

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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UNITED STATES LANDS

6536-2. May expend money on leased land.

Act Apr. 14, 1941, c. 215 approves and ratifies leases covering Beltrami and Pine Island areas and provides for Conservation projects in such areas.

Funds available for repair of machinery to be used as sponsor's contribution in Beltrami Island project development work. Op. Atty. Gen. (208B-4), Aug. 15, 1941.

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

6536-3. Not to create debt.

Methods of acquiring federal lands for state park purposes and operation thereof defined. Op. Atty. Gen. (330a), Feb. 7, 1942.

6536-11. Expenditure of state's percentage of proceeds of sale of land to the United States.—Subdivision 1. All sums heretofore or that may hereafter be received from the United States government, on account of an act of Congress approved May 23, 1908 (35 Stat. 260), or any amendments thereof hereafter enacted shall be expended as follows:

One-half for public schools and the remainder for public roads in the counties in which the national forests are situated; provided, however, that any county coming within the provisions of said act of Congress is hereby authorized to borrow money from the Federal government or any of its agencies and to use moneys received pursuant to the provisions of said act of Congress or amendments thereto for the purpose of repaying any loan or loans made to such coun-

ty by the Federal government or any of its agencies. In the case of the Superior National Forest, the counties of Cook, Lake, Koochiching and St. Louis shall share in the distribution of the sum received from that source in the same proportion that the federally owned lands in each county which are within the boundaries of said forest bear to the total number of acres of federally owned lands in said forest area. In the case of the Chippewa National Forest, the counties of Cass, Itasca and Beltrami shall share in the distribution of the sum received from that source in the same proportion that the federally owned lands in each county, which are within the boundaries of said forest bear to the total number of acres of federally owned lands in said forest area.

Subdivision 2. Any distribution made by the state of moneys received from the United States government on account of said act of congress is hereby legalized and made valid and effective to the same extent as though the method of distribution used was provided for by legislative enactment prior to the distribution thereof. (As amended Apr. 22, 1943; c. 569, §1.)

Half of funds received from national government must be expended on roads and half for benefit of public schools. Op. Atty. Gen. (159A-10), Mar. 25, 1942.

6536-13. Same—use for schools and roads; etc.

Distribution for school purposes should take population into consideration rather than number of acres, and in matter of roads number of miles involved would be an important factor in distributing funds for roads. Op. Atty. Gen. (203k), June 1, 1942.

CHAPTER 41

Eminent Domain

6537. Right of eminent domain.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902, Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

The construction and maintenance by a citizen of a rock garden upon a small triangular tract purchased by a city immediately adjoining one of its streets, garden being accessible to public at all times except at night, when gates of an ornamental fence around the tract are locked, is a public use and does not constitute an abandonment of the tract for public purposes. Kendrick v. City of St. Paul, 213M283, 6NW(2d)448. See Dun. Dig. 1.

Though a condemnation has been treated as a purchase and sale for various purposes, a condemned condemnation by highway department of land for a highway was not a "sale" of the property within meaning of act permitting former owners of tax forfeited land to repurchase it if not already sold by the state. State v. Flach, 213M353, 6NW(2d)805. See Dun. Dig. 3013.

There is no expressed legislative authority for an independent school district to exercise right of eminent domain for play ground and recreational purposes, if property involved is separated from, and cannot be made a part of school house site. Op. Atty. Gen., (817o), Feb. 5, 1940.

County board in establishing a county road under §2582 should proceed entirely under that section, and not under this statute. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

A village operating under Laws 1885, c. 145, should follow procedure provided by that act in condemning land. Op. Atty. Gen., (234b), May 27, 1941.

A village operating under 1885 laws can acquire a right-of-way for a new street as provided by that law, or by exercise of power of eminent domain under general statutes. Op. Atty. Gen. (396g), Aug. 7, 1942.

When city charter provides actual payment of compensation is prerequisite to right of possession of land condemned it must be followed. Op. Atty. Gen. (59a-14), Sept. 18, 1942.

A city with a charter providing a method for acquisition of property for public purposes cannot proceed under this chapter, and city of Austin desiring to condemn land for an airport site must proceed under its charter. Op. Atty. Gen. (59a-14), Apr. 14, 1943.

Tuberculosis Sanatorium Commissioners do not possess power of eminent domain, and whether taking of additional private property for public use is necessary is a question of fact to be determined in proceedings in eminent domain, which must be instituted by county boards. Op. Atty. Gen. (556a-3), June 16, 1943.

After obtaining approval of site by commissioner of aeronautics, city may condemn land for an airport and take possession at any time after the filing of the report

of the commissioners under the general law, but charter provisions concerning condemnation must control procedure. Op. Atty. Gen. (234b, 817f), July 30, 1943.

Condemnation of land by county for county aid road purposes, where land involved belongs to the state and has been sold by the state under contract. Op. Atty. Gen. (817f), Oct. 22, 1943.

6540. Entry for surveys, etc.

Condemnor may survey premises prior to commencement of condemnation proceedings without consent of owners. Op. Atty. Gen. (59a-14), Apr. 14, 1943.

6541. Petition and notice.

1. Proceedings generally.
Practice and procedure in condemnation proceedings in federal court must be according to the forms and modes provided in the state where the proceedings are had. U. S. v. Federal Land Bank of St. Paul, (C.C.A.8), 127 F. (2d) 505. See Dun. Dig. 3748a.

Tuberculosis Sanatorium Commissioners do not possess power of eminent domain, and whether taking of additional private property for public use is necessary is a question of fact to be determined in proceedings in eminent domain, which must be instituted by county boards. Op. Atty. Gen. (556a-3), June 16, 1943.

6543. Order made thereon—Commissioners.

An order appointing commissioners in eminent domain proceedings by the state is not a final one and is not appealable. State v. Simons, 212M452, 4NW(2d)361. See Dun. Dig. 3129.

Proceedings to condemn property may be abandoned before commissioners are appointed, under Austin City Charter. Op. Atty. Gen. (817c), Apr. 17, 1943.

6546. Payment—Tender—Deposit in court.

Deposit of money with clerk where land forfeited to state for tax is condemned for highway and former owner is claiming right of repurchase. State v. Flach, 213M353, 6NW(2d)805. See Dun. Dig. 3119.

Where lands which have been forfeited to the state for delinquent taxes are taken by the state for trunk highway purposes, and the award of damages deposited with the clerk of the district court in the county where the land is situated, the county may petition the district court for an order directing the clerk to pay this award to the county treasurer, and the court will then determine whether he is entitled to the award. Op. Atty. Gen., (229d-3), July 24, 1941.

If the owner of land who has confessed judgment on certain delinquent taxes is not in default on the judgment by confession and if taxes not covered by the judgment are not delinquent there is no objection to the coun-

ty releasing its claim to the state warrant issued payable to the owner and to the county upon the taking of the land for state trunk highway purposes. *Id.*

6549. Appeal.

Editorial note.—Service of notice of filing of report may be dispensed with in proceedings by state or its agencies under §6557-1.

The exercise of eminent domain by condemnation proceedings in this state is an exertion of the legislative power, and the judicial power comes into play only to the extent that the constitution guarantees to the owner of property the right of compensation and to determine if the taking is for a public purpose, hence the proceeding up to the time awards are made is essentially legislative and only quasi-judicial in character, and consequently a single petition embracing several parcels is justified, but as soon as the amount of the awards becomes controversial by the taking of an appeal, the matter assumes the nature of a judicial proceeding and each award becomes a severable object of controversy so that separate appeals must be taken from separate awards. *U. S. v. Federal Land Bank of St. Paul, (C.C.A. 8), 127 F. (2d) 505. See Dun. Dig. 3013.*

The right of eminent domain is inherent in a sovereign state, and is not derived from the constitution, which however restricts the power by providing that compensation must be paid, and where the power is exercised by the federal government congress may provide any mode or method it sees fit within constitutional limitations for carrying this inherent right of sovereignty into effect, but where it chooses to require that it be done in conformity with the state law and practice such state law must control unless it contravenes some provision of the constitution, statute or rule of procedure of the United States, so that where separate notices of appeal from the separate awards made must be filed within 30 days under the state law, an appeal taken by the United States from numerous awards in condemnation proceedings by it, wherein a single notice of appeal was filed did not confer jurisdiction upon the court to which the appeal was taken nor furnished basis for amendment after expiration of time for appeal by then filing separate notices of appeal. *U. S. v. Federal Land Bank of St. Paul, (C.C.A.8), 127 F. (2d) 505. See Dun. Dig. 3013.*

Service of a single notice of appeal from numerous awards in condemnation proceedings by the United States did not give the reviewing court jurisdiction, and appeal was properly dismissed without permitting appellant to amend its notice of appeal so as to file separate notice of appeal as to each particular award, as the filing of separate notices of appeal after the time for appeal had expired would not be an amendment but an extension of time for appeal beyond statutory time. *U. S. v. Federal Land Bank of St. Paul, (C.C.A.8), 127 F. (2d) 505. See Dun. Dig. 3749.*

Appeals from awards of commissioners in highway condemnation proceedings instituted by the state are governed by Mason's St., §6557-1, Minn. St. 1941, §117.20(2), and not this section, and such appeal must be taken within 30 days from the date of the "filing" of the report of the commissioner. *Eystad, 214M490, 8NW(2d)613. See Dun. Dig. 3107.*

Where owner of land taken by county has appealed from the award, county may proceed with proposed improvement without giving a bond. *Op. Atty. Gen. (817-d), July 1, 1941.*

Clerk of district court should charge usual \$3.00 deposit fee for state highway condemnation cases when an appeal is taken from the award of the commissioners, but a second fee should not be charged in case of a second appeal involving same land and same award of damages. *Op. Atty. Gen. (144b-12), June 12, 1942.*

After obtaining approval of site by commissioner of aeronautics, city may condemn land for an airport and take possession at any time after the filing of the report of the commissioners under the general law, but charter provisions concerning condemnation must control procedure. *Op. Atty. Gen. (234b, 817f), July 30, 1943.*

6550. Trial—Costs.

In condemnation of bottom land by state, involving 365 acres, a verdict of jury finding value to be \$5,476.05 was sustained, over objection of both parties. *State v. Andrews, 209M578, 297NW848. See Dun. Dig. 3046 to 3078a.*

In proceeding by state to condemn land, wherein both parties appealed to district court from award, court did not abuse its discretion in permitting a view of the land by the jury as against objection that condition of land had been changed since award was filed. *Id. See Dun. Dig. 3111, 9721.*

In condemnation proceeding exclusion of photograph of wheat in shock upon part of land taken was not reversible error where appellant without objection introduced uncontradicted evidence of every bushel of grain of all kinds raised on land during season in question and also of prior years. *Id. See Dun. Dig. 3112.*

In eminent domain proceeding by state, wherein witness called by state to testify to value of land taken made a mistake and testified as to value of adjoining tract, it was within judicial discretion of trial court to determine whether or not a new trial should be granted. *Id. See Dun. Dig. 7131.*

In eminent domain proceedings where there are no requests for instructions to jury and no exceptions to in-

structions given, failure of court to define meaning of "market value" is no ground for a new trial. *Id. See Dun. Dig. 9771, 9797.*

6551. Judgment—Possession.

In action to apportion an award in gross made in a highway condemnation proceeding for taking part of a strip of land subject to a lease and an option to purchase, evidence justified a finding of waiver of a provision in lease for payment of taxes by lessees, where no separation of small leased tract from larger holding was ever made for tax purposes and no right of reentry for default of lessees was ever asserted, and lessees were entitled to share in award. *Hockman v. Lindgren, 212 M321, 3NW(2d)492. See Dun. Dig. 3099.*

In highway condemnation where an award is made in gross, it should be apportioned in ratio that actual damage to each interest bears to total actual damage, regardless of whether gross award exceeds or falls short of such total. *Id. See Dun. Dig. 3099(52).*

If property taken was actually occupied by former owner between filing of first award and payment of damages, rental value may be offset against award. *Op. Atty. Gen. (817r), Sept. 16, 1940.*

After obtaining approval of site by commissioner of aeronautics, city may condemn land for an airport and take possession at any time after the filing of the report of the commissioners under the general law, but charter provisions concerning condemnation must control procedure. *Op. Atty. Gen. (234b, 817f), July 30, 1943.*

6552. Interest—Award, when payable; etc.

Proceeding to condemn a right of way for highway purposes may be abandoned and discontinued by state in exercise of its legislative function at any time prior to making of an award where state has not entered into possession of the property or appropriated it to its purposes. *State v. Appleton, 208M436, 294NW418. See Dun. Dig. 3091.*

6553. Record evidence, how perfected.

An order appointing commissioners in eminent domain proceedings by the state is not a final one and is not appealable. *State v. Simons, 212M452, 4NW(2d)361. See Dun. Dig. 3129.*

6554. Property taken by state to be an estate without right or reversion.

Where city condemned land for use in widening a city street and received a warranty deed from landowner upon payment of award, and a small triangular piece was not used for street but was turned over to Department of Parks and Playgrounds and was landscaped by a public spirited citizen, title which city acquired under the deed in addition to easement acquired by condemnation was a qualified or terminable fee, a sovereign or prerogative title, which it as an agency of the state, holds in trust for the city and which it can neither sell nor devote to a private use, but this does not mean that fee-simple title cannot be lost or relinquished by abandonment of all public use. *Kendrick v. City of St. Paul, 213M283, 6NW(2d) 449. See Dun. Dig. 3040.*

A warranty deed to a municipality from owner of lands condemned in eminent domain proceedings vests fee-simple title in municipality in trust for the public. *Id.*

6555. Notice of condemnation proceedings in certain cases to be filed with the register of deeds of the county.—Whenever the State of Minnesota or any city, county, village, town, board of park commissioners or board of public works in this state shall hereafter take or acquire, by condemnation proceedings or dedication, any land or lands or any easement or interest therein for laying out, opening, widening, extending or establishing any public street, road, highway or alley, or for public parks, parkways or other public purposes, or shall vacate or abandon any public street, road, highway, alley, park or public grounds or any portion thereof, or any easement or interest therein, a notice in writing of the completion of every such condemnation proceeding and of every such dedication, vacation or abandonment of any public street, road, highway, alley, park or public grounds or any portion thereof, shall be forthwith filed for record with the register of deeds of the county within which the lands and premises are located.

Provided that such notice shall first be presented to the county auditor who shall enter the same in his transfer records and shall note upon the instrument, over his official signature, the words "entered in the transfer record." Such notice shall be prepared and filed by the state department administrator, clerk, auditor, recorder or other person charged with the duty of keeping the records of the state or such city, county, village, town, board of park commissioners or board of public works so acquiring any such lands

or vacating or abandoning any such street, road, highway, park or public grounds, and such notice shall contain a statement of the time of the completion of such condemnation proceedings or of such vacation or abandonment, as the case may be, and the name of the state, city, county, village, town, or board by whom such proceedings are prosecuted or such vacation is made, or to whom such dedication is made, and a description of the real estate and lands affected thereby. Any failure to file such notice shall not invalidate or make void any such condemnation proceeding for such vacation or abandonment of any public street, road, highway, park or public grounds or any portion thereof. (As amended Act Apr. 16, 1941, c. 252, §1.)

An estoppel against a city arises where there has been a long-continued nonuser by city of a dedicated street and where private parties, in good faith and in belief that city's use has been abandoned, have made valuable and permanent improvements without objection from city, with its knowledge and encouraged by making of permanent improvements by issuing building permits to those in possession, so that to reclaim land without compensation will result in great damage to those in possession. *City of Rochester v. North Side Corp.*, 211M276, 1 NW(2d)361. See Dun. Dig. 6620, 6620a.

6557-1. Eminent domain proceedings by state or its agencies—Procedure.—In eminent domain proceedings instituted by the state or by its agencies or political subdivisions as petitioners under the provisions of Chapter 41, General Statutes 1923, the procedure shall be as follows:

(a) The report of commissioners shall be filed with the clerk of district court within 90 days from the date of the order appointing such commissioners, but for cause shown the court upon such notice as the court may determine may extend the time for making and filing said report.

(b) At any time within 30 days from the date of the filing of such report, any party to the proceeding may appeal from any award of damages embraced in said report, or from any omission to award damages, by filing with the clerk a notice of such appeal. Such notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and the grounds of the appeal. Upon appeal the prevailing party shall recover costs and disbursements.

(c) Payment of the damages awarded may be made or tendered at any time after the filing of said report. The duty of the public officials to pay the amount of any award or final judgment upon appeal shall for all purposes be held and construed to be full and just compensation to the respective owners or the persons interested in the lands.

(d) The notice of filing of report provided for in Section 6545, General Statutes 1923, shall be dispensed with; as shall also the final decree provided for in Section 6553, General Statutes 1923, provided the attorney for the petitioner make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of payment of all awards or judgments in relation thereto, which certificate upon approval thereof by the court shall establish the rights of the petitioner in the lands taken and shall be filed with the clerk and a certified copy thereof filed for record with the register of deeds. Such record shall be notice to all parties of the title of the state or of its agency or political subdivision to the lands therein described.

(e) The commissioner of highways may except as to lands already devoted to a public use, at any time after the filing of a petition for the condemnation of any land for a trunk highway, or for material for the construction or improvement thereof, take possession of such land; and may at any time enter upon any lands and make surveys and examinations thereof in the location of trunk highways or in the acquisition of material for the construction or improvement thereof. (As amended Apr. 18, 1941, c. 307, §1.)

The right of eminent domain is inherent in a sovereign state, and is not derived from the constitution, which

however restricts the power by providing that compensation must be paid, and where the power is exercised by the federal government congress may provide any mode or method it sees fit within constitutional limitations for carrying this inherent right of sovereignty into effect, but where it chooses to require that it be done in conformity with the state law and practice such state law must control unless it contravenes some provision of the constitution, statute or rule of procedure of the United States, so that where separate notices of appeal from the separate awards made must be filed within 30 days under the state law, an appeal taken by the United States from numerous awards in condemnation proceedings by it, wherein a single notice of appeal was filed did not confer jurisdiction upon the court to which the appeal was taken nor furnish basis for amendment after expiration of time for appeal by then filing separate notices of appeal. *U. S. v. Federal Land Bank of St. Paul*, (C.C.A.8), 127 F. (2d) 505. See Dun. Dig. 3013.

The exercise of eminent domain by condemnation proceedings in this state is an exertion of the legislative power, and the judicial power comes into play only to the extent that the constitution guarantees to the owner of property the right to compensation and to determine if the taking is for a public purpose, hence the proceeding up to the time awards are made is essentially legislative and only quasi-judicial in character, and consequently a single petition embracing several parcels is justified, but as soon as the amount of the awards becomes controversial by the taking of an appeal, the matter assumes the nature of a judicial proceeding and each award becomes a severable object of controversy so that separate appeals must be taken from separate awards. *U. S. v. Federal Land Bank of St. Paul*, (C.C.A.8), 127 F. (2d) 505. See Dun. Dig. 3013.

Service of a single notice of appeal from numerous awards in condemnation proceedings by the United States did not give the reviewing court jurisdiction, and appeal was properly dismissed without permitting appellant to amend its notice of appeal so as to file separate notice of appeal as to each particular award, as the filing of separate notices of appeal after the time for appeal had expired would not be an amendment but an extension of time for appeal beyond statutory time. *U. S. v. Federal Land Bank of St. Paul*, (C.C.A.8), 127 F. (2d) 505. See Dun. Dig. 3749.

One occupying premises under a revocable license with unconditional right to remove house if license were revoked, was not entitled to any part of an award in a highway condemnation proceeding, and owner of land can claim no greater sum than value of the land without house. *State v. Riley*, 208M6, 293NW95. See Dun. Dig. 3051.

Appeals from awards of commissioners in highway condemnation proceedings instituted by the state are governed by this section, and not by Mason's St. §6549, Minn. St. 1941, §117.13, and such appeal must be taken within 30 days from the date of the "filing" of the report of the commissioner. *Eystad*, 214M490, 8NW(2d)613. See Dun. Dig. 3107.

Where school district held land subject to revert back to grantor in case it ceased to be used for school purposes, and highway commissioner condemned part of the land but it still continued to be used for school purposes, school district was entitled to retain all damages paid to it, and grantor would be entitled to nothing more than damages to reversion, if any. *Op. Atty. Gen.* (229d-3), June 25, 1942.

(d). An order appointing commissioners in eminent domain proceedings by the state is not a final one and is not appealable. *State v. Simons*, 212M452, 4NW(2d)361. See Dun. Dig. 3129.

(e). Proceeding to condemn a right of way for highway purposes may be abandoned and discontinued by state in exercise of its legislative function at any time prior to making of an award where state has not entered into possession of the property or appropriated it to its purposes. *State v. Appleton*, 208M436, 294NW418. See Dun. Dig. 3091.

6560. Duty of appraisers—Notice—Award.

Where state condemns land for a highway, owner of a house upon the land under an oral lease or a license terminable at will by owner of land is not entitled to any damages where he is permitted to remove his house, and owner of land is only entitled to damages equal to value of land itself. *State v. Riley*, 213M448, 7NW(2d) 770. See Dun. Dig. 3058, 3059.

6561. Appeal—Trial—Costs—Bond.

In a proceeding to condemn land for highway purposes, an option obtained by commissioner of highways but never exercised, for purchase of land designated and located by his order, is not relevant evidence on issue of damages for taking of land covered by option. *State v. Nelson*, 212M62, 2NW(2d)572. See Dun. Dig. 3070.

Damage to property sold by landowners before condemnation proceeding was started could not be considered by jury in assessing damages to landowners for taking of portion of property not conveyed. *Id.* See Dun. Dig. 3057a.

6563. Award and judgment—How payable.

Where state condemned land and damages were awarded under a misapprehension that house was part of real estate and belonged to owner thereof, land being of value of \$375 and house more than \$4,000, disparity between award and value of property was so gross as to amount to a fraud upon the state and to justify court's setting aside award in excess of amount reflecting value of land alone. *State v. Riley*, 213M448, 7NW(2d)770. See Dun. Dig. 3131.

In a proceeding by the state to determine right to money paid into court under an award in a highway condemnation proceeding, a party who is not entitled to claim any part of the award is in no position to contend that the state, not having appealed, cannot be awarded any part of the fund on appeal. *Id.*

6569. Answer—Ascertainment of damages.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

6573. Procedure, etc.

City condemning property for an airport outside its

boundary must proceed under its charter and not under general law. *Op. Atty. Gen.* (234b, 817f), Oct. 6, 1943.

6578-5. Clerk to mail notices in condemnation proceedings in certain cases.—In any city of the first class which, under its charter, is authorized to condemn property for public use and to appoint commissioners to assess damages or benefits upon property to be taken for such use, which charter provides for notices of the filing of the commissioners' report in such proceedings, the clerk of such city shall mail to the person whose name appears on the records of the auditor of the county in which such city is located as the person who last paid the taxes on the property proposed to be taken, within 48 hours after the filing of the commissioners' report in such proceedings, a notice of such filing. (Act Apr. 1, 1943, c. 249, §1.) [430.023]

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6588. County board may establish—Eminent domain.

County board should not appropriate money for digging of a well to pump large quantities of water into a lake lying wholly in the county until they have adopted a resolution for maintenance of lake level pursuant to §6588, and if this is done it is not necessary to adopt a more complicated proceeding of §6602-13. *Op. Atty. Gen.* (125a-59), Aug. 8, 1940.

County board may appropriate funds for digging of well and maintenance of pumping station to pump water into a lake, and may receive donations or gifts to be used toward the expensive work. *Id.*

County board may make appropriation for digging of well to maintain water level in a lake without consent of commission of conservation. *Id.*

6589. Resolution—Filing of copy, map, etc.

County board may not sell pipe which is a part of installation of water level control project, though pumping unit has not been used for several years and plant is partially dismantled and pipe lying idle, in view of benefited owners who paid for equipment. *Op. Atty. Gen.* (983D), Jan. 22, 1942.

6602-12. Commissioner may construct dams; etc.

Property owner damaged by flooding caused by construction of dam and receiving satisfaction from the state and executing a release of damages could not recover damages for the same injury from another property owner who constructed the dam. *Driessen v. M.*, 208M356, 294NW206. See Dun. Dig. 10187.

6602-13. Owners may initiate proceedings.

County board should not appropriate money for digging of a well to pump large quantities of water into a lake lying wholly in the county until they have adopted a resolution for maintenance of lake level pursuant to §6588, and if this is done it is not necessary to adopt a more complicated proceeding of §6602-13. *Op. Atty. Gen.* (125a-59), Aug. 8, 1940.

TRI-STATE AREA

6602-41. Tri-state waters commission created.

Members of tri-state waters commission who served intermittently and are paid on a per diem basis are not "state employees", but persons who are regularly employed and whose salaries are paid by warrants of state auditor and who serve continuously are entitled to membership in retirement association. *Op. Atty. Gen.*, (331a-7), Jan. 30, 1940.

WATER CONSERVATION

6602-51. Declaration of purpose.

Whether a lake may be "lowered" or "drained" in any given case depends for its validity upon statutory authority properly invoked and exercised. *Lake Elysian*

High Water Level, 208M158, 293NW140. See Dun. Dig. 10187.

Long delay occurring between establishment of ditch and institution of proceedings to restore lake level does not limit right of state so to proceed since no prescriptive right can be obtained against sovereign, absent any statutory time limit within which to act. *Id.*

County board may make appropriation for digging of well to maintain water level in a lake without consent of commission of conservation. *Op. Atty. Gen.* (125a-59) Aug. 8, 1940.

6602-53. Shall develop water conservation program for state.

Act Apr. 28, 1941, c. 518, authorizes sale, lease or other disposition to United States of certain lands acquired for the Lac Qui Parle river water conservation project.

An act relating to the Lac qui Parle and Big Stone Lake water control projects and appropriating money therefor. *Laws 1943, c. 476.*

6602-54. Must have written permission from commissioner.

Joint consent of federal and state governments is required to permit a change of the cross section of a navigable river such as the Minnesota over which both have concurrent jurisdiction. *Op. Atty. Gen.* (370), June 26, 1942.

6602-55. Permission necessary to build dams.—

Subdivision 1. It shall be unlawful for the state or any agency thereof or any person, partnership, association, private or public corporation, county, municipality, or other political subdivision of the state to construct, reconstruct, remove or abandon any reservoir, dam, or waterway obstruction, or to make or construct or permit to be made or constructed any change therein or addition thereto, or to make or permit to be made any change in or addition to or to remove or abandon any existing dam, reservoir, or waterway obstruction, or in any manner other than in the course of usual operation of dams beneficially using water to change or diminish the course, current, or cross-section of any stream or body of water wholly or partly within this state, without a written permit from the commissioner previously obtained upon written application as provided in Mason's Supplement 1940, Sections 6602-56 to 6602-58, inclusive, and other applicable provisions of law.

Subd. 2. **Application of act.**—Nothing in this section shall be construed to apply to any dam or obstruction in a stream or other body of water which has less than one square mile of drainage area or a normal flow of less than two cubic feet per second or to the erection, use or control of structures operated or to be operated for the production of water power.

Subd. 3. **Exceptions.**—Nothing in this section shall be construed to apply to the construction of any highway, public road, bridge or culvert thereon by the