

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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less than ninety days or by both such fine and imprisonment. (Act Mar. 28, 1941, c. 83, §6.) [89.168]

6632-1. Cutting practices in logging operations to be established and enforced.—The conservation of the forest resources of the state, the prevention of forest fires, wastage of timber, soil erosion, the conservation of water resources and the prevention of floods, the maintenance of a satisfactory tax base, and the promotion of a desirable land use program so as to maintain forest and timbered lands in a productive state, are hereby recognized and declared as requiring that uniform and wise cutting practices in logging operations shall be established and enforced. (Act Apr. 2, 1943, c. 290, §1.) [90.215]

6632-2. Size of trees which may be cut.—No spruce, balsam, pine, tamarack or other species of trees to be utilized for pulpwood, except aspen, shall be cut from trees having less than two or more 100-inch sticks per tree with a minimum stump diameter of less than six inches inside of the bark at 16 inches above ground level. Provided that on each acre cut over there shall be left at least eight thrifty trees of the minimum diameter or larger of predominant species as seed trees. (Act Apr. 2, 1943, c. 290, §2.) [90.215]

6632-3. Size of trees which may be cut.—No white nor Norway pine saw logs shall be cut which do not produce a butt log of 12 inches or more in diameter inside of the bark at its large end. Provided, that on each 40-acre tract from which pine saw timber is taken, eight or more such pine trees of the same minimum size or larger shall be left. (Act Apr. 2, 1943, c. 290, §3.) [90.215]

6632-4. Ties.—No trees of any species shall be cut for ties which do not produce at least one tie with a

top diameter of not less than eight inches inside of the bark. (Act Apr. 2, 1943, c. 290, §4.) [90.215]

6632-5. Director of the Division of Forestry to make rules and regulations.—The director of the division of forestry is hereby authorized and empowered to make such rules and regulations for the disposal of slash as in his judgment will afford adequate protection against fire hazards, and leave the land in a productive state, and may where conditions warrant grant special permits modifying the cutting regulations herein contained. Such regulations when published once in a legal newspaper shall have the same effect as though specifically provided herein. (Act Apr. 2, 1943, c. 290, §5.) [90.215]

6632-6. Not to apply to land clearing operations.—This act shall apply to all timber cutting in the state, except that it shall not apply to operations where land is being cleared by bona fide farmers for actual agricultural use or bona fide owners of cottage sites, nor shall the cutting provisions hereof apply to the cutting of cordwood for firewood. (Act Apr. 2, 1943, c. 290, §6.) [90.215]

6632-7. Violation a misdemeanor.—Violation of any of the provisions hereof shall constitute a misdemeanor punishable by a fine of not less than \$50 nor more than \$100, or imprisonment in the county jail for not less than 30 nor more than 90 days. Violation of the cutting practices herein prescribed shall constitute a separate offense as to each 40-acre tract involved. (Act Apr. 2, 1943, c. 290, §7.) [90.215]

6632-8. Effective date.—This act shall take effect and be in force six months from and after its passage. (Act Apr. 2, 1943, c. 290, §8.)

CHAPTER 44

Drainage

COUNTY DRAINS AND DITCHES [COUNTY DRAINS AND JUDICIAL DRAINS]

6728. Damages arising after construction, etc.

Liability of county ditch system for damages to property owner caused by flooding. Op. Atty. Gen. (844c-2), Sept. 29, 1943.

6784. County board may raise, lower or alter damages or benefits; etc.

There is no authority for reassessing benefited property to make up a deficit caused by nonpayment of some of special assessments, and bonds should be paid from proceeds of a general levy upon all property of county or counties. Op. Atty. Gen. (38B), Sept. 26, 1940.

6807. Establishment of district—Classes.

Supervision and control of county drainage ditches within village limits may be transferred from board of county commissioners to governing body of village. Laws 1941, c. 54.

By establishment of a county ditch pursuant to Law 1905, c. 230, land benefited and assessed acquired a property right, appurtenant to land, not to be taken away or impaired, except by due process, but where only relief sought in construction was to so enlarge outlet as to more effectually drain slough lands lying adjacent to outlet and to control sudden rises and floods that overflowed low lands lying adjacent to shores of a lake, landowners' rights are limited to benefits accruing within stated purposes and subsequent erosion of the lake outlet whereby natural water level was much lowered cannot be claimed to be a barrier against state in now seeking restoration of lake level to its natural and normal height. Lake Elysian High Water Level, 208M153, 293 NW140. See Dun. Dig. 2824.

6820. When contracts may be made.

County and village adjacent to a county ditch may not enter into contract whereby village would take over a ditch and use it for a sewer drain or overflow from

septic tanks and installation of disposal plant at outlet of ditch. Op. Atty. Gen., (387G-3), Sept. 20, 1939.

6829. Upkeep and repair of district.

While county has implied power to clean bed of judicial ditch, and use persons on relief for that purpose, any wood removed therefrom belongs to owner of land and cannot be given to workers. Op. Atty. Gen., (150c), Oct. 10, 1939.

6840-2. Powers of county boards; etc.

County commissioners cannot turn over a ditch to a village which has been using the ditch as a sewer. Op. Atty. Gen. (148a-6), Aug. 15, 1940.

6840-5. Engineer—Appointment, oath and bond.

County highway engineer may not be appointed engineer in county ditch proceedings, but assistant county highway engineer may be so appointed. Op. Atty. Gen. (122b-3), Nov. 5, 1943.

6840-21. Assessment of benefits limited; etc.

Section prohibits county board from assessing lands in repair if there are no benefits. Op. Atty. Gen. (602B), Sept. 25, 1941.

County board decides whether or not there are any benefits in a repair job upon filing of report of engineer in case of a county ditch. Id.

Though particular lands may receive no direct benefit from repairs, they may be assessed if drainage system as a whole is benefited. Op. Atty. Gen. (602b), Oct. 30, 1941.

6840-22. Bridges across drainage systems; etc.

Owner of bridge across ditch on private land with exclusive right to use may remove bridge at pleasure. Op. Atty. Gen. (642b-8), Oct. 16, 1942.

6840-23. Bridges and culverts; etc.

Township must repair or rebuild bridges on township road, and county must repair or rebuild bridges on

county road, though constructed for and still used for crossing judicial ditches. Op. Atty. Gen. (148-a-3), Aug. 9, 1940.

6840-24. All benefited lands to be assessed.

After a ditch is constructed and benefits assessed, no additional burden can be placed upon land on account of construction of the ditch, and before an additional burden can be placed upon the land there must be an additional benefit by way of maintenance, extension, deepening or widening. Op. Atty. Gen. (901), Jan. 21, 1943.

Where benefits were assessed against land and liens were paid, and interest on deposit of money collected was credited to and became a part of general fund of county, no further liens could be imposed upon the land to make up any "deficit" or "shortage". Op. Atty. Gen. (148a-7), Jan. 23, 1943.

6840-26. Final hearing on petition, engineers' and viewers' report.

There might be objections to relocating of spurs under a petition asking only for cleanout and repair of ditch, and if there is a substantial relocation there should be a hearing and possibly appointment of viewers. Op. Atty. Gen. (602j), Aug. 17, 1942.

When a ditch has been repaired so as to conform to original depth and width at a cost not in excess of 30% of original cost of construction of ditch, it is not necessary to have a final hearing upon report of engineer after completion of the work, but when improvement consists of deepening, widening, or extending, then there must be a report of the engineer and viewers and a hearing on the report of the engineer. Op. Atty. Gen. (602j), Oct. 2, 1942, Oct. 7, 1942.

6840-31. Damages awarded to be paid out of general ditch fund, etc.

If land owner does not appeal, damages awarded become final, and mere fact that owner and county did not anticipate damages which subsequently would develop is immaterial. Op. Atty. Gen. (602d), Apr. 15, 1943.

6840-32. Appeals from county board or district court, etc.

Whether appeal from order of county board levying assessments is exclusive remedy since passage of Laws, 1935, Chapter 300, was discussed but not determined. Petition of Slaughter, 213M70, 5NW(2d)64. See Dun. Dig. 2835c.

Landowner has no right to appeal from county board's order refusing to clean out a ditch, and though he may bring a writ of certiorari, it will not furnish a trial at which the evidence will be received. Op. Atty. Gen. (602j), Aug. 9, 1943.

6840-40. Inspection of work by engineer; etc.

When a ditch has been repaired so as to conform to original depth and width at a cost not in excess of 30% of original cost of construction of ditch, it is not necessary to have a final hearing upon report of engineer after completion of the work, but when improvement consists of deepening, widening, or extending, then there must be a report of the engineer and viewers and a hearing on the report of the engineer. Op. Atty. Gen. (602j), Oct. 2, 1942, Oct. 7, 1942.

6840-43. Bond issues by county boards; etc.

There is no authority for reassessing benefited property to make up a deficit caused by nonpayment of some of special assessments, and bonds should be paid from proceeds of a general levy upon all property of county or counties. Op. Atty. Gen. (38B), Sept. 26, 1940.

Where benefits were assessed against land and liens were paid, and interest on deposit of money collected was credited to and became a part of general fund of county, no further liens could be imposed upon the land to make up any "deficit" or "shortage". Op. Atty. Gen. (148a-7), Jan. 23, 1943.

Service or commission charges made by bank in paying principal and interest when bonds or coupons were presented to bank for payment may not properly be charged to ditch fund of county. Op. Atty. Gen. (29a-17), Feb. 19, 1943.

6840-49. Liens—Supplementary liens.

Where actual cost of construction exceeded original estimate and levy, a supplemental assessment should be made, but if this is not done drainage bonds are general county obligations. Op. Atty. Gen. (901b), Feb. 25, 1941.

Making up a deficit in ditch funds. Op. Atty. Gen. (901b), July 29, 1942.

Additional assessments may be made against the lands benefited by reason of construction of ditch to cover additional cost not included in original tabular lien statement filed but not to exceed benefits accruing to the particular tracts. The interest on bonds issued by the county to finance construction is not a charge against lands assessed for benefits. Lands are assessed for cost of necessary repairs. Op. Atty. Gen. (602b), Dec. 1, 1943.

6840-50. Same—Interest on.

Where county refunded its judicial ditch bonds and obtained a lower interest rate, and landowners contend they are entitled to difference in interest being charged

on their liens and interest county is paying on bonds, court might have power to modify order previously made fixing and determining rate of interest, but it is questionable that county could refund interest payments made prior to such court order, if the same is secured. Op. Atty. Gen. (821), Jan. 11, 1941.

Court has no authority to establish a different plan for payment of the principal than is authorized by statute. Op. Atty. Gen. (921L), May 29, 1942, June 5, 1942.

6840-50a. Same—Payment of interest deficiency—Reassessment of land.—Whenever a ditch has been established by county or judicial proceedings and the county board has issued and sold bonds to pay a part or the entire cost thereof, and has assessed the lands benefited, which assessments have been paid and there are insufficient funds to pay the interest due or to become due upon such bonds, said county board is authorized to determine the amount that each piece, parcel or tract of land shall bear to pay such interest deficiency and to assess the same according to the rules which governed the first assessment. (Act Apr. 10, 1941, c. 173, §1.) [108.35]

Where prior to the passage of this act, a general levy has been made against the county for the purpose of taking care of interest deficiency on ditch bonds such fund may be used for the purpose for which it was set up; and if the county board then makes assessment under this section, the amount assessed may become a part of the general revenue of the county. Op. Atty. Gen., (148-C-1), July 1, 1941.

Where interest deficiency arises because assessments for ditch were paid up in advance by various property owners and bonds, not being callable, continued to draw interest, proceedings may be had under this section. Op. Atty. Gen. (38b), June 1, 1942.

Making up a deficit in ditch funds. Op. Atty. Gen. (901b), July 29, 1942.

Act is intended to include ditches constructed before 1941, and applies when proceeds of assessments for benefits is insufficient to pay interest on bonds and principal has been paid, and act is not limited to ditches where interest has not been paid, since interest may have been paid from another fund. Op. Atty. Gen. (148a-7), March 1, 1943.

Constitutionality has been questioned. Id.

Amount of lien against land benefited by establishment of drainage system cannot be increased beyond total benefit originally assessed, and there is no lien upon land upon which assessments have been paid in full before time of payment required by law, though there is a loss to the county which is unable to earn interests sufficient to cover interests on bonds issued. Op. Atty. Gen. (38c), July 10, 1943.

6840-51. Same—Payment of.

Extension of time of payment of liens. Laws 1943, c. 405.

Amount of lien against land benefited by establishment of drainage system cannot be increased beyond total benefit originally assessed, and there is no lien upon land upon which assessments have been paid in full before time of payment required by law, though there is a loss to the county which is unable to earn interests sufficient to cover interests on bonds issued. Op. Atty. Gen. (38c), July 10, 1943.

Additional assessments may be made against the lands benefited by reason of construction of ditch to cover additional cost not included in original tabular lien statement filed but not to exceed benefits accruing to the particular tracts. The interest on bonds issued by the county to finance construction is not a charge against lands assessed for benefits. Lands are assessed for cost of necessary repairs. Op. Atty. Gen. (602b), Dec. 1, 1943.

(8).

Small acre tracts owned by different owners would each be considered as a separate tract, and a section of land in name of one owner would be considered as four different tracts, as affecting fees of register of deeds for releasing ditch liens. Op. Atty. Gen., (373B-10(G)), May 13, 1940.

6840-53. Repairing and cleaning—Payment for.

Subsection (a). **Repairing and cleaning.**—The county board of any county in this state within which is constructed or may hereafter be constructed any state, county, or judicial drainage system lying wholly or partly within the county shall keep the same or such part thereof as lies within the county in proper repair and free from obstruction in the manner specified in this chapter so as to answer its purpose: said board may cause each drainage system to be annually inspected, either by a committee or board members or a ditch inspector appointed by the board, and if the committee or the inspector shall report that repairs are necessary on any ditch system and such report is

approved by the board, it shall cause such repairs to be made immediately. If the committee's or inspector's report shows that the estimated cost of such repairs will be less than \$500.00 the board may have such work done by force account without advertising for bids or entering into a contract therefor, and in case there are sufficient funds to the credit of the drainage system to make such repairs and the improvement consists of cleaning out and repair only, and does not contemplate any improvement other than of restoring the ditch as nearly as practicable to the same condition as it was when originally constructed, such funds may be expended by the county board for such purpose without further assessment as specified in this chapter; but no part of the original ditch fund shall be used for repair or cleaning out a system, or any part thereof, until the same has been completed according to plans and specifications and the board or court shall have so found and determined.

Subsection (b). **Payment.**—In case there are not sufficient funds to the credit of the drainage system so to be repaired, the county board may pay for the same out of the general revenue fund of the county. To raise the necessary money to reimburse the general revenue fund the county board is hereby authorized to apportion and assess the costs of the repairs upon all lands originally assessed for benefits in proceedings for the construction of the system, this apportionment and assessment to be in the same proportion as was originally assessed for the benefits: Provided, however, that for the purpose of creating a fund to the credit of each such drainage system to be used for repairs exclusively, the county board is hereby authorized to apportion and assess the amount of said fund so to be created, by ordering the filing of an additional tabular statement and lien against all of the parcels of land originally assessed for benefits in proceedings for the construction of such ditch system and in the same proportion as in the original lien statement. The funds so credited to the credit of any drainage system by the filing of additional liens and the amount authorized to be expended for repairs under these provisions shall not exceed ten per cent of the original cost of constructing said ditch system, during any five year period. Such assessments may be made payable in not to exceed five annual installments, as ordered by the county board. (As amended Apr. 24, 1943, c. 626, §§1, 2.)

- (c) * * * * *
- (d) * * * * *
- (e) * * * * *

Act Mar. 11, 1941, c. 54, §1 provides: Certain counties may transfer supervision, maintenance, and control of county drainage ditch situated within village to village authorities.

Cleaning and repair of state, county and judicial ditches—insufficient funds—notice of assessment. Laws 1943, c. 241.

Laws 1943, c. 626, provides that "The provisions of this act shall not apply to any game refuge or conservation areas created by Laws 1929, Chapter 258, Laws 1931, Chapter 407, or Laws 1933, Chapter 402."

Landowners who paid their assessments along with their real estate taxes in 1940 were in no position to complain that county board met and passed its resolution levying an annual assessment on July 11, 1939, whereas it published notice that hearing on assessment was to be held on July 12, 1939, as failure to give notice required by drainage laws may be waived. *Petition of Slaughter, 213M70, 5NW(2d)64*. See Dun. Dig. 2827.

Record of county board levying an annual assessment against land to provide funds to keep ditches "in proper repair and free from obstruction" could not be impeached by showing that assessment in question was levied for improper purpose of obtaining funds to pay interest on ditch bonds previously issued by county, there being nothing in the record to sustain assertion that act of the board was fraudulent. *Petition of Slaughter, 213M70, 5NW(2d)64*. See Dun. Dig. 2835a, 3389, 3435.

Fact that drainage assessment was paid under protest was immaterial, unless payment was made under duress or coercion, and then only as evidence tending to show that alleged payment was result of duress, as affecting waiver of notice of hearing on assessment of annual taxes in drainage proceedings to keep ditches in proper repair and free from obstruction. *Petition of Slaughter, 213M70, 5NW(2d)64*. See Dun. Dig. 9517.

Order of county board purporting to levy an assessment for ditch repairs "at a rate not exceeding 30 mills" was

void for failure to fix a definite rate, and spreading of an assessment by county auditor based upon such order was illegal, and could be attacked by answer or petition. *Saxhaug v. County of Jackson, 215M490, 10NW(2d)722*. See Dun. Dig. 2840, 9338(63).

The power to levy an assessment for ditch repairs, being a legislative one delegated by statute to the county board, cannot be redelegated by the county board to the county auditor. *Id.* See Dun. Dig. 2840, 9238.

Where a valid ditch assessment has not been levied, the county auditor is without power to spread an assessment for ditch repairs against property. *Id.* See Dun. Dig. 2841.

Statute vests county board with discretion to levy an assessment less than, but not exceeding, 30 mills for repairs. *Id.* See Dun. Dig. 2843.

Statute does not authorize an appeal to review an illegal assessment for repairs, nor will certiorari lie, since landowner has an adequate remedy, either by answer in proceedings to collect or by petition under statute to determine validity. *Id.* See Dun. Dig. 2845a.

Where petition was filed for a clean out of a judicial ditch at cost of about 12% of entire cost of original ditch, and later another petition was filed for another branch of the same ditch, and cost of two cleanouts would total over 30% of original cost of entire ditch, each petition may be treated separately if they were both made in good faith, and all owners benefited by original construction will be assessed for repairs in same proportion as for original construction. *Op. Atty. Gen., (901E), Oct. 6, 1939*.

Where a judicial ditch was established and later a new ditch was established replacing a portion of original ditch with its outlet in original ditch, cost of later cleaning outlet of original ditch should be assessed against all lands benefited by the repair, including those drained by new ditch. *Op. Atty. Gen., (425c-3), May 27, 1940*.

If leveling off of bank along ditch is part of improvement or repair project, cost thereof may become part of contract for cleaning out and repair of ditch. *Op. Atty. Gen., (602-J), July 2, 1940*.

Private individuals must maintain their own bridges and culverts for approaches to their land over judicial ditches. *Op. Atty. Gen., (148a-3), June 12, 1941*.

All lands originally assessed for benefits for construction should be assessed though only a small part of ditch system is to be cleaned out. *Op. Atty. Gen., (602B), Oct. 8, 1941*.

Though particular lands may receive no direct benefit from repairs, they may be assessed if drainage system as a whole is benefited. *Op. Atty. Gen., (602b), Oct. 30, 1941*.

Where a deficit has arisen in certain ditch repair funds by reason of repairs, there is authority for an annual tax for purpose of creating a fund to be used for such repairs, and it is immaterial that repairs causing deficit have already been made before tax is levied, but annual levy may not exceed thirty mills, but if cost of repairing ditch has already been paid out of general revenue fund and it is necessary to levy a tax to reimburse that fund, county may levy a tax in any one year sufficient to cover such deficit, apportioning it in accordance with benefits originally assessed. *Op. Atty. Gen., (602F), Jan. 21, 1942*.

Though there is no procedure provided by which county board can vacate or disestablish a lateral ditch, no one could successfully complain against owner of land who, with consent of county board and all interested landowners, plows up a lateral and diverts water in another direction, but in case repair of ditch is done without appointment of new viewers and reassessment of benefits, land would remain liable for its proportionate share of cost of cleaning and repairing ditch. *Op. Atty. Gen., (148a-7), Sept. 17, 1942*.

County Board may cut down and grub out cottonwood trees which threaten to obstruct tile ditch. *Op. Atty. Gen., (602j), Sept. 29, 1942*.

There is no proceeding in the law for abandonment of a drainage system, and neglect of duty on part of public officers cannot constitute a public abandonment, and where a new ditch system was constructed and used lower portion of an older system as part thereof and it is claimed that old system has been abandoned and newer system desires to repair and clean out, and it appears that original specifications have been lost, organization of an entirely new district is advised. *Op. Atty. Gen., (602j), Nov. 19, 1942, Dec. 3, 1942*.

A repair or cleanout job contemplates restoring ditch to specifications upon which it was built, and any change in those specifications would require a change in the procedure. *Op. Atty. Gen., (602j), Dec. 3, 1942*.

A ditch emptying into another ditch may be cleaned without consent of persons interested in other ditch, but if it is to be enlarged so as to cast a greater burden on lower ditch, all of provisions relating to enlarging or changing of ditch must be observed. *Op. Atty. Gen., (602g), Feb. 11, 1943*.

Improvements of main and lateral ditch by separate petitions and distribution of benefits and costs. *Op. Atty. Gen., (602j), Apr. 16, 1943*.

In answer to question whether it is necessary that the notice provided by Laws 1943, c. 241, be filed with register of deed before hearing on contract or the commencement of work provided under Laws 1943, c. 626, amending this section, the notice is to be filed at the time stated in Laws 1943, c. 241. *Op. Atty. Gen., (602b), June 2, 1943*.

There is nothing in the statute which would authorize private individuals to clean out and repair county ditches, so no one could probably object, but there is no reason why county may not accept gifts of money from adjoining landowners to be used for purpose of cleaning a ditch, and county board may transfer money from road and ditch fund with which to pay a part of expense of cleaning and repairing a county ditch, provided the revenue fund is reimbursed by assessment upon all land originally assessed for benefits. Op. Atty. Gen. (602j), June 15, 1943.

Laws 1943, c. 626, amends the first two subsections and does not repeal the other subsections, and by it a fund is created but no disbursements are made by its authority, and it does not limit disbursements by other authority. Op. Atty. Gen. (602j), July 21, 1943.

Procedure for repair and maintenance of ditches as affected by Laws 1943, c. 626. Op. Atty. Gen. (602i), Aug. 4, 1943.

Maintenance of ditches. Op. Atty. Gen. (602j), Sept. 10, 1943.

On repair clean-out job to make ditch conform to original specifications and serve original purpose without extension, widening, or deepening, county board assesses benefits. Assessments may be spread over a period of five years after repair work is done. Op. Atty. Gen. (602j), Sept. 13, 1943.

County board may proceed under this section to clean out and repair part of judicial ditch which lies within the county. Op. Atty. Gen. (150c), Oct. 8, 1943.

Additional assessments may be made against the lands benefited by reason of construction of ditch to cover additional cost not included in original tabular lien statement filed but not to exceed benefits accruing to the particular tracts. The interest on bonds issued by the county to finance construction is not a charge against lands assessed for benefits. Lands are assessed for cost of necessary repairs. Op. Atty. Gen. (602b), Dec. 1, 1943.

(a). Amended. Laws 1943, c. 626, §1. See above text. Landowner has no right to appeal from county board's order refusing to clean out a ditch, and though he may bring a writ of certiorari, it will not furnish a trial at which the evidence will be received. Op. Atty. Gen. (602j) Aug. 9, 1943.

It is mandatory upon county board to repair a ditch that is in need of repair, but engineer's report that ditch needs repair is only evidence and not conclusive thereof. *Id.*

Duty to keep ditch in repair is mandatory and section does not limit amount that board may spend, but only the amount that may be spent without advertising for bids. Op. Atty. Gen. (602j), Aug. 12, 1943.

(b). Amended. Laws 1943, c. 626, §2. See above text. Where original cost of construction was laid against land in divisions of 40 acres each, and some of such 40 acre tracts have been divided and are owned by different persons, assessment for repairs within each 40 should be laid proportionately upon owners on the basis of area, without taking into consideration fact that benefit from repairs may be greater to one part of 40 than to another part. Op. Atty. Gen. (901j), Aug. 31, 1942.

Board is not limited to July meeting to make an assessment under this subdivision, but may take the action at any time. Op. Atty. Gen. (602j), Aug. 16, 1943.

All of the cost of the repair must be assessed at one time and cannot be spread out over different years. *Id.* Statute of limitations will not prevent county from reimbursing a general fund for repairs made many years before. Op. Atty. Gen. (602j), Oct. 18, 1943.

(c). Tax levy for ditch repair fund may not be made at adjourned July meeting if 15 days published notice is not given before the regular July meeting. Op. Atty. Gen. (519d), July 9, 1943.

Since Laws 1943, c. 626, does not by its terms purport to amend this subsection, procedure set up herein applies, but the limit of the assessment is nullified by the more liberal provision in such c. 626, this subsection not being repealed except so far as inconsistent. Op. Atty. Gen. (602f), July 20, 1943.

Procedure under this subsection was not affected by Laws 1943, c. 626. Op. Atty. Gen. (602j), Aug. 16, 1943.

6840-53a. Assessments for cleaning state, county and judicial ditches.—Whenever the County Board, of any County of this State, within which is located a State, County or Judicial drainage ditch, shall adopt a resolution to clean or repair said ditch and there are not sufficient funds to the credit of the drainage system to defray the cost, the county auditor shall, within three days after the contract has been entered into, or the county has commenced the work itself, pursuant to such resolution, file for record with the register of deeds of the county, a notice specifying the adoption of such resolution, the estimated cost of the work to be performed, that the contract has been entered into or that the work has commenced, a brief description of the lands affected and that said lands

will be assessed for the cost of such cleaning or repairing in the same proportion as was originally assessed for benefits for the construction of said ditch. (Act Apr. 1, 1943, c. 241, §1.) [106.481]

In answer to question whether it is necessary that the notice provided for be filed before the hearing on the contract or the commencement of the work provided under Laws 1943, c. 626, the notice is to be filed when the statute says it is to be filed. Op. Atty. Gen. (602b), June 2, 1943.

6840-54. Repair or improvement of drainage system—Petition—Engineer.

Where several parties petition for repairs, work to be done may not be divided into sections and be repaired individually so as to keep cost of each section under \$500.00, and avoid appointment of engineer, notice to property owners and letting of a contract. Op. Atty. Gen. (150-c), July 23, 1940.

Land not originally assessed may not be assessed for cleaning and repairing ditch. Op. Atty. Gen. (602j), Oct. 14, 1941.

Where ditch A empties into ditch B some four miles above outlet of ditch B and land owners on ditch A petition to clean out that ditch and also 2,000 feet of ditch B, in order to obtain a clean outlet, it is proper to assess land originally assessed for ditch A for expense incurred in cleaning out both ditches. Op. Atty. Gen. (602b), Jan. 19, 1942.

County board should not approve replacement of open ditch with tile unless it considers that work is in nature of repair. Op. Atty. Gen. (602i), July 9, 1942.

If only a clean-out is contemplated, county board is authorized to proceed to clean the ditch and no notice is required to be given before work is done, but if any widening, deepening, or extensions are contemplated, notice is required to be given to all persons whose lands are affected as in the case of a new ditch proceeding. Op. Atty. Gen. (602j), Sept. 2, 1942.

When a ditch has been repaired so as to conform to original depth and width at a cost not in excess of 30% of original cost of construction of ditch, it is not necessary to have a final hearing upon report of engineer after completion of the work, but when improvement consists of deepening, widening, or extending, then there must be a report of the engineer and viewers and a hearing on the report of the engineer. Op. Atty. Gen. (602j), Oct. 2, 1942, Oct. 7, 1942.

Cost of moving telephone poles is a legitimate charge to ditch district assessment. Op. Atty. Gen. (98a-12), Oct. 28, 1942.

Procedure for repair of a judicial ditch lying wholly in one county with estimated cost exceeding \$500.00, but not exceeding 30% of original cost. Op. Atty. Gen. (150a), Nov. 21, 1942.

Improvements of main and lateral ditch by separate petitions and distribution of benefits and costs. Op. Atty. Gen. (602j), Apr. 16, 1943.

When cost of repair exceeds 30% of original cost of ditch, majority of owners of 51% of property affected must sign petition for repair. Op. Atty. Gen. (602j), June 14, 1943.

Under Laws 1943, c. 626, a fund for maintenance is created but no disbursements are made by its authority, and it does not limit disbursements by other authority or under this section. Op. Atty. Gen. (602j) July 21, 1943.

Section compared with preceding section, which relates merely to cleaning and repair. Op. Atty. Gen. (602j), Aug. 12, 1943.

Statute of limitations will not prevent county from reimbursing a general fund for repairs made many years before. Op. Atty. Gen. (602j), Oct. 18, 1943.

Function of petition is to start the machinery in motion, and, if the petition alleges what the statute requires, that is sufficient, though petitioner might think that ditch needs to be cleaned out only at a certain spot. Op. Atty. Gen. (602j), Oct. 22, 1943.

All property in district is assessed in proportion to original assessment on a clean out job only, but in case of deepening, widening and extending the benefits are assessed in accordance with the facts. Op. Atty. Gen. (602j), Oct. 26, 1943.

County highway engineer may not be appointed engineer in county ditch proceedings, but assistant county highway engineer may be so appointed. Op. Atty. Gen. (122b-3), Nov. 5, 1943.

(b). Property owners owning 51% of property, even though not the majority of the property owners affected are required to sign petition for repair. Op. Atty. Gen. (602j), June 14, 1943.

If cost of repairs will exceed 30% of original cost of construction, board may not entertain petition where those signing are neither a majority of owners of land, nor own 51% of the land affected either as to acreage or as to number of tracts. Op. Atty. Gen. (602i), June 21, 1943.

6840-56. Same—Report of Engineer—Procedure.

- (a) * * * * *
- (b) * * * * *
- (c) * * * * *
- (d) * * * * *

(e). It shall be the duty of the auditor, in all such cases, to include in such statement and provide for the collection for the benefit of the county when funds have been advanced as herein provided, interest upon the total sum so advanced at a rate to be fixed by the county board but not to exceed six per cent per annum. And it shall be the duty of the county auditor and the county treasurer to levy, assess and collect the amounts included in such lien statement in the same manner as provided in Mason's Minnesota Statutes of 1927, Section 6840-51. (As amended Act Apr. 10, 1941, c. 211, §1.)

County board decides whether or not there are any benefits in a repair job upon filing of report of engineer in case of a county ditch. Op. Atty. Gen. (602B), Sept. 25, 1941.

A hearing presupposes a notice such as is required to be given under §6840-58. Id.

It is doubtful that objecting landowners who will receive no benefit from assessment resulting from change of condition since construction of ditch may be assessed for repairs. Id.

When a ditch has been repaired so as to conform to original depth and width at a cost not in excess of 30% of original cost of construction of ditch, it is not necessary to have a final hearing upon report of engineer after completion of the work, but when improvement consists of deepening, widening, or extending, then there must be a report of the engineer and viewers and a hearing on the report of the engineer. Op. Atty. Gen. (602j), Oct. 2, 1942, Oct. 7, 1942.

No notice to landowners is required in case of a mere cleanout or repair job under this section, since board has no authority under this section to lengthen, widen, deepen or in any manner change original specifications for ditch. Op. Atty. Gen. (148b-5), Jan. 21, 1943.

6840-57. Same—Viewers—Appointment—Duties.

There might be objections to relocating of spurs under a petition asking only for clean-out and repair of ditch, and if there is a substantial relocation there should be a hearing and possibly appointment of viewers. Op. Atty. Gen. (602j), Aug. 17, 1942.

When a ditch has been repaired so as to conform to original depth and width at a cost not in excess of 30% of original cost of construction of ditch, it is not necessary to have a final hearing upon report of engineer after completion of the work, but when improvement consists of deepening, widening, or extending, then there must be a report of the engineer and viewers and a hearing on the report of the engineer. Op. Atty. Gen. (602j), Oct. 2, 1942, Oct. 7, 1942.

Procedure for repair of a judicial ditch lying wholly in one county with estimated cost exceeding \$500.00 but not exceeding 30% of original cost. Op. Atty. Gen. (150a), Nov. 21, 1942.

6840-60. Same—Liens—Statement of—Assessment and collection.—In all proceedings pending before the county board within ten days after the letting of the contract as provided in Mason's Minnesota Statutes of 1927, Section 6840-59 or in the proceedings pending before the district court, within ten days after filing of the order apportioning the costs and expense of the improvement among the several counties, the county auditor, or the county auditors, as the case may be, shall make and file in their respective offices a summary statement in form and substance as provided in Mason's Minnesota Statutes of 1927, Sections 6840-44 and 6840-45, and shall forthwith make a certified copy thereof and file the same for record in the office of the register of deeds of their county, as provided in Mason's Minnesota Statutes of 1927, Section 6840-45. Upon the filing and recording of such copy in the office of the register of deeds, the amount specified in such statement for lien shall constitute a lien against each tract of land and each public or corporate road or railroad, and such land, road or railroad will be liable for such sum and interest thereon, and the same shall be and remain a first and paramount lien on such land, public or corporate road or railroad until fully paid, and shall take precedence of all mortgages, charges, incumbrances or other liens whatsoever, except only a prior ditch lien and payment of the several installments of said lien may be made in the manner provided in Mason's Minnesota Statutes of 1927, Section 6840-51. Such filing shall be deemed notice to all parties interested of the existence of such lien; the fees of the register of deeds for such recording shall be paid by the county on the allowance of the board, and said lien statement after

the same has been recorded shall be returned to the county auditor and be by him preserved as a part of the record of such proceedings. That the provisions of Mason's Minnesota Statutes of 1927, Section 6840-51, relative to the duties of the county auditor and the county treasurer governing the assessment and collection of such lien shall apply to and govern the acts of the county auditors and treasurers in the respective counties in this proceeding, provided that in all cases where the total cost of such improvement does not exceed the sum of \$3,000 said lien may, when ordered by the county board be collected in equal annual installments for three or five years, and where the total cost shall exceed \$3,000 the county board may, and they shall have authority to provide the funds by the sale of county bonds as in the case of county or judicial drainage system, as provided in Mason's Supplement 1940, Section 6840-43, and it shall be the duty of the respective county boards to provide the funds for the payment of the cost and expense of such improvement, and they are hereby authorized so to do in accordance with the provisions of this act, and may pay such cost and expense out of the general ditch fund when funds are available therein, or out of the general revenue fund of the county, but in either case it shall be the duty of the county auditor to provide for and collect as part of the expense of such improvement, interest upon all sums advanced by the county at a rate to be fixed by the county board but not to exceed six per cent per annum, and it shall be the duty of the county auditor and county treasurer of the respective counties to extend such assessments upon the records of their office in accordance with the provisions of Mason's Minnesota Statutes of 1927, Section 6840-51, and collect the same as in case of other assessments against said property. (As amended Act Apr. 10, 1941, c. 211, §2.)

Procedure for repair of a judicial ditch lying wholly in one county with estimated cost exceeding \$500.00, but not exceeding 30% of original cost. Op. Atty. Gen. (150a), Nov. 21, 1942.

6840-61. Use of drainage systems as outlets.

An unassessed land owner cannot dig a private lateral ditch at his own expense to connect with a drainage system created prior to April 25, 1925, even though he is willing to enter into an agreement to pay his proportionate share of future assessments for cleaning and repairing the main ditch. Op. Atty. Gen. (602h), Nov. 20, 1940.

Whether private ditches which did not connect with ditch itself constituted "laterals" was a question of fact. Op. Atty. Gen. (602j), Oct. 14, 1941.

6840-68. Municipal sewer drainage into drainage systems, etc.

Section is applicable to village which wishes to dispose of its sewerage effluent into a judicial ditch. Op. Atty. Gen. (387g-9), July 30, 1941.

6840-74. Fees and expenses of engineers; etc.

Fee of register of deed for recording a lien spread for repair of a county ditch is to be fixed in a reasonable sum by county board. Op. Atty. Gen. (373b-10)(g), Dec. 17, 1942.

6840-84. Obstructing work—Alteration of markings, etc.

Though there is no procedure provided by which county board can vacate or disestablish a lateral ditch, no one could successfully complain against owner of land who, with consent of county board and all interested landowners, plows up a lateral and diverts water in another direction, but in case repair of ditch is done without appointment of new viewers and reassessment of benefits, land would remain liable for its proportionate share of cost of cleaning and repairing ditch. Op. Atty. Gen. (148a-7), Sept. 17, 1942.

A lateral of an established judicial ditch may not be changed so that the lateral becomes part of an established county ditch without consent of owners of every piece of land affected by both the established ditches, or proceedings would be necessary in both the district court and before county board, and the undertaking would be impractical although not impossible. Op. Atty. Gen. (148a-6), Sept. 23, 1942.

Construction of tile drain to connect with established drainage ditch may not be had without consent of owners of all land assessed for original ditch. Op. Atty. Gen. (602h), Dec. 9, 1942.

6840-85. Outlets in adjoining states.

This section is only applicable to original establishment of ditch. Op. Atty. Gen. (150-c), Sept. 5, 1940.

6840-88. Systems extending into; etc.

If there is no objection from persons or officials in adjoining states, drainage district in this state may be assessed and pay for deepening of watercourse in adjoining state. Op. Atty. Gen. (150-C), Sept. 5, 1940.

6840-115. Same—Petition—Notice of hearing.

Extension of time for payment of liens. Laws 1943, c. 405.

6840-116. Hearing—Order for extension.

Court has no authority to establish a different plan for payment of the principal than is authorized by statute. Op. Atty. Gen. (921L), May 29, 1942, June 5, 1942.

6840-119. Same—Existing liens not affected.

When land subject to drainage ditch lien was conveyed to county by a poor person and thereafter county board extended time of payment of unpaid installments, drainage lien was not extinguished when land was subsequently resold by the county. Op. Atty. Gen. (921j), Aug. 23, 1943.

TOWN DITCHES

6842. Petition to be filed.

Public drainage proceedings are justified only to serve a public rather than private purposes. Town Ditch No. 1 v. B., 208M566, 295NW47. See Dun. Dig. 2819.

6846. Report of engineer and action of viewers.

Rule of Sheehan v. Flynn, 59Minn436, 61NW462, 26LRA 632, that by reasonable drainage works on his own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. Town Ditch No. 1 v. B., 208M566, 295NW47. See Dun. Dig. 2841a, 10165.

6847. Attorney-at-law.

In connection with proceedings to establish a town ditch, town board has no authority to employ an attorney not asked for in the petition. Op. Atty. Gen., (151B), Dec. 18, 1939.

6849. Benefits and damages, how ascertained.

Town Ditch No. 1 v. B., 208M566, 295NW47; note under §6846.

6850. Costs and expenses.

On appeal from action of town board in rejecting petition, town board may employ an attorney, and it is probable that expenses of such attorney to represent town board should be paid by petitioners. Op. Atty. Gen. (434a-1), March 26, 1943.

6854. Appeal from order refusing to establish.

On appeal from action of town board in rejecting petition, town board may employ an attorney, and it is probable that expenses of such attorney to represent town

board should be paid by petitioners. Op. Atty. Gen. (434a-1), March 26, 1943.

6874. Compensation of engineers and viewers.

In town drainage proceedings boards may not pay more than \$5.00 per day for engineer services. Op. Atty. Gen. (148a-10), Aug. 12, 1943.

CURATIVE AND MISCELLANEOUS PROVISIONS

6923-1. Validation of proceedings.—

Where the county board of any county of this state or the judge of any of the district courts of this state in pursuance of any laws of the State of Minnesota governing the establishment, construction or repair of any drainage system or part thereof has established and ordered constructed any drainage system wholly within any county of this state or partly within two or more counties thereof, and such drainage system has been actually constructed and the proceedings for such establishment and construction are in all respects valid and according to law, and assessments or liens have been levied or created by the county auditor, county board, or judge of said court against all of the lands originally assessed for benefits in the proceedings for the establishment of such drainage system, for the purpose of collecting and paying a deficit in any such drainage system due to the increased cost of construction of such drainage system, deficiency in interest payable on bonds issued for construction of such drainage system, the expense of improvement, maintenance and repair of same, or for any other reason, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for said purposes are hereby approved, legalized and declared to be valid, and in full force and effect and a lien upon and against said lands benefited by the establishment and construction of said drainage system until paid, at the time and in the manner as set forth in said act and amendments thereto. (Act Apr. 10, 1941, c. 174, §1.) [647.50]

Act Apr. 10, 1941, §2 provides that this act shall not affect any action now pending.

Amount of lien against land benefited by establishment of drainage system cannot be increased beyond total benefit originally assessed, and there is no lien upon land upon which assessments have been paid in full before time of payment required by law, though there is a loss to the county which is unable to earn interests sufficient to cover interests on bonds issued. Op. Atty. Gen. (38c), July 10, 1943.

CHAPTER 44A

Soil Conservation

6932-3. State soil conservation committee established; etc.

(A).

Commissioner of conservation may designate his deputy to serve on committee and exercise all his powers, but commissioner of agriculture may not designate his deputy or any other person to act in his stead and director of agricultural extension service may not substitute the vice-director. Op. Atty. Gen., (705a-2), Apr. 17, 1941.

(D)(1).

State committee may assist district board, but this does not imply the paying of the bills for the district by means of furnishing supplies. Op. Atty. Gen. (705a), Dec. 8, 1943.

(D)(5).

Committee has authority to purchase and furnish to school libraries pamphlets on the subject of soil conservation. Op. Atty. Gen. (705a), Dec. 8, 1943.

6932-4. Creation of soil conservation districts.—

A to G * * * * *

H. (1) Territory annexed—Procedure.—

Petitions for including additional territory within an existing district may be filed with the State soil conservation committee, and the proceedings herein provided for

in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by a majority of the occupiers of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(2) Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the State soil conservation committee by any twenty-five (25) or more occupiers of land within the district or districts affected. In such event, all of the proceedings herein provided for in the case of petitions to organize a district shall be followed in so far as they are applicable. The committee shall prescribe the form for such