c. 343, §7.)

[1.047]

3-8. Law repealed.—Mason's Minnesota Statutes of 1927, Sections 4 and 5, as amended by Laws 1941, Chapter 66, and Mason's Minnesota Statutes of 1927, Sections 6, 6-2, 6-3, 6-4, 6-5, and 6-6, and Mason's Supplement 1940, Section 6-1, are hereby repealed, but such repeal shall not affect any case in which the consent of the state to the acquisition of property or the exercise of jurisdiction by the United States was given by or under any of said provisions and the acquisition of the property was completed before the taking effect of this act, nor any case in which the consent of the state was given under Laws 1941, Chapter 66, before the taking effect of this act. (Act Apr. 7, 1943, c. 343, §8.)

[1.048]

4. Lands of United States—Jurisdiction. [Repealed.]

Repealed. Laws 1943, c. 343, §8.
St. Croix State Park. Laws 1943, c. 293.
United States may condemn land for wild rice lake Indian reserve which belongs to the state of Minnesota and is devoted by the state as a feeding and breeding place for water fowl and other game birds and animals. State of Minnesota v. U. S., (CCA8), 125F(2d)636. See Dun. Dig. 3030.

Fifty-year lease from government construed and effect of presidential proclamation concerning Beltrami Island resettlement area discussed. Op. Atty. Gen. (983g), Apr. 24, 1942.

Whether state court has jurisdiction of prosecution for crime committed on a C.C.C. camp depends upon whether conveyance, legislative act, or treaty expressly excludes the state's jurisdiction. Op. Atty. Gen., (605B-23), Feb. 24, 1941.

5. Sale of state lands to United States. [Repealed.]

Repealed. Laws 1943, c. 343, §8.

Title passes to United States when deed is recorded, as far as public is concerned. Op. Atty. Gen. (410), July 31, 1941.

Statute confers authority upon Governor to sell any lands to the government owned by the state, except those subject to constitutional restrictions as to public sale, such as school lands, and except those already devoted to a particular public use under existing law. Op. Atty. Gen. (700d-28), Oct. 22, 1942.

6 to 6-4. [Repealed.]

Repealed. Laws 1943, c. 343, §8.

6-5. Acquisition by United States of land and water for upper Mississippi River wild life and fish refuge; etc. [Repealed.]

Repealed. Laws 1943, c. 343, §8.

Laws 1941, c. 87, cedes jurisdiction over certain water areas to the United States for maintenance of a migratory waterfowl and wildlife refuge at Talcot Lake in Cottonwood County.

6-6. Same—State lands ceded. [Repealed.]

Repealed. Laws 1943, c. 343, §8.

6-9. Definitions.—That the following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract", and shall include renewals and alterations of a contract.

(2) "Political subdivision" shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.

(3) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(4) "United States" shall mean the United States of America.

(5) "County board" shall mean the county board of any county in this state.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States located within a political subdivision, and shall include the persons inhabiting such a project.

(7) "Governing body" shall mean the council, board, body, or persons in which the powers of a subdivision as a body corporate, or otherwise, are vested.

(8) "Fund" shall mean, unless otherwise expressed, the "Government Project Fund" to be established pursuant to Section 6 of this act. (Act Apr. 26, 1941, c. 480, §1.)

[471.49]

6-10. Agreement with the United States for services to be rendered, and payments to be made in lieu of taxes.—The county board of any county in this state is hereby authorized and empowered to make requests of the United States for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for the payment of such sums in lieu of taxes as the United States may agree to pay, and to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes; provided that at least ten days notice in writing of the meeting of the county board at which such proposed agreement will be considered and acted upon shall be given by the county auditor to the clerk of each political subdivision affected. (Act Apr. 26, 1941, c. 480, §2.)

[471.50]

6-11. Distribution of payments.—Every such agreement shall state the year or years for which the payments are to be made in lieu of the taxes that would have been levied upon the premises concerned for such year or years if the same has been subject to taxation. All payments made by the United States under any such agreement shall be received by the county treasurer and shall be distributed in the same manner and in the same proportions as such taxes for each year or years would have been distributed. (Act Apr. 26, 1941, c. 480, §3.)

[471.51]

6-12. Statement of names of political subdivisions.—Each agreement entered into pursuant to Section 2 shall contain the names of the political subdivisions with respect to which it is consummated, and a statement of the proportionate share of the payment by the United States to which each subdivision shall be entitled. (Act Apr. 26, 1941, c. 480, §4.)

[471.52]

6-13. Political subdivision may make agreement with United States.—If the United States declines to deal with a county board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county, or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby authorized to make request of the United States for payment of such sums in lieu of taxes as the United States may agree to pay, and is hereby empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project and for the payment by the United States to the subdivision, in one or more installments of such sums in lieu of taxes. The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision during said period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment. (Act Apr. 26, 1941, c. 480, §5.)

[471.53]

6-14. Disposition of money received.—All money received by a political subdivision hereunder shall be used in like manner as the proceeds of taxes upon the premises concerned. (Act Apr. 26, 1941, c. 480, §6.)

[471.54]

6-15. Construction of Act.—No provision of this act shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this act, of the duty of furnishing, for the benefit of a project, all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes. (Act Apr. 26, 1941, c. 480, §7.)

[471.55]

COMMON LAW
DECISIONS RELATING TO CHAPTER
IN GENERAL

1. In general.

Under the provisions of the 11th amendment to the Federal Constitution an action cannot be brought against a state either directly or when the state is a real party in interest, indirectly, through suit against state officers in their official capacity unless there is a constitutional infringement of rights. West Pub. Co. v. McColgan, (DC-Cal), 46FSupp163. See Dun. Dig. 3744, 8831.

A claim statute may recognize legal obligations of state if it sees fit so to do, and it may compensate by direct appropriation or it may waive immunity from suit. Westerson v. S., 207M412, 291NW900. See Dun. Dig. 8831.

Repeal of remedy does not mean loss of right or of consent to suit by the state. *State v. Stassen*, 208M523, 294 NW647.

Where attorney general appeared and answered to merits without suggestion of immunity to suit, it may be assumed that he consented to litigate issue his answer presents. *Nollet v. H.*, 210M88, 297NW164, 134ALR192. See Dun. Dig. 8831.

Administrator of Federal Housing Administration is subject to suit for tort of his agent committed in course and scope of agent's employment. *Zins v. J.*, 211M1, 299 NW685. See Dun. Dig. 9956d.

It is fundamental that the United States cannot be sued without its permission, but this sovereign immunity does not extend to its agents, individual or corporate. *Id.*

2. Liability for torts.

General rule is that a governmental agency is not answerable for damages sustained as result of negligence of its officers or agents in performance of governmental functions. *Westerson v. S.*, 207M412, 291NW900. See Dun. Dig. 8831.

By Laws 1939, c. 420, the state waived its sovereign immunity to suit for damages caused by the location, relocation, construction, reconstruction, improvement, maintenance, and supervision of the trunk highways sys-

tem to the extent and within the limits therein specified. *Id.* See Dun. Dig. 8831.

State cannot be sued without its consent, and laws 1937, ch. 480, §1, was not a consent to a suit for injuries in an explosion in a garage where trucks of maintenance department of state highway system were stored and where state employees negligently spilled gasoline. *Underhill v. S.*, 208M498, 294NW643. See Dun. Dig. 8831.

State is not liable for torts of its officers, agents or employees, unless it has assumed or consented to such liability. *Op. Atty. Gen.* (234), Nov. 12, 1941. See Dun. Dig. 8846b.

It cannot be sued without its consent. *Id.* See Dun. Dig. 8831.

State is not liable for damages caused by fire boat in Duluth Harbor crashing into other craft. *Op. Atty. Gen.* (844g), March 18, 1943.

Governmental responsibility for torts in Minnesota. 26 Minn. Law Rev. 293.

Governmental responsibility for torts in Minnesota. 26 Minn. Law Rev. 700.

3. Liability on contracts.

Legislature may prescribe such terms and conditions for right of recovery against state as it deems appropriate. *State v. Wm. O'Neil Sons Co.*, 209M219, 296NW7. See Dun. Dig. 8831.

CHAPTER 2

Territorial Divisions

LEGISLATIVE DISTRICTS

9. Boundaries of Legislative Districts.

Legislature has power at 1943 session to enact a reapportionment act based on 1940 census. *Op. Atty. Gen.* (8a), Jan. 21, 1943.

THIRTIETH DISTRICT

The thirtieth district shall be composed of all that part of the fourth ward lying north of Franklin Avenue; and the twelfth, thirteenth, and fourteenth precincts of the sixth ward, all in the City of Minneapolis and shall be entitled to elect one senator and two representatives. (As amended Apr. 20, 1943, c. 522, §1.)

THIRTY-FIRST DISTRICT

The thirty-first district shall be composed of the sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twen-

ty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, and thirty-third precincts of the fifth ward and the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh precincts of the sixth ward of the city of Minneapolis and shall be entitled to elect one senator and two representatives. (As amended Apr. 20, 1943, c. 522, §2.)

THIRTY-SECOND DISTRICT

The thirty-second district shall be composed of the seventh, eighth and eighteenth precincts of the seventh ward and the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, nineteenth, twenty-sixth and twenty-seventh precincts of the eleventh ward and all of the twelfth ward of the city of Minneapolis, and shall be entitled to elect one senator and two representatives. (As amended Apr. 20, 1943, c. 522, §3.)

CHAPTER 3

The Legislature

33. Compensation and mileage.—The compensation of members, officers, * * * * *

(1) to (6) * * * * *

(7). Each member shall receive mileage at the rate of fifteen cents per mile for the distance necessarily traveled in going and returning from the place of meeting, computed from his place of residence. (As amended Apr. 6, 1943, c. 326, §1; Apr. 24, 1943, c. 629, §2.)

Laws 1943, c. 329, §3, provides that the provisions of this Act shall take effect and be in force from and after the first Tuesday after the first Monday in January, 1945.

Contingent fund of lieutenant governor may be used to defray any expenses incurred in connection with discharge of official duties, including automobile mileage expenses. *Op. Atty. Gen.* (280k), May 27, 1941.

Member of House of Representatives may file for office of Lieutenant Governor though legislature has passed an act increasing salaries of members of the legislature, which would automatically increase the salary of the Lieutenant Governor. *Op. Atty. Gen.* (213d), Aug. 5, 1943.

35. Compensation of members.—The compensation of members of the House of Representatives of the Legislature of the State of Minnesota shall be \$2,000 for the entire term to which they are elected, payable as follows: \$500 on the first day of February, \$500 on the first day of March, \$500 on the first day of April

of the year in which the regular legislative session is held, and \$500 on the last day of the regular legislative session; the compensation of Senators of the Legislature shall be \$4,000 for the entire term to which they are elected, payable as follows: \$500 on the first day of February, \$500 on the first day of March and \$500 on the first day of April of each year in which a regular legislative session is held, and \$500 on the last day of such regular legislative session; provided, however, that in the event of extra legislative sessions, members of the legislature shall receive and be entitled to additional compensation at the rate of \$10.00 per day for each day while so engaged in extra session. Said additional compensation shall be paid to the members of the Legislature every ten days and on the last day during such extra legislative session. (As amended Apr. 6, 1943, c. 326, §1; Apr. 24, 1943, c. 629, §1.)

Laws 1943, c. 629, §3, provides that the provisions of that chapter, granting increases in the compensation of members of the legislature, shall take effect from and after the first Tuesday after the first Monday in January, 1945.

Federal victory tax applies to salaries of members of legislature and to help employed by legislature. *Op. Atty. Gen.* (531r), Jan. 9, 1943.