

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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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

resides or in the county where the alleged father of the child resides or in the county where the child is found, if it is likely to become a public charge upon such county.

It shall be the duty of the county attorney, if the complaint seems to be justified, to prosecute such actions and he shall institute appropriate proceedings for the enforcement of orders of the court. The county attorney may, on the written request of the defendant, file such complaint in the district court accompanied by said written request and a waiver by the defendant of his right to a preliminary examination. The county attorney may then bring the defendant before the judge of said court at any time for the adjudication of the paternity of such child and the making of an order for its support. (As amended Apr. 9, 1941, c. 150, §1.)

A stipulation executed by a minor defendant would be binding if fair and reasonable. Op. Atty. Gen. Sept. 3, 1941.

Complaint may be filed in county where mother, child and alleged father live, though woman did not have a settlement there for poor relief purposes at time she was delivered of child. Op. Atty. Gen. (840c-2), Apr. 16, 1942.

**3263. Defendant to give bond—May plead guilty.**

Sheriff is not required to permit one confined to jail to marry. Op. Atty. Gen. (300), March 22, 1943.

**3265. Trial—Preliminary examination—Judgment of paternity—Default—Duties of division of social welfare—Bond for support of child.—Laws 1941, Chapter 152, Section 1, is hereby amended so as to read as follows:**

Upon the trial in district court the judge may at his discretion exclude the general public from attending at such trial and shall do so at the request of either party. The examination taken before the justice or judges of the municipal court shall in all cases be read to the jury when demanded by the defendant. If he is found guilty, or admits the truth of the accusation, he shall be adjudged to be the father of such child and thenceforth shall be subject to all the obligations for the care, maintenance and education of such child, and to all the penalties for failure to perform the same, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity. Judgment shall also be entered against him for all expenses incurred by the county for the lying-in and support of and attendance upon the mother during her sickness, and for the care and support of such child prior to said judgment of paternity, the amount of which expenses, if any, shall also be found by the judge, together with costs of prosecution. If the defendant fails to pay the amount of such money judgment forthwith, or during such stay of execution as may be granted by the court, he shall be committed to the county jail, there to remain until he pays the same or is discharged according to law; provided, however, that no stay shall be granted unless the defendant shall give a bond to the county, in such sum and with such sureties as shall be approved by the court for the payment of such money judgment on or before the expiration of such stay. Upon due notice to the county welfare board or the director of social welfare and the duly appointed guardian, if any, the judge of the district court before whom the proceedings are pending shall make and enter an order, directing and requiring the father of such child to pay to the county welfare board, or the director of social welfare such sum of money or its equivalent, as may be proper and adequate for the care, maintenance, and education of such child. Or such order may provide for the payment, in the manner heretofore provided, of a specific sum each month, or at other stated intervals, for the

purpose hereinbefore specified. The court shall further fix the amount, and order the defendant to pay all expenses necessarily incurred by, or in behalf of, the mother of such child, in connection with her confinement and the care and maintenance of the child prior to judgment. If the defendant fails to comply with any order of the court, hereinbefore provided for, he may be summarily dealt with as for contempt of court, and shall likewise be subject to all the penalties for failure to care for and support such child, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity, and in case of such failure to abide any order of the court, the defendant shall be fully liable for the support of such child without reference to such order. (As amended Apr. 9, 1941, c. 152, §1; Mar. 27, 1943, c. 201, §1.)

Laws authorizing court to order blood grouping test in cases of disputed paternity. *Beach v. B.*, (AppDC), 114F(2d)479.

Evidence held sufficient to sustain finding of guilt of being the father of an illegitimate child. *State v. McIlraith*, 212M536, 4NW(2d)342. See *Dun. Dig.* 840.

Where defendant was released without bond and was required by judgment to pay a certain amount per month and he is in default, it seems that real estate in another county may be reached by way of a supplementary judgment for the amount due. Op. Atty. Gen. (840c-10), Oct. 29, 1941.

Confinement expenses incurred and paid by mother may not be recovered in a civil action but are not to be included in judgment in paternity case, although expenses incurred by county may be so included. Op. Atty. Gen. (840c-3), Oct. 1, 1942.

Whether court should enter judgment for monthly payments against defendant found guilty who has entered military service is a matter of discretion and fact. Op. Atty. Gen. (310), Oct. 28, 1942.

Collection in another state of judgment for installment payments. Op. Atty. Gen. (840c-10), May 17, 1943.

Where judgment provided for payments until child should reach the age of 16 years, defendant could be adjudged guilty of contempt of court for failure to comply with the order after the child attained age of 16 years. Op. Atty. Gen. (840c-11), Oct. 22, 1943.

**3266. Father to pay all expenses.**

Uniform Illegitimacy Act of South Dakota, providing for imprisonment for failure to file bond for support of child, does not violate any constitutional provision of that state. *Acker v. A.*, 293NW(SD)83.

Confinement expenses incurred and paid by mother may not be recovered in a civil action but are not to be included in judgment in paternity case, although expenses incurred by county may be so included. Op. Atty. Gen. (840c-3), Oct. 1, 1942.

**3272. Director of social welfare may make settlement.—(a)** The director of social welfare shall have authority to accept from the acknowledged or adjudicated father of the child such sum as shall be approved by the court having jurisdiction of proceedings to establish the paternity of the child, in full settlement of all obligations for the care, maintenance and education of such child; and shall hold or dispose of the same as ordered by said court. Such settlement shall discharge the father of all further liability, civil and criminal, on account of such child, provided that such settlement shall not affect any liability of the father under Section 3266. (As amended Apr. 9, 1941, c. 152, §2.)

(b) to (e) \* \* \* \* \*

Laws 1943, c. 246, provides that counties with population of 500,000 or more and operating under township system of caring for poor may provide hospital care for woman who is pregnant with child. And that county welfare may furnish such care when such woman is not a resident of state.

Names of mother and child should not be published in county annual financial statement in connection with expenditures for hospital care and maintenance. Op. Atty. Gen. (277c-1), Jan. 27, 1941.

(e). **Records private.**

There is nothing improper in reporting statistical information to county attorney. Op. Atty. Gen. (121b-17), Feb. 9, 1943.