

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.

Edited by
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be guilty of a gross misdemeanor and each violation shall constitute a separate offense. (Act Apr. 16, 1943, c. 460, §8.) [340.407(2)]

3200-99. Inconsistent acts repealed.—All Acts, or parts of Acts, inconsistent with the provisions of this Act are hereby repealed. (Act Apr. 16, 1943, c. 460, §9.)

Laws 1943, c. 460, §10, provides act should take effect from and after passage.

PRIOR LAWS

3209. Prosecution. [Repealed.]

Where there has been continuous and persistent violations of liquor and gambling statutes and repeated convictions have failed to abate them an injunction is properly granted to abate a "public nuisance." State v. Sportsmen's Country Club, 214M151, 7NW(2d)495. See Dun. Dig.: 4947a.

3238-3. Places where sale forbidden.

There is no state law prohibiting licensing or operation of a place for sale of intoxicating liquor near a church. Op. Atty. Gen. (218g-1b), Mar. 27, 1941.

Where village voted against granting of license in 1914 and county voted against repeal of 18th amendment in 1933, but majority in village at that election were wet, and later village annexed land in a wet county, license cannot be issued for wet strip without a vote of electors at the general and not special election. Op. Atty. Gen. (218c-3), May 5, 1941.

3238-4. Persons to whom sales, etc., illegal.

Provisions forbidding sale of intoxicating liquor by persons who have been blacklisted do not apply to sale of non-intoxicating malt beverages. Op. Atty. Gen. (218e), June 6, 1940.

Municipal liquor store may not sell intoxicating liquor to father of a minor child, such liquor to be consumed by such minor upon the premises. Op. Atty. Gen. (218j-12), Sept. 5, 1940.

It is unlawful to sell 3.2 beer to an habitual drunkard after notice not to do so. Op. Atty. Gen. (218e), Jan. 20, 1943.

It is not a crime for a person of Indian blood to drink intoxicating liquor, nor to carry and have in his possession intoxicating liquor merely because he is an Indian. Op. Atty. Gen. (240c), July 12, 1943.

Indian rights and the federal courts. 24MinnLawRev 145.

3238-9. Sales, etc., to minors; etc.

Provisions forbidding sale of intoxicating liquor by persons who have been blacklisted do not apply to sale of non-intoxicating malt beverages. Op. Atty. Gen. (218E), June 6, 1940.

3238-11. Inducing minors, etc., to enter saloons, etc.

A place licensed to sell intoxicating liquors may not permit amateur performances therein by minors, even without compensation, unless a permit has first been obtained from industrial commission, and it is probable that such performances would violate criminal law. Op. Atty. Gen. (270a-4), May 24, 1941.

3238-12. Exclusion from places where liquor is sold to minors; etc., after notice—Penalty.

Where mayor of village in a dry county posted a notice in a beer parlor not to sell beer to a certain person, and was sued for libel, village council may reimburse mayor for attorneys fees and other expenses, and also a reasonable sum paid in settlement. Op. Atty. Gen., (469B-1), Nov. 16, 1939.

3238-18½. Sale by employee.

Revocation of license is mandatory where violation of statutes is wilful, otherwise revocation is discretionary, and violation by an employee would be discretionary unless licensee himself had knowledge of act and consented to or acquiesced in it, and there should be a hearing whether or not there has been a conviction for a violation. Op. Atty. Gen. (218g-14), April 8, 1940.

Section does not apply to off-sale liquor stores. Op. Atty. Gen. (218j-10), May 28, 1940.

CIVIL ACTIONS

3239. Action for injuries caused by intoxication.

Whether minor purchased or was given liquor at bar and as a result thereof died in jail, warranting recovery of damages by parents, held for jury, even though he committed suicide. Sworski v. C., 293NW297. See Dun. Dig. 4928a.

A person is liable for giving as well as selling liquor. Id.

This section does not manifest a legislative intent to protect beneficiaries of statute from their own failures or to impose a penal liability, and contributory negligence or intoxication may be a defense, but such is not true of liability under Minn. Stat. 1941, §340.12, Mason's Stat. 1940 Supp., §3200-26. Maves v. Byers, 214M54, 7NW(2d)403, 144ALR821. See Dun. Dig. 4918.

Liability of city for illegal acts of its bartender. Op. Atty. Gen. (844b), Jan. 28, 1943.

Section applies to city operating a municipal liquor store. Op. Atty. Gen. (218j-10), Feb. 3, 1943.

CHAPTER 16A

Cigarettes

3242. Licensing of sale of cigarettes; etc. [Repealed.]

Repealed. Laws 1941, c. 242.

Repealed. Laws 1941, c. 405.

3243. Licenses for sale and manufacture of cigarettes. [Repealed.]

Repealed. Laws 1941, c. 242.

Repealed. Laws 1941, c. 405.

Blind persons may manufacture or sell cigarettes without payment of license fee. Laws 1941, c. 461.

Various licenses may be posted in open faced paper display envelopes in a series fastened together at top like sheets of a calendar. Op. Atty. Gen. (829c), July 25, 1941.

3243-1. Exemptions—Blind persons.—No applicant for any license required of persons for the sale or manufacture of cigarettes shall be required to pay any fee to the state or any political subdivision thereof if he furnishes a doctor's certificate showing that he is blind, as defined by Laws of 1937, Chapter 324. (Act Apr. 26, 1941, c. 461, §1.) [461.15]

3244 to 3248. [Repealed.]

Repealed. Laws 1941, c. 242.

Repealed. Laws 1941, c. 405.

Sec. 2, Act Apr. 24, 1941, c. 405, provides that the powers and duties of the commissioner of taxation with respect to enforcement of cigarette license law shall continue until Dec. 31, 1941, and thereafter to the extent necessary to enforce penalties previously accrued.

3250-1. Repeal.—Mason's Minnesota Statutes of 1927, Sections 3242, 3244, 3245, 3246, 3247, and Mason's Supplement 1940, Sections 3243 and 3248, are hereby repealed, effective December 31, 1941. (Act Apr. 16, 1941, c. 242, §1; Act Apr. 24, 1941, c. 405, §1.)

State licensing law is repealed as of January 1, 1942, upon which date municipalities are authorized to regulate sales. Op. Atty. Gen. (829c-1), Nov. 12, 1941.

3250-2. Powers and duties of Commissioner of Taxation Continued.—The powers and duties of the commissioner of taxation with respect to the enforcement of the laws relating to licensing the manufacture and sale of cigarettes shall continue until December 31, 1941, and thereafter to the extent necessary to enforce penalties and collect fees accruing prior to said date. (Act Apr. 16, 1941, c. 242, §2; Act Apr. 24, 1941, c. 405, §2.)

3250-3. License and retail sale to be regulated by local governing bodies.—The governing body of each village, borough, and city of any class, may, after January 1, 1942, license and regulate the sale at retail of cigarettes, cigarette paper or cigarette wrappers and may fix the license fee therefor at not to exceed \$12.00 per annum, and provide for the punishment of any violation of such regulations, and may make such other provisions for the regulation of the sale of cigarettes within its jurisdiction as are permitted by

law. The county board may make like provisions for licensing and regulating the sale of cigarettes in areas outside the limits of any municipality, provided that no license shall be issued for the conduct of such business in any town, unless the consent of the governing body of such town, if organized, is filed with the application for such license. (Act Apr. 16, 1941, c. 242, §3; Act Apr. 24, 1941, c. 405, §3.) [461.12]

Laws 1941, c. 405, controls over Laws 1941, c. 242, and proper license fee is \$12.00 per year. Op. Atty. Gen. (829c-3), July 31, 1941.

County board may enact an ordinance licensing and regulating sale, or may do so by resolution. Op. Atty. Gen. (829C-1), Sept. 25, 1941.

It is not mandatory for county board or municipality to enact provisions for regulation, and where no ordinances regulating sale are enacted, cigarettes may be sold without license or regulation. Op. Atty. Gen. (829C-1), Oct. 24, 1941.

County board has implied authority to provide for punishment of violations of regulations. Op. Atty. Gen. (829c-1), Nov. 19, 1941.

Municipalities are authorized to license the "retail" sale of cigarettes and papers, and wholesale sale need not and cannot be licensed. Op. Atty. Gen. (829e-1), Dec. 13, 1941.

Law leaves entire matter in hands of local municipality to be regulated by ordinance of resolution. Op. Atty. Gen. (829C-6), Feb. 17, 1942.

City has no power to license wholesaling of cigarettes, in absence of a charter provision expressly giving such power. Op. Atty. Gen. (829C-1), Feb. 20, 1942.

A wholesaler need not obtain a license. Id.

County board has some discretion in granting of licenses, but a regulation must not be arbitrary or oppressive, and may adopt a by-law providing that any license issued may be revoked for cause after notice and hearing. Op. Atty. Gen. (829C-1), Feb. 25, 1942.

Whether or not licensing fee may be pro-rated for any portion of a year is dependent upon ordinance or resolution adopted by county board or municipality. Op. Atty. Gen. (829c-1), Apr. 9, 1942.

While an ordinance prohibiting disposal of cigarettes or cigarette paper in any form to any person under 18 years of age, or to minors in educational institutions, could be upheld under the Minneapolis health clause of the charter of Minneapolis, the relation of licensing the sale of cigarettes at wholesale to the objects or purposes of the general welfare clause of the charter would be difficult to establish. Op. Atty. Gen. (829c-1), July 24, 1943.

3250-4. Fees, benefits.—The fees for licenses granted by the governing body of any municipality shall be for the benefit of the municipality; fees for licenses issued by the county board shall be paid to the county treasurer who shall apportion ten per cent thereof to the general revenue fund of the county and the balance to the town in which the business licensed is conducted. If a license is issued by the county board for the conduct of business in an area outside the limits of any organized town or municipality, the

entire fee shall be paid to the general revenue fund of the county. (Act Apr. 16, 1941, c. 242, §4; Act Apr. 24, 1941, c. 405, §4.) [461.13]

Where license is issued for conduct of business outside limits of any organized city or village, fees are paid to county treasurer, ten percent being retained by county and balance paid to township. Op. Atty. Gen. (829C-1), Jan. 3, 1942.

3250-5. Licenses not affected.—This act shall not affect the validity of any license issued prior to December 1, 1941. (Act Apr. 16, 1941, c. 242, §5; Act Apr. 24, 1941, c. 405, §5.) [461.14]

3250-6. State dairy and food commissioner to issue license to common carriers—Enforcement of law—Violation.—Subdivision 1. The state dairy and food commissioner may issue a license or permit to any railroad company, dining car company or sleeping car company or other common carrier operating in this state, to sell cigarettes upon any club, parlor, dining, buffet, observation, cafe, lounge or passenger car. Each such company applying for such license shall pay to the dairy and food commissioner a fee of \$25.00 per annum. A duplicate of such license shall be posted in each such car in which cigarettes are sold. The license so granted shall govern and permit the sale of cigarettes in the state of Minnesota, or in any political subdivision thereof, in any club, parlor, dining, buffet, observation, cafe, lounge or passenger car which is part of a train or which is about to become a part of a train then being operated or to be operated in this state. Such cigarettes are to be sold only to bona fide passengers or persons actually being transported.

Subdivision 2. It shall be unlawful to sell, exchange, barter, dispose of or give away, or keep for sale any cigarettes on any such car without first having obtained the license herein provided.

Subdivision 3. The state dairy and food commissioner, his inspectors and assistants and employees, shall enforce the provisions of this section, and the fees collected shall be paid into the state treasury by the dairy and food commissioner.

Subdivision 4. Any person violating any of the provisions of Section 6 of this act shall be guilty of a misdemeanor. (Act Apr. 16, 1941, c. 242, §6; Act Apr. 24, 1941, c. 405, §6.) [17.34]

Editorial note.—Both of the acts given as credits for §§3250-1 to 3250-6, are identical except that the former limits the annual license fee at \$1,200, while the latter limits the annual license fee at \$12.00.

CHAPTER 16B

Athletic Commission

3260-4. Commission to appoint boxing commissioner; etc.

Secretary of state athletic commission is the head of a department and in unclassified service. Op. Atty. Gen. (644b), May 1, 1942.

3260-5. Duties of commission.

Commission should supervise and collect a tax on a school boxing tournament where an admittance charge is made. Op. Atty. Gen. (596B-6), Feb. 27, 1941.

CHAPTER 17

Illegitimate Children—Bastards

3261. Complaint—Where filed—Warrant.—On complaint being made to a justice of the peace or municipal court by any woman who is delivered of an illegitimate child, or pregnant with a child which, if born alive, might be illegitimate, accusing any person of being the father of such child, the justice or clerk of the court shall take the complaint in writing, under

her oath, and thereupon shall issue a warrant, directed to the sheriff or any constable of the county, commanding him forthwith to bring such accused person before such justice or court to answer such complaint; which warrant may be executed anywhere within the state. Such complaint shall be filed and further proceedings had either in the county where the woman