1941 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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6955. Special commissioner to take testimony.

Appointment by a state board of special counsel who represented in a proceeding to remove an appointed officer, *if unauthorized, would not taint proof submitted* or otherwise affect validity of the proceedings, and its sole effect would be to deprive attorney of his right to compensation from the state, and no prejudice could result to officer being tried, since evidence is not rendered incompetent by fact that it was wrongfully or illegally procured. State v. State Board of Education, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 3239.

No statutory authority is necessary for appointment of a referee to receive and file charges and to take testimony in proceedings to remove an appointive officer pending before an administrative board. State v. State Board of Education, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 8010, 8311.

Original specifications of charges against an official charged with misconduct in office may be supplemented or amended during progress of removal proceedings *before a referee, proper opportunity to meet such additional* or amended charges having been given. Id. See Dun. Dig. 8010.

Under any definition of "cause", removal of an officer is not justified unless the charge is substantial, as opposed to trivial or inconsequential. Id. See Dun. Dig. 8010.

Appointment of a referee by an administrative board in proceedings to remove an appointee, with limited power of hearing and reporting testimony, a diversion or delegation of "power to remove" from administrative body to referee, acting in strict subordination to board itself and being its alter ego only in a very limited sense. Id. See Dun. Dig. 8010.

While proceedings by an administrative board in exercise of its power of removal of an appointee are quasi judicial in nature, yet such board does not, at any stage of removal proceedings, lose its identity as an administrative body and become a court, and the regularity of such proceedings must be considered along with the intrinsic nature of administrative bodies and the fundamental purposes for which they were created must be kept constantly in mind; they must not be tested by strict legal rules which prevail in courts of law. Id. See Dun. Dig. 8010.

Where no tenure is fixed by law, power of removal of appointive officer is inseparably incident to power of appointment and may be exercised arbitrarily at will of appointing power, and the only effect of fixing tenure by statute is that appointing power cannot remove official arbitrarily, but only for cause and after due notice and hearing. Id. See Dun. Dig. 8010.

Where administrative board fully exercised its right of removal of an appointive officer at time of repeal of statute giving it right of removal, repealing statute could not be given retroactive effect so as to destroy the fully executed right of removal, but legislature would have constitutional right to qualify board's right of removal during pendency of removal proceeding. Id. See Dun. Dig. 8010.

While an order of state board of education removing commissioner of education from office may be reviewed by supreme court by certiorari, inquiry in that court is not whether findings of board are sustained by a preponderance of the evidence, but whether there is any evidence whatsoever to sustain the order of removal. Id. See Dun. Dig. 8010.

To justify an order removing a public officer, substantial grounds specially relating to and affecting the administration of his office and directly affecting rights and interests of public must exist. Id. See Dun. Dig. 8010.

Statutes authorize issuance of subpoenas by any clerk of court of record or by any justice of the peace of the state for witnesses in proceedings before state board *of education to remove the commissioner of education for* inefficiency and misconduct. Id. See Dun. Dig. 8010.

"Inefficiency" denotes incapability for office, and in proceeding to remove an appointive officer any evidence tending to show such incapability is relevant to issue of present inefficiency, even though period to which evidence relates may have been a prior term in office. Id. See Dun. Dig. 8010.

Validity of proceedings to remove an appointive officer pending before state board of education is not affected by its appointment of special counsel to represent it thereat where such appointment was made with consent and acquiescence of attorney general. Id. See Dun. Dig. 8010.

6957. Appointment—How long to continue—Impeachment.

Appointee to fill vacancy in office of county commissioner holds office until beginning of official year following next ensuing general election. Op. Atty. Gen., (126a), Dec. 1, 1939.

"Next general election," means the one occurring after there is sufficient time, after the vacancy, to give notice required by law that vacant office is to be filled at election, and four days is not sufficient time to give notice. Op. Atty. Gen. (126h), Oct. 11, 1940.

Appointment to fill vacancies in office of county commissioner are governed by this section. Id.

One vacating office by conviction for crime cannot be appointed to fill such vacancy. Op. Atty. Gen. (471m), Jan. 4, 1941.

Where either a district judge or a probate judge has been appointed to fill a vacancy, there is no short term to be filled between November election and first of following year. Op. Atty. Gen. (911s), July 27, 1942.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oaths of office.

Village president reelected to office may file his oath of office by mail. Op. Atty. Gen., (471h), Dec. 20, 1939.

6967. By whom and how administered.

Town clerks do not have an official seal and it is not essential to the validity of an acknowledgment taken by a town clerk that he attach the seal thereto, and a town clerk is empowered to administer oaths and take affidavits even when not in connection with the duties of his office. Op. Atty. Gen. (834a), May 5, 1943; (436a), May 24, 1943.

Oath attached to application of man in armed service other than Alaska and Island Possessions of the United States may be sworn to before a commissioned officer in active service, and such an officer may also be the attesting witness on ballot envelope. Op. Atty. Gen. (639e), Nov. 26, 1943.

6968. Officials may administer, when.

County board is authorized to administer oath to witnesses in a hearing of charges against a veteran under the Preference Act. Op. Atty. Gen. (85E), Mar. 6, 1942.

A supervisor of a soil conservation district may administer oaths of verification on small claims against district, but secretary has no authority to administer oaths. Op. Atty. Gen. (705a-8), July 20, 1942.

Chairman of board of supervisors of a soil conservation district has authority to administer oath of office to a newly appointed or elected supervisor. Op. Atty. Gen. (705a-8), July 20, 1942.

Oath of supervisor of a soil conservation district for expense incurred by him may be taken by another supervisor, but a supervisor cannot administer an oath to himself. Op. Atty. Gen. (705a-8), July 23, 1942.

Op. Atty. Gen. (436a, 834a), May 5, 1943, May 24, 1943; note under §6967, 358.09.

ACKNOWLEDGMENTS

6970. Form of certificate.

Acknowledgment is only prima facie evidence and can be assaulted by one claiming deed was forged. Amland v. G., 208M596, 296NW170. See Dun. Dig. 78.

A *conveyance of land by state auditor with an ac*knowledgment omitting customary statement of venue preceding acknowledgment should be recorded when presented to a register of deeds, but in order to avoid any question as to validity of conveyances an appropriate curative act is suggested. Op. Atty. Gen. (24D), (320F.), Jan. 24, 1942.

A defect in an acknowledgment, or even entire omission of an acknowledgment, does not vitiate a conveyance, but merely disqualifies it for recording purposes. Op. Atty. Gen. (320F), Jan. 24, 1942.

6973. By whom taken in this state.

Officers in armed forces. Laws 1943, c. 445.

Fact that chattel mortgage was acknowledged in county other than that in which mortgagor maintained a garage and kept mortgaged car on display for sale did not raise a jury question as to good faith of finance company taking mortgage, and which took possession of automobile under process on default of payments, while it was in possession of mortgagor, as against pledgee of automobile who had paid sight draft accompanying bill of lading and received delivery of car and had permitted pledgor to retain for purposes of sale. Goembel v. Heesch, 212M424, 4NW(2d)104. See Dun. Dig. 70, 1431, 7740.

Town clerks do not have an official seal and it is not essential to the validity of an acknowledgment taken by a town clerk that he attach the seal thereto, and a town clerk is empowered to administer oaths and take affidavits even when not in connection with the duties of his office. Op. Atty. Gen. (834a), May 5, 1943; (436a), May 24, 1943.

6974. Instruments legalized.
Acknowledgments of instruments taken by notary after commission expired legalized. Laws 1943, c. 211.

6977. In other states—By whom taken.
A deed executed in another state, witnessed, and acknowledged before a notary public of that state, with his seal impressed thereon, is entitled to record without further authentication. Op. Atty. Gen. (373b-9-(a)), Dec. 15, 1943.

6978. Certificate, how authenticated.
A deed executed in another state before a notary having no seal, accompanied by certificate of secretary of state to official character of notary, may be recorded. Op. Atty. Gen. (373b-9a), July 30, 1942.
A deed executed in another state, witnessed, and acknowledged before a notary public of that state, with his seal impressed thereon, is entitled to record without further authentication. Op. Atty. Gen. (373b-9-(a)), Dec. 15, 1943.

6979. In foreign countries.
Acknowledgments heretofore taken in foreign countries by a judge of a court of law, declared valid. Laws 1941, c. 340.

6981-1. Validation of foreign acknowledgments.—That all acknowledgments to any Deed or other Instrument heretofore taken in any foreign country by a Judge of a Court of Law therein, where the signature of said Judge was written and the stamp or seal of the Court was attached, affixed or impressed on said deed or other instrument are certified to be genuine by a President or Vice President of the Supreme Law Court of the foreign country where the acknowledgment was taken and where the signature of said President or Vice President of said Supreme Law Court and the stamp or seal of said Supreme Law Court on said instrument are certified to be genuine by the Consul or Vice Consul of the United States in said foreign country, be, and the same are hereby declared to be legal and valid and effectual for all purposes. (Act Apr. 21, 1941, c. 340, §1.)
[647.51]

6981-2. Same—Application.—This act shall not apply to any pending actions and no action shall be maintained questioning the validity of any acknowledgment coming within the purview of Section 1 of this Act unless said action be brought within 6 months after its enactment. (Act Apr. 21, 1941, c. 340, §2.)
[647.51]

6982. Soldiers and sailors abroad.—Any person enlisted, commissioned, or employed in the armed forces of the United States, in addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by sections 6979 and 6981, may acknowledge the same wherever located before any officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or ensign or higher in the navy, or any commissioned officer in active service of any component of the armed forces of the United States as now or hereafter constituted, which officer shall certify thereto over his official signature and title in substantially the form applicable as provided in section 6981, omitting reference to an official seal. Such certificate shall state that the person so acknowledging is at the time of acknowledgment enlisted or employed in the armed forces of the United States and that the officer taking the acknowledgment is in the active service of the armed forces of the United States. The authentication of acknowledgments provided by section 6981 is not required. No charge of any character shall be paid to or exacted by any officer taking the acknowledgment. (As amended Act Mar. 2, 1943, c. 95.)

Acknowledgments of soldiers and sailors may be taken before military or naval officers for purposes of motor vehicle registration. Op. Atty. Gen. (310), Dec. 29, 1941.

An unacknowledged instrument relating to conveyance of land, such as a power of attorney, may be proven by the subscribing witnesses, but where there are not subscribing witnesses, but only a certificate that it was subscribed and sworn to, the instrument is not entitled to record. Op. Atty. Gen. (373b-9-a), June 14, 1943.

Power of attorney executed by a soldier must be acknowledged and witnessed to be entitled to record, not merely sworn to. Id.

Laws 1943, c. 95, amending this section, controls taking of acknowledgments within continental United States, while Laws 1943, c. 445, controls taking of acknowledgments outside continental United States. Op. Atty. Gen. (310), Aug. 20, 1943.

Oath attached to application of man in armed service other than Alaska and Island Possessions of the United States may be sworn to before a commissioned officer in active service, and such an officer may also be the attesting witness on ballot envelope. Op. Atty. Gen. (639e), Nov. 26, 1943.

6982-1. Commissioned officers to take acknowledgments.—Commissioned officers in the armed services of the United States, while outside continental United States, are hereby authorized to administer oaths required or authorized by law and to certify acknowledgments of deeds and other instruments required or authorized by the laws of this state. No seal, reference to a seal, nor any other authentication of any act of any such officer authorized under this act shall be required. A statement of the rank and branch of the service by the officer taking such acknowledgment or administering the oath attached to the instrument or affidavit shall be prima facie evidence of the truth thereof and of such officer's authority under this act. (Act Apr. 14, 1943, c. 445, §1.)
[358.271]

This act controls taking of acknowledgments outside continental United States. Op. Atty. Gen. (310), Aug. 20, 1943.

6982-2. Acknowledgments legalized and validated.—All acknowledgments heretofore taken and all oaths heretofore administered since December 7, 1941, by any commissioned officer who is authorized to administer oaths and to take or certify acknowledgments under the provisions of this act are hereby legalized and validated. (Act Apr. 14, 1943, c. 445, §2.)

This act controls taking of acknowledgments outside continental United States. Op. Atty. Gen. (310), Aug. 20, 1943.

CHAPTER 49

Fees

6987. Fees of clerk of district court.
Under Laws 1919, chapter 229, clerk is not entitled to receive fees in personal property tax cases, while clerks governed by Laws 1937, chapter 19, are entitled to receive and retain fees in such cases. Op. Atty. Gen., (144B-21), Sept. 30, 1939.

Salary and compensation of clerk of district court for Wilkin County. Op. Atty. Gen. (144A-4), Mar. 23, 1942.

(48).
Clerk is not entitled to charge 20 cents for indexing each plaintiff and each defendant in actions to quiet title where there are a great number of defendants, without a rule or order of the court. Op. Atty. Gen., (144B-15), Sept. 19, 1939.

Clerk may not charge an indexing fee in absence of a rule or order of court, but an order fixing a fee therefor remains in effect until modified or abrogated. Op. Atty. Gen. (144B-15), Oct. 20, 1941.

6989. Fees of clerk of district court in certain counties.
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.