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.

Edited by
the
Publisher's
Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL 1, MINNESOTA

1944

PART III
RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

7392. Partner agent of partnership; etc.

Negligence of one member of the joint enterprise or his contributory negligence is imputable to all other members. Ruth v. H., 209M248, 296NW136. See Dun. Dig. 4949.

As to third persons, each member of a joint enterprise is agent of others, and act of one within scope of enterprise are acts of all. Id.

Where copartnership conveyed all of assets to a nonfunctioning corporation acquired by copartners, and later under name of another corporation of the copartners executed a lease of oil station and contract containing an agreement to pay indebtedness of copartners to lessee, any formal declarations of policy which corporation may have made in its attempt to disclaim liability cannot prevail in face of contractual admission. Range Ice & Fuel Co. v. B., 209M260, 296NW407. See Dun. Dig. 2016.

A surety for a partner is relieved from liability if a change is made in the membership of the partnership. Trovatten v. Minea, 213M544, 7NW(2d)390, 144ALR263. See Dun. Dig. 7372.

Rule that bank receiving partnership funds and permitting them to be deposited in individual name of partner is liable to the partnership if there is any misappropriation does not apply to deposits by corporate officers having authority to receive money, endorse checks and deposit funds. Columbia Land Co. v. Empson, 305 Mich220, 9NW(2d)452. See Dun. Dig. 7358.

Guaranty and warrant to confess judgment is not in the ordinary course of a partnership business, and where but two of three partners sign, the third is not bound except on a showing of authority from him to sign for the firm, or laches and acquiescence amounting to authority. Jamestown Banking Co. v. C., 14Atl(2d)(Pa)325.

7396. Partnership bound by partner's wrongful act.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. Kangas v. W., 207M315, 291 NW292. See Dun. Dig. 5834a.

Where plaintiff, an employee of a partnership of which defendant was a member, was injured in a collision between a truck owned and operated by him and defendant's truck operated by another employee of partnership, both drivers being engaged in due course of partnership business and in furtherance of a common enterprise, and where neither defendant in his individual capacity nor driver of his truck was insured or self-insured as required by Mason Minn. St. 1940 Supp. §4272-5, but both drivers and partnership were insured under compensation act, plaintiff's motion to strike from defendant's answer allegations in respect of plaintiff's election to take benefits accruing under compensation act was properly granted in common-law action for damages based on negligence of defendant's driver. Gleason v. Sing, 210M253, 297NW720. See Dun. Dig. 7370.

Cases holding a corporation liable for negligence of its agent even though injured party is agent's wife are clearly distinguishable from cases holding that a partnership is not liable for negligence of a partner who injured his wife. Karalis v. Karalis, 213M31, 4NW(2d) 632. See Dun. Dig. 7370.

Neither partners individually nor partnership are liable for injuries to wife of a partner caused by that partner's negligent driving of a partnershp car. Id.

A person damaged by trover and conversion of his property by one acting as a member of a partnership could sue either the partnership or the individual partner. Klam v. Koppel, 118Pac(2d)(Idaho)729. See Dun. Dig. 7370.

7398. Nature of partner's liability.

Estate of a deceased partner was liable for money which partnership collected as gasoline tax but failed to pay over to the state. Morrison's Estate, 22Atl(2d)(Pa) 729. See Dun. Dig. 7394.

7399. Partner by estoppel.

One having reasonable cause to believe that no change had occurred in the personnel of the firm, and deals accordingly, may sue one who claims previous separation from the partnership. Tallent v. F., 141SW(2d)(Tenn) 485.

7400. Liability of incoming partner.

Provision does not preclude reaching partner's personal assets to satisfy his liability on a partnership lease upon which he has received benefit of years of occupancy. Ellingson v. W., 104Pac(2d)(Cal)507.

PART IV
RELATIONS OF PARTNERS TO ONE ANOTHER

7401. Rules determining rights and duties of partners.

Mere fact that farm used in pig business was owned by husband and wife as tenants by entireties did not establish wife as a partner in the pig business carried on under an arrangement between husband and a third person, nor can one be held as a member of a partnership as between the partners without the consent of all the partners, and stricter proof is required to establish a partnership between members of the same family. Lobato v. Paulino, 304Mich668, 8NW(2d)873. See Dun. Dig. 7348.

7405. Right to an account.

Where under decree of probate court children of intestate were decreed two-thirds of a half interest in a newspaper business, and later agreed that widow should have the entire half interest in the newspaper during her lifetime, a subsequent action between children for accounting was not an action for a partnership accounting, and the partner of decedent was not a necessary party. Lewis v. Lewis, 211M587, 2NW(2d)134. See Dun. Dig. 7404a.

PART V
PROPERTY RIGHTS OF A PARTNER

7407. Extent of property rights of a partner.

The Uniform Partnership Act, which is law in Massachusetts, (Mass. G. L. (1932 Ed.) c. 108A, Sections 24-26, 30, 33, 37, 38(1), 40, 43), conceives of the part as a coowner with his partners of specific partnership property, holding as a tenant in partnership, but provides that on the death of a partner his right in specific partnership property vests in the surviving partner or partners. McClennen et al. v. Comm. of Int. Rev. (CCA1), 131F(2d)165. See Dun. Dig. 7381.

Where partnership acquires land solely for purpose of speculation and it is not contemplated that there shall be any conveyances between the parties, equity regards it as personal property among partners and agreement of one partner to release his interest is not a contract for such an interest in lands as comes within statute of frauds. Smith v. G., 144SW(2d)(TennApp)702.

7408. Nature of a partner's right in specific partnership property.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. Kangas v. W., 207M315, 291 NW292. See Dun. Dig. 7370.

CHAPTER 58
Corporations

GENERAL PROVISIONS

7429. Existing corporations continued.

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. Op. Atty. Gen. (92a-9), Jan. 18, 1940.

7432. Public service corporations—Purposes of.

A franchise granted by a village to a corporation operating water and sewer facilities was supported by a consideration where under the provisions of the franchise the village would acquire title to the entire system, including improvements made from funds obtained by a loan, in case service corporation failed or neglected to operate the same. Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 6670.

7434. Municipality may purchase.

Acquisition by city of New Ulm of natural gas distribution system operated under a franchise providing for acquisition by the city at the end of 5-year period. Op. Atty. Gen. (624-10), June 25, 1943.

7444. Filing and record of certificate.

Clearing house association is not a "financial corporation". Op. Atty. Gen. (29a-6), Dec. 17, 1941.

7445. Publication of certificate.

Publication of certificate on the same date as filing with Secretary of State was legal and valid; though it antedated by one day the filing with the register of deeds of certificate of incorporation of a bank. Op. Atty. Gen. (29a-24), Oct. 5, 1943.

7447. General powers.

E. Albrecht & Son v. L., (DC-Minn), 27FSupp65. Rev'd on other grounds, (CCA8), 114F(2d)202.

Existence and extent of right of members of a corporation to control actions of corporate officers or agents is determined by law of state of incorporation. Farmers Educational, Etc. v. F., 207M80, 289NW884. See Dun. Dig. 2185.

Where act complained of affects plaintiff solely in his capacity, as a member, and is act of corporation, or through its agents, then such action is management of internal affairs of corporation, and, in case of a foreign corporation, our courts will not as a general rule take jurisdiction. Id. See Dun. Dig. 2185.

In suit by local division of foreign corporation to enjoin cancellation of charter of local division, defendant by general appearance and prayer for general and affirmative relief gave court jurisdiction of the subject matter. Id. See Dun. Dig. 2185.

7447-1. Sale, lease or exchange of property, etc.

Section applies to the sale, lease or exchange of property by cooperative associations. Op. Atty. Gen. 93(A), Dec. 14, 1943.

7453. By-laws, how adopted.

Power to amend by-laws resides in stockholders and cannot be delegated to board of directors. Op. Atty. Gen. (27a-13), Aug. 14, 1940.

7455. *Duration of corporate existence*—Renewal.

Act Feb. 25, 1941, c. 20, authorizes co-operative companies and associations to renew their corporate existence, and validates certain such proceedings.

Laws 1941, c. 102, authorizes renewal of the corporate existence of certain corporations created under General Statutes of 1894, c. 34, Title 3, whose duration expired less than 21 years prior to passage of such act.

Act Mar. 28, 1941, c. 104, authorizes renewal of corporate existence of social, charitable, or fraternal corporations.

Act Apr. 9, 1941, c. 127, §1, legalizes proceedings to renew corporate existence of any private corporation organized under laws of state, etc.

Act Apr. 10, 1941, c. 167, provides for completion of certain proceedings to renew corporate existence, and validates certain croporate acts and contracts of corporations taking steps to renew their corporate existence.

Laws 1943, c. 88, authorizes any corporation heretofore organized under laws of this state for pecuniary profit, and whose period of duration has expired less than 21 years prior to passage of this act, and who continued in business, to renew its corporate existence, within one year after the passage of this act.

Notes of Decisions

This is the only statute under which a county agricultural society may renew its corporate life. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. Op. Atty. Gen. (92a-9), Jan. 18, 1940.

A chamber of commerce does not have a perpetual corporate existence. Op. Atty. Gen. (92a-9), Nov. 9, 1940.

Act limits power only to renewal of corporate existence of a dead business corporation, and it cannot reduce its capital stock or exercise other corporate powers before such renewal, paying a fee measured by its old capital stock. Op. Atty. Gen. (92a-12), June 29, 1943.

7455a. Insurance companies may provide for perpetual corporate existence.—The corporate existence of any insurance company heretofore or hereafter organized under the laws of this state may be made perpetual by so providing in its articles of incorporation or by amendment thereof. (Act of Feb. 25, 1943, c. 72, §1.)

[300.131]

7457. Renewal of corporate existence of certain corporations authorized.

Laws 1943, c. 88, provides for renewal of corporate existence, legalizes corporate acts and provides for rights and remedies of non-assenting stockholders.

Renewal of certain social and charitable corporations. Laws 1943, c. 421.

Renewal of certain social, educational and charitable corporations. Laws 1943, c. 463.

7457-9. Corporate existence of cooperative associations renewed.

Renewal of corporate existence of certain co-operative corporations and validating acts and contracts of corporations taking steps to renew such corporate existence. Act Apr. 10, c. 166, §§1, 2.

7458. Election of board of directors.—The business of every such corporation, except savings banks, shall be managed by a board of at least three directors, elected by ballot by and from the stockholders or members; provided, however, that when the certificate of incorporation or the by-laws so provides, a vacancy in the board of directors may be filled by the remaining directors; provided, however, that not more than one-third of the members of the board may be so filled in any one year; that of savings banks, by a board of at least seven trustees, residents of the county of its location, each of whom, before being authorized to act, shall file a written acceptance of the trust. A majority of the directors or trustees shall constitute a quorum for the transaction of business. Any action which might be taken at a meeting of the board of directors, trustees or managers may be taken without a meeting if done in writing signed by all of the directors, trustees or managers. (As amended Apr. 9, 1941, c. 148, §1.)

7463. Transfer of stock.

Where trust instrument gave corporation option to purchase stock on death of beneficiary at book value, book value was determinable as of last day of month preceding date on which representatives of beneficiary should have made an offer of the stock to the corporation. Warner & Swasey Co. v. Rusterholz, (DC-Minn), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 5653, 7480, 9888a, 10258.

7465-2. Not to affect existing liability.

Liability of stockholder for debts incurred by domestic corporation prior to 1930 amendment of Constitution, which attaches as soon as his relationship is assumed, is fixed by constitution and stands as surety for corporate debts, and cause of action accrues, so as to set statute of limitations running, when corporation is declared insolvent and a receiver has been appointed, and not upon date of order for assessment, and mere fact that there was delay caused to some extent by objecting stockholders did not deprive court of jurisdiction to hear and determine need for assessments, and court in action and withholding decision over a period of six months on application for assessment and leave to sue did not suspend running of statute. Knipple v. Lipke, 211M238, 300 NW620, 137ALR783. See Dun. Dig. 2168, 5617.

7470. Record of stock—Reports—Dividends.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

7472. Amendments to Certificates of Incorporation.

County agricultural associations formed under §7885 may amend their articles of incorporation under this section. Op. Atty. Gen. (772a-5), March 8, 1940.

Resolution of amendment should be adopted by a majority vote of members of an athletic club. Op. Atty. Gen. (92a-1), May 31, 1940.

7475. Fees for filing.

A dead business corporation cannot renew under Laws 1943, c. 88, on basis of a reduced capital stock. Op. Atty. Gen. (92a-12), June 29, 1943.

7475-1. County agricultural societies may renew corporate existence.

Act Apr. 9, 1941, c. 147, §2, authorizes certain county agricultural societies to renew their corporate existence, and validates certain corporate acts and contracts of societies taking steps to renew their corporate existence.

7484. Dissolution of corporations.

A county agricultural society may be dissolved only upon affirmative vote of majority of voting stock or members. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

7485. Continuance for three years to close affairs.

A cemetery corporation whose existence has terminated by limitation within three years may transfer its property to a city and city may agree to maintain and operate the cemetery as a public cemetery. Op. Atty. Gen. 870(D), Dec. 10, 1943.

7486. Extension of time for closing affairs, etc.

Time for closing affairs and disposing of property of certain corporations, not including those having power of eminent domain, whose existence has been terminated, is extended for two years. Laws 1941, c. 128.

7487. Conveyances, etc., legalized.

Laws 1943, c. 400, certain religious corporations.

7489. Diversion of corporate property.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

7492. Examination by attorney general, etc.

(f).

One who has entered into a contract with another acting as a corporation cannot question corporate character of "corporation". State v. Rivers, 206M85, 287NW790. See Dun. Dig. 1983.

MINNESOTA BUSINESS CORPORATION ACT

7492-1. Definitions.

The nature of a corporation is such that it is an entity separate and distinct from the body of its stockholders, and where a corporation sold in toto all of its newspaper publishing business to another corporation, taking stock of such other corporation in exchange, the transfer of interest was as complete and effective as it would have been if no stock had been received, and the two corporations remained separate entities. Matthews v. Minnesota Tribune Co., 215M369, 10NW(2d)230, 147ALR 147. See Dun. Dig. 1969.

A corporation is not a fiction of the law but a real legal unit possessing individuality and endowed by the law with many of the attributes of persons. Id.

A corporation and a sole owner of its stock will be treated as separate and distinct for income tax purposes, except in some exceptional cases, such as where the corporation is a mere sham and is used for tax avoidance. Cargill v. Spaeth, 215M540, 10NW(2d)728. See Dun. Dig. 9570dd.

Protective coloring in corporation law. 26 Minn. Law Rev. 824.

7492-2. Purpose of incorporation and qualification of incorporators.

Banking corporations are not formed under this act. Op. Atty. Gen. (29a-24), Oct. 5, 1943.

7492-3. Articles of incorporation.

Articles of incorporation in the Norwegian language cannot be recorded. Op. Atty. Gen. (373B-17(d)), Dec. 18, 1940.

Secretary of state should not accept an amendment fixing maximum liability of corporation at an amount "equivalent to 4 times the net worth of the corporation." Op. Atty. Gen. (93a-18), June 25, 1942.

Elimination of accrued preferred dividends by charter amendment. 26 Minn. Law Rev. 387.

7492-4. Corporate name.

In action by personal loan company against Personal Finance Company to protect a trade name, it was an abuse of discretion to deny plaintiff's motion for a temporary injunction pending suit, where it was shown clearly that because of defendant's name, window and neon signs, and advertising of its business, mail and telephone messages intended for plaintiff went to defendant and messages intended for defendant came to plaintiff. Personal Loan Co. v. Personal Finance Co., 212 M600, 5NW(2d)61. See Dun. Dig. 4490, 9670.

Subd. VII.

A "banking" corporation authorized to do business under banking laws of New York may not establish a place of business in this state to lend money, purchase accounts, notes choses in action, etc., but not to accept deposits, operate as a bank or perform any banking function, cannot use the word "banking" in its name. Op. Atty. Gen. (92c), July 15, 1943.

7492-5. Filing articles of incorporation, etc.

Banking corporations are not formed under this act. Op. Atty. Gen. (29a-24), Oct. 5, 1943.

7492-8. Powers common to corporations.

Where copartnership conveyed all of assets to a nonfunctioning corporation acquired by copartners, and later under name of another corporation of the copartners executed a lease of oil station and contract containing an agreement to pay indebtedness of copartners to lessee, any formal declarations of policy which corporation may have made in its attempt to disclaim liability cannot prevail in face of contractual admission. Range Ice & Fuel Co. v. B., 209M260, 296NW407. See Dun. Dig. 2016.

Business losses are chargeable to corporation and not to stockholders. Briggs v. Kennedy Mayonnaise Products, 209M312, 297NW342. See Dun. Dig. 1969.

A corporation has only such powers as are expressly granted in its charter or by statute and such implied powers as are necessary and proper for the purpose of carrying out its express powers. Young v. Blandin, 215 M111, 9NW(2d)313. See Dun. Dig. 1998.

A corporation is only an artificial person, created by law, or under authority of law, from a group or succession of natural persons, and if it is to function at all in its chosen or granted field of operation, it must act through or by means of human direction, being impotent otherwise. State v. McBride, 215M123, 9NW(2d)416. See Dun. Dig. 1969.

Where a corporation is used by an individual as an instrument of fraud, or to hinder and delay and, if possible, defraud creditors, or for other wrongful purposes, courts will go as far as necessary in disregarding the corporation and its doing in order to accomplish justice. Id. See Dun. Dig. 1969, 2022a, 2115b.

(b).

Complaint in representative action by stockholder must allege a cause of action in favor of plaintiff against corporation and entitling him to sue as its representative and another cause of action must be set forth in favor of corporation against alleged wrongdoer who has same particularity as if action had been brought by corporation. Briggs v. Kennedy Mayonnaise Products, 209M312, 297NW342. See Dun. Dig. 2069.

A representative suit by a stockholder has dual aspect of an action against corporation to compel it to act in discharge of its duty to protect stockholders against wrongdoing by bringing an appropriate action when necessary to enforce its rights and of an action on behalf of corporation against wrongdoers to obtain redress for violation of such rights. Id.

General relief in a representative action by stockholder does not comprehend a personal judgment in favor of stockholder against corporation based on a debt or other liability either as part of his cause of action against corporation entitling him to sue as its representative or corporation's cause of action against the wrongdoer. Id.

Stockholder bringing representative action on a clause of action belonging to corporation is not entitled to recover judgment in same action in his favor against corporation on a debt or other liability which he claims it owes to him. Id. See Dun. Dig. 2069, 7499c to 7508.

A corporation is merely the stockholders acting in group capacity with corporate personality. Lenhart v. Lenhart Wagon Co., 210M164, 298NW37, 135ALR833. See Dun. Dig. 1969.

Notwithstanding the fact that they have benevolent and charitable features, benevolent and beneficial associations, corporate and non-corporate, are liable in tort the same as other groups of individuals, including slander by their agents. High v. Supreme Lodge of the World, 214 M164, 7NW(2d)675, 144ALR810. See Dun. Dig. 2022.

Notwithstanding that a corporation is a legal entity distinct from natural persons composing it, if it is to function at all it must act through human effort or by means of human direction. Rommel v. New Brunswick Fire Ins. Co., 214M251, 8NW(2d)28. See Dun. Dig. 1969 (45,46).

Interposition of corporate entity which is merely a hollow legal shell used only as a convenient legal means by which part of business of another is conducted will not be permitted to conceal the truth of the transaction. Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 1969.

(f).

Under rule that to establish an express contract between parties by their letters or other written communications it must appear that there was a clear assent on both sides to one and same set of terms, correspondence held insufficient to establish a contract by a corporation and controlling stockholders to pay plaintiff a fixed amount out of proceeds from sale of assets of corporation. Young v. St. Paul Publishers, 210M346, 298 NW251. See Dun. Dig. 2016.

7492-9. Holding shares and securities of other corporations.

A corporation established to print and publish newspapers and the "purchasing, owning and controlling of such rights, franchises and property as may considered useful and convenient in the business of printing and publishing of newspapers" had no authority to engage in business of buying and selling bonds and stocks with the cash assets of the company available from time to time for the purpose of making a profit on the rise in the market value in any bond or stock or to minimize or to recoup a loss from a fall in the market value of any bond or stock. Young v. Blandin, 215M111, 9NW(2d) 313. See Dun. Dig. 2005.

Where the corporate separation is maintained and the subsidiary conducts its own business, the subsidiary, not the parent, is doing the business. Cargill v. Spaeth, 215 M540, 10NW(2d)728. See Dun. Dig. 2013.

7492-13. Shares; filing certain resolutions; options and conversion rights.

Shareholder has a property interest in corporation irrespective of issuance of certificate. Wackerbarth v. W., 207M507, 292NW214. See Dun. Dig. 2029.

Where a corporation engaged in the real estate business, as owner of a platted area, installed improvements such as water and sewer systems at own expense and sold lots with the understanding that no assessments therefor would be imposed because purchase price included payment of improvements, and organized another corporation as a service company to maintain and operate water and sewer services, with only three shares of stock and no property or officers or employees, such service corporation was as much bound by legal consequences of the facts relating to the sale of lots as was the real estate corporation, and fact that an individual subsequently became the owner and holder of the stock in such service corporation did not alter the result, and he could not contend that corporation had full and exclusive ownership of such system as against the community or grantor of franchise, a village. Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 2071.

7492-14. Shares—Allotment and consideration; etc.

Issuance or payment to a promoter of stock or property of a corporation for organization services held prohibited by New York Stock Corporation Law, and stock so illegally issued may be canceled. Winston v. S., 21NYS (2d)841.

7492-20. Stated capital and surplus.

Net worth or book value of a corporation, determinative of book value of its stock, is but the favorable difference between its assets and liabilities correctly computed. Bass v. Ring, 210M598, 299NW679. See Dun. Dig. 2043.

Financial provisions of Minnesota Business Corporation Act. 25 Minn Law Rev 744.

7492-21. Dividends and purchase of own shares.

VI.

Right of holder of preferred stock to have it retired or redeemed depended upon law of state of incorporation and articles of incorporation. Peterson v. New England Furniture & Carpet Co., 210M449, 299NW208. See Dun. Dig. 2029a.

Where holder of preferred stock requested that it be redeemed, a letter stating that corporation would purchase the stock on a certain date in the future if presented for redemption was merely an offer which could be withdrawn before that date. Id. See Dun. Dig. 2041.

A Delaware corporation could not purchase or redeem its preferred stock if it would impair the capital of the corporation. Id.

Whether preferred stock of a Delaware corporation should be purchased or redeemed by the corporation lay wholly in power of board of directors of the corporation, acting in conformity to the law of the state of incorporation. Id. See Dun. Dig. 2041, 2192.

Where trust instrument gave corporation option to purchase stock settled on beneficiary, status of beneficiary under the trust agreement could not be affected by her subsequent conduct, but her consent to plan of recapitalization precluded successful attack on validity of agreement and by-law of corporation controlling disposition of the stock. Warner & Swasey Co. v. Rusterholz, (DC-Minn), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 5653, 7480, 9888a, 10258.

Book value should be figured as of last day of month preceding date on which stock should have been offered to corporation. Id.

Corporation held to have power under laws of Ohio and its articles of incorporation to purchase its own common stock. Id.

7492-22. Liability of shareholders and directors; etc.

Stockholders who acquiesced and approved of illegal dividend payments could not object thereto after corporation's bankruptcy. Fergus Falls Woolen Mills Co., (DC-Minn), 41FSupp355. Rev'd on other grounds (CCA8), 127F(2d)491. See Dun. Dig. 2084a, 2096, 5652.

7492-26. Voting trusts.

Voting trusts currently observed. 24MinnLawRev347.

7492-27. Directors.

Record sustains finding that directors transferred their secret profits voluntarily to their corporation. Risvold v. G., 207M359, 292NW103. See Dun. Dig. 2096.

Stockholder may bring representative suit against officers of corporation without requesting corporation to bring suit, where it appears that a demand would have been futile. Savory v. Berkey, 212M1, 2NW(2d)146. See Dun. Dig. 2069.

Majority stockholder, as president, liquidator, and sole director and officer in charge of corporation's affairs, was charged with a duty of paying and settling claims against the corporation and distributing the assets, which duty arose out of his position as sole managing officer, and to take such steps and to do such acts as would tend to accomplish that end as expeditiously as possible, and his duty was comparable to that of an executor or administrator charged with the responsibility of collecting and distributing the assets to those entitled. Young v. Blandin, 215M111, 9NW(2d)313. See Dun. Dig. 2096.

7492-29. Officers and agents.

The term "management" means either officers of directors of the company or corporation, and not the individuals who may constitute the management. Warner & Swasey Co. v. Rusterholz, (DC-Minn), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 5653, 7480, 9888a, 10258.

A proposed written contract, employing agent to sell all property of corporation, upon specified commission and expense money, which stockholders at a meeting authorized and directed its officers to execute, and which was duly executed, may not be modified as to compensation by oral agreement between president and general manager of corporation, not authorized so to do by either stockholders or board of directors. Foley v. W., 207M 399, 291NW903. See Dun. Dig. 2114.

Expedient of adopting a corporate business structure, having same name, property, and purposes as a former partnership or individual, will not be effective to purge organizers in their corporate capacity of indebtedness previously incurred in some other capacity, and doctrine applies although corporation was not organized but acquired by purchase. Range Ice & Fuel Co. v. B., 209M260, 296NW407. See Dun. Dig. 1977.

Declarations of an official or agent of a corporation are inadmissible against corporation unless made within scope of authority of official or agent and while transacting business of corporation. Peterson v. Johnson Nut Co., 209M470, 297NW178. See Dun. Dig. 3418.

A corporation can only act through its officers, agents, or servants. Langford Elec. Co. v. Employers Mut. Indem. Corporation, 210M289, 297NW843. See Dun. Dig. 2016.

A corporation in adverse possession of conspiring directors to an extent inconsistent with self defence is not charged with knowledge of the fact of fraud perpetrated upon it, and cannot be charged with knowledge until facts are acquired by its stockholders as a class. Lenhart v. Lenhart Wagon Co., 210M164, 298NW 37, 135ALR833. See Dun. Dig. 2119.

In action against trustee of corporation in liquidation to recover for services rendered, issue being amount of plaintiff's compensation, independent audits of corporation's business annually for many years were admissible in evidence as admissions by corporation and defendant, notwithstanding that on their face they appear to have been based upon information furnished by plaintiff alone, defendant being principal sttockholder, president, and general manager, and neither he nor corporation could plead ignorance. Lewin v. Froehl, 211M256, 300NW814. See Dun. Dig. 3409, 3418.

Where stockholders over a long period have committed its business to control and management of its president and general manager, there is evidence of his authority to act for corporation in contracting for rendition of services needed by it even though there is no formal action by stockholders or directors. Id. See Dun. Dig. 2114.

Authority conferred upon managing officer of a corporation by act of stockholders in permitting such officer to control the business, said to be implied from facts, is really actual authority expressed by conduct. Id. See Dun. Dig. 2114.

In action by stockholder in behalf of corporation to recover of its officers and directors, burden was upon plaintiff to prove alleged misappropriation and loss. Savory v. Berkey, 212M1, 2NW(2d)146. See Dun. Dig. 2069.

Cases holding a corporation liable for negligence of its agent even though injured party is agent's wife are clearly distinguishable from cases holding that a partnership is not liable for negligence of a partner who injured his wife. Karalis v. Karalis, 213M31, 4NW(2d) 632. See Dun. Dig. 2022.

Knowledge of an officer of a company was knowledge of the company. Murphy v. Barlow Realty Co., 214M64, 7NW(2d)684. See Dun. Dig. 2119.

Notwithstanding that a corporation is a legal entity distinct from natural persons composing it, if it is to function at all it must act through human effort or by means of human direction. Rommel v. New Brunswick Fire Ins. Co., 214M251, 8NW(2d)28. See Dun. Dig. 1969 (45, 46).

Corporate depositor was bound by provision in passbook that discrepancies and errors be reported to bank within 10 days after receiving statement and cancelled check, though employee charged with duty of examining such statements was the person guilty of forging checks. Brunswick Corp. v. Northwestern Nat. Bank & Trust Co., 214M370, 8NW(2d)333, 146ALR833. See Dun. Dig. 2119.

7492-30. Relation of directors and officers to corporation.

As against existing creditors or stockholders a corporation cannot make bonus payments to its officers which are not a matter of contractual obligation, such payments being regarded as without consideration after services have been performed and officer has been paid all that previous agreement calls for, but such extra allowances may be made where no rights of creditors are involved and where the stockholders consent, and after the expiration of the statute of limitations, consent of stockholders will be presumed, so that where action by stockholders was not instituted for some 15 or 20 years after the bonuses had been paid and lack of knowledge on the part of the stockholders was not shown, such bonus payments were not recoverable. Boyum v. Johnson, (Fergus Falls Woolen Mills Co.), (C.C.A.8), 127 F. (2d) 491 reversing (DC-Minn), 41 F. Supp. 355. See Dun. Dig. 2121.

Where 15 or 20 years elapsed since making of bonus payments to officer of a corporation before action to recover same was instituted by stockholders, who had attended annual meetings where bonuses were declared and who had made no objection thereto, it will be presumed that such stockholders had knowledge of and acquiesced in the payment. Boyum v. Johnson, (Fergus Falls Woolen Mills Co.), (C.C.A.8), 127 F. (2d) 491, reversing (DC-Minn), 41 F. Supp. 355. See Dun. Dig. 2121.

It was error for bankruptcy court to set off against claim of stockholder against corporation purchase price of store sold by the corporation to the claimant where the records of the corporation showed that payment for the store had been made by claimant by surrendering obligations of the corporation which he held. Boyum v. Johnson, (Fergus Falls Woolen Mills Co.), (C.C.A.8), 127

F. (2d) 491, reversing (DC-Minn), 41 F. Supp. 355. See Dun. Dig. 2073.

In action against directors taking stock in another corporation as a secret profit, evidence sustains finding as to value of stock. Risvold v. G., 207M359, 292NW103. See Dun. Dig. 2096.

Corporation, not having sought rescission and having recovered secret profits made by its directors, may not mulct person dealing with directors and his non-director associates of their remaining interest in property which was open and apparent on face of contract made with corporation. Id. See Dun. Dig. 2096.

Where corporation purchased a divided interest in gold mine and it was later discovered that officers and directors also received an interest in the mine in nature of a commission, corporation was under necessity either of affirming or of rescinding entire transaction, but having affirmed was entitled to everything purchased with its money, including interest transferred by seller to officers. Risvold v. G., 207M359, 296NW411. See Dun. Dig. 2103.

Where a person in a fiduciary relation to another acquires property, and acquisition or retention of property is in violation of his duty as fiduciary, he holds it upon a constructive trust for the other, and directors and officers of a corporation are fiduciaries. Id. See Dun. Dig. 2113.

Where officers and directors of a corporation participate in purchase by corporation of an undivided interest in a gold mine and later secretly receive from seller an interest in gold mine in nature of a commission, they hold their interest for benefit of corporation under doctrine of constructive trust. Id. See Dun. Dig. 2113.

Where directors of corporation have clandestinely sold their own property to corporation, they are not liable as for secret profits, but may be held as for "fraud or excessive price," in which case measure of damages is difference between price paid by the corporation and fair value of property. Id. See Dun. Dig. 2096.

Stockholder's representative action, being based as it is upon corporate right, belongs to corporation and cause of action is enforced for its exclusive benefit, and same relief is granted as if action had been instituted by corporation itself. Briggs v. Kennedy Mayonnaise Products, 209M312, 297NW342. See Dun. Dig. 2069.

In legal effect a representative action by a stockholder so far as it relates to wrongdoer is one by corporation conducted by stockholder as its representative. Id.

There being a fiduciary relationship between directors and shareholders, law does not require stockholder to anticipate the worst of his benefactor, and there is no presumption that directors are dishonest or corrupt which imposes upon stockholders duty to investigate books of corporation under penalty of being charged with knowledge of their content. Lenhart v. Lenhart Wagon Co., 210M164, 298NW37, 135ALR833. See Dun. Dig. 2096.

A mere showing that corporate books of account were not well kept or that entries therein were not made at proper time did not suffice to show loss or damage to corporation in a representative action by stockholder against corporate officers. Savory v. Berkey, 212M1, 2 NW(2d)146. See Dun. Dig. 2069.

Majority stockholder, as president, liquidator, and sole director and officer in charge of corporation's affairs, was charged with a duty of paying and settling claims against the corporation and distributing the assets, which duty arose out of his position as sole managing officer, and to take such steps and to do such acts as would tend to accomplish that end as expeditiously as possible, and his duty was comparable to that of an executor or administrator charged with the responsibility of collecting and distributing the assets to those entitled. Young v. Blandin, 215M111, 9NW(2d)313. See Dun. Dig. 2113.

Expenses incurred by sole managing officer in charge of liquidation of corporation in operation of an unauthorized investment business, including his salary, office expenses, and subscriptions to various investment services, should not be charged against interest of a minority stockholder in final settlement and the distribution. Id.

Nonliquidating dividends attributable to gains arising out of wrongful investments by sole managing officer of a corporation in charge of liquidation are not deductible from the amount a stockholder is entitled to receive, under the rule that whatever gains accrue through unauthorized use of trust funds belong to the cestui. Id.

One who was president, liquidator, and sole director and officer in charge of a corporation's affairs, stood in the position of a fiduciary toward the corporation and the other stockholders. Id.

Where sole managing officer in charge of liquidation of a corporation represented to a stockholder that he was keeping the money "at intrest", her acceptance of dividends arising out of the unauthorized investments did not constitute an estoppel. Id. See Dun. Dig. 2116.

Officer of corporation in full management of a drug store owned by the corporation was criminally liable for act of an employee of the corporation in selling intoxicating liquor in his absence, if he knew that liquor was kept for sale and had full control and supervision over the employee, and was attempting to use corporate legal entity as a shield of protection for himself in his unlawful activity of selling liquor. State v. McBride, 215M123, 9NW(2d)416. See Dun. Dig. 2115b.

An officer or agent of a corporation cannot avoid responsibility for his act on the ground that it was done in his official capacity, nor can he assert that acts in corporate form are not his acts merely because they are carried on by him through the instrumentality of the corporation which he controls and dominates and which he has employed for that purpose. Id.

Although a director or other officer of a corporation is not ordinarily criminally liable for acts performed by other officers or agents of the corporation, he is criminally liable for his own acts, although done in his official capacity, if he participated in the unlawful act, either directly or as an aider, abettor, or accessory. Id.

Under Uniform Fiduciaries Act, §5, one selling land to an individual and accepting in payment a check of a corporation, by such individual as its president, held liable to the corporation for the money received on such check. LaVecchia v. N., 9SE(2d)(NC)489.

7492-35. Voluntary transfer of corporate assets.

Under rule that to establish an express contract between parties by their letters or other written communications it must appear that there was a clear assent on both sides to one and same set of terms, correspondence held insufficient to establish a contract by a corporation and controlling stockholders to pay plaintiff a fixed amount out of proceeds from sale of assets of corporation. Young v. St. Paul Publishers, 210M346, 298NW251. See Dun. Dig. 2016.

Right of a Delaware corporation to sell all of its assets to a Minnesota corporation and to issue new stock of Minnesota corporation to old stockholders is governed by the law of Delaware. Peterson v. New England Furniture & Carpet Co., 210M449, 299NW208. See Dun. Dig. 2014.

A corporation has the power to transfer its assets to, and accept the stock of, a new corporation. Dworsky v. Buzza Co., 215M282, 9NW(2d)767. See Dun. Dig. 2014.

In action by stockholder who received stock of a new corporation in place of stock of old corporation which was liquidated, evidence held to show no fraud which would warrant rescission. Id.

The sale by a corporation of its newspaper publishing business in toto to another company amounted to a dismissal of all of its employees engaged in that part of defendant's business and entitled them to severance pay under an employment contract, though it took in exchange part of the stock of the other company and such company reemployed the workers. Matthews v. Minnesota Tribune Co., 215M369, 10NW(2d)230, 147ALR147. See Dun. Dig. 2014.

7492-36. Amendment of articles of incorporation.

A dead business corporation cannot renew under Laws 1943, c. 88, on basis of a reduced capital stock. Op. Atty. Gen. (92a-12), June 29, 1943.

Elimination of accrued preferred dividends by charter amendment. 26 Minn. Law Rev. 387.

7492-37. Provisions relating to certain amendments.

Op. Atty. Gen. (92a-12), June 29, 1943; note under §7492-36, 301.37.

7492-38. Reduction of stated capital.

Op. Atty. Gen. (92a-12), June 29, 1943; note under §7492-36, 301.37.

7492-39. Rights of shareholders not assenting to certain corporate action.

Under Delaware law a preferred stockholder objecting to a merger of the Delaware corporation with a Minnesota corporation may not sit idly by and, when merger or sale has been accepted by a great majority of stockholders, come into court to have transaction set aside, especially where there has been laches. Peterson v. New England Furniture & Carpet Co., 210M449, 299NW208. See Dun. Dig. 1991.

7492-40. Consolidation and merger authorized.

Generally, no merger of corporations created by different states can occur unless authority to merge with foreign corporations is clearly and affirmatively conferred upon each constituent corporation. Op. Atty. Gen. (92a-8), Apr. 6, 1942.

7492-43. Rights of dissenting shareholders.

Under Delaware law a preferred stockholder objecting to a merger of the Delaware corporation with a Minnesota corporation may not sit idly by and, when merger or sale has been accepted by a great majority of stockholders, come into court to have transaction set aside, especially where there has been laches. Peterson v. New England Furniture & Carpet Co., 210M449, 299NW208. See Dun. Dig. 1991.

7492-45. Proceedings for dissolution.

Laws 1943, c. 209, provides that corporations established for care of dependent children and aged persons under sections 7920-7926 may be dissolved under these sections.

7492-46. Voluntary proceeding for dissolution.

Certificate of voluntary dissolution may be filed with secretary of state. Op. Atty. Gen. (92a-29), Oct. 28, 1941.

7492-47. Winding up out of court.

Stockholder in corporation being liquidated was not barred from asserting a cause of action against sole managing officer in charge of liquidation, who indulged

in the buying and selling of bonds and stocks with cash assets of the company for purpose of making a profit on the rise in market value of securities or to minimize or to recoup a loss from a fall in the market value of any security, by waiver, laches, or estoppel, though she did not attend stockholders' meetings which were held every year, and received the dividends out of profits flowing from the unauthorized investments during the first years, and relied on such managing officer's representation that it would be to the best interests of the stockholders to delay distribution until after settlement of income matters and contingent liability as guarantor on bonds and made no independent investigation. Young v. Blandin, 215M111, 9NW(2d)313. See Dun. Dig. 2116, 2122.

"Liquidation" of a corporation means realization on assets and the discharge of liabilities and the distribution of net proceeds to stockholders, and any use of the corporate assets inconsistent with the mere collection of assets, settlement of liabilities, and the distribution of the proceeds to the stockholders constitutes a breach of duty by an officer managing the corporation and its winding up, and question whether certain of investments made out of cash on hand be considered wise and prudent or speculative and whether they were made with the care and diligence of an investor are immaterial. Id. See Dun. Dig. 2123.

7492-47a. Time extended for closing affairs of certain corporations—Process.—When any corporation, other than a corporation having the power of eminent domain, whose existence was terminated on or before July 1, 1939, by forfeiture or by expiration of its period of duration as fixed by its charter or otherwise, did not or shall not fully close its affairs and convey all of its property within the period of three years succeeding the date of such termination, and when such corporation has or claims or appears to have or claim any interest in or to any property, the time limit for so closing its affairs and disposing of its property is hereby extended for two years after the passage of this act for the purpose of permitting the corporation to close its affairs and dispose of its property, and the extension hereby made shall also apply for the purpose of authorizing and permitting service of process in actions at law or in equity in order that the corporation may prosecute and defend actions and be served with process therein. (Act Apr. 9, 1941, c. 128, §1.)
[647.25]

Certificate of voluntary dissolution may be filed with secretary of state. Op. Atty. Gen. (92a-29), Oct. 28, 1941.

7492-47b. Transfer.—The corporation during such two year period when authorized by a majority vote of its board of directors and the written consent of the holders of a majority of the shares of stock of the company, issued and outstanding, having voting power, may transfer and convey all or any part of its property to a trustee or trustees with power of sale in trust for the benefit of all of the stockholders of the corporation. (Act Apr. 9, 1941, c. 128, §2.)
[647.25]

7492-47c. Transfers made on or before two years after passage of act legalized.—Any and all transfers and conveyances of property by the corporation and the service of process by or against the corporation, made or done after the date of termination of its corporate existence and on or before two years after the passage of this act, are hereby legalized and made of the same force and effect as if the same had been made or done within three years after the date of termination of its corporate existence. (Act Apr. 9, 1941, c. 128, §3.)
[647.25]

7492-47d. Pending proceedings.—This act shall not affect any action or proceeding now pending. (Act Apr. 9, 1941, c. 128, §4.)
[647.25]

7492-48. Grounds for involuntary dissolution.

Venue of a proceeding for involuntary dissolution of a corporation is in county of its principal place of business, and not in some other county where it has an agent or property. Radabaugh v. H. D. Hudson Mfg. Co., 212M180, 2NW(2d)828. See Dun. Dig. 10110.

7492-53. Claims against corporations in dissolution, etc.

Where company engaged in business of servicing large employers of labor by undertaking to instruct help by furnishing printing matter teaching how services would be more efficient and profitable to employer discounted spurious contracts with finance company and was placed in receivership, meanwhile continuing its business of procuring contracts for services, to wipe out loss of finance company, and profits thereafter to be equally divided between finance company, individual originating the literature, and plaintiff salesman, agreement of finance company to pay plaintiff commissions and expenses owing to company in receivership if he would continue to sell contract for finance company was severable from agreement for advances and commissions with respect to a new business, and money paid for commissions on contract subsequently obtained could not be applied upon agreement of finance company to pay what was due from other company, and success of anticipated business was not condition precedent, and it was immaterial that new federal legislation led employers of labor to hesitate to contract for services. Smith v. Minneapolis Securities Corp., 211M534, 1NW(2d)841. See Dun. Dig. 2158.

7492-69. Certain corporations legalized and acts validated.

Laws 1941, c. 127, legalizes and validates the renewal of corporate existence of private corporations in certain cases.

Legalizing renewal. Laws 1943, c. 401.

7492-69b. Renewal of corporate existence of expired corporations.

See Laws 1943, c. 88, as to renewal of corporate existence.

Renewal of corporate existence. Laws 1943, c. 401, §1.

UNIFORM STOCK TRANSFER ACT

Adopted by North Carolina, 1941.

7492-71. How title to certificates and shares may be transferred.

Read v. Penn. Co. for Ins., Etc., 12Atl(2d)(Pa)925.

Federal court in refusing to follow construction by state intermediate court of Ohio Uniform Stock Transfer Act failed to apply the state law as required by 28:725, Mason's U. S. Code Annotated, in absence of persuasive data that highest court of state would decide otherwise than did intermediate court, and especially where such highest court had refused to review such intermediate court's decision. West v. A., 311US223, 61SCR179, 132ALR 956, rev'g (CCA6), 108F(2d)347. See 121F(2d)142. Cert. den. 62SCR138. See Dun. Dig. 2044, 3748.

Stock disposed of by a holder may be restricted by an option provision for repurchase. Warner & Swasey Co. v. Rusterholz, (DC-Minn), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 5653, 7480, 9888a, 10258.

In action to recover corporate stock or value thereof on ground that it had been obtained from plaintiff by means of fraud, evidence held not to show fraud. Eckberg v. T., 207M433, 292NW19. See Dun. Dig. 8589.

Shares of corporate stock are personal property in the form of a property interest in the corporation, and are subject of attachment, garnishment, and levy of execution. Wackerbarth v. W., 207M507, 292NW214. See Dun. Dig. 2027.

Uniform stock transfer act was not involved in an action involving right to garnish corporate stock, certificate for which was never issued. Id. See Dun. Dig. 2044.

Net worth or book value of a corporation, determinative of book value of its stock, is but the favorable difference between its assets and liabilities correctly computed. Bass v. Ring, 210M598, 299NW679. See Dun. Dig. 2043.

A stockholder authorizing his attorney to offer his stock and that of another at a certain price on condition that purchaser must agree to purchase other stock on the same basis to the extent of a certain number of shares, a letter written by attorney containing the offer and a letter accepting the offer established a contract by such stockholder to sell stock owned by him, though offer was not authorized by the other stockholder. Haglin v. Ashley, 212M445, 4NW(2d)109. See Dun. Dig. 1742, 8499, 8500.

Where corporate stock is not sold on market and as such has no established market value, and its actual value is conjectural or problematical, specific performance of an agreement to sell it may be enforced, as there is no definite basis for assessing damages. Id. See Dun. Dig. 8789.

In a clear, unambiguous agreement drawn by competent counsel whereby plaintiff agreed to sell shares of stock in a corporation to defendants for a stated price, a portion of which was to be retained by defendants to cover plaintiff's proportionate share of costs and expenses incurred in connection with litigation arising out of certain construction work, the word "litigation" must be given its commonly accepted meaning and may not be construed to include other claims or demands. Bass v. Ring, 215M11, 9NW(2d)234. See Dun. Dig. 8518.

One whose stock has been wrongfully transferred on the books of a corporation may treat the transfer as valid and sue either in equity to compel the corporation to restore him to his rights as a stockholder or at law for conversion of his shares by the corporation, but the

duty of the corporation to protect the owner is one imposed by law, and not one arising out of contract. Boyum v. Massachusetts Investors Trust, 215M485, 10NW (2d)379. See Dun. Dig. 2040, 2044.

Provisions that title to stock passes only upon delivery of certificate, did not apply to a case where owner of stock executed and delivered a trust instrument containing words of present assignment, with intent to pass title to trustees, without delivering certificate. Home for Destitute Crippled Children v. B., 31NE(2d)(IllApp)812.

Where person received stock endorsed by the one to whom it was issued and without any notice of defect in the endorser's title, he was entitled to a writ of mandamus compelling the corporation to transfer the stock to his name on its books. Priess v. Acme Mosaic Terrazzo Co., 309 IllApp 475, 33NE(2d)504.

Under this act certificates of stock are negotiable. Id.

Wrongful transfer of stock certificates held in escrow, to an innocent purchaser for value, could be enjoined by the corporation issuing the stock, and the certificates recovered. Fulton Land Co. v. Armor Insulating Co., 192 Ga526, 15SE(2d)848.

Requirement of code that incorporeal things should be transferred by authentic act is superseded by the Uniform Stock Transfer Act, but provision with respect to *manual gifts is not affected. Le Blanc* v. V., 198So(La) 398.

Shares created in a state which has adopted Uniform Stock Transfer Act with its provision that title to a share can be transferred only by delivery of the certificate may be transferred by delivery of certificate as provided by Act of that state even though delivery takes place in another state where such Act is not in force. Morson v. S., 29NE(2d)(Mass)19.

Uniform Stock Transfer Act provision for transfer of full legal title by delivery and endorsement does not apply to co-operative banks in Massachusetts in view of statute providing for transfer of shares of co-operative banks only on books of corporation, and transfer of certificates gives only an equitable title and does not give legal title sufficient to allow recovery in action for conversion of stock. Lane v. V., 30NE(2d)(Mass)821.

Act clearly intended that a stock certificate embodied the shares of stock themselves, so that the situs of the shares is the situs of the certificate. Haughey v. Haughey. 305Mich356, 9NW(2d)575. See Dun. Dig. 2043, 2044.

Creditors of corporation are presumed to know terms of uniform stock transfer act provision which permits valid transfer of stock without having it registered upon books of company, and therefore are charged with knowledge that stock register does not always represent true ownership of stock. Murfrey, Blossom & Co. v. S., 31NE (2d)(OhioApp)134.

In Ohio there is no law which requires transfer on books of corporation as prerequisite to transfer of ownership of stock, since passage of uniform stock transfer act. Id.

Where written power of attorney provided that power should be revoked automatically by death, sale of stock pursuant to such power was valid where third party did not know of death of owner of stock. Young v. W., 31NE (2d)(OhioApp)728.

7492-73. Corporation not forbidden to treat registered holder as owner.

Liquidating committee of bank could sue to recover dividend paid to pledgor of stock to bank as security for loan, though bank had assigned the note and pledge to the Reconstruction Finance Corporation as security for loan to bank, in view of this section. Morrison v. G., 196So(Miss)247.

7492-75. Who may deliver a certificate.

In action to determine ownership of corporate stock, claimed by third person as purchaser in good faith, evidence held to sustain finding that there was no delivery of the stock to third person and that person in possession was not agent or broker of such third person. Robinson v. Robson, 297Mich119, 297NW208.

7492-76. Indorsement effectual in spite of fraud; etc.

Read v. Penn. Co. for Ins., Etc., 12Atl(2d)(Pa)925.

Act is all-inclusive and admits of no exceptions, even in case of theft or felonious taking from owner, affecting right of a good faith purchaser. People v. Depositors State Bank, 28NE(2d)(Ill)825.

7492-83. No attachment or levy upon shares unless certificate surrender; etc.

Status and interest of a member of a federal savings and loan association is not subject to provisions of uniform stock transfer act relating to a levy of execution, and share certificate need not be seized to make a levy on account effective, and sheriff does not sell the share account, but merely collects from association the "things in action", the amount in the debtor's account to which debtor is entitled. Benton's Apparel v. Hegna, 213M271, 7NW(2d)3, 143ALR1148. See Dun. Dig. 2043, 2044.

Sheriff could levy execution upon corporate stock issued prior to effective date of the uniform stock transfer act without obtaining physical possession of the certificate, and could make a sale thereof. Brennan v. Friedell, 215M499, 10NW(2d)355. See Dun. Dig. 2043, 2044.

Shares of stock in a foreign corporation are subject to attachment in a state where the Uniform Stock Transfer Act is in effect and where the certificate is located, if in the state of incorporation a transfer of a certificate of stock by endorsement and delivery is sufficient to transfer title. Haughey v. Haughey, 305Mich356, 9NW (2d)575. See Dun. Dig. 2043, 2044.

7492-88. Rule for cases not provided for by this act.

Adjudication of bankruptcy of stockholder of bank followed by appointment and qualification of a trustee in bankruptcy terminates bankrupt's ownership of bank stock as of date of the adjudication where such stock is not exempt property. State v. Arrowhead Investments, 28NE(2d)(Ohio)797.

7492-91. Definition of the person appearing to be the owner of certificate.

Where a bank took stock which was registered in firm name of a brokerage partnership, and endorsed in blank, as collateral for a personal loan to a member of the firm, it was not put upon notice of the fact that the firm was not the true owner. Mason v. Public Nat. Bank & Trust Co., 28NYS(2d)416, 262AppDiv249.

A transfer of stock which is registered in the name of a brokerage firm and endorsed in blank is valid even if made without the knowledge of the true owner, unless transferee acted in bad faith. Id.

7492-93. Act does not apply to existing certificates.

Sheriff could levy execution upon corporate stock issued prior to effective date of the uniform stock transfer act without obtaining physical possession of the certificate, and could make a sale thereof. Brennan v. Friedell, 215M499, 10NW(2d)355. See Dun. Dig. 2043, 2044.

FOREIGN CORPORATIONS

7493. Affidavit to state street number address of agent—Etc. [Repealed.]

Repealed. Laws 1935, c. 200, §§27 and 30.

Service of a summons upon Secretary of State did not give court jurisdiction of an action to recover from a foreign corporation which sold securities in Minnesota without complying with law requiring it to obtain a license, where the corporation had withdrawn and was doing no business in the state at time summons was served. Sivertsen v. Bancamerica-Blair Corporation, (D C-Minn), 43 F. Supp. 233. Appeal dism'd (C.C.A.8), 129 F. (2d) 1022. See Dun. Dig. 7814.

When a foreign social and charitable corporation pursues within our limits purposes for which it is organized, it is doing business in Minnesota, and amenable to process here, and chief local officer, appointed by and responsible to foreign corporation, is a proper person to serve as agent of the corporation. High v. S., 206M599, 289NW519. See Dun. Dig. 7814.

Jurisdiction of a foreign corporation was not obtained by service of summons by sheriff leaving copies with chief clerk of corporation division of secretary of state, or by leaving copies of summons with deputy securities commissioner, it appearing that defendant entered state in May, 1929, and transacted business in securities until October, 1931, when it entirely withdrew therefrom and has never since transacted any business in the state, and never registered any securities in the state nor applied for nor received license to deal in securities therein, and never appointed any agent to receive process or notice for it nor complied with Mason's St., §§7493, 7494, on withdrawing, or with §3996-11, and securities sold to plaintiff were never registered with securities commissioner. Babcock v. Bancamerica-Blair Corp., 212M428, 4 NW(2d)89. See Dun. Dig. 2187.

7494. Licenses required—Filing copy of articles of incorporation and statements—Etc. [Repealed.]

Repealed. Laws 1935, c. 200, §§27, 30.

Babcock v. Bancamerica-Blair Corp., 212M428, 4NW(2d) 89; note under §7493.

Departure of foreign corporation from Minnesota, subsequent absence therefrom and residence elsewhere, held to have tolled Minnesota Statute of limitations with respect to action against such corporation. City Co. of New York v. S., (CCA8), 110F(2d)601, aff'g. (DC-Minn), 25FSupp948. Overruled by 209M155, 296NW513, and later rev'd and remanded by 312US666, 61SCR823, 85LEd1110. Chase Securities Corp. v. V., (CCA8), 110F(2d)607.

Service of a summons upon Secretary of State did not give court jurisdiction of an action to recover from a foreign corporation which sold securities in Minnesota without complying with law requiring it to obtain a license, where the corporation had withdrawn and was doing no business in the state at time summons was served. Sivertsen v. Bancamerica-Blair Corporation, (D C-Minn), 43 F. Supp. 233. Appeal dism'd (C.C.A.8), 129 F. (2d) 1022. See Dun. Dig. 7814.

Running of limitations is not tolled by departure of foreign corporation from state so long as there is a process agent in state. Pomeroy, v. N., 209M155, 296NW 513. See Dun. Dig. 5610.

7495-1. Definitions.

Where a corporation, organized under the laws of one state, transacts no business there and establishes its

principal office in another, where it manages and directs its business, it acquires a commercial domicile there, in virtue of which it is subject to taxation there upon its intangibles, even though its business may extend into other states. Cargill v. Spaeth, 215M540, 10NW(2d)728. See Dun. Dig. 9155.

A foreign non-profit corporation is not required to secure a certificate of authority, and this applies to a sorority. Op. Atty. Gen., (92c), June 26, 1941.

7495-2. Foreign corporations must have a certificate of authority.

A state has no right to exclude foreign corporations from doing business within the state where the business has a substantial relation to interstate commerce. Union Brokerage Co. v. Jensen, 215M207, 9NW(2d)721. See Dun. Dig. 2186, 4895.

A state may impose such restrictions as it sees fit as a prerequisite to a foreign corporation coming into the state to do business. Id.

Where a railroad corporation licensed to do business in the state was reorganized in bankruptcy and new corporation was formed under order of court, the new corporation must become licensed as an entirely new entity and pay required license fees. Op. Atty. Gen. (92c), Dec. 18, 1941.

7495-3. Foreign corporations not to do banking business.—No foreign corporation shall transact in this state the business which only a bank, trust company or building and loan association may transact in this state; provided, however, that any such foreign corporation may apply for, in the manner hereinafter set forth, and obtain a certificate of authority to transact in this state the business of making real estate loans. (As amended Apr. 9, 1941, c. 164, §1.)

Intention of 1941 amendment appears to have been to extend to building and loan association organized under the laws of other states the privilege of qualifying here for the sole business of making real estate loans. Op. Atty. Gen. (53C), Jan. 30, 1942.

Federal building and loan association may do business in this state without qualifying as a foreign corporation. Id.

7495-4. Names of corporations.

(a).

A "banking" corporation authorized to do business under banking laws of New York may not establish a place of business in this state to lend money, purchase accounts, notes, choses in action, etc., but not to accept deposits, operate as a bank or perform any banking function, cannot use the word "banking" in its name. Op. Atty. Gen. (92c), July 15, 1943.

7495-8. Same powers as domestic corporation.

A corporation organized under laws of Maine and licensed to do business in Missouri and Minnesota may not obtain a reciprocity permit for motor vehicles registered under laws of Missouri. Op. Atty. Gen. (632C), Dec. 10, 1940.

Statute authorizing a foreign corporation to conduct business in Minnesota does not render corporation a "resident" within meaning of fur buyer's license act. State v. Starkweather, 214M232, 7NW(2d)747. See Dun. Dig. 2188.

7495-13. Service of process.

Running of limitations is not tolled by departure of foreign corporation from state so long as there is a process agent in state. Pomeroy v. N., 209M155, 296NW513. See Dun. Dig. 5610.

7495-14. Must file report with Secretary of State.

Where no report was filed on or before April 1 and notice was sent on May 13 by registered mail apprising company of fact that its certificate of authority would be revoked unless default was cured within thirty days after mailing of such notice, and no report was filed, revocation of license was proper, and report could not be reinstated later without payment of required fees and penalty, no "good cause" being shown. Op. Atty. Gen. (92c), July 13, 1942.

7495-17. Revocation of license.

(a).

Where no report was filed on or before April 1 and notice was sent on May 13 by registered mail apprising company of fact that its certificate of authority would be revoked unless default was cured within thirty days after mailing of such notice, and no report was filed, revocation of license was proper, and report could not be reinstated later without payment of required fees and penalty, no "good cause" being shown. Op. Atty. Gen. (92c), July 13, 1942.

7495-20. Foreign corporations may not maintain action unless licensed.

Fact that a foreign corporation, party to an action, has not been licensed to do business in state is, as against it, a defense to be affirmatively pleaded and may not be taken advantage of by motion to dismiss not made until the trial. Risvold v. G., 209M357, 296NW411. See Dun. Dig. 2188.

A foreign corporation which maintains an office in Minnesota, engages in a substantial wholesale business here through an agent employed on a commission basis, and otherwise engages in business activities here, is doing a local business within the state, and cannot maintain an action upon a guaranty agreement executed in the state without having obtained a certificate of authority to do business in the state. Cohn-Hall-Marx Co. v. Feinberg, 214M584, 8NW(2d)825. See Dun. Dig. 2187.

Activities of a corporation as a customhouse broker, which were local and intrastate in character and had no substantial relation to interstate commerce rendered corporation amendable to statute requiring a certificate of authority before bringing an action in the state. Union Brokerage Co. v. Jensen, 215M207, 9NW(2d)721. See Dun. Dig. 2188, 4894.

7495-27. Laws repealed.

Jurisdiction of a foreign corporation was not obtained by service of summons by sheriff leaving copies with chief clerk of corporation division of secretary of state, or by leaving copies of summons with deputy securities commissioner, it appearing that defendant entered state in May, 1929, and transacted business in securities until October, 1931, when it entirely withdrew therefrom and has never since transacted any business in the state, and never registered any securities in the state nor applied for nor received license to deal in securities therein, and never appointed any agent to receive process or notice for it nor complied with Mason's St., §§7493, 7494, on withdrawing, or with §3996-11, and securities sold to plaintiff were never registered with securities commissioner. Babcock v. Bancamerica-Blair Corp., 212M428, 4 NW(2d)89. See Dun. Dig. 2187.

7495-30. Date effective.

Babcock v. Bancamerica-Blair Corp., 212M428, 4NW(2d) 89; note under §7495-27.

PUBLIC SERVICE CORPORATIONS

RAILROAD CORPORATIONS

7525. Right of way over public ways.

Generally speaking, county board has no authority to grant easements or permits for electric power lines over tax forfeited lands. Op. Atty. Gen. (700A-3), Aug. 21, 1941.

7526. Power to acquire property.

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.

7535. Right of eminent domain in certain cases.

No state officer or employee has authority to give a right of way easement to any corporation, cooperative, or person over state hospital property. Op. Atty. Gen., (700a-3), Oct. 24, 1939.

7536. Use of public roads—Restriction.

In death action against power company involving electrocution and wherein defendant had burden of proof on issue of contributory negligence, it is difficult to understand how presumption of due care in favor of a decedent would operate in favor of plaintiff. Peterson v. M., 206M268, 288NW588. See Dun. Dig. 2616.

Plaintiff's decedent, killed by electrocution, was guilty of negligence as a matter of law in manner he cut down a tree which either struck or came within immediate area of high tension nower line maintained by defendant. Id. See Dun. Dig. 2996.

All persons are held to have a certain minimum of knowledge, including scientific facts commonly known in community, and danger of electricity is so widely known and appreciated that all persons are deemed by law to have knowledge of its deadly potentialities. Id. See Dun. Dig. 2996.

In case involving electrocution of employee by defendant's uninsulated electric wire, where recovery is sought by employer's insurer, as subrogee, for payments made to employee's dependents, questions of negligence, assumption of risk, and contributory negligence of both employee and employer were for jury. Standard Acc. Ins. Co. v. M., 207M24, 289NW782. See Dun. Dig. 2996.

An ordinance of city of St. Paul under which city officers employ city employees in trimming trees along telephone and electric power lines and charge expense thereof to utilities involved is within powers conferred by the welfare clause of city charter. Erny v. C., 207M 150, 290NW427. See Dun. Dig. 6617.

Where housewife was temporarily blinded by an electric flash while operating an electric stove in usual manner, court properly applied res ipsa loquitur doctrine in action against power company which had installed stove a few days prior thereto. Peterson v. M., 207M387, 291 NW705. See Dun. Dig. 7044.

In action for injuries caused by flash of electricity while operating electric stove in ordinary manner, court did not err in instructing jury with respect to defendant's power company's capacity as a supplier of chattels and as a distributer of electricity, since negligence of de-

fendant must be result of default in either capacity. Id. See Dun. Dig. 6995.

An individual, by mere entry upon and use of public highways of a township with his water supply system, obtained no statutory franchise, since such water supply system is not to be classified as "water power". Kuehn v. V., 207M518, 292NW187. See Dun. Dig. 4168.

Individual maintaining water supply system along highway could not claim authority or franchise on ground of municipal acquiescense since no prescriptive right may be gained in a public street or highway. Id. See Dun. Dig. 8448.

Where motorist ran off of pavement and broke a pole carrying highly charged wires, causing wires to sag over edge of pavement several feet from ground, ther existed a dangerous traffic situation and an emergency requiring prompt action by power company after notice, and power company was liable where its employees arriving upon scene failed to immediately render conditions safe before a person rushing to aid of injured motorist was electrocuted. Arnold v. Northern States Power Co., 209 M551, 297NW182. See Dun. Dig. 2996.

Motorist driving off highway and breaking pole supporting highly charged electric wires was not relieved of liability for death of one electrocuted while rushing to his aid by reason of intervening negligence of power company in failing promptly to meet the emergency, and power company was not relieved of liability because it did not create the dangerous situation. Id. See Dun. Dig. 2996, 7005.

Where motorist ran into power pole causing line to sag within several feet of edge of pavement, a farmer ignorant of electricity was not guilty of contributory negligence as a matter of law in attempting to pass under wire to render aid to injured motorist. Id. See Dun. Dig. 7025.

Public liability policy issued to electric company constructing rural electric lines did not cover loss sustained by insured by reason of deliberate tresspass and the cutting of trees. Langford Elec. Co. v. Employers Mut. Indem. Corporation, 210M289, 297NW843. See Dun. Dig. 4875pp.

A power company with legal advice from start of negotiations could not claim that ordinance granting franchise was in effect though not signed by village president or attested by recorder or published, under doctrine of equitable estoppel, since it must have known that ordinance must be signed, attested and published. Union Public Service Co. v. Village of Minneota, 212M92, 2NW (2d)555. See Dun. Dig. 6788, 6789.

It would seem desirable that consent to use of village street by a power company should be in a more formal document than a mere motion before council. Id. See Dun. Dig. 6618.

Act of village council in form of an ordinance both as to title and contents, granting a power company authority to use street, must be published as an ordinance. Id. See Dun. Dig. 6789.

Before an ordinance takes effect, including an ordinance granting a franchise to a power company, it may be revoked or repealed by village council either by motion, resolution, or ordinance. Id. See Dun. Dig. 6790.

Evidence that a workman, who was electrocuted by taking hold of a metal brace and an uninsulated spot on a connection with high-voltage wires, while engaged in the performance of his work on the steeply sloping roof of a lean-to shed, was seen walking on the roof toward the crossarm brace and afterwards was seen holding onto the connection at the uninsulated spot and the metal brace, with his body doubled up, but did not show what the workman did when he got in close proximity to the brace, did not displace the presumption that decedent exercised due care for his own safety. Schroepfer v. City of Sleepy Eye, 215M525, 10NW(2d)398. See Dun. Dig. 2996.

A distributor of electricity placing connections between its customer's and its own high-voltage electric wires on a crossarm four feet above the roof of a lean-to shed, on which the presence of workmen might reasonably be anticipated, may be found negligent, if one of the connections is partly uninsulated, for failure to insulate the connection or to place it above the danger line of contact. Id.

A distributor of electricity, because it is a dangerous, deadly, and silent force, is under an affirmative duty either to insulate its wires or to place them beyond the danger line of contact where people might reasonably be expected to go. Id.

Where a distributor of electricity places its wire in such a way that there is no reasonable ground to anticipate that people will come in dangerous proximity to them, there is no breach of legal duty and consequently no basis for a charge of negligence. Id.

Rules applicable to duties of any distributor of electricity were applied in determining question of negligence of a city, with respect to the insulating and placing of high tension wires. Schroepfer v. City of Sleepy Eye, 215M525, 10NW(2d)398. See Dun. Dig. 2996f.

Where contract for repairing a county aid road provided that power poles should be removed by owners, and cooperative electric company refused to make two moves, and county agreed to pay for one move, cost to county was a necessary incidental expense which could properly be paid out of road and bridge fund. Op. Atty. Gen., (98a-12), Nov. 4, 1939.

Where alteration in highways necessitated removal of telephone pole to a temporary location and their removal back after grading was completed, cost of moving poles falls upon company and not upon county. Op. Atty. Gen. (98a-12), Feb. 13, 1940.

Water power, telegraph, telephone, or light, heat and power company may install lines on public highways outside a city or village without any permit from county commissioners, whether roads are towns, county or state roads. Op. Atty. Gen. (624c-14), June 17, 1940.

Where rural cooperative electric association erected poles along county highway but outside its 33-foot right-of-way, and county obtained slope easement from abutting owners for purposes of improving road, cost of removing poles should be paid by county, regardless of restrictions in permit to construct lines along and over county roads. Op. Atty. Gen. (377a-13), Sept. 18, 1940.

It is not necessary for village to advertise for bids in connection with granting of franchise to electric light and power company to furnish energy to village and inhabitants, if franchise is not exclusive and does not exceed a period of 15 years. Op. Atty. Gen. (707a-15), Dec. 3, 1940.

Office of attorney-general has held that a village could not grant a perpetual franchise to a light and power company, but law is so uncertain that there should be a judicial determination of the question. Op. Atty. Gen. (204a-5), Dec. 10, 1940.

Generally speaking, county board has no authority to grant easements or permits for electric power lines over tax forfeited lands. Op. Atty. Gen. (700A-3), Aug. 21, 1941.

Grant of franchise to public utility to use street is question for village council, and an election on question would be only advisory. Op. Atty. Gen. (624A-5), Sept. 5, 1941.

Village council has no power to regulate rates of power company whose franchise has expired, and right to charge license fee for use of street is doubtful, in absence of a contract. Op. Atty. Gen. (624A-5), Mar. 25, 1942.

TELEGRAPH AND TELEPHONE COMPANIES

7549. Who may construct telegraph lines; etc.

Laws 1921, c. 92, conferring on villages power to issue bonds for erection of a white way, has expired by its own terms. Op. Atty. Gen. (44B-16), Aug. 21, 1941.

CEMETERY ASSOCIATIONS

7557. Existing and new cemeteries, how governed.

One attending a burial service was an invitee of cemetery, which was bound to keep premises in a reasonably safe condition for her use and give warning of latent or concealed defects, though it owed no duty to warn of known or obvious dangers. Hutchison v. Hillside Cemetery Ass'n, 212M242, 4NW(2d)81. See Dun. Dig. 6984.

Finding that cemetery failed to keep premises in reasonably safe condition for use of invitee was sustained by evidence that it allowed a wire pedestal to remain on grave in area to be occupied by those attending a burial service, and plaintiff's failure to look as she stepped backward was not contributory negligence as matter of law, though some lot owner placed the wire pedestal on his lot contrary to regulations. Id. See Dun. Dig. 6984, 6994.

A cemetery corporation whose existence has terminated by limitation within three years may transfer its property to a city and city may agree to maintain and operate the cemetery as a public cemetery. Op. Atty. Gen. (870d), Dec. 10, 1943.

7558. Cemetery associations.

A cemetery association organized under Stats. 1878, Title 5, §239, etc., may transfer cemetery to a city to be held and maintained as a cemetery by the city, under proper arrangement for carrying out obligations to lot owners. Op. Atty. Gen. (870b), Aug. 13, 1943.

7559. Officers of cemetery associations to make reports.

When a township is dissolved, it is duty of county commissioner to appoint an actuary for town cemetery until it is disposed of. Op. Atty. Gen. (870), Dec. 10, 1940.

7561. Land, how acquired—Extension.—Every such corporation may take and hold, by purchase or gift, within the county of its location, and in an adjoining county, not exceeding 300 acres of land to be actually used and occupied exclusively for the burial or cremation of the dead and for purposes necessary or proper thereto. Such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees shall determine, with such avenues, alleys, and walks as they deem proper, and a map of such survey shall be filed for record with the register of deeds of the county of its location; and whenever the corporation desires to enlarge its cemetery, and cannot agree with the owners

of the land desired therefor, the same may be acquired under the power of eminent domain: Provided, that public necessity, propriety and convenience require such proposed enlargement, which, together with the boundaries thereof, shall be first established and determined as issues of fact. (As amended Act 16, 1941, c. 240, §1.)

Lands acquired must be within county of location of cemetery, and association cannot purchase adjoining lands in another county. Op. Atty. Gen. (870a), Nov. 18, 1940.

7563. Funds—How used—Grants in trust.

A cemetery corporation is authorized, under its power to defray necessary expenses in management and care of its cemetery, to pay unemployment compensation taxes imposed on basis of labor employed in operating and maintaining its cemetery. Christgau v. W., 208M263, 293 NW619. See Dun. Dig. 1386.

7569. Lots inalienable — Conveyance. — Whenever any lot in any cemetery, or any entombment or inurnment space in any mausoleum, has been sold or conveyed for burial purposes, such lot, entombment or inurnment space shall forever thereafter be inalienable, except as hereinafter provided.

(a) The original purchaser of such lot, entombment or inurnment space, may sell, convey and release to the cemetery the portion of the same not actually occupied by interments or by entombment or inurned human remains.

(b) The owner by inheritance of such lot, entombment or inurnment space, after ten years have elapsed since title to such lot, entombment or inurnment space vested in such owner by inheritance, may sell, convey and release to the cemetery the portion of the same not actually occupied by interments or by entombed or inurned human remains.

(c) When, by the consent of the owner, such lot, entombment or inurnment space has been solely used by some other person as a family burial place, such owner, with the consent of the governing body of the cemetery, may convey the same to the persons so using it.

The cemetery may use any of its funds for repurchase of any lots, entombment or inurnment spaces, as provided herein, and may hold or again sell and convey the same. (As amended Apr. 1, 1943, c. 253, §1.)

7570. Cemetery association may reinvest; etc.

Association may restrain the burial of a member of a lot owner's family if lot owner is in arrears in his annual assessments, if according to regulations in effect at time of sale of lot. Op. Atty. Gen. (870a), Aug. 20, 1940.

7579-1. Cancellation and termination of contracts for purchase of lots by certain associations—Refunds. —Whenever any cemetery association organized under the laws of this state, shall enter into a contract to convey to any person or persons the right of sepulture or burial upon any platted lot or designated piece of ground, or any entombment or inurnment space in any mausoleum within the area of such cemetery, by which contract the association has reserved the right to terminate the same in case of default by the purchaser, and to forfeit the payments made, as liquidated damages, it may do so by serving upon the purchaser, his personal representative, or assigns, a notice as provided in Section 9576 Mason's Minnesota Statutes, 1927, specifying the conditions in which default has been made, and stating that such contract will terminate thirty (30) days after the service of such notice, unless prior thereto, the purchaser shall comply with such conditions and pay the costs of service. Provided that when the contract so specifies the notice may be served upon the purchaser, by registered mail, return receipt requested, by depositing the same in the post office, with the postage prepaid thereon, and addressed to the purchaser at the address given by him in the contract, or as later changed by written notice to the association. In case the notice of default is served by mail, the thirty-day period hereinbefore specified shall commence to run as of the date of depositing the same in the post office:

Provided further, that if any interment or burial has been made on such platted lot or designated piece of ground, or in any entombment or inurnment space in said mausoleum so sold said contracts to convey may be terminated only as to the portion of the premises or entombment or inurnment space not actually occupied by said interment or burial or by an entombment or inurnment. (As amended Mar. 29, 1943, c. 216, §1.)

7579-1a. Same—Not to apply to existing contracts. —This act shall not apply to any contracts existing prior to the passage of this act. (Act Mar. 29, 1943, c. 216, §2.)

[306.24]

7582. Conveyance or other disposal of lots by owners.

Transfer of a cemetery lot, or any portion thereof, can be made by owner only to cemetery association or a private cemetery in trust for use and benefit of a person or persons named in trust. Op. Atty. Gen., (870), July 21, 1941.

If cemetery is operated by a city under a home rule charter or has been in existence prior to passage of this section, rights and powers as to transfer of lot are not affected by this section. Id.

7591. Fund, how constituted.—Twenty per cent of the proceeds of all sales of cemetery lots made after the vote of the trustees to establish said care and improvement fund shall be paid over to such board or trustee, on January 1, April 1, July 1, and October 1, in each year, until the principal of said fund shall amount to at least one hundred thousand dollars; and any other income or funds of the association, in excess of its liabilities, may be added to such fund by a two-thirds vote of its trustees. But the principal of such fund shall in no event exceed five thousand dollars for each acre of the cemetery, nor one million dollars in the aggregate. The words "cemetery lots" as used in this section shall not be construed to include burial space in a mausoleum. Each such cemetery association shall take not less than ten per cent of the proceeds of all sales of burial space hereafter made in a mausoleum for such fund, which shall be paid over on the first days of January, April, July and October of each year to the trustee or trustees of said fund, and such payments shall thereafter become a part of such permanent care and improvement fund. The term "burial space" as used herein shall include private rooms, crypts, niches or other designated space in which the bodies or ashes of deceased persons are placed for permanent burial in a mausoleum. (As amended Mar. 15, 1943, c. 133, §1.)

7616. Same—Percentage of sale of lots to be paid into fund—Other additions to fund.—Each such cemetery association shall take not less than 20 per cent for such fund of the proceeds of all sales hereafter of cemetery lots, which shall be paid over on the first days of January, April, July and October of each year to the trustee or trustees of said fund, and such payments shall thereafter become a part of such permanent care and improvement fund. Any other income or funds not required by such association for other purposes may from time to time be added to said fund by a vote of at least two-thirds of the members of the said board of trustees of the association. The words "cemetery lots" as used in this section shall not be construed to include burial space in a mausoleum. Each such cemetery association shall take not less than ten per cent of the proceeds of all sales of burial space hereafter made in a mausoleum for such fund, which shall be paid over on the first days of January, April, July and October of each year to the trustee or trustees of said fund, and such payments shall thereafter become a part of such permanent care and improvement fund. The term "burial space" as used herein shall include private rooms, crypts, niches or other designated space in which the bodies or ashes of deceased persons are placed for

permanent burial in a mausoleum. (As amended Mar. 15, 1943, c. 133, §2.)

7624. Application of act—Corporate public cemetery association may come under act.—This act shall also apply to cemetery associations mentioned in section 1 of this act, maintaining such cemeteries in cities existing under a charter framed pursuant to section 36 of article 4 of the constitution. The governing body of any corporate public cemetery association wishing to avail such corporation the benefits of this act may do so by adoption of a resolution by a two-thirds vote of the governing board. (As amended Act Feb. 15, 1943, c. 32, §1.)

PRIVATE CEMETERIES

7629. Gifts authorized for proprietary care of lots in cemeteries.

City has no power to appropriate money to assist in maintenance of a private cemetery. Op. Atty. Gen. (59a-3), May 19. 1942.

FINANCIAL CORPORATIONS

GENERAL PROVISIONS

7640. Supervision by examiner.

This section is superseded by §5323. Op. Atty. Gen., (29a-6), April 12, 1940.

7642. Unclaimed dividends in liquidation.

Laws 1943, c. 442, §(13), applies to unclaimed dividends in the hands of the commissioner of banks at the time of passage of Laws 1941, c. 183, and they should be sent over to the state treasurer, subject to right of commissioner to receive 50 per cent thereof to defray expenses in connection with liquidation of closed bank. Op. Atty. Gen. (29b-(7)), Dec. 8, 1943.

7648. Right to acquire and hold real estate.—Save as otherwise specially provided, the entire cost of land and buildings for the transaction of the business of such a corporation, including premises leased to others, shall not be more than as follows, assets other than cash being taken at cash market value: For a bank or a trust company, 40 per cent of its existing capital and surplus; for a savings bank, 50 per cent of its net surplus; for a building and loan association, five per cent of its net assets. Any such corporation may change its location, dispose of its place of business, and acquire another, upon the written approval of the commissioner of banks. (As amended Act Feb. 28, 1941, c. 37, §1.)

7650. Schedule of fees.

This section is superseded by §5332. Op. Atty. Gen., (29a-16), April 12, 1940.

7658-1. Definitions.

Township mutual insurance companies may invest funds up to $5,000 in federal savings and loan associations. Op. Atty. Gen., (249a-12), June 3, 1941.

7658-4. Laws prescribing type of security not to apply.

Nothing in this section nor §7658-3 is intended to supersede the limitations contained in §7677 Mason's Minn. St. 1927. Op. Atty. Gen., (29a-19), July 7, 1941.

7658-7. Banking institutions may take advantage of Federal Banking Act.

Fire Department Relief Association is probably entitled to interest on savings deposits in a national bank under regulations of the Federal Deposit Insurance Corporation. Op. Atty. Gen. (30d), Oct. 4, 1940.

Village general fund, waterworks fund, sewer fund, sewage disposal fund, light fund, and municipal liquor store fund are insured in the aggregate up to $5000, regardless of number of accounts, and notwithstanding that law requires some of the funds be kept entirely separate from other funds. Op. Atty. Gen. (355E), Feb. 18, 1941.

7658-21. Certain deposits assumed to be abandoned. [Repealed.]

Repealed. Laws 1943, c. 620, §9.

Sale of escheated property by State treasurer, §95-4.

Tennessee statute requiring banks to pay over to the state the amount of deposits which have been inactive for 15 years, held invalid as to national banks as invading federal powers. American Nat. Bank v. C., 135SW(2d) (Tenn)935.

State savings bank may not lawfully credit deposits of less than $10.00, which have not been dealt with for 20 years, to its surplus and undivided profits account, since it does not own such deposit outright. Op. Atty. Gen. (30d), June 11, 1940.

Certificate of deposit is within Escheat Law. Op. Atty. Gen. (29-a-4), July 31, 1940.

Act is invalid as applied to national banks. Op. Atty. Gen. (32), Jan. 20, 1942.

7658-22. Banks to notify attorney general. [Repealed.]

Repealed. Laws 1943, c. 620, §9.

Act is invalid as applied to national banks. Op. Atty. Gen. (32), Jan. 20, 1942.

(b).

A reference to previously filed statement of names may be accepted, if they indicate all changes in list of deposits already filed. Op. Atty. Gen. (29a-12), Feb. 1, 1940.

7658-23. to 7658-27. [Repealed.]

Repealed. Laws 1943, c. 620, §9.

7658-28. Definitions.—Subdivision 1. The following words, terms, and phrases shall, for the purposes of this Act, be given the meanings subjoined to them.

Subdivision 2. "Banking institution" means any state bank, national bank, savings bank, or trust company, within this state.

Subdivision 3. "Financial institution" means any savings, building, and loan association organized under the laws of this state, federal savings and loan association, credit union, industrial loan and thrift company, or other financial institution within this state.

Subdivision 4. "Person" means a partnership, association, or corporation, as well as a natural person.

Subdivision 5. "The state" means the State of Minnesota.

Subdivision 6. "Deposit" and "funds or other property", when such funds or other property are referred to as having been left on deposit or held on deposit, each means the unpaid balance of money or its equivalent received by a banking institution or financial institution in the usual course of business and for which it has given or is obligated to give credit to a commercial, checking, savings, time or thrift account, or which is evidenced by its certificate of deposit, passbook, share certificate, certificate of indebtedness, or other like certificate. (Act Apr. 24, 1943, c. 620, §1.)
[48.521]

7658-29. Abandoned funds.—When any person abandons any funds or other property which have been left on deposit, or otherwise, with any banking institutions or financial institution, the same shall, with the increase and proceeds thereof, escheat to and become the property of the state. (Act Apr. 24, 1943, c. 620, §2.)
[48.522]

7658-30. What are presumed to be abandoned funds.—Any person who has left on deposit, or otherwise, with any banking institution or financial institution, any funds or other property, and has not dealt therewith for a period of 20 years by adding thereto, withdrawing therefrom, or asserting any claim thereto, is presumed to have abandoned the same. (Act Apr. 24, 1924, c. 620, §3.)
[48.523]

7658-31. Banks to file lists of abandoned funds with Secretary of State.—Subdivision 1. (1) It shall be the duty of the cashier or managing officer of every banking institution and financial institution, which on June 30, 1943, holds on deposit, or otherwise, any funds or other property which have been left with it on deposit, or otherwise, and have not been dealt with for a period of 20 years by additions thereto, withdrawals therefrom, or the assertion of any claim thereto, to file with the secretary of state, within thirty days thereafter, a statement, in duplicate, reporting the same, stating the names of the persons shown by the records of said banking institution or financial institution to have been the owners or depositors of such funds or other property; the last known place of residence or business of each, and in

each instance, the kind of funds or other property, and how held, the amount of the deposit, including interest if any, and the value and nature of the property otherwise held, including interest or other increase or proceeds thereof, if any. This statement shall be subscribed by the officer making it, and shall be verified by his affidavit that it is a complete and correct statement of the funds and other property required by this subdivision to be reported, and that the statements therein are true to the best of his knowledge, information and belief.

(2) Like verified statements, in duplicate, shall be filed with the secretary of state, within 30 days after the first day of January in each year thereafter, by the cashiers or managing officers of all banking institutions and financial institutions which, on said first day of January, hold on deposit, or otherwise, any funds or other property, which by the terms of Section 3 of this Act are presumed to have been abandoned.

(3) The duplicate copies of these verified statements shall be delivered by the secretary of state to the attorney general immediately after filing.

Subdivision 2. The secretary of state shall have the statements referred to in Subdivision 1 of this section bound at the expiration of each filing period, and shall make and keep an alphabetical index of persons reported as depositors or owners, with appropriate references to the bound statements, and these bound statements and index shall be open to public inspection.

Subdivision 3. A copy of each statement required by Subdivision 1, together with a notice, directed to whom it may concern, stating that the deposits or other property referred to in the statement have not been dealt with by additions thereto, withdrawals therefrom, or claim thereto, for a period of 20 years, and requesting all persons having knowledge or information relative to the whereabouts of the persons named in the statement, or other possible claimants to the funds or other property, to give this information to the subscribing officer, shall be displayed in a prominent place in the banking institution or financial institution for which the statement is filed, accessible to the public, for a period of 30 days from the date of filing. (Act Apr. 24, 1943, c. 620, §4.)
[48.524]

7658-32. Escheated funds.—Subdivision 1. Whenever the attorney general has reason to believe, from an examination of the statements required by Subdivision 1 of Section 4 hereof to be filed, or from other information or investigation, that any funds or other property, in this Act referred to, have escheated to and become the property of the state by reason of the abandonment thereof, he shall commence an action or actions in the name of the state in this district court of Ramsey County to declare the escheat of and enforce the rights of the state in and to said funds or other property, or any part thereof. Such action shall be commenced by the filing of a verified complaint in the office of the clerk. All or any number of persons who are claimed to have abandoned such funds or other property and any other known claimants to the same may be joined as defendants in one action. The place of trial of any such action shall not be changed without the consent of the attorney general. Every such action shall be triable by the court without a jury.

Subdivision 2. (1) In any such action the state, at the time of the filing of the complaint in the office of the clerk, or at any time thereafter, may have the funds or other property held by banking institutions and financial institutions on deposit, or otherwise, and claimed by the state to have been abandoned by the defendants, or any part of such funds or other property, attached, in the manner hereinafter prescribed, as security for the satisfaction of such judgment as it shall recover.

(2) To procure such attachment, the attorney general shall file a petition verified by himself or one of his assistants on information and belief, for a writ or writs of attachment, which petition shall set forth that the action is brought under the provisions of this Act for the purpose of declaring the escheat of and enforcing the rights of the state in and to certain funds and other property, claimed to have been abandoned, referring to the complaint on file for a description of the funds and other property involved; that the state, as plaintiff, desires certain of those funds and other property attached as security for the satisfaction of such judgment as it may recover, and that to that end he prays that one or more writs of attachment issue, directed to the sheriffs of such counties as shall be designated in the petition, requiring the attachment of the funds or other property to be in the petition described. The petition shall then set forth, as to each writ desired, the name of the county to the sheriff of which said writ shall run, and a statement of the funds and other property sought to be attached, stating as to each item of such funds and other property the name of the defendant by whom it is claimed it has been abandoned, and the names of any other known claimants thereto; the last known residence or business address of such person or persons, if known, and if not known, stating that fact; the amount or value thereof, including interest or other increase or proceeds thereof, whether funds or other property, and how held, describing the property if other than funds, and the name and business address of the banking institution or financial institution holding such funds or other property, including the name of the county in which it is doing business. A writ or writs of attachment shall then be allowed by a judge of the court in which the action is brought. No bond shall be required as a condition of allowing any such writ.

(3) Upon the filing of the petition and the order of allowance, the clerk shall issue the writ or writs prayed for. If more than one writ is issued, such writs may be directed to the sheriffs of different counties as specified in the petition. Each writ shall require the sheriff to attach the funds or other property held by banking institutions and financial institutions in his county on deposit, or otherwise, attachment of which was prayed for in the petition, and shall describe the funds and other property to be attached, stating as to each item thereof the same matters required to be stated in the petition.

(4) The sheriff, upon receiving the writ, shall execute the same without delay. He shall attach all funds and other property described in the writ as being held by any banking institution or financial institution by leaving with such banking institution or financial institution a certified copy of the writ and a notice specifying the funds and other property attached. When he has executed the writ he shall annex to it an inventory of the funds and other property attached, and return the writ with his doings to the court.

Subdivision 3. Service of the summons may be made upon the defendants in any action by publication of a copy thereof once each week for four consecutive weeks in a newspaper of general circulation published in each of the counties in which funds and other property have been attached. The first publication shall be made within 30 days after the issuance of the first writ of attachment in any action. If publications are made in more than one county such publications shall all be commenced within the same week. With the summons a notice shall be published, giving the title of the action and referring to the claim therein, and directed to all persons other than those named as defendants therein claiming any interest in any funds or other property described in the complaint, and requiring them to appear within 60 days after the first publication of the summons and show cause, if any they have, why it should not be

adjudged that the owners of such funds and other property have abandoned the same, and why such funds and other property have not escheated to and become the property of the state, and notifying them that if they do not so appear and show cause the state will apply to the court for the relief demanded in the complaint. At the end of each such notice there shall be a statement of the date of the first publication of the summons and notice. A copy of the summons and notice shall be posted in a conspicuous place in each banking institution and in each financial institution holding funds or property described in the complaint, within 15 days after the first publication of the summons, the copies thereof mailed within the same period to all defendants whose last known place of residence or business is shown by the petition for writ of attachment to be in the State of Minnesota, at such last known place of residence or business.

Subdivision 4. Any person interested may intervene in such action, as provided by law.

Subdivision 5. Upon the completion of the publication of the summons and notice, and the elapse of sixty days from the date of the first publication thereof, and proof thereof, together with proof of the posting and mailing provided for in Subdivision 3 of this section, the court shall have full and complete jurisdiction over all the funds and other property which have been attached and of everyone having or claiming an interest in said funds or other property, and full and complete jurisdiction to hear and determine the issues in the action and render an appropriate judgment therein.

Subdivision 6. Upon the trial the verified statements filed with the secretary of state, pursuant to the provisions of Subdivisions 1 and 2 of Section 4 of this Act, shall be prima facie evidence of the facts therein stated. The court shall, if it finds that any party is entitled to any of the funds or other property described in the complaint, order that the action be dismissed as to such party, and the attachment of such funds vacated, without costs. If the court shall find as to all or any part of the funds and other property described in the complaint that the depositors or owners thereof have abandoned the same, it shall adjudge that such funds and other property have escheated to and become the property of the state, and that the state is entitled to recover the same.

Subdivision 7. Upon the entry of any judgment in favor of the state, the attorney general shall notify, in writing by mail, all banking institutions and all financial institutions holding any funds or other property adjudged to have escheated to and become the property of the state, and demand that the same be forthwith transmitted to the state treasurer. If any such institution shall fail, within 30 days after the mailing of such written notice, to transmit such funds or other property to the state treasurer, the attorney general, after filing a proof of the mailing of the notice with an affidavit showing such failure to transmit the funds or other property, may proceed to have the judgment enforced by execution. Such a judgment as to any funds or other property shall be satisfied only out of the property attached. Executions may be directed to the sheriff of any county and shall run throughout the state without the necessity of filing any transcripts of the judgment in counties other than that in which it was rendered. (Act Apr. 24, 1943, c. 620, §5.)
[48.525]

7658-33. Funds to be credited to general revenue fund.—All monies transmitted to the treasurer by banking institutions and financial institutions, and all monies collected on executions, shall be credited to the general revenue fund. (Act Apr. 24, 1943, c. 620, §6.)
[48.526]

7658-34. Owners may sue state to recover money.—Any person claiming to be legally entitled to any of the funds or other property involved in any action commenced under the provisions of Section 5 of this Act, who did not appear in said action, may, within a period of ten years after the entry of judgment therein, sue the state to recover the funds or other property of which it was alleged he was the owner or depositor, and in case such person be an infant or under disability, the period of limitation is extended to one year from the removal of such disability. In case such person recovers judgment the attorney general shall advise the legislature at its next session of such recovery and request an appropriation for the payment of such judgment. If funds or other property involved amount to less than the value of $200, any person making claim to such funds or other property may make application to the executive council for the refund thereof, and upon good cause shown, the executive council is authorized to order such refund paid to such claimant from the general revenue fund. A sufficient amount is apropriated annually to pay any such refunds so ordered by said executive council. In any suit brought under the provisions of this section no interest shall be allowed by the plaintiff and no interest shall be allowed by the executive council on any amount which it shall order paid. (Act Apr. 24, 1943, c. 620, §7.)
[48.527]

7658-35. Violations—Penalties.—Any banking institution or financial institution which shall, or the cashier or managing officer of which shall, knowingly and wilfully violate any of the provisions of this Act shall forfeit to the State interest in the amount of 15 per cent per annum upon all such funds or other property held on deposit or otherwise by said institution as come within the provisions of this Act; provided, however, that, until it shall have been determined by final decision of a court of competent jurisdiction, from which no appeal or request for review has been made within the time permitted by applicable provisions of law or from which no appeal or request for review is permissible, that the provisions of this Act are valid and enforcible, no bank or financial institution shall become subject to the penalty herein provided for failure to comply with any provision of this Act if such failure be based upon its contention in good faith that the provisions of this Act are invalid as applied to it. (Act Apr. 24, 1943, c. 620, §8.)
[48.528]

7658-36. Laws repealed.—Laws 1937, Chapter 358, being Mason's Supplement 1940, Sections 7658-21 to 7658-27, is hereby repealed. (Act Apr. 24, 1943, c. 620, §9.)

BANKS

7660. Special powers.

A cashier's check is merely a bill of exchange, and even though negotiable in form, is not equivalent of money, and drawer bank does in certain circumstances have a valid defense against holder, and payment of check can be stopped, and may be stopped by purchaser as against one not a holder in due course. Deones v. Zeches, 212M 260, 3NW(2d)432. See Dun. Dig. 995a.

7663. Powers and duties.

A statute authorizing the Federal Reserve Bank to make loans to private industries or persons is not mandatory, and the refusal to do so does not give a cause of action for damages. Billings Utility Co. v. Federal Reserve Bank, (DC-Minn), 46FSupp691. See Dun. Dig. 813a.

Where check was drawn on bank containing deposit of both drawer and payee and was deposited and credited to payee, but before it was charged against drawer's account, payment was stopped, bank could not avoid obligation to payee by charging bank amount of check. W. A. White Brokerage Co. v. C., 207M239, 290NW790. See Dun. Dig. 787.

A collecting bank owes a duty to payee to exercise ordinary care in collection of item. First Nat. Bank v. N., 14Atl(2d)(NJ)765.

Indorsement "for deposit" indicates that endorsee bank is agent for collection and not owner of item. Id.

An action for money had and received would not lie against a bank cashing a check upon which name of

payee was forged and paying out entire proceeds of check by cash and credit and receiving from drawee bank only the amount it had disbursed, since it was not unjustly enriched. Soderlin v. Marquette Nat. Bank, 214M408, 8 NW(2d)331. See Dun. Dig. 797. But see Home Indemnity Co. v. State Bank of Fort Dodge, 8NW(2d)(Iowa)757; Sidles Co. v. Pioneer Valley Sav. Bank, 8NW(2d)(Iowa) 794.

The relation between a bank and its depositor is that of debtor and creditor. Brunswick Corp. v. Northwestern Nat. Bank & Trust Co., 214M370, 8NW(2d)333, 146ALR 833. See Dun. Dig. 780.

A passbook provision limiting time within which to examine and give notice of errors to ten days after receiving monthly statements from bank is reasonable and constitutes a contractual obligation binding upon the depositor, whether the depositor signed it or was aware of its contents or not. Id. See Dun. Dig. 781.

Reasonable provisions in a passbook are binding upon bank's depositor. Id.

The object of a passbook is to inform the depositor from time to time of the condition of his account as it appears upon the books of the bank. Id.

Passage of uniform negotiable instruments act without a limitation provision did not impliedly repeal state statute requiring a bank depositor to report forgeries within 6 months. Id.

Negligence on the part of a bank does not have effect of exonerating a depositor from its failure to inspect bank statements and cancelled checks and to notify bank of forgery within a 10 day limitation provided in passbook. Id.

7664. Trust accounts recorded.—Besides its general books of account, it shall keep separate books of account for all fiduciary accounts. All funds and property held by it in a fiduciary capacity shall at all times be kept separate from its own funds and property, and all fiduciary funds deposited or held as fiduciary by the bank awaiting investment shall be carried in a separate account, and shall not be used by the bank in the conduct of its business, and all deposits made by it of such funds in any other banking institutions shall be deposited as fiduciary funds, to its credit as fiduciary, and not otherwise. Every security or property in which the funds held by it as trustee, executor, administrator, guardian, receiver, or assignee, or in any other fiduciary capacity are invested, shall at once upon receipt thereof be immediately entered in the proper books as belonging to the particular fiduciary account whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular fiduciary account to which it belongs so that all fiduciary funds and property can be readily identified at any time by any person. It shall be unlawful for any bank to lend any officer, director or employee any funds held as fiduciary under the powers conferred by this act. Any officer, director or employee to whom such a loan is made shall be guilty of larceny of the amount of such loan from the time of the making thereof. Any state bank when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent, cause any stocks, securities, or other property now held or hereafter acquired in such capacity to be registered and held in the name of a nominee or nominees of such state bank without mention of the fiduciary relationship. Any such state bank shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered. (As amended Apr. 7, 1943, c. 338, §1.)

7669. Stock list—Filing—Effect of transfer; etc.

Voluntary transfer by husband to his wife of his assets without retaining sufficient property to meet his liabilities held fraudulent with respect to his liability upon bank stock. McKey v. R., (CCA7), 114F(2d)129. Cert. den., 61SCR72.

Provision requiring printing "subject to single liability" on letterheads is now obsolete and may for all practical purposes be disregarded. Op. Atty. Gen. (29a-28), May 31, 1940.

7671. Dividends—Surplus.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

7677. Restrictions upon total liability of individuals to banks; first mortgage security; liability of officers; discounts; excess liability; penalty and civil liability.—The total liabilities to any such bank, as principal, surety, or endorser of any person, corporation, or copartnership, including the liabilities of the several members thereof, shall never exceed 15 per cent of its capital actually paid in cash and of its actual surplus fund; provided, that for the purposes of this section the members of a family living together in one household shall be regarded as one person and the total liabilities of the members of the family shall be limited as herein provided. Loans not exceeding 25 per cent of such capital and surplus made upon first mortgage security on improved real estate in the state or in an adjoining state within 20 miles of the place where the bank is located, shall not constitute a liability of the maker of the notes secured by such mortgages within the meaning of the foregoing provision limiting liability, but shall be an actual liability of the maker. These mortgage loans shall be limited to, and in no case exceed, 40 per cent of the cash value of the security covered by the mortgage. Commercial paper actually owned by the person negotiating the same, not exceeding 15 per cent of the capital stock and surplus, taken from any one person, shall not constitute a liability within the meaning of this act, but shall be an actual liability of the maker. The total liability of any officer or director shall never exceed ten per cent of the same aggregate amount. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or to purchase the same, made by any Federal Reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. The discount of the following classes of paper shall not be regarded as creating liability within the meaning of the section:

(1) Bonds, orders, warrants, or other evidences of indebtedness of the United States, of federal land banks, of this state or of any county, town, village, or school district in this state, or of the bonds of any other state in the United States, or bonds and obligations of the federal home loan banks established by act of congress known as the federal home loan bank act, approved July 23, 1932, and acts amendatory thereto, and in bonds and obligations of the Home Owners' Loan Corporation established by act of congress, known as the Home Owners' Loan Act of 1933, and acts amendatory thereto, in exchange for mortgages on homes, or contracts for deed, or real estate held by it.

(2) Bills of exchange drawn in good faith against actually existing values.

(3) Paper based upon the collateral security of warehouse receipts covering agricultural or manufactured products stored in elevators or warehouses under either of the following conditons:

First—When the actual market value of the property covered by such receipts at all times exceeds by at least ten per cent the amount loaned thereon.

Second—When the full amount of every such loan is at all times covered by fire insurance in duly authorized companies, within the limit of their ability to cover such amounts, and the excess, if any, in companies having sufficient paid-up capital to authorize their admission, and payable, in came [sic] of loss, to the bank or holder of the warehouse receipt, unless accompanied by a certificate of the railroad and warehouse commission declaring the warehouse issuing the same to be fireproof.

When a bank shall allow any person, copartnership, or corporation to become indebted to it, directly or indirectly, in excess of the amount, exclusive of interest permitted by the laws of this state, the officer or

employee of the bank wilfully permitting or approving the loan shall be guilty of a gross misdemeanor and, in addition thereto, shall be personally liable to the bank for the amount of the loan in excess of the statutory limit. (As amended Act Feb. 10, 1943, c. 23, §1.)

A state bank may not invest more than 15% of its capital and surplus in notes of a federal national mortgage association. Op. Atty. Gen., (29a-19), July 7, 1941.

7678. Contracts, how made.

Where bank cashed 4 postal money orders and in turn received payment from post office, government was entitled to recover from bank amount paid. U. S. v. Northwestern Nat. Bank & Trust Co., (DC-Minn), 35FSupp484.

If the bank honored check and marked it paid, fact that there was an overdraft did not prevent bank from denying liability as a garnishee of depositor on theory that bank had no legal right or authority to cash the check. Midland Loan Finance Co. v. K., 206M134, 287NW 869. See Dun. Dig. 780.

A joint control agreement by an administrator, his surety and depositary by its terms limited to special administration covers the administrator's bank account as general administrator, where the evidence shows that such was the intention and understanding of the parties, and bank was liable to surety for permitting withdrawal by check without counter signature of surety. Fidelity & Casualty Co. of New York v. P., 207M184, 290NW305. See Dun. Dig. 783.

A letter to a bank enclosing a draft "payable to" a certain brewing company, "to be deposited with the brewery for credit of" plaintiff, "on the understanding that it" was "subject to" plaintiff's withdrawal at any time, created a debtor-creditor relationship between plaintiff and brewing company, and not a trust relationship so as to render bank liable as participant in a breach thereof by cashing draft and crediting proceeds to brewery company's account. Walz v. State Bank of Greenwald, 211M317, 1NW(2d)375. See Dun. Dig. 780, 783.

A "credit" is a debt due in consequence of a contract of hire or borrowing of money and connotes no more than a chose in action. Id. See Dun. Dig. 782.

Whether or not an endorsement on a check is sufficient if made by authority of payee, it was no defense to an action against bank cashing check, where evidence did not disclose any such authority from payee, and written endorsement of payee was also forged upon the check by employee of payee who received proceeds from bank. Soderlin v. Marquette Nat. Bank, 214M408, 8NW (2d)331. See Dun. Dig. 797, 984a.

7681. Capital not to be withdrawn—Dividends.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

7682. Insolvent banks—Examiner to take charge.

Receiver took no more than bank had in pledged assets and could sell no more. Bishop v. L., 207M330, 291 NW297. See Dun. Dig. 824e.

7689. Liquidation and distribution of closed banks.

Subd. 1. **Commissioner to make inventory.** — Upon taking possession of the property and assets of such bank the commissioner of banks shall make an inventory of the assets of such bank, in duplicate, one to be filed in the office of the commissioner of banks and one in the office of the clerk of the district court of the county in which the principal office of such bank was located.

Subd. 2. **Liquidation and distribution of assets.**— The commissioner of banks shall collect all debts due and all claims belonging to such bank, and upon the order of the district court may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank on such terms as the court shall direct, and may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders.

Subd. 3. **Special attorney general.**—Upon the request of the commissioner of banks in writing the attorney general shall employ a special attorney to act as counsel in all matters relating to the liquidation of each bank, which appointment shall be made according to the provisions of the statutes regulating the employment by the attorney general of special attorneys for state boards and officers, and the payment of such attorney shall be made in the manner provided in subdivision 7 hereof for the payment of compensation and expenses in liquidation of banks.

Subd. 4. **Notice to file claims.**—The commissioner of banks shall cause notice to be given by advertisement in a legal newspaper in the city or village where such bank is located, or, if none in such city or village, then in the county, weekly for five (5) consecutive weeks, calling on all persons who may have claims against such bank to present the same to the commissioner of banks, and make legal proof thereof at a place and within a time not earlier than one week after the last day of publication, which time and place shall be specified in said notice. The commissioner of banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank.

Subd. 5. **Duties of Commissioner in regard to claims.**—If the commissioner of banks doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice made according to law shall be filed with the commissioner of banks. An action upon a claim so rejected must be brought within sixty days after such service and the filing of proof thereof. The venue of such action shall be in the county in which such bank is located, and such action shall be brought jointly against the bank and the commissioner of banks as statutory liquidator of said bank. Any person having a claim against such bank and not presented and filed within the time fixed in the notice to creditors may present the same and the commissioner of banks shall allow or reject the same in whole or in part as hereinbefore provided, and suit on such rejected claim not filed within the time fixed by the notice shall be brought within thirty days after the service and filing of proof of such rejection. Any claim not filed within the time fixed in the notice to creditors but received and filed as by this section provided and duly allowed, shall participate and share in such dividends only as shall be paid from the proceeds of those assets remaining undistributed at the time of filing of such claim. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the bank and the taking over of the same by the commissioner of banks for purposes of liquidation.

Subd. 6. **Shall make list of claims.**—Upon the expiration of the time fixed for the presentation of claims, the commissioner of banks shall make in duplicate a complete list of the claims presented, including and specifying such claims as have been rejected by him, one such list to be filed in his office and one in the office of said clerk of district court. Such inventory and list of claims shall be open at all reasonable times to inspection.

Subd. 7. **Expenses of liquidation.**—All expenses of supervision and liquidation shall be fixed by the commissioner of banks, subject to the approval of the district court of the county in which said bank is located, after notice fixing the time and place when the commissioner of banks will hear and fix the amount of all such expenses, and the amount so fixed and the compensation of legal counsel as fixed by the attorney general, shall be paid upon the certificates of the commissioner of banks and the attorney general respectively, out of the funds of such bank in the hands of the commissioner of banks. The commissioner of banks shall determine monthly the amount of compensation paid to each employee for services in connection with the liquidation of each bank and of all other expenses in connection therewith and thereupon shall pay to the state treasurer from the assets of each such bank the amount so determined which shall be deposited in the general revenue fund. When the commissioner of banks deems it advisable, he may certify the amount so determined to the state auditor who shall transfer to the general revenue fund the amount so certified from the unclaimed moneys made available to the commissioner of banks by Laws 1941, Chapter 183.

Subd. 8. **Deposit of funds.**—The money collected by the commissioner of banks shall be from time to time deposited in one or more state banks or trust companies, and, in case of a suspension or insolvency of the depository, such deposit shall be preferred before all of the deposits.

Subd. 9. **May declare dividends.**—At any time after the expiration of a date fixed for the presentation of claims the commissioner of banks may, out of the funds remaining on hand after the payment of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors he may declare a final dividend, such dividends to be paid to such persons in such amounts and upon such notice as may be directed by the said district court.

Subd. 10. **Objections to claims by interested parties.**—Objections to any claim not rejected by the commissioner of banks may be made by any party interested by filing a copy of such objections with the commissioner of banks, who shall present the same to the district court at the time of the next application to declare a dividend.

Subd. 11. **Appeal to District Court.**—Whenever any such bank of whose property and business the commissioner of banks has taken possession as aforesaid, deems itself aggrieved thereby it may at any time within ten days after such taking possession apply to the district court of the county in which such bank is located to enjoin further proceedings, and said court, after citing the commissioner of banks to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties in determining the facts, may upon the merits, dismiss such application or enjoin the commissioner of banks from further proceedings and direct him to surrender such business and property to such bank.

Subd. 12. **Proceedings after payment of claims.**—Whenever the commissioner of banks shall have paid each and every depositor and creditor of such bank (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claims, and shall have made proper provisions for unclaimed and unpaid deposits or dividends and shall have paid all the expenses of the liquidation, the commissioner of banks shall call a meeting of the stockholders of such corporation by giving notice thereof for ten days by publishing such notice in one or more newspapers of the county where the bank is located. At such meeting the stockholders shall determine whether the commissioner of banks shall be continued as liquidator and shall wind up the affairs of such bank, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation under the commissioner of banks he shall complete the liquidation of the affairs of such corporation, and after paying the expenses thereof, if there are proceeds of liquidation as yet undistributed he shall reimburse those stockholders who paid their stock assessments pursuant to the order for assessment to the extent that each has paid, and. if the proceeds are insufficient to reimburse such paying stockholders in full, then in just proportion. Any proceeds remaniing undistributed after such paying stockholders have been reimbursed as by this act provided shall be distributed among all the stockholders in proportion to their several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner of banks a bond to the state of Minnesota, in such amount, with such sureties, and in such form as shall be approved by the commissioner of banks, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner of banks shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such corporation then remaining in his hands, and upon such transfer and delivery the said commissioner of banks shall be discharged from any and all further liability to such bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash and shall account for and make distribution of the property of such bank as is herein provided in the case of distribution by the commissioner of banks, except that the expenses thereof shall be subject to the direction and control of the said district court. In case of the death, removal or refusal to act of any such agent or agents, the stockholders, on the same notice as that after which they were elected, and in the same way may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

Subd. 13. **Unclaimed funds to be paid into State Treasury.**—Upon the liquidation of any bank, trust company, or financial institution liquidated by the commissioner of banks as statutory liquidator, if any dividends or any moneys set apart for the payment of claims remain unpaid, and the places of residence of the owners thereof are unknown to the commissioner of banks, he may pay same into the state treasury as hereinafter provided. Whenever the commissioner of banks shall be satisfied that the process of liquidation should not be further continued he may make and certify triplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due him and his last known address. Upon one of such lists, to be retained by the commissioner of banks he shall endorse his order that such unclaimed moneys be forthwith deposited in the state treasury. When so deposited, one of said lists shall be delivered to the state treasurer and another to the state auditor and the commissioner of banks shall retain in his office such records and proofs concerning said claims as he may have, which shall thereafter remain on file in his office. The treasurer shall execute upon the list retained by the commissioner of banks a receipt for such money, which shall operate as a full discharge of the commissioner of banks on account of such claims. At any time within six years after such receipt, but not afterward, the claimant may apply to the commissioner of banks for the amount so deposited for his benefit, and upon proof satisfactory to the governor, the attorney general and the commissioner of banks, or to a majority of them, they shall give an order to the auditor to issue his warrant upon the treasurer for such amount, and such warrant shall thereupon be issued. If no such claim be presented within six years the commissioner of banks shall so note upon his copy of said list and certify the fact to the auditor and treasurer who shall make like entries upon the corresponding lists in their hands; and all further claims to said money shall be barred. Provided, however, that the state treasurer shall pay to the commissioner of banks not to exceed 50 per cent of the amount so turned over to the state treasurer by the commissioner of banks to be used to partially defray expenses in connection with the liquidation of closed banks, in such amounts and at such times as the commissioner of banks shall request. (As amended Act Apr. 14, 1941, c. 183, §1; Apr. 14, 1943, c. 442, §2.)

Funds in possession of commissioner of banks set aside for unforseen expenses incident to liquidation, which have been established by withholding a portion of final liquidating dividends, may be used by the commissioner for any expense incident to administration of the affairs of the closed bank department of his division. Laws 1941, c. 92.

Where bank entered into an agreement with its depositors and creditors whereby former was to treat a specified amount of a certain judgment as an asset, amount remaining to be held in trust for latter, and that all recoveries made on such asset should be first applied toward liquidation of the bank's "share", judgment debtor being in process of liquidation, and extent of reorganized bank's priority" being at issue, bank's right to first payment does not include interest on amount at which judgment was treated by it as an asset. Farmers & Merchants State Bank, 206M149, 288NW19. See Dun. Dig. 824e.

The rule of American Surety Co. of New York v. J. N. Peyton, 186 Minn. 588, 244NW74, has no application to a case where all creditors stand, as against the insolvent debtor, on an equal footing. Id.

Rule of caveat emptor applies in judicial sales. Bishop v. L., 207M330, 291NW297. See Dun. Dig. 824e.

Trustees of non-liquid assets of a bank in process or reorganization must submit all sales of real property to court for approval. Propp v. Johnson, 211M159, 300NW 615. See Dun. Dig. 824e.

Commissioner liquidating a bank can compel village to pay warrants held by bank notwithstanding that there are delinquent taxes on buildings owned by the bank far in excess of the amount of the warrants. Op. Atty. Gen., (476c-6), Oct. 30, 1939.

Persons employed by commissioner of banks and statutory liquidator in liquidating business of a particular bank or banks are employees of bank on behalf of which their services are rendered and are not state employees under the civil service act. Op. Atty. Gen., (644), April 22, 1940.

Laws 1943, c. 442, §(13), applies to unclaimed dividends in the hands of the commissioner of banks at the time of passage of Laws 1941, c. 183, and they should be sent over to the state treasurer, subject to right of commissioner to receive 50 per cent thereof to defray expenses in connection with liquidation of closed banks. Op. Atty. Gen. (29b-(7)), Dec. 8, 1943.

If any equipment can be definitely ascertained as having come from or having been property in connection with the liquidation of a particular bank, the proceeds of the sale of that equipment may in the same manner be used for the payment for necessary expenses incurred after the declaration and payment of the final dividend in connection with the affairs of that bank. Op. Atty. Gen. (29b-(7)), Dec. 13, 1943.

Subd. 7. Expenses of liquidation.

Members of liquidation department of commissioner of banks become members of state employees retirement association on July 1, 1943, but are not entitled to credit for any prior service. Op. Atty. Gen. (331a-7), July 3, 1943.

7689-1. Closed banks—Use of funds.—Funds in the possession of the commissioner of banks set aside for the purpose of meeting unforeseen and contingent expenses incident to the liquidation of closed state banks, which funds have been established by withholding a portion of final liquidating dividends in such cases, may be used by the commissioner of banks for any expense incident to the administration of the affairs of the closed bank department of his division. (Act Mar. 28, 1941, c. 92, §1.)

[49.24]

Funds and property in the hands of commissioner of banks from miscellaneous sources and not distributed because of impracticability of so doing, and not from the withholding of portions of final liquidating dividends, may not be disposed of under this section, nor can they be turned into the general revenue fund of the state because they do not belong to the state. Op. Atty. Gen. (29b-(7)), Dec. 8, 1943.

7690-4. Sale, compromise, etc., of debts due bank; etc.

Trustees of non-liquid assets of a bank in process or reorganization must submit all sales of real property to court for approval. Propp v. Johnson, 211M159, 300NW 615. See Dun. Dig. 824e.

7690-10. Definitions.

Act did not impair obligation of contract as to a nonconsenting depositor. Baltrusch v. Citizens State Bank, 211M77, 300NW201. See Dun. Dig. 824e.

7690-12. Reorganization.

Where bank entered into an agreement with its depositors and creditors whereby former was to treat a specified amount of a certain judgment as an asset, amount remaining to be held in trust for latter, and that all recoveries made on such asset should be first applied toward liquidation of the bank's "share", judgment debtor being in process of liquidation, and extent of reorganized bank's priority being at issue, bank's right to first payment does not include interest on amount at which judgment was treated by it as an asset. Farmers & Merchants State Bank, 206M149, 288NW19. See Dun. Dig. 824e.

The rule of American Surety Co. of New York v. J. N. Peyton, 186 Minn. 588, 244NW74, has no application to a case where all creditors stand, as against the insolvent debtor, on an equal footing. Id.

Although exercise by commissioner of discretion delegated to him to approve a plan of reorganization submitted to him is subject to judicial review, it cannot be overturned unless it has been abused. Baltrusch v. Citizens State Bank, 211M77, 300NW201. See Dun. Dig. 824e.

In action for damages for fraud of commissioner of bank, bank officers, and others, in obtaining approval by depositors of plan of reorganization of bank, concealment by certain defendants that they were liable on bond of bank officer as city treasurer was immaterial under complaint basing recovery upon representation relating to availability of assets for payment of general creditors as against public depositors. Rien v. Cooper, 211M517, 1 NW(2d)847; note under §7690-17.

Fraud in obtaining approval of depositors to plan of reorganization of a bank could not be based upon representation as to value of certain assets made after approval of the plan. Id.

7690-13. Provisions of reorganization.

Action of commissioner of banks in approving plan of reorganization proposed by bank and consented to by ninety-eight percent of depositors, whereby there was a fifty percent reduction of deposits, was not arbitrary, unjust, or fraudulent. Baltrusch v. Citizens State Bank, 211M77, 300NW201. See Dun. Dig. 824e.

Trustees of non-liquid assets of a bank in process of reorganization must have contracts for sale of real estate approved by district court before they are binding, but need not seek approval before negotiations have passed from initial stage of good faith into final stage of performance. Propp v. Johnson, 211M159, 300NW615. See Dun. Dig. 824e.

Trustees who contract subject to approval of district court do not make themselves personally liable upon contract for failure to secure such approval. Id. See Dun. Dig. 824e, 9928a.

A provision of depositors' agreement cannot override restrictions imposed by legislature. Id. See Dun. Dig. 824e. (n).

Where court duly appointed a trustee and liquidating agent of a bank in process of reorganization, and later appointed a co-trustee but upon inadequate published notice and authorized him to bring several suits, and court granted motion for removal of co-trustee, court had plenary jurisdiction of the res and acted within its jurisdiction in later directing co-trustee to proceed to judgment in suits commenced by him. First State Bank of Sauk Centre, 207M592, 292NW185. See Dun. Dig. 824e.

7690-17. Exemptions.

In action against commissioner of bank and bank officers for fraud in obtaining approval of general creditors and depositors to a plan of reorganization, a representation that assets sufficient to pay all public deposits would in no event be available to general depositors and general creditors whether they signed plan of reorganization or not was false since it included a proceeding in insolvency under general law, but such representation was not material where alleged fraud was based on claimed misrepresentation that depositors of the public funds were exempt from and entitled to preference under the reorganization. Rien v. Cooper, 211M517, 1NW(2d)847. See Dun. Dig. 824e.

Depositors of public funds were exempt from, and entitled to a preference over general creditors and depositors under a reorganization. Id.

7692. Consolidation, when authorized.

Contention that written guaranty executed to trust company prior to its consolidation with plaintiff bank was not relied upon by plaintiff in making loans to defendant subsequent to consolidation, held frivolous, where guaranty was a continuing one and was in possession of plaintiff at all times subsequent to consolidation. Chase Nat. Bank v. B., (DC-Minn), 32FSupp230.

7697-9. Deposits of trust funds.

An unincorporated volunteer fire department and an incorporated fire department relief association should be considered as separate depositors, though membership of both organizations is the same. Op. Atty. Gen., (198B-2), Dec. 14, 1939.

7698. Payment of forged or raised check—Liability to depositor.

Corporate depositor was bound by provision in passbook that discrepancies and errors be reported to bank within 10 days after receiving statement and cancelled check, though employee charged with duty of examining such statements was the person guilty of forging checks. Brunswick Corp. v. Northwestern Nat. Bank & Trust Co., 214M370, 8NW(2d)333, 146ALR833. See Dun. Dig. 781.

In order that bank passbook provisions concerning examination of statements and cancelled checks have the force and effect of contract, it is necessary only that enforcement of them as such be reasonable under the circumstances. Id.

A passbook provision limiting time within which to examine and give notice of errors to ten days after receiving monthly statements from bank is reasonable and constitutes a contractual obligation binding upon the depositor, whether the depositor signed it or was aware of its contents or not. Id.

Absent an agreement providing the time within which a passbook, together with cancelled checks and bank statements should be examined by depositor, the rule is that such examination must be made within a reasonable time. Id.

Section was not impliedly repealed by uniform negotiable instruments act. Id.

Negligence on the part of a bank does not have effect of exonerating a depositor from its failure to inspect bank statements and cancelled checks and to notify bank of forgery within a 10 day limitation provided in passbook. Id.

A bank owes a depositor the absolute duty to pay out its money only according to depositor's order. Id. See Dun. Dig. 787a.

BANKS AND TRUST COMPANIES.

7699-9. Same—Corporate existence merged, etc.

Where a national bank and a trust company were consolidated or merged without any change in ownership, and without any addition to capital or surplus, the capital assets which passed from the trust company to the consolidated company were not paid in surplus and contributions to capital within the meaning of §701(f) of the Revenue Act of 1934. Northwestern Nat. Bank & Trust Co. v. U. S., (DC-Minn), 46FSupp390. See Dun. Dig. 763c.

7699-9½. Consolidation of banks and trust companies.

National bank and trust company formed by consolidation of national bank and state trust company held not liable for capital stock tax since under §701 (f) of the 1934 Federal Revenue Act, the consolidated association must be deemed to be the same corporation as each of its constituents so that nothing was received in the form of property that it did not have before the union. U. S. v. Northwestern Nat. Bank & Trust Co., (CCA8), 137F (2d)761, aff'g 46FSupp390.

Where a national bank and a trust company were consolidated or merged without any change in ownership, and without any addition to capital or surplus, the capital assets which passed from the trust company to the consolidated company were not paid in surplus and contributions to capital within the meaning of §701(f) of the Revenue Act of 1934. Northwestern Nat. Bank & Trust Co. v. U. S., (DC-Minn), 46FSupp390. Aff'd 137F (2d)761. See Dun. Dig. 763c.

7699-12. No deposit in excess of 25 times amount of capital and actual surplus.—Subd. 1. No bank or trust company organized under the laws of this state shall accept deposits in a sum exceeding 25 times the amount of its capital stock and its actual surplus.

Subd. 2. **Exceptions.**—Due to the present emergency, between the date of final enactment hereof and July 1, 1945 any such bank or trust company may accept deposits in excess of the sum specified in Subdivision 1 to the extent that such deposits are offset by cash in excess of legally required cash reserves, or by obligations of the government of the United States maturing within a period of 10 years, owned and unpledged by such bank, or by both. (As amended Apr. 7, 1943, c. 342, §1.)

7699-13. Commissioner to take possession and liquidate unless deposits are reduced.—If any such bank or trust company shall violate the provisions of Mason's Minnesota Statutes of 1927, Section 7699-12, as amended, the Commissioner of Banks may take possession thereof and liquidate such corporation in accordance with law, unless said bank or trust company shall within ninety days after notice from the Commissioner of Banks reduce its deposits to the amount allowed by law or increase its capital stock accordingly. (As amended Apr. 7, 1943, c. 342, §2.)

7699-34. Voluntary liquidation—Title to assets.—Before the commissioner of banks shall file his certificate of liquidation, the bank or trust company shall petition the district court in the county of its location and have the court appoint a trustee, and the bank or trust company shall transfer the title to all assets omitted from the liquidation of the bank or trust company to the trustee for the benefit of the persons entitled thereto, and the assets shall be administered and distributed by the trustee subject to the approval of the district court. (As amended Act Mar. 4, 1941, c. 42, §1.)

SAVINGS BANKS

7711. Deposit by minor or in trust, etc.

A deposit in a savings account in name of depositor as trustee for another with right to withdraw whole or any part thereof or otherwise revoke trust creates a tentative trust only, valid under our statutes, which is revocable by depositor during his lifetime and enforceable by beneficiary as an irrevocable trust only after depositor's death. Rickel v. Peck, 211M576, 2NW(2d)140, 138ALR1375. See Dun. Dig. 9886a.

Court having jurisdiction of guardianships of incompetent persons has power to order on behalf of an incompetent ward the revocation of a tentative trust of a savings account. Id. See Dun. Dig. 7771a 9886a.

7714. Authorized securities.—Except as it relates to the investment of trust funds by corporate trustees or by individual trustees, the term "authorized securities" whenever used in the statutes and laws of this state shall be understood as referring to the following described securities in which the trustees of any savings bank shall invest the money deposited therein and which at the time of the purchase thereof are included in one or more of the following classes:

1. (a) In the bonds or other interest-bearing obligations of the United States, or in securities for the payment of which and interest thereon the faith of the government is pledged.

(b) In the bonds or other interest-bearing securities of the Dominion of Canada, provided that the full faith and credit of the Dominion of Canada is pledged for the payment thereof and provided further that they are payable in United States dollars within the United States. (As amended Mar. 26, 1943, c. 197, §1.)

2. In the bonds or notes of any state which has not defaulted in the payment of any bonded debt within ten years prior to the making of such investment; and in the highway revenue bonds or certificates of such states payable out of irrevocably pledged special revenues to be derived from gasoline or other motor fuel taxes or motor vehicle license fees, provided that such revenues during the most recent fiscal year of such state (next preceding the date of such investment) were equal to at least one and one quarter times the interest, principal, and sinking fund requirements of such revenue bonds or certificates during such fiscal year.

3. (a) In the bonds, certificates of indebtedness, or other interest bearing obligations, payable out of a levy of ad valorem taxes, of any city of the state of Minnesota containing over 50,000 inhabitants, or of any board of any such city, without regard to any debt limits other than those applicable to the issuance thereof;

(b) In the bonds, certificates of indebtedness or other interest bearing obligations, payable out of a levy of ad valorem taxes, of any county, city, town, village, or school, drainage or other district, or public authority, created pursuant to law for public purposes in Minnesota, provided that the net indebtedness of such county, municipality, district, or authority as net indebtedness is defined by Mason's 1927 Statutes, Section 1935, or any amendments thereof, shall not exceed ten per cent of its assessed valuation;

(c) In the bonds, certificates of indebtedness or other interest bearing obligations, payable out of a levy of ad valorem taxes, of any county, city, town, village, or school, drainage or other district, or public authority, created pursuant to law for public purposes in any state of the United States other than Minnesota, provided that the total bonded indebtedness of such county, municipality, district or authority, exclusive of revenue bonds or certificates, shall not exceed ten per cent of its assessed valuation; and provided further that if such county, municipality, district or authority is of any state other than Iowa, Wisconsin, North Dakota, or South Dakota, it shall contain at least 3,500 inhabitants;

(d) In the bonds, certificates or other interest bearing obligations, payable out of special revenues, of any county, city, town, village, or school, drainage, or other district, or public authority, created pursuant to law for public purposes in any state of the United States, provided, however,

(aa) that if such county, municipality, district or authority is of any state other than Minnesota, it shall contain at least 3,500 inhabitants; and

(bb) that such obligations shall have been issued to finance the purpose or construction of or addition to a public enterprise furnishing water, sewer, lighting, power, gas, or road facilities, from which revenue is to be derived; and

(cc) that the governing body or other legally constituted authority shall have covenanted or shall be required by law to establish and maintain rates to yield sufficient revenue for the payment of operating expenses, maintenance expenses, and principal and interest on such revenue obligations and to pledge such revenue irrevocably to said purposes; and

(dd) that at the date of investment such public enterprise shall have been in operation for at least three years; and

(ee) that during the preceding three fiscal years its annual net earnings, after payment of operating expenses and maintenance expenses, shall have been on the average at least one and one quarter times the average annual interest, principal and sinking fund requirements on such revenue obligations during the period from the end of its most recent fiscal year to the final maturity of such obligations.

4. (a) On notes or bonds secured by mortgages or trust deed on unencumbered real estate in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and Montana, worth when improved at least twice and when unimproved at least three times the amount loaned thereon.

(b) In notes or bonds secured by mortgages or trust deed on unencumbered real estate in paragraph (a) where such notes or bonds do not exceed 60 per cent of the appraised value of the security for the same, provided that such notes or bonds are payable in installments aggregating not less than five per cent of the original principal per annum in addition to the interest; or, are payable on a regular amortization basis in equal installments, including principal and interest, such installments to be payable monthly in such amounts that the debt will be fully paid in not to exceed 20 years if the security is non-agricultural real estate, and such installments to be payable annually or semi-annually in such amounts that the debt will be fully paid in not to exceed 25 years if the security is agricultural real estate

(c) Not more than 50 per cent of the whole amount of the moneys of the bank shall be so loaned and such investments shall be made only on report of a committee directed to investigate the same and report its value, according to the judgment of its members, and its report shall be preserved among the bank's records.

5. In notes secured by such bonds or mortgages, as the bank under this section is authorized to invest in, but no such bond or mortgage shall be taken as collateral security for more than its par value, nor shall the aggregate amount of securities taken be less than the full amount loaned thereon, and no such loan shall be made for a longer time than one year, nor to a greater amount to any one person than three per cent of the total deposits of the bank. No such bank shall loan in the aggregate, on the security specified in this paragraph, more than one-fourth of its deposits.

6. In the bonds of any railroad company which are secured by first lien upon a railroad within the United States, or a portion thereof, which shall be a first lien upon not less than one hundred miles of main line track thereof, or in the mortgage bonds of any such company of an issue to retire all prior mortgage indebtedness thereof, or in the bonds of any railroad company in the United States which are guaranteed or assumed by another railroad company within the United States; provided that the railroad company, except one whose bonds are so guaranteed or assumed, either issuing, guaranteeing or assuming any of such bonds, has not within five years prior to such investment failed in the payment of a dividend upon its entire capital stock outstanding of not less than four per cent per annum each fiscal year, and has not within such time defaulted in the payment of any part of the principal or interest of any debt incurred by it and secured by trust deed or mortgage upon its road or any part thereof, or in the payment of any part of the principal or interest of any bonds guaranteed or assumed by it, or in the hands of any railroad company which have been outstanding not less than fifteen years and which are secured by first lien upon a railroad within the United States, or a portion thereof, which shall be a first lien upon not less than one hundred miles of main line track thereof, upon which bonds there has been no default in the payment of interest in the fifteen years next prior to such investment, or in bonds of corporations secured by a mortgage upon railroad terminals in cities of not less than two hundred thousand population, and which shall be guaranteed by a railroad company that has not defaulted in the payment of interest on any of its bonds for a period of at least ten years prior to the date of such purchase. But no such banks should loan upon or invest in railroad bonds to an amount exceeding in the aggregate twenty-five per cent of its deposits, nor exceeding five per cent of its deposits in the bonds issued, guaranteed, or assumed by any one railroad company.

7. In farm loan bonds issued by any federal land bank, or by a joint stock land bank in the Federal Reserve district in which Minnesota is situated, in accordance with the provisions of an act of Congress of the United States of July 17, 1916, known and designated as "The Federal Farm Loan Act," and acts amendatory thereto, and in bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act approved July 22, 1932, and acts amendatory thereto.

8. In bankers' acceptances of the kind and character following:

a. Bankers' acceptances of the kind and maturities made eligible by law for rediscount with or purchase by federal reserve banks, providing the same are accepted or endorsed by a bank, or trust company incorporated under the laws of this state; or by any bank or trust company in the United States which is a member of the federal reserve system.

b. Not more than twenty per cent of the assets of any savings bank shall be invested in such acceptances. Not more than seven per cent of the aggregate amount credited to the depositors of any savings bank shall be invested in the acceptances of or deposited with a trust and banking company or with a national bank of which a trustee of such savings bank is a director.

9. In railroad equipment trust obligations, comprising bonds, notes or certificates, which when issued are secured by new standard gauge rolling stock purchased or leased by any railroad incorporated in the United States or in Canada, or by the receiver or trustee of any such railroad, or by any corporation engaged in the business of leasing or furnishing railroad rolling stock, provided, however, that the entire issue of such obligations:

(a) Is required to be paid, in United States dollars within the United States, within fifteen years from date of issue in approximately equal annual or semi-annual installments commencing not later than three years after the date of issue, and

(b) Is of an aggregate amount not exceeding eighty per cent of the cost of the equipment securing such issue; but if issued originally in an amount which exceeded such eighty per cent, then investment in the obligations of such issue shall nevertheless be authorized as soon as or at any time after all the unpaid obligations of such issue are reduced to or are less than fifty per cent of the cost of the equipment securing such issue.

10. In the bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the

District of Columbia, and transacting the business of supplying electrical energy, or artificial gas, or natural gas purchased from another corporation and supplied in substitution for or in mixture with artificial gas, for light, heat, power and other purposes, or transacting any or all of such business, provided that at least seventy-five per centum of the gross operating revenues of any such corporation are derived from such business and that not more than fifteen per centum of the gross operating revenues are derived from any one kind of business other than supplying electricity or gas or electricity and gas, and provided further that such corporation, if operating outside of Minnesota, is subject to regulation by a public service commission or public utility commissioner or other similar regulatory body duly established by the laws of the United States or the states or state in which such corporation operates, subject to the following conditions:

(a) Such corporation shall have all franchises necessary to operate in the territory in which at least seventy-five per centum of its gross income is earned, which franchises either shall be indeterminate permits or agreements with, or subject to the jurisdiction of, a public service commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of such bonds, and such corporation shall file with the Commissioner of Banks or make public each year a statement and a report giving the income account covering the previous fiscal year and the balance sheet showing in reasonable detail the assets and liabilities at the end of such fiscal year.

(b) The book value of the outstanding capital stock of such corporation shall at the time of such investment be equal to at least two-thirds of its total funded debt.

(c) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a substantial portion of its property was acquired by consolidation, merger, purchase or as a successor corporation, shall be considered together in determining the required period.

(d) For a period of five fiscal years next preceding the date of such investment the net earnings of such corporation shall have been each year not less than twice the annual interest charges on its total funded debt applicable to that period, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than one million dollars.

(e) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial portion thereof within five years immediately preceding the date of such investment by consolidation, merger, purchase or as a successor corporation, the gross operating revenues, net earnings and interest charges of the predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (d) of this subdivision have been complied with.

(f) The gross operating revenues and expenses of a corporation for the purpose of this subdivision shall be respectively the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated or leased and operated by such corporation, as determined by the system of accounts prescribed by the public service commission or public utility commission or other similar regulatory body having jurisdiction in the matter. The gross operating revenues and expenses, as defined above, of subsidiary companies must be included, provided that all the mortgage bonds and a controlling interest in stock or stocks of such subsidiary companies are pledged as part security for the mortgage debt of the principal corporation.

(g) The net earnings of a corporation for the purpose of this subdivision shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, taxes other than federal and state income taxes, rentals, depreciation and provision for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of said balance. The term "funded debt" shall be construed to mean all interest-bearing debt excepting therefrom unsecured obligations maturing within one year of date of issue.

(h) Such bonds must be part of an original issue of not less than one million dollars and must be mortgage bonds secured by a first or refunding mortgage secured by property owned and operated by the corporation issuing or assuming them, or must be underlying mortgage bonds secured by property owned and operated by the corporation issuing or assuming them, provided that such bonds are to be refunded by a junior mortgage providing for their retirement and provided further that the bonds under such junior mortgage comply with the requirements of this subdivision and that such underlying mortgage either is a closed mortgage or remains open solely for the issuance of additional bonds which are to be pledged under such junior mortgage. The aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed sixty per centum of the value of the physical property owned as shown by the books of the corporation and subject to the lien of such mortgage or mortgages securing the total mortgage debt, provided that if a refunding mortgage, it must provide for the retirement on or before the date of their maturity of all bonds secured by prior liens on the property. No such savings bank shall loan upon or invest in bonds of such public utility companies in an amount exceeding in the aggregate ten per centum of its deposits and surplus, nor exceeding five per centum thereof in the bonds of any one public utility company.

11. In the bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and authorized to engage, and engaging, in the business of furnishing telephone service in the United States, provided that such corporation is subject to regulation by the Interstate Commerce Commission or a public service commission or public utility commission or other similar federal or state regulatory body duly established by the laws of the United States or the states or state in which such corporation operates, subject to the following conditions:

(a) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a substantial portion of its property was acquired by consolidation, merger, purchase or as a successor corporation, shall be considered together in determining the required period; and such corporation shall file with the Commissioner of banks or make public in each year a statement and a report giving the income account covering the previous fiscal year and the balance sheet showing in reasonable detail the assets and liabilities at the end of such fiscal year.

(b) The book value of the outstanding capital stock of such corporation shall at the time of such investment be equal to at least two-thirds of its total funded debt.

(c) For a period of five fiscal years next preceding the date of such investment the net earnings of such corporation shall have been each year not less than twice the annual interest charges on its total funded debt applicable to that period, and for such period, the gross operating revenues of any such corporation shall have averaged per year not less than five million dollars.

(d) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial portion thereof within five years immediatley preceding the date of such investment by consolidation, merger, purchase or as a successor corporation, the gross operating revenues, net earnings and interest charges of the predecessor or constituent corporation shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (c) of this subdivision have been complied with.

(e) The gross operating revenues and expenses of a corporation for the purpose of this subdivision shall be respectively the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated or leased and operated by such corporation, as determined by the system of accounts prescribed by the Interstate Commerce Commission or the public service commission or public utility commission or other similar federal or state regulatory body having jurisdiction in the matter.

(f) The net earnings of a corporation for the purpose of this subdivision shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, taxes, other than federal and state income taxes, rentals, depreciation and provision, for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of said balance. The term "funded debt" shall be construed to mean all interest-bearing debt excepting therefrom unsecured obligations maturing within one year of date of issue.

(g) Such bonds must be a part of an original issue or of a subsequent series of bonds of the aggregate amount of not less than five million dollars, both the original issue and the subsequent series being protected by the same mortgage provisions, and must be secured by a first or refunding mortgage, and the aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed sixty per centum of the value of the property, real and personal, owned absolutely as shown by the books of the corporation and subject to the lien of such mortgage, provided that if a refunding mortgage, it must provide for the retirement of all bonds secured by prior liens on the property. Not more than thirty-three and one-third per centum of the property constituting the specific security for such bonds may consist of stock or unsecured obligations of affiliated or other telephone companies, or both. No such savings banks shall loan upon or invest in bonds of such telephone companies in an amount exceeding in the aggregate ten per centum of its deposits and surplus, nor exceeding five per centum thereof in the bonds of any one telephone company.

12. (a) In bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act, approved July 23, 1932, and Acts amendatory thereto, and in bonds and obligations of the Home Owners' Loan Corporation established by Act of Congress known as the Home Owners' Loan Act of 1933, and Acts amendatory thereto.

(b) Certificates of Deposits of any bank or trust company, however, organized, the deposits of which are insured in whole or in part by the Federal Deposit Insurance Corporation, to the extent that such certificates of deposits are fully insured.

13. (a) The district court, upon petition of a trustee under a will or other instrument may, if the trust does not otherwise provide, authorize the trustee to invest the income or principal of the trust fund in policies of life or endowment insurance or annuity contracts, issued by a life insurance company duly authorized to transact business in the state, on the life of any beneficiary of the trust or on the life of any person in whose life such beneficiary has an insurable interest.

(b) The probate court, upon the application of a guardian, may authorize him to invest income or principal of the estate of his ward in policies of life or endowment insurance or annuity contracts, issued by a life insurance company duly authorized to transact business in the state, on the life of the ward or on the life of a person in whose life the ward has an insurable interest. (As amended Apr. 22, 1941, c. 380, §§1-3; Mar. 26, 1943, c. 197, §1; Apr. 24, 1943, c. 635, §6.)

Laws 1943, c. 635, provides that the amendment therein contained will take effect July 1, 1943. See §§8090-4 to 8090-8 for other provisions.

(3).

Bonds issued for a sewage disposal plant for use of which charges are made are to be deducted in determining indebtedness of village. Op. Atty. Gen., (928a-8), May 11, 1940.

(13).

Investment of fiduciary funds in life insurance policies and annuities. 25MinnLawRev298.

Generally speaking, state bank may invest in bonds of a township refunding warrants. Op. Atty. Gen. (43B-3), July 8, 1940.

(13)(b).

Mere relationship of guardian and ward standing alone would not create an insurable interest, but an insurable interest may arise under particular circumstances, such as dependency, expectation of aid or benefit when needed, etc. Op. Atty. Gen. (346d), June 25, 1940.

TRUST COMPANIES

7735. Investment of trust funds by corporate trustee—Commingling funds.—It may invest all moneys received by it in trust in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of such investments and securities and evidences thereof. Whenever special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow such directions, and in such case it shall not be further responsible by reason of the performance of such trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection thereof, and shall be responsible for their validity, regularity, quality, and value thereof at the time made, and for their safekeeping. Whether it be the sole trustee or one of two or more co-trustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of such securities, or the whole of the funds so commingled shall be owned and held by such trust company in its several trust capacities, and it shall be liable for the administration thereof in all respects as though separately invested, provided, however, that not more than $25,000 (at the cost price of such investments) shall be so invested for any one trust at any one time in fractional parts or as commingled funds for investment, unless the authority to invest in fractional parts or as commingled funds be given in the order, judgment, decree, will or other written instrument governing such trust. Funds

so commingled for investment shall be designated collectively as a common trust fund. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. The foregoing shall apply as well whether a corporate trustee is acting alone or with an individual co-trustee. (As amended Act Apr. 18, 1941, c. 298, §1.)

7739. Trust accounts kept separate — Securities how deposited.—Besides its general books of account, it shall keep separate books for all fiduciary accounts. All funds and property held by it in a fiduciary capacity shall at all times be kept separate from the funds and property of the corporation, and all deposits by it of such funds in any banking institution shall be deposited as fiduciary funds, to its credit as fiduciary and not otherwise. Every security or property in which the funds held by it as trustee, executor, administrator, guardian, receiver, or assignee, or in any other fiduciary capacity are invested, shall at once upon receipt thereof be immediately entered in the proper books as belonging to the particular fiduciary account whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular fiduciary account to which it belongs, so that all fiduciary funds and property can be readily identified at any time, by any person. Any trust company incorporated under the laws of this state and any national banking association authorized to act in a fiduciary capacity in this state, when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent, cause any stocks, securities, or other property now held or hereafter acquired in such capacity to be registered and held in the name of a nominee or nominees of such corporate fiduciary without mention of the fiduciary relationship. Any such corporate fiduciary shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered. (As amended Apr. 7, 1943, c. 339, §1.)

7739-1. Effective date. This act shall take effect and be in force from and after the approval thereof. (Act Apr. 7, 1943, c. 339, §2.)

GENERAL BUILDING AND LOAN ASSOCIATIONS

7764. Withdrawal of stock — Valuation — Times. [Repealed.]

Repealed, Apr. 21, 1939, c. 391, §51.

In action against building and loan association to rescind purchase of house and lot, in payment for which plaintiff applied stock of defendant, evidence held insufficient to show that defendant misrepresented its own financial situation or value of stock accepted in payment. Beck v. N., 206M125, 288NW217. See Dun. Dig. 1172.

SAVINGS, BUILDING AND LOAN ACT

7770-14. Commissioner to supervise.—The commissioner of banks shall exercise a constant supervision over the books and affairs of all such associations doing business within the state; and shall examine at least twice each year all of said associations, inspecting and verifying the assets and liabilities of each, and so far investigate the character and value of the assets of each such association as to ascertain with reasonable certainty that the values are correctly carried on its books. The right of inspection of the books and records of such association shall be exclusive with the commissioner of banks.

The commissioner of banks shall investigate the methods of operation and conduct of such associations and their systems of accounting, to ascertain whether such methods and systems are in accordance with law and sound business principles. He may examine, or cause to be examined, on oath any of the officers, directors, agents, clerks, customers, or shareholders of any such association touching the affairs and business thereof, and may, in the performance of his official duties, issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, such oath. In case of any refusal to obey any subpoena issued by him or under his direction, such refusal may at once be reported to the district court of the county in which the association is located, and such court shall enforce obedience to such subpoenas in the manner provided by law for enforcing obedience to subpoenas of said court. In all matters relating to his official duties, the commissioner of banks shall have the same power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, and employees of such associations, and all persons having dealings with or knowledge of the affairs or methods of such associations shall afford reasonable facilities for such examinations and make such returns and reports to the commissioner of banks as he may require; attend and answer, under oath, his lawful inquiries, produce and exhibit such books, accounts, documents, and property as he may desire to inspect, and in all things aid him in the performance of his duties. (As amended Apr. 23, 1943, c. 587, §1.)

7770-24. Rights and privileges of members.

Statute supersedes any inconsistent by-laws respecting qualification to vote. Op. Atty. Gen., (53a-26), Dec. 13, 1949.

7770-25. Rights and privileges of officers and directors.

Directors need not be voted on separately, but to be elected a particular director must receive a majority of the vote of the members present and voting. Op. Atty. Gen., (53a-10), Dec. 13, 1949.

7770-31. Share accounts.

Status and interest of a member of a federal savings and loan association is not subject to provisions of uniform stock transfer act relating to a levy of execution, and share certificate need not be seized to make a levy on account effective, and sheriff does not sell the share account, but merely collects from association the "things in action", the amount in the debtor's account to which debtor is entitled. Benton's Apparel v. Hegna, 213M271, 7NW(2d)3, 143ALR1148. See Dun. Dig. 1163-1177.

7770-45. Not to deal in real estate.—No such association shall engage in the business of buying and selling or dealing in real estate, but it may secure obligations due to it and the payment of its loans by taking real estate mortgages. It may purchase at any sheriff's, judicial or other sale, public or private, any real estate upon which it has a mortgage, judgment or other lien, or in which it has any interest. It may acquire title to any real estate on which it holds any lien, in full or part satisfaction thereof, and may sell, convey, hold, lease or mortgage the same. Also in transactions involving the purchase by a shareholder of improved real estate for home purposes, or for the construction of a home, a savings, building and loan association, organized under the laws of this state, or of the United States of America, may when authorized by its by-laws acquire the title thereof, and it may give to such shareholders a contract to convey the same as upon a sale thereof and upon default in the conditions of such contract, the association may terminate the interest of such shareholder pursuant to law. (As amended Apr. 10, 1941, c. 165, §1.)

Commissioner of Banking may order discontinuance of practice of lending money on mortgages executed and recorded prior to record ownership by mortgagor, though such a mortgage would be effective in equity. Op. Atty. Gen. (53-2-22), Mar. 17, 1941.

CERTAIN INVESTMENT COMPANIES

7771. Investment companies—Control.—No person and no co-partnership, association or corporation, whether local or foreign, heretofore organized or which may hereafter be organized, doing business as a so-called investment, loan, thrift, benefit, cooperative, home, securities, trust or guarantee company for the licensing, control and management of which there is no law now in force in this state, and which

such persons, co-partnership, association or corporation shall solicit or receive payments to be made to himself or itself either in a lump sum or periodically, or on the installment plan, and which issues therefor, or has issued therefor and has or shall have outstanding, so-called bonds, debentures, shares, coupons, thrift certificates, certificates of membership or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof money or anything of value at some future date, shall solicit or transact any such business in this state, unless such person, co-partnership, association or corporation shall at all times keep and maintain a paid up capital or capital and surplus of $100,000, or shall keep on deposit with the commissioner of banks, authorized securities in an amount equal to the cash surrender value of all investment contract liabilities on investment contracts held by residents of this state and shall submit to the commissioner of banks on the first day of each month a vertified report in writing which shall set forth the total amount of the cash surrender value of all investment contract liabilities on investment contracts held by residents of this state; such deposit at no time shall be less than $50,000. Every such person, co-partnership, association or corporation, whether local or foreign, which shall be hereafter authorized to do business with an original paid in capital of less than $100,000 shall at all times be required to maintain and keep on deposit with the commissioner of banks authorized securities in an amount equal to the cash surrender value of all investment contract liabilities on investment contracts held by residents of this state; and shall have first complied with the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 7774; provided, however, that existing permits heretofore issued under said Section 7774 shall continue in full force and effect. (As amended Apr. 24, 1943, c. 659, §1.)

Fees for examinations. Laws 1943, c. 319.

A company applying for a license under this section must be transacting a business similar to that of a building and loan association, and there must be no other law under which such a company might be licensed. Op. Atty. Gen., (29a-8), April 19, 1940.

A license under §7771, would confer no right to transact business of an industrial loan and thrift company described in §7774-25. Id.

7772. Supervision of commissioner; etc.

Examiner's salary for time taken to make examination, cost of supplies used, and a portion of office overhead, as well as for travel, hotel and meals of examiner, are "actual necessary expenses." Op. Atty. Gen. (29a-16), Oct. 18, 1940.

7774-½a. What are investment companies. — Wherever used in this act, the term "investment company" means any person, co-partnership, association or corporation referred to in Mason's Minnesota Statutes of 1927, Sections 7771 to 7774, both inclusive, as amended by Laws 1939, Chapter 109. (Act Apr. 6, 1943, c. 319, §1.]
[54.293]

7774-½b. Fees for examinations — Expenses. — Every investment company shall pay to the State of Minnesota, in addition to the fees for examination and expenses provided for in Mason's Minnesota Statutes of 1927, Section 7772, the actual necessary expenses incurred by the commissioner of banks for all salaries, wages, and expenses of special examiners and other special employees employed by the commissioner of banks to make the examinations provided for by law, and compensation for special services rendered by regular examiners in connection with such examinations, and shall make deposits to cover the estimated cost of such salaries, wages, expenses, and compensation for special services, as hereinafter provided. (Act Apr. 6, 1943, c. 319, §2.)
[54.293]

7774-½c. Commissioner of Banks to furnish estimate of expenses.—Prior to the commencement of any examination of an investment company in any year, the commissioner of banks shall make and furnish to such investment company under his supervision an estimate of the amount reasonably necessary to pay the salaries, wages, and expenses of special examiners and other special employees to be employed by him for the purpose of making such examination, and compensation for special services to be rendered by regular examiners. Such company shall forthwith pay the amount of such estimate to the state treasurer and all amounts so paid are appropriated to the commissioner of banks for the purposes of this section. (Act Apr. 6, 1943, c. 319, §3.)
[54.293]

7774-½d. Salaries and expenses to be paid from deposits.—Upon authorization by the commissioner of banks, the monies due each special examiner or special employee engaged in any examination of an investment company, and compensation to any regular examiner for special services in connection with such examination, shall be paid to him from the deposit made by such investment company, in the manner prescribed by law. (Act Apr. 6, 1943, c. 319, §4.)
[54.293]

7774-½e. To pay additional sums.—If at any time it appears to the commissioner of banks that the money deposited by any investment company shall be insufficient to pay the salaries, wages, expenses, and compensation for special services of regular examiners aforesaid, as and when incurred by the commissioner of banks, such investment company shall, on request of the commissioner of banks, forthwith pay to the state treasurer such additional sum as may be necessary to meet such salaries, wages, expenses, and compensation for special services. (Act Apr. 6, 1943, c. 319, §5.
[54.293]

7774-½f. Commissioner to prepare a statement—Repayment of excess.—Within 30 days after the completion of an examination of any investment company which has made a deposit as herein provided, the commissioner of banks shall prepare and present to such investment company a full statement of all salaries, wages, and expenses of special examiners and other special employees, and compensation for special services rendered by regular examiners paid from such deposit, and if the amount so paid is not equal to the amount of the deposit, the excess shall, upon authorization of the commissioner of banks, be repaid by the state treasurer to the investment company making the deposit. (Act Apr. 6, 1943, c. 319, §6.)
[54.293]

INVESTMENT COMPANY ACT OF 1940

7774-¾a. Definitions.—Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, for the purposes of this Act, shall be given the meaning subjoined to them.

Subdivision 2. "Company" means a face amount certificate company as defined by the Act of the Congress of the United States of America known and cited as the "Investment Company Act of 1940", which has certificates outstanding, but to which company subsection (c) of Section 28 of said Act, relating to a deposit of investments, does not apply, and which company is or has been authorized to do business in the State of Minnesota pursuant to sections 7771 to 7774, both inclusive, of Mason's Minnesota Statutes of 1927, as amended.

Subdivision 3. "Treasurer" means the Treasurer of the State of Minnesota in his official capacity.

Subdivision 4. "Commissioner" means the Commissioner of Banks of the State of Minnesota in his official capacity.

Subdivision 5. "Liability" wherever used in respect of any certificate or certificates as of any time means

the then amount which the Company is obligated under the provisions of such certificate or certificates to pay in cash upon the surrender and cancellation thereof, but if any certificate does not expressly provide for deducting the amount of any loan or loans made upon the security thereof, "liability" with respect of such certificate shall mean the amount the Company is obligated to pay under the provisions thereof upon the surrender and cancellation of such certificate, less the amount of any such loan or loans.

Subdivision 6. "Assets" means cash and investment of the kind made eligible for deposit by the provisions of this Act.

Subdivision 7. "Value" when used in respect of any asset or assets means the value of such asset or assets, evaluated as provided by this act.

Subdivision 8. "Certificate" means any certificate, investment contract or other security which represents an obligation on the part of the Company to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount, or any security which represents a similar obligation of the Company, the consideration for which was the payment of a single lump sum. (Act Apr. 23, 1943, c. 591, §1.)
[57.01]

7774-¾b. Deposit of securities by investment companies.—Any company may, at its option, deposit and maintain with the Treasurer assets as collateral security for the payment by it of its liability under the certificates to be secured thereby as specified in section 3 hereof; provided that any company not organized under the laws of the State of Minnesota may deposit and maintain with the Treasurer assets as collateral security only for the payment of its liability under certificates issued to or held by residents of the State of Minnesota.

If any company elects to make a deposit as herein authorized, in respect of such company the following provisions shall be applicable. (Act Apr. 23, 1943, c. 591, §2.)
[57.02]

7774-¾c. Company shall deposit securities.—Subdivision 1. The Company, if organized under the laws of the State of Minnesota, shall, subject to the provisions hereof, deposit and maintain with the Treasurer from time to time as collateral security, assets of the kind eligible for deposit under the provisions of this Act, having an aggregate value at all times, evaluated as provided in this Act, at least equal to 100% of its then liability on all certificates outstanding in the United States, except as provided in subdivisions 2 and 3 of this section.

Subdivision 2. If the Company is at any time maintaining a separate deposit of assets in respect of certificates liability as required by the statute of any state or by an order, regulation of requirement of any state or of any official or agency thereof, or otherwise, no assets shall be deposited or maintained with the Treasurer hereunder in respect of the Company's liability under the certificates in respect of which such separate deposit is then being maintained, except in respect of the excess of the aggregate of the Company's liability under such certificates over the value of the assets then being maintained in such separate deposit, evaluated as provided in this Act.

Subdivision 3. If the Company at any time has conveyed any real estate eligible for maintenance under the provisions of the certificates secured by the deposit herein authorized, or any thereof, acquired through the foreclosure of any mortgage, trust deed or other similar security instrument or by conveyance in lieu of such foreclosure, to a corporate trustee or trustees as security for the payment of its liability under the certificates secured by the deposit with the Treasurer hereunder, under an agreement or agreements approved by the Commissioner, the amount of the assets required to be maintained with the Treasurer under subdivision 1 of this section shall be reduced by the value of real estate held from time to time by such trustee or trustees, evaluated at the amount of the unpaid principal of the defaulted loan at the date of such foreclosure sale or of such conveyance or the book value of such real estate whichever is the lesser. Real estate shall not be eligible as security hereunder except as provided in this subdivision and upon written authorization by the Commissioner.

Subdivision 4. The Company, if not organized under the laws of the State of Minnesota, shall, subject to the provisions hereof, deposit and maintain with the Treasurer from time to time as collateral security, assets of the kind eligible for deposit under the provisions of the Act, having an aggregate value at all times, evaluated as provided in this Act, at least equal to 100% of its then liability on all certificates issued to or held by residents of the State of Minnesota. (Act Apr. 23, 1943, c. 591, §3.)
[57.03]

7774-¾d. Securities eligible.—Except as otherwise provided herein, assets deposited and maintained under Section 3 hereof shall be cashed and investments in first mortgages and first deeds of trust on improved real estate, in government bonds, state bonds, municipal bonds, obligations issued or guaranteed in whole or in part by the United States Government, or by a government chartered institution or agency and/or in assets of the kind which life insurance companies are now permitted by the laws of the State of New York to acquire or hold, or any of them, and such other assets as the Commissioner may approve as eligible for such purposes. (Act Apr. 23, 1943, c. 591, §4.)
[57.04]

7774-¾e. Valuation of securities.—Assets deposited and maintained under section 3, for the purpose of determining compliance therewith, except as otherwise provided in the Act, shall be valued as follows:

Each bond, debenture and other security of inbedtedness of like kind, acquired by purchase and not in default, if amply secured, if purchased at par, at the par value, and if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and, provided further, that the Commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule; preferred and guaranteed stocks upon which dividends are being currently paid, at average cost to the Company of each issue of such stocks; each contract for deed, each mortgage, trust deed or other similar security instrument at the unpaid balance of the indebtedness secured thereby, all other assets at their established market value or at their reasonable value if the asset has no established market value. (Act Apr. 23, 1943, c. 591, §5.)
[57.05]

7774-¾f. Exchange of deposits.—Subdivision 1. Assets deposited with the Treasurer hereunder may be withdrawn at any time by the Company, at its option, whenever other assets eligible for deposit hereunder, of at least equal value are substituted therefor, and assets may be withdrawn without such substitution, at the option of the Company, to the extent of any excess over the aggregate amount required to be maintained under section 3 hereof. In the event of a withdrawal by substitution, the Treasurer shall permit the withdrawals of any assets on deposit upon the filing with him of a statement by one of the Company's officers or by an employee designated by such

purpose in writing filed with the Treasurer, stating that the value of the assets to be substituted is at least equal to the value of the assets to be withdrawn; and, in the event of a withdrawal of excess, upon the filing with him of a statement, executed as aforesaid, stating the value of the assets, required by section 3 hereof to be maintained does not exceed a stated amount and that the value of the assets on deposit hereunder is not less than a stated amount, the Treasurer shall permit a withdrawal of assets of a value not greater than the excess value, if any, of assets on deposit over the amount required to be maintained, as shown by such statement, and the Treasurer may conclusively rely upon such statements.

Subdivision 2. Upon the withdrawal of any asset deposited with the Treasurer as provided in this section, the Treasurer shall execute and deliver to the Company any and all instruments or documents necessary or appropriate in the premises to revest in the Company, or its nominee, such interest as he has therein by reason of the deposit thereof pursuant to this Act, and thereupon such asset shall be discharged from any lien or incumbrance arising from the deposit thereof with the Treasurer and the Treasurer shall be relieved and discharged from all further liability in respect thereof. (Act Apr. 23, 1943, c. 591, §6.)
[57.06]

7774-¾ g. Company to collect income.—The Company shall be entitled to collect, receive and retain the income from and/or payments made on any assets maintained with the Treasurer, except as herein otherwise expressly provided; provided that the value of maintained assets shall not at any time be less than the minimum value required to be maintained under section 3 hereof. Interest coupons, if any, shall be surrendered by the Treasurer to the Company so long as it shall be entitled to receive such interest hereunder not more than fifteen nor less than five days prior to their respective maturities. (Act Apr. 23, 1943, c. 591, §7.)
[57.07]

7774-¾ h. Treasurer to keep assets in vault.—The Treasurer shall keep the assets and any documents or papers delivered into his possession under this Act in the vaults provided by the state for his official use, except that he may keep said assets, documents and papers elsewhere if in his opinion the available space in such vaults now is, or shall hereafter become, inadequate for such purpose, or if for any other reason he shall deem it desirable or expedient so to do; provided (a) if assets consisting of stocks, bonds, debentures or other securities of like kind, payable to bearer or negotiable by delivery, not secured as provided in (b) of this proviso, or cash, are to be kept elsewhere than in the official vaults, the Treasurer shall, subject to the approval of the Company, rent one or more safe-deposit boxes of any bank, trust company or safe-deposit company, under state or federal supervision, in which safe-deposit box or boxes such assets, and any papers or documents relating thereto, shall be kept by him, or he shall, with the Company's approval, deposit the same with any such bank or trust company under a safekeeping or custodian agreement between such bank or trust company and himself, and (b) if assets consisting of mortgages, trust deeds or similar security instruments, or evidences of indebtedness secured by mortgages, trust deeds or other similar security instruments deposited with the Treasurer, or any assets other than those within the purview of (a) of this proviso, are to be kept elsewhere than in the official vaults, the Company, upon the written request of the Treasurer, shall provide, subject to the approval thereof by the Treasurer, at its own cost and expense, for his use, a vault or vaults equipped with suitable filing cabinets adequate for the purpose, in which such assets, within the purview of (b) of this proviso, and any documents and papers relating to assets coming within the purview of (b) of this proviso delivered into his possession, shall be kept, such vault or vaults to be under the exclusive supervision and control of the Treasurer and such employees as he may appoint for the purpose of keeping and administering such deposit. If provision cannot be made for the keeping of any assets to be kept elsewhere than in the official vaults, with approval as herein provided, the Treasurer shall then provide such facilities.

Assets, documents and papers of each Company shall be kept by the Treasurer segregated from all other assets, documents and papers in his possession, custody or control. (Act Apr. 23, 1943, c. 591, §8.)
[57.08]

7774-¾ i. Purpose of pledged assets.—Subdivision 1. Assets maintained with the Treasurer hereunder by a Company organized under the laws of the State of Minnesota shall constitute a pledge only of such assets as collateral security for the payment to holders of certificates, residing in the United States, of the cash payments provided in such certificates, as and when the same become due and payable according to the terms and conditions thereof, subject to the provisions of this Act; provided, however, that the holders of certificates in respect of which a separate deposit is being maintained as specified in subdivision 2 of section 3, shall be entitled to participate in the deposit maintained hereunder, in case of a general liquidation thereof, only after such separate deposit has been exhausted and after the holders of certificates secured only by the deposit hereunder shall have received from the deposit hereunder a percentage amount upon their certificate obligations equal to the percentage amount received by the holders of certificates in respect of which such separate deposit is maintained from such separate deposit, and shall thereafter participate on an equal percentage basis in the residue of the deposit hereunder with certificate holders secured only by the deposit hereunder.

Subdivision 2. Assets maintained with the Treasurer hereunder by a Company not organized under the laws of the State of Minnesota, shall constitute a pledge only of such assets as collateral security for the payment to holders of certificates, issued to or held by residents of the State of Minnesota, of the cash payments provided in such certificates, as and when the same become due and payable according to the terms and conditions thereof, subject to the provisions of this Act.

Subdivision 3. The Company shall file specimen copies of all certificates referred to in subdivisions 1 or 4, of section 3, as the case may be, with the Treasurer, but no certificate shall be excluded from the security of the deposit by reason of the failure to file a specimen thereof or by reason of having attached thereto or included therein riders, endorsements or other slight modifications or additional provisions. (Act Apr. 23, 1943, c. 591, §9.)
[57.09]

7774-¾ j. Treasurer to maintain record. — The Treasurer shall maintain a record in ledger form of the assets maintained with him by the Company, in which shall be credited assets as and when deposited with him from time to time and in which shall be charged assets as and when withdrawn by the Company from time to time, and the Company shall furnish the Treasurer with all information necessary and appropriate to enable him to maintain such ledger. (Act Apr. 23, 1943, c. 591, §10.)
[57.10]

7774-¾ k. Mortgages—Trust deeds—How deposited.—Subdivision 1. A mortgage, trust deed or other similar security instrument shall be deposited with the Treasurer, for the purposes of section 3, by delivery of the same to the Treasurer, except as otherwise provided in this section, together with the following instruments:

(1) Any note or bond secured thereby, endorsed substantially as follows: "The within instrument is hereby assigned to the Treasurer of the State of Minnesota, his successors or assigns under and pursuant to the provisions of Chapter , Laws 1943."

(2) An assignment of the mortgage, trust deed or other similar security instrument in blank.

(3) An attorney's opinion as to title, certificate or policy issued by a title insurance company or a mortgagee's duplicate of the Torrens title certificate, stating, showing or insuring as of the date thereof such mortgage, trust deed or other security instrument to be a first lien upon the real estate described therein.

(4) Whenever the delivery of any security instrument to the Treasurer is required by the foregoing provisions of this section and such instrument is on file pursuant to or is required to be filed with a public officer by the statutes of any state, a copy of such instrument, duly certified by the officer with whom the original is filed to be a true copy thereof, may be delivered in lieu of such original instrument.

Provided, that whenever the Company is making a loan for the improvement of real estate which loan is to be secured by a mortgage, trust deed or other similar security instrument, and the moneys to be loaned and a duly executed mortgage, trust deed or other similar security instrument have been deposited in escrow with a bank, or trust company, under state or federal supervision and regulation, the moneys to be disbursed by such bank or trust company as the work progresses, the moneys remaining from time to time in possession of such bank or trust company, and the mortgage, trust deed or other similar security instrument shall be deemed deposited with the Treasurer for the purposes of section 3 hereof, upon the delivery to him of an assignment of said moneys and of said mortgage. trust deed or other similar security instrument, subject to the escrow agreement, together with a receipt of the bank or trust company duly acknowleding that it has such moneys and the mortgage, trust deed or other similar security instrument in its possession, without the delivery of the moneys and the mortgage, trust deed or other similar security instrument to the Treasurer. Any mortgage, trust deed or other similar security instrument securing moneys loaned or to be loaned for the improvement of real estate, where such moneys are to be disbursed as the work progresses, if duly recorded or deposited in escrow, shall be deemed deposited with the Treasurer for the purposes of section 3 hereof upon delivery to him of an assignment thereof, without delivery of such mortgage, trust deed or security instrument or other accompanying instruments specified in this section. Upon the consummation of any such loan, the mortgage, trust deed or other similar security instrument, duly recorded, and the other accompanying instruments specified in this section, shall be delivered to the Treasurer, subject to the provisions of the following proviso. Such mortgage, trust deed or other similar security instrument shall be valued from time to time pending the consummation of the loan at the then amount of money disbursed on said loan, as shown by statements to be filed with the Treasurer from time to time by an executive officer of the Company or some employee or employees of the Company, designated by the Company in writing filed with the Treasurer; and

Provided, further, that any mortgage, trust deed or other similar security instrument filed or to be filed for record but not yet returned and/or in respect of which it is proposed to procure a certificate or policy issued by a title insurance company and/or insurance pursuant to the Federal Housing Act, shall be deemed deposited with the Treasurer for the purposes of section 3 hereof upon deliverying to him an assignment thereof, together with such of the accompanying papers specified in this section as are then available for delivery, without the delivery of such mortgage, trust deed or other similar security instrument. Upon the completion of such recordation and return of the instrument and/or the procurement of such certificate or policy and/or the effecting of such insurance, such mortgage, trust deed or other similar security instrument shall be forthwith delivered to the Treasurer, together with such other withheld instruments. Upon the failure to make delivery of such mortgage, trust deed or other similar security instrument and/or title certificate or policy withheld within 120 days after the assignment of said asset, or in respect of a construction loan as specified in the first proviso, after the consummation of such loan, the same shall be withdrawn.

If any security instrument or accompanying instrument is withheld from delivery to the Treasurer as provided in this section, the Company shall furnish the Treasurer with a statement, stating the reason for the non-delivery thereof, and if forwarded for recording, with a receipt of the recording officer or a statement as to why such receipt cannot be so furnished.

Subdivision 2. For the purpose of paragraph (3) of subdivision 1 of this section and of section 4 hereof, a mortgage, deed or trust or other similar security instrument shall not be deemed to be other than a first lien upon the property covered thereby by reason of the existence of taxes or assessments that are not delinquent more than six months, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint highways, sewer rights, rights in walls, customary easements for public utilities, nor by reason of building or use restructions, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner, nor by any slight encroachment, restrictive covenant, easement right or reservation which does not materially impair the value of the property as security; provided, that a tax upon real estate, though delinquent for six months or more, shall not render the mortgage, trust deed or other similar security instrument secured by such real estate ineligible for deposit hereunder, if the validity of such tax or the amount thereof is in litigation, and a deposit for the payment thereof when the validity or amount has been determined, has been made by the person or corporation under duty of paying the same with the Company or with any other person or corporation. (Act Apr. 23, 1943, c. 591, §11.)
[57.11]

7774-¾l. Assets to be deposited to be accompanied by statement.—Subdivision 1. Any asset deposited with the Treasurer shall be accompanied by a statement that in the opinion of a person authorized by the company to make such statement such asset, identifying it, is of a kind authorized to be deposited under the provisions of this Act, and giving the value thereof, evaluated as provided in this Act.

Subdivision 2. A Company organized under the laws of the State of Minnesota shall, at the time of making the initial deposit and thereafter on or before the 30th days of January and July of each year, file with the Commissioner and the Treasurer the following:

(1) A statement showing the aggregate value of the assets, calculated as of the last day of the preceding month, evaluated in accordance with the provisions of this Act, maintained with the Treasurer hereunder on the last day of said preceding month, except that the statement accompanying the initial deposit shall be in respect of the value of the assets then being deposited, calculated as aforesaid.

(2) A statement showing the aggregate amount of the Company's liability, as of the last day of the preceding month, upon all outstanding certificates in the United States, shown by states.

(3) A statement showing the aggregate value of the assets, calculated as of the last day of the preceding month, evaluated in accordance with the provi-

sions hereof, maintained on deposit or deposits as referred to in subdivision 2 of section 3, shown by deposits.

(4) A statement showing the aggregate value of the assets, calculated as of the last day of the preceding month, conveyed under an agreement or agreements as specified in subdivision 3 of section 3, if any, evaluated as herein provided.

Subdivision 3. A company not organized under the laws of the State of Minnesota, shall at the time of making the initial deposit and thereafter on or before the 30th days of January and July of each year, file with the Commissioner, the following:

(1) A statement showing the aggregate value of the assets, calculated as of the last day of the preceding month, evaluated in accordance with the provisions of this Act, maintained with the Treasurer hereunder on the last day of said preceding month, except that the statement accompanying the initial deposit shall be in respect of the value of the assets then being deposited, calculated as aforesaid.

(2) A statement showing the aggregate amount of the Company's liability, as of the last day of the preceding month, upon all outstanding certificates issued to or held by residents of the State of Minnesota.

Subdivision 4. Said statements shall be made by an executive officer or some employee or employees of the Company, designated by the company in writing filed with said Commissioner, and shall be verified under oath by the person making the same.

Subdivision 5. The Company shall furnish a copy of the statements specified in this section and of the reports specified in section 14, to the supervisory or regulatory authority or authorities having administrative jurisdiction of the issuance of certificates of the kind herein mentioned and of deposits in respect thereof, of any state whose resident certificate holders are protected by the deposit maintained hereunder.

Subdivision 6. If the statements filed as provided in this section shall at any time show the value of the assets on deposit to be less than the minimum amount required by section 3 hereof to be maintained, the Company shall deposit additional assets sufficient to comply with the requirements of said section within thirty days after the filing of said statements, and if it shall fail so to do, the Company, upon written request thereafter made by the supervisory or regulatory authority or authorities having administrative jurisdiction of the issuance of certificates of the kind herein mentioned and of deposits in respect thereof, of any state whose resident certificate holders are protected in whole or in part by the deposit maintained hereunder, shall mail to each certificate holder residing in such state, within thirty days after receipt of such request, copies of the statements last filed as provided in subdivisions 2 or 3 of this section, as the case may be. (Act Apr. 23, 1943, c. 591, §12.) [57.12]

7774-¾m. Shall notify treasurer of desire to sell assets.—If the Company shall notify the Treasurer in writing that it desires to sell any asset maintained with him or to exchange the same for other investments eligible in whole or in part for deposit with the Treasurer, or that the obligation to pay or deliver moneys or property evidenced by any asset maintained with him is to be paid or discharged in full or in part at some place other than the place where such assets are maintained, the Treasurer shall forward such asset to a bank or trust company, under state or federal supervision and regulation, selected by the Treasurer in the place where such sale, exchange or payment is to be consummated, or to the bank or trust company specified in the asset, if so specified, for the payment or exchange, together with proper instruments and instructions for the consummation of such sale, exchange or payment in accordance with the directions of the company. The asset to be sold, exchanged or paid shall continue to be a part of the assets maintained with the Treasurer until such sale, exchange or payment is consummated, and upon the consummation thereof, the proceeds of such sale or payment, or the property received in exchange, shall become and constitute a part of the assets maintained with the Treasurer so far as the same are eligible, and the Treasurer shall require that the same be forthwith transmitted by such bank or agency to him. If, as a result of such sale, exchange or payment, the amount being maintained with the Treasurer will be reduced to an amount less than that required to be maintained with him, the Company shall, before or at the time such sale, payment or exchange is consummated, deposit with the Treasurer assets so that upon the consummation of said sale, exchange or payment the amount being maintained with him shall meet the requirements of the deposit.

The Treasurer shall exercise reasonable care in the selection of the bank or agency for the purposes specified in this section, and, if he has exercised such care in the selection thereof, shall not be liable for the negligence or default of such bank or agent. (Act Apr. 23, 1943, c. 591, §13.) [57.13]

7774-¾n. Company to file reports showing defaults.—The Company shall file with the Commissioner and the Treasurer on or before the 30th days of January and July of each year, a report showing the defaults, if any, as of the last day of the preceding month, in the payment of principal or interest due upon any bond, debenture, or other similar security, and the defaults in the payment of principal or interest, or other default, if any, under any mortgage, trust deed or other similar security instrument, then being maintained with the Treasurer under Section 3 hereof, as of the last day of the preceding month, provided that no default need be reported which has not continued for 120 days or more. Said report shall be made by an executive officer or some employee or employees of the Company, designated by it in writing filed with the Commissioner, and shall be verified under oath by the person making the same.

In the event that any mortgage, trust deed or other similar security instrument maintained with the Treasurer shall be in default, the Company may, and upon the written request of the Commissioner after the same has been in continuous default for six months shall, withdraw such asset in accordance with the provisions of section 6 hereof or proceed with the collection, adjustment, compromise or foreclosure of such asset in such manner as in its judgment seems advisable. If the Company shall elect to proceed to collect, adjust, compromise or foreclose any such asset and shall elect to withdraw the same for that purpose otherwise than as provided in section 6 hereof, the Company shall file with the Treasurer a bond, duly executed by it as principal and a corporate surety company, duly licensed under the laws of the State of Minnesota to do a surety business in the state, as surety, in the penal sum equal at least to the then value of the such mortgage, trust deed or other similar security instrument, conditioned that the Company shall within thirty days after the collection, adjustment, compromise or completion of foreclosure, deposit with the Treasurer the proceeds of the collection or compromise, the adjusted mortgage, trust deed or other similar security instrument, or the sheriff's certificate or other instrument evidencing the Company's rights and interest in the real estate pending the period for redemption, if there be a redemption period, together with sufficient additional eligible assets, if any be required, to equal the value of the withdrawn asset at the time of withdrawal. Upon the filing of such bond, the mortgage, trust deed, or other similar security instrument shall be delivered by the Treasurer to the Company and shall be discharged from any and all liability and incumbrance arising from the deposit thereof with the

Treasurer hereunder. Provided, that if in lieu of a separate bond for each mortgage, trust deed or other similar security instrument so withdrawn, the Company shall file one or more general and continuing bonds in such penal sum or sums as it may elect, it shall be entitled to withdraw thereunder, at one time or from time to time, for the purposes aforesaid, mortgages, trust deeds or other similar security instruments having an aggregate value not in excess of the penal sum or sums of such bond or bonds, plus the value of any deposits theretofore made in accordance with the conditions of such bond or bonds. If more than one such general and continuing bond be filed, the Company shall file with the Treasurer at the time of the withdrawal of any mortgage, trust deed or other similar security instrument, otherwise than as provided in section 6 hereof, a writing specifying the particular bond under which such withdrawal is made. Any bond filed as herein provided shall be and constitute a part of the deposit; and shall be valued from time to time at the value of any and all mortgages, trust deeds and other similar security instruments withdrawn thereunder, each such asset to be valued as of the time of withdrawal, less the value of any asset or assets deposited in accordance with the conditions of such bond. Any bond may be withdrawn at any time when the conditions thereof have been performed. If the sheriff's certificate or other instrument evidencing the Company's rights and interests in the real estate pending the period for redemption be deposited, it shall be valued at the amount of the unpaid principal of the debt secured by the foreclosed mortgage, trust deed or other security instrument as of the time of foreclosure. At least five days before the expiration of the period for redemption, if no redemption has been made prior thereto, the Company shall withdraw such certificate or other instrument in accordance with the provisions of section 6 hereof.

A mortgage, trust deed or other similar security instrument shall not be deemed to be in default, for the purposes of this section, if the collection of the debt secured thereby or the foreclosure of such mortgage, trust deed or other similar security instrument is prevented by the terms of any applicable law of any state or of the United States, or of any rule, regulation or order made pursuant to such law, or of any executive decree, unless and until such law, rule, regulation, order or decree is declared invalid by final decree of a court of competent jurisdiction, and if any such asset has been withdrawn as provided in this section for collection or foreclosure, and the collection or foreclosure thereof is stayed by order of any court having jurisdiction in the premises, pursuant to any such law, rule, regulation or order, such asset may be redeposited pending the period of such stay. (Act Apr. 23, 1943, c. 591, §14.)
[57.14]

7774-¾o. Company to pay all taxes and assessments.—The Company shall pay and discharge any and all taxes, assessments and other governmental charges levied upon or against any real estate covered by any mortgage, trust deed or other similar security instrument maintained with the Treasurer under section 3 hereof, if not paid by the person or corporation under the primary duty of paying the same, within six months after the same become delinquent; provided that if the Company or the owner of the real estate involved desires to contest the validity of such tax, assessment or charges, or the amount thereof, the Company shall not be deemed to be in default in respect of the payment thereof unless such taxes, assessments or charges remain unpaid for a period of thirty (30) days after the validity or amount thereof, as the case may be, has been determined by final judgment of a court of competent jurisdiction. (Act Apr. 23, 1943, c. 591, §15.)
[57.15]

7774-¾p. Statements to be certified by public accountant.—Subdivision 1. The statements of the value of deposited assets and the amount of liability on outstanding certificates as required by section 12 hereof and the reports of defaults on deposited assets required by section 14 hereof, both as of the 31st day of December of each year, shall be certified by the public accountant qualified to certify the company's financial statement under the Investment Company Act of 1940, and the report by such accountant shall be delivered to the Commissioner on or before the 31st day of March following the filing of said respective statements and reports.

Subdivision 2. The Company shall deliver to the Commissioner annually a copy of a complete audit of its books and records, showing, in addition to the things usual in a complete audit, the value of assets deposited pursuant to this Act and the amount of liability of the Company to holders of its outstanding certificates secured hereby, such value and amount being computed in accordance with the provisions hereof. Such audit shall be made by a public accountant qualified as provided in subdivision 1 of this section. (Act Apr. 23, 1943, c. 591, §16.)
[57.16]

7774-¾q. Company to maintain insurance on mortgaged properties.—The company shall at all times maintain or cause to be maintained insurance upon all buildings and improvements upon real estate covered by any mortgage, trust deed or other similar security instrument maintained with the Treasurer, insuring the same against destruction or damage from fire, by policy in usual form, and from such other hazards as the Company has required, for at least the amount of the unpaid balance of the principal, with accrued interest, of the loan, with the loss made payable to the Company and/or its assigns as their interest may appear, subject to, but without obligation to so provide, the right of the insured, insurer, or of the Company to restore or repair the loss or damage and to use the proceeds for such purpose. The Company shall adjust with the insurer any loss or damage arising in respect of such insurance. The Company shall deposit the policy or policies with the Treasurer or file with him a certificate of the insurer showing the amount of such insurance, the hazards insured against, and the expiration date or dates of the policies. (Act Apr. 23, 1943, c. 591, §17.)
[57.17]

7774-¾r. Company may modify rate of interest.—The Company and the owner of or other persons having an interest in any real estate subject to any mortgage, trust deed or other similar security instrument being maintained with the Treasurer may at any time before sale at foreclosure of the real estate described therein, whether such mortgage, trust deed or other similar security instrument be in default or otherwise, by agreement in writing change or modify the terms thereof in respect to the rate of interest, the time or manner or amount of the payment of any installment or installments of principal or interest, or reserves and credits for taxes, assessments and hazard insurance, whether in default or thereafter becoming due, or to include as a part of the principal debt any moneys advanced or to be advanced by the Company for the payment of taxes, assessments or insurance premiums. A copy of any such agreement shall be filed forthwith with the Treasurer. (Act Apr. 23, 1943, c. 591, §18.)
[57.18]

7774-¾s. Treasurer may sell assets—When.—Subdivision 1. If the Company shall fail to make any cash payment provided in any outstanding certificate secured by the deposit, according to the terms of such certificate, as and when the same matures or otherwise becomes due and payable, said Treasurer may, and upon the written request of the holder thereof

shall, first giving thirty days' written notice to the Company of its intention so to do, use so much of said assets maintained with him as is necessary to pay and discharge the liability in default, if said default is not cured within said thirty (30) day period, provided, that if such default arises under a certificate in respect of which a separate deposit as described in subdivision 2 of section 3 is being maintained, no action shall be taken by the Treasurer as in this section provided until such separate deposit has been exhausted, and a certificate executed by an executive officer of the Company or by an employee thereof, designated for that purpose in writing filed with the Treasurer, stating that a separate deposit is being maintained as specified in said subdivision 2 in respect of such certificate, identifying such deposit, shall be conclusive upon the Treasurer for the purposes of this section until the right of the holder of such certificate to resort to the deposit maintained hereunder has been acknowledged in writing by the Company or has been established by final judgment of a court of competent jurisdiction. To that end, the Treasurer shall have the right and power to sell any asset then held by him and not due at private sale or at a public auction, giving to the Company at least ten (10) days' notice in writing of the time, place and manner of sale and to collect any asset then due or which becomes due during the continuance of said default, with or without suit, and to apply the proceeds so realized, or so much thereof as shall be necessary therefor, to the discharge of the liability in default. In the event the company in good faith disputes the right of any person demanding payment under any such certificate to receive the same or the amount claimed and so notifies the Treasurer in writing thereof, no default, for the purpose of this section, shall be deemed to arise until such dispute is settled between the parties thereto or is determined by final judgment of a court of competent jurisdiction.

Subdivision 2. If the Treasurer shall determine to apply any asset maintained with him to the discharge of a default as hereinbefore provided, he shall forthwith notify the Company in writing of his intention so to do, identifying the asset or assets, and shall thereafter be entitled to all then unpaid interest dividends or other income due or to become due thereon; provided that if any of such assets be not sold or collected, the Company, upon the discharge of the default, shall become entitled to any such interest, dividends or other income not applied in the discharge of such default.

Subdivision 3. For the purpose of realizing the amount necessary to discharge a default, the Company by making a deposit hereunder does thereby irrevocably make, constitute and appoint the Treasurer its attorney-in-fact in respect to assets maintained with him hereunder to complete and to make or execute any assignments, transfers, endorsements, cancellations, satisfactions, collections and settlements, in the name of the Company or otherwise, and to do any and all acts appropriate in the premises.

Subdivision 4. No action shall be taken by the Treasurer as provided in this section after a petition has been filed in Federal Court to have the Company adjudged a bankrupt under the Federal Bankruptcy Act, after a proceeding has been commenced in any court of competent jurisdiction to have the Company adjudged insolvent and to liquidate its affairs, after voluntary, judicial dissolution proceedings have been instituted by the Company or after the Commissioner has taken possession of the properties and assets of the Company under authority of law for the purpose of liquidating the affairs of the Company, during the pendency of such proceedings, and the Company shall promptly notify the Treasurer in writing of the happening of any of such events. (Act Apr. 23, 1943, c. 591, §19.)
[57.19]

7774-¾t. Treasurer to surrender assets to court upon order.—Should the Company be adjudged a bankrupt under the Federal Bankruptcy Act or insolvent by final judgment or decree of any court of competent jurisdiction, or should voluntary dissolution proceedings be instituted, and a trustee in bankruptcy, a general receiver, or a trustee to liquidate the affairs of the Company be appointed, or should the Commissioner take possession of the properties and assets of the Company under authority of law for the purpose of liquidating the affairs of the Company, the Treasurer, if and when authorized by an order of the court, shall surrender and deliver the assets then on deposit with him to such trustee, receiver or Commissioner, as the case may be; provided, however, that such surrender and delivery shall be without prejudice to any right or rights or lien or liens which certificate holders may have in or upon such assets, arising out of or under the provisions of this act. (Act Apr. 23, 1943, c. 591, §20.)
[57.20]

7774-¾u. Treasurer to send notices to company.—The Treasurer shall promptly forward to the Company all notices, letters, circulars nad communications which he receives in respect of any asset maintained with him hereunder, or a copy thereof, unless he shall deem the same to be of a confidential character. (Act Apr. 23, 1943, c. 591, §21.)
[57.21]

7774-¾v. State and Treasurer not to be liable.—The State of Minnesota shall be under no liability in respect of said deposit nor shall the Treasurer be under any responsibility or liability in respect thereof, except that he shall be under the same duty and liability for the safekeepnig of any such assets delivered into his possession and for the surrender and delivery thereof in accordance with the provisions hereof as in the case of public funds.. The Treasurer is authorized to procure any insurance or bonds appropriate to protect him against liability for the safekeeping and delivery of said assets; provided, however, that the aggregate penal sum of any fiduciary insurance or bonds shall not exceed $500,000. (Act Apr. 23, 1943, c. 591, §22.)
[57.22]

7774-¾w. Commissioner to make examination.—The Commissioner at least annually, and as much oftener as he shall deem it advisable, shall make such examination in respect of the deposit with the Treasurer as will enable him to determine, as of any date selected by him, whether the Company is maintaining the same in accordance with the provisions hereof, and wherein, if at all, it is failing to perform any duty or obligation assumed or imposed upon it by law in respect of such deposit, and may thereupon determine what, if any, action will be taken in the premises in case of failure to perform any such duty or obligation. Nothing in this Act shall be construed to abridge any power, authority, privilege or duty conferred or imposed upon the Commissioner in respect to investment companies under any other law, unless herein expressly provided. (Act Apr. 23, 1943, c. 591, §23.)
[57.23]

7774-¾x. Company to pay cost of administration.—The Company shall pay to the State of Minnesota all costs and expenses reasonably and necessarily paid or incurred by the Treasurer in the performance of administrative duties or requirements in respect of the deposit and in receiving and safekeeping the assets maintained with him, including the salaries of additional help, if any, employed for that purpose, and the cost of any insurance or bonds required by the Treasurer for his protection against liability. At or prior to the time of making the initial deposit hereunder, the Treasurer shall make an estimate of the amount reasonably necessary to meet the regular reoccurring monthly expenses likely to be incurred

within the next three months period, and a separate estimate of any non-reoccurring monthly expense likely to be incurred within said period, and the Company shall forthwith pay the amount of said estimates to the Treasurer. Within ten days after the end of each quarterly period thereafter, the Treasurer shall present to the Company a detailed account of all reoccurring monthly costs and expenses paid by him during the last preceding quarterly period, and an estimate of any non-reoccurring monthly cost or expense likely to be incurred in the next succeeding quarterly period, and the Company shall pay to the Treasurer, within ten days thereafter, the amount of said account and of said estimate. If at any time the money in said fund shall be insufficient to pay the costs and expenses as and when incurred by the Treasurer as aforesaid, the Company shall, on request of the Treasurer, forthwith pay to him such additional sum as may be necessary to meet such costs and expenses. If at any time it appears to the Treasurer that there is a surplus in said fund over the requirements thereof, he shall deduct all, or such portion of such surplus as he deems advisable, from the account of costs and expenses for next ensuing quarterly period or periods. The sums so paid by the Company to the Treasurer are hereby appropriated as and when paid for the use of the Treasurer for the purposes of paying any costs and expenses incurred by him as aforesaid, and shall constitute a revolving fund for such purposes. Upon the termination of the deposit hereunder, the Treasurer shall return to the Company any money then remaining in said fund. (Act Apr. 23, 1943, c. 591, §24.)
[57.24]

7774-¾y. Commissioner may employ additional help.—The Commissioner may employ such additional help as may be necessary, if any, to supervise the deposit, and the Company shall pay to the State of Minnesota the reasonable and necessary costs and expenses of such additional help and any other expenses that the Commissioner may be put to by reason of such deposit, but the expense of general supervision of the Company as now provided by statute shall be paid as provided by such statute. At or prior to the making of the initial deposit, the Commissioner shall make an estimate of the amount of such costs and expenses likely to be incurred within the next three months period, and the Company shall forthwith pay such amount to the Treasurer. Within ten days after the end of each quarterly period thereafter, the Commissioner shall present to the Company a detailed account of the costs and expenses incurred by him and paid by the State for which the Company is liable as herein provided, and the Company shall pay to the Treasurer the amount of such account within ten days thereafter. The sums so paid by the Company to the Treasurer are hereby appropriated as and when paid for the use of the Commissioner for the purposes of paying the costs and expenses incurred by him as aforesaid, and shall constitute a revolving fund for such purposes. Upon the termination of the deposit hereunder, the Treasurer shall return to the Company any money then remaining in said fund. (Act Apr. 23, 1943, c. 591, §25.)
[57.25]

CREDIT UNIONS

7774-4. Powers enumerated.—A credit union shall have the following powers:

(a) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas Clubs, Vacation Clubs and other such thrift organizations within its membership).

(b) To make loans to members for provident or productive purposes.

(c) To make loans to a cooperative society or other organization having membership in the credit union.

(d) To deposit in state and national banks and trust companies authorized to receive deposits.

(e) To invest in any investment legal for savings banks or for trust funds in the state.

(f) To borrow money as hereinafter indicated.

(g) To adopt and use a common seal and alter the same at pleasure.

(h) To make pyaments on shares of and deposit with any other credit union operating under the provisions of this act, or operating in this state under the provisions of the Federal Credit Union Act, in amounts not exceeding in the aggregate 22 per cent of its unimpaired assets. (As amended Apr. 24, 1943, c. 647, §1.)

Local credit unions are without authority to hold shares of, or deposit funds with a central league credit union. Op. Atty. Gen., (53B), April 3, 1940.

Credit unions are confined in their operations to the specific powers granted under this section, and may not engage in any revenue producing activity, whether in rendering service to its members or not which is not specifically provided for or necessarily incident to carrying out the powers enumerated, and treasurers of credit union as individuals may act as agents for insurance or a bondified check system, provided he act purely as an individual and does not pledge any credit of the union or use any of the funds of the union. Op. Atty. Gen. (53b), July 12, 1943.

Credit unions do not have power to negotiate and rediscount notes with or without recourse or to service loans for compensation. Op. Atty. Gen. (53b), Aug. 31, 1943.

The League Credit Union has right to purchase notes secured by mortgage which meet requirements of the law as to investment by savings banks or for trust funds, but a local credit union has no right to sell a note taken by it which is secured by a real estate mortgage. Op. Atty. Gen. 53(b), Dec. 9, 1943.

7774-5. Membership in.

A by-law permitting a member who leaves field of membership of credit union to retain his membership but without right to borrow, is invalid. Op. Atty. Gen., (53B), Oct. 25, 1939.

Family relationship is not sufficient to make a person eligible to membership. Op. Atty. Gen., (53B), Oct. 26, 1939.

7774-7. Fiscal year—Meetings.—The fiscal year of all credit unions shall end December 31. General and special meetings may be held in the manner and for the purposes indicated in the by-laws. At least ten days before any regular meeting, and at least seven days before any special meeting, written notice shall be mailed or handed to each member, and in the case of a special meeting, the notice shall clearly state the purpose of the meeting and what matters will be considered thereat. No member shall be eligible to vote at any meeting or to hold any office unless he owns at least one share of the credit union which is fully paid. At all meetings a member shall have but a single vote, whatever his share holdings. There shall be no voting by proxy. Any firm, society or corporation having a membership in the credit union and entitled to vote may cast its vote by one person upon presentation by him of written authority of the firm, society or corporation. (As amended Act Feb. 10, 1943, c. 20, §1.)

7774-9. Officers—Directors—Powers and duties. (j).

Credit unions do not have power to negotiate and rediscount notes with or without recourse or to service loans for compensation. Op. Atty. Gen. (53b), Aug. 31, 1943.

Union may not borrow money in a sum exceeding 35% of its unimpaired asset. Id.

7774-10. Credit committee.—The Credit Committee shall have the general supervision of all loans to members, not including loans to a member who is a director, or an officer, or a member of the Credit Committee, or a member of the Supervisory Committee. Applications for such loans shall be on a form, prepared by the Credit Committee, shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the Credit Committee shall pass on

all such loans and approval of such loans must be in writing and by unanimous vote of such members present. The Credit Committee shall meet as often as may be necessary after due notice to each member thereof. The Credit Committee, the Supervisory Committee, and the Board of Directors, meeting jointly and acting collectively as a whole, shall have the general supervision of all loans to a member who is a director, or an officer, or a member of the Credit or Supervisory Committee. Application for such loans shall be in similar form as may be required to be furnished to the Credit Committee for a loan in the case of a member who is not a director, or an officer, or a member of the Credit or Supervisory Committee. At least a majority of the members of each of said Committees and of the Board of Directors, at a joint meeting and acting collectively as a whole, shall pass on all such loans in the absence of the applicant, and the approval of such loan at said meeting must be in writing and by unanimous vote of all such members present. Said Committees and the Board of Directors meeting jointly, and acting collectively as a whole, as herein provided for, shall meet as often as may be necessary after due notice to each member thereof. (As amended Apr. 24, 1943, c. 647, §2.)

7774-15. Borrowing money.—A credit union may borrow from any source or sources sums which shall not exceed in the aggregate 35 per cent of its unimpaired assets. (As amended Apr. 24, 1943, c. 647, §3.)

Credit unions do not have power to negotiate and rediscount notes with or without recourse or to service loans for compensation. Op. Atty. Gen. (53b), Aug. 31, 1943.

7774-16. Loaning money.—A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the by-laws. A borrower may repay his loan, in whole or in part, any day the office of the credit union is open for business. Except for loans secured by first real estate mortgages on homes owned and occupied, of the character made to other members, no director, officer, or member of the Credit or Supervisory Committee may become liable, as a borrower or endorser for other borrowers, or both, to the credit union in which he holds office, beyond the amount of his holdings in shares and deposits therein, unless the loan shall have been approved in the manner provided by Mason's Minnesota Statutes of 1927, Section 7774-10, as herein amended. (As amended Apr. 24, 1943, c. 647, §4.)

7774-19. Expulsion or withdrawal of members.

A by-law permitting a member who leaves field of membership of credit union to retain his membership but without right to borrow, is invalid. Op. Atty. Gen., (53B), Oct. 25, 1939.

7774-20. Voluntary dissolution.

Subdivision 1. A credit union may be voluntarily liquidated after two-thirds of the members present and entitled to vote shall have voted such liquidation at a special meeting called by a majority of the board of directors for that purpose, upon 14 days' mailed written notice to each member at his last known address clearly stating the purpose of the special meeting, or at any regular meeting after like notice of the purpose has been given. By a majority vote of the members present and entitled to vote at the meeting, a committee of three members shall be elected to liquidate the credit union.

Vacancies in this committee shall be filled by the remaining members of the committee, acting jointly with the board of directors serving at the time of the vote for liquidation, or by and with the approval of any ten or more shareholders. In case the remaining members of the committee or a majority of said board of directors shall notify the Commissioner of Banks that a vacancy can not be filled in the manner therein provided, the Commissioner shall have authority to fill the vacancy from the membership of the credit union as it existed at the time of the vote for liquidation.

Subdivision 2. Immediately after this meeting and before the committee shall proceed with the liquidation, the officers of the credit union shall file with the Commissioner of Banks a certified copy of the minutes of this meeting, a written statement outlining the plan of liquidation, and a verified statement, in writing, signed by a majority of the officers, consenting to this liquidation containing the names and addresses of all officers and directors of the credit union. After the Commissioner of Banks shall, by proper examination, determine that the credit union is solvent, he shall issue a certificate of approval of the liquidation, which certificate shall be filed with the Register of Deeds in the county where the credit union is located. From and after this special meeting the credit union shall cease to do business except for purposes of liquidation. Before commencing the liquidation the committee shall execute and file with the Commissioner of Banks a bond running to the State of Minnesota for the benefit of the members and creditors of the credit union in such amount and with such sureties and in such form as shall be approved by the Commissioner of Banks, conditioned for the faithful performance of all duties of its trust.

Subdivision 3. Upon filing this certificate with the Register of Deeds, the credit union shall be deemed dissolved and its corporate existence terminated except for the purpose of discharging its debts, collecting and distributing its assets, and doing all other acts required in order to liquidate. The credit union shall have a corporate existence and may sue and be sued.

Subdivision 4. If the credit union shall not be completely liquidated and its assets discharged within three years after the special meeting of the members, the Commissioner of Banks may take possession of the books, records and assets and proceed to complete the liquidation.

Subdivision 5. Funds representing unclaimed dividends in liquidation in the hands of the liquidating committee or the Commissioner of Banks for six months after date of final dividend, shall be deposited with the State Treasurer, who shall, within one year thereafter, pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to the same, and at the end of that year the State Treasurer shall credit all residue of the deposit to the General Revenue Fund.

Subdivision 6. Upon completion of the liquidation by the liquidating committee, it shall file with the Commissioner of Banks a verified statement in writing signed by the members of the committee stating that all debts of the credit union, including deposits, have been paid, except unclaimed dividends, and if any such, the amount thereof, the names of the persons entitled thereto, with their last known addresses, and all books and papers of the credit union shall thereupon be deposited with the Commissioner of Banks. ('25 c. 206, §20; Apr. 20, 1933, c. 346, §4; Apr. 14, 1937, c. 213, §7; Feb. 10, 1943, c. 20, §2.)

Editorial note.—This section is republished to eradicate errors in 1938 and 1940 Supplements.

7774-24a. Reorganization of federal credit union under state law.—Whenever any federal credit union authorized to dissolve has taken the necessary steps for that purpose, a majority of its directors, upon authority in writing of two-thirds of the members of the credit union and upon approval of the commissioner of banks, may execute a certificate of incorporation under the provisions of the state credit union act, which in addition to the other requirements of law, shall state the authority derived from the shareholders of such federal credit union; and upon recording such certificate as required by law, it shall become a legal state credit union. Thereupon the assets, of said dissolved credit union, subject to its liabilities

not liquidated under the federal law before such incorporation, shall vest in and become the property of such state credit union. (Act Apr. 28, 1941, c. 510, §1.)
[52.201]

7774-24b. Reorganization of state credit union under federal laws.—Whenever any state credit union authorized to dissolve has taken the necessary steps for that purpose, a majority of its directors, upon authority in writing of two-thirds of the members and the approval of the commissioner of banks, may execute a certificate of incorporation under the provisions of the federal credit union act, which federal union shall be regarded as continuing the existence of the state credit union. Any officer of the state credit union, or member of the supervisory and credit committees, elected to a corresponding office in the federal credit union, shall be regarded as holding over such office from the state credit union to federal credit union. (Act Apr. 28, 1941, c. 510, §2.)
[52.202]

INDUSTRIAL LOAN AND THRIFT COMPANIES

7774-25. Organization.—It is lawful for three or more persons, who desire to form a corporation for the purpose of carrying on primarily the business of loaning money in small amounts to persons within the conditions hereinafter set forth, to organize, under this law, an industrial loan and thrift company, by filing with the secretary of state and the register of deeds in the county in which the place of business of the corporation is located, a certificate of incorporation, and upon paying the fees and upon compliance with the procedure provided for the organization and government of ordinary corporations under the laws of this state, and complying with the additional requirements prior to authorization to doing business, as set forth in this act. (As amended Act Feb. 25, 1943, c. 67, §1.)

7774-26. Capital and surplus. — No corporation shall be organized under this law or qualified to do business thereunder with a capital of less than $25,000.00 in cities with less than 50,000 people; $50,000.00 in cities with more than 50,000 people and less than 100,000 people; and $75,000.00 in cities with 100,000 people, or more, according to the last official census; each share of stock shall have a par value of not less than $25.00 per share. No corporation shall begin doing business under this act unless the required capital is fully paid, and unless a surplus of no less than ten per cent of said capital shall have also been fully paid and set up. After the capital of a corporation organized or doing business under this act shall have been fully paid and a surplus of not less than 10% also fully paid and set up, additional capital stock in any said corporation may be sold at not less than par, provided, however, that there is always maintained a surplus of at least 10% of said capital of said corporation. (As amended Feb. 25, 1943, c. 67, §2.)

7774-27. Certificate.—Any such corporation hereafter organized as an industrial loan and thrift company, shall, after compliance with the requirements set forth in Mason's Supplement 1940, Section 7774-25, as herein amended, and Sections 7774-26, as herein amended, cause an application, in writing, to be made to the department of commerce for a certificate of authorization. The application, in duplicate, shall be in the form prescribed by the department of commerce and filed in its office. The application shall be made in the name of the corporation, executed and acknowledged by two of its officers designated by the board of directors of the corporation for that purpose, requesting a certificate authorizing the corporation to transact business as an industrial loan and thrift company, at the place and in the name stated in the application. At the time of filing the application the applicant shall pay a filing fee of $25.00, to be paid into the state treasury and credited to the state security commission fund, and submit a copy of the by-laws of the corporation, its articles of incorporation and all amendments thereto. Thereupon the department of commerce shall fix a time, within 30 days after the filing of the application, for a hearing at its office, at which hearing it shall either grant or refuse to grant such application. A notice of the hearing shall be published once in the form prescribed by the department of commerce, at the expense of the applicant, not less than ten, nor more than 20, days prior to the date of such hearing, in a newspaper published in the municipality in which the proposed industrial loan and thrift company is to be located, or, if there be no such newspaper, in a newspaper published at the county seat of the county in which the company is proposed to be located.

The department of commerce shall thereupon make, or cause to be made, an examination to ascertain whether the assets of such corporation, over and above all its liabilities, have an actual value of not less than the par value of all of its capital stock, which shall not be less than the amount prescribed by Mason's Supplement 1940, Section 7774-26, and if such facts appear and the by-laws and articles of incorporation and amendments thereto are in accordance with law, and if the members of the corporation are of good moral character and financial integrity, and if there is a reasonable public demand for such company in such location, and if the probable volume of business in such location is sufficient to insure and maintain the solvency of such company and the solvency of the then existing company or banks in such locality, without endangering the safety of any such company or bank in the locality as a place for investing or depositing public and private money, and if the department of commerce is satisfied that the proposed company will be properly and safely managed, then after the hearing provided for, if the department of commerce is satisfied that the proposed company will be properly and safely managed, such application shall be granted, otherwise it shall be denied.

If the application be granted the department of commerce shall, not later than 30 days after such hearing, issue a certificate authorizing the corporation to transact business as an industrial loan and thrift company as provided in this act. If the application be denied the department of commerce shall, not later than 30 days after such hearing, notify the corporation of the rejection of its application for authorization to transact business as an industrial loan and thrift company.

The certificate of authorization granted shall be filed in the places as specified for filing the certificate of incorporation in Mason's Supplement 1940, Section 7774-25. Such corporation shall thereupon become an industrial loan and thrift company.

Not more than one place of business shall be maintained under the same certificate of authority issued hereafter pursuant to the provisions of this act, but the department of commerce may issue more than one certificate of authority to the same company upon compliance with all the provisions of this act governing an original issuance of a certificate of authority. (As amended Feb. 25, 1943, c. 67, §3.)

A license under §7771, would confer no right to transact business of an industrial loan and thrift company described in §7774-25. Op. Atty. Gen., (29a-8), April 19, 1940.

7774-30. Directors—residence.—At least three-fourths of the directors of any industrial loan and thrift company shall be residents of the county in which the industrial loan and thrift company maintains its principal place of business, and each director shall own and hold not less than 20 shares of capital stock of the industrial loan and thrift company, unencumbered. (As amended Feb. 25, 1943, c. 67, §3.)

7774-33. Examination.—The commissioner of banks shall make examinations, at least once each year, of each industrial loan and thrift company organized or operating under this act, at which time he shall satisfy himself that the corporation is in a solvent condition and is complying with the requirements of this act and operating according to sound business principles. In order to enforce his actions in this connection, the commissioner of banks is hereby vested with the same authority as in his examination and regulation of state banks. The cost of such examinations shall be borne by the corporation and the fees to be paid by the corporation therefor shall be the same as is provided in Mason's Supplement 1940, Section 7772.

Each industrial loan and thrift company shall annually on or before the first day of February file a report with the commissioner of banks stating in detail, under appropriate heads, its assets and liabilities at the close of business on the last day of the preceding calendar year. Such report shall be made under oath in the form prescribed by the commissioner and published once, at the expense of such industrial loan and thrift company, in a newspaper of the county of its location, and proof thereof filed immediately with the commissioner of banks.

The penalties for violation of this act, or for any wrongdoing in connection therewith, shall be the same as those applied to state banks under the laws of this state. (As amended Act Feb. 25, 1943, c. 67, §4.)

SMALL LOAN BUSINESS

7774-41. Small loan companies to be licensed.

In action by Personal Loan Company against Personal Finance Company to protect a trade name, it was an abuse of discretion to deny plaintiff's motion for a temporary injunction pending suit, where it was shown clearly that because of defendant's name, window and neon signs, and advertising of its business, mail and telephone messages intended for plaintiff went to defendant and messages intended for defendant came to plaintiff. Personal Loan Co. v. Personal Finance Co., 212M 600, 5NW(2d)61. See Dun. Dig. 4490, 9670.

A parent foreign corporation having no license to conduct a small loan business, but owning all stock of a defendant subsidiary corporation licensed under state law, has no right to intervene in action by another loan company to protect its trade name and right to do business in a certain city. Personal Loan Co. v. Personal Finance Co., 212M600, 5NW(2d)61. See Dun. Dig. 4899.

Not unconstitutional as working a discrimination based on amount of loan. Fuller, 102Pac(2d)(Cal)321.

Constitutionality of bill limiting application of small loans act to cities of first class. Op. Atty. Gen. (53a-18), March 18, 1943.

7774-50. Commissioner may investigate loan companies.

Commissioner of banks is empowered to investigate interest rates of money lenders not licensed under act as well as those who are licensed, except those specifically eliminated, such as pawn brokers, industrial loan and thrift companies, credit unions, banks, savings banks and trust companies. Op. Atty. Gen., (29a-8), Nov. 16, 1939.

7774-51. Books of account—annual report.—The licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this Act and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

Each licensee shall annually on or before the fifteenth day of March, except in odd numbered years and then on or before the seventh day of February, file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business, conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports. (As amended Act Mar. 5, 1943, c. 106, §1.)

7774-52. Not to advertise.

Small loan companies conducting business in offices of another business. Op. Atty. Gen. (92D), Mar. 12, 1942.

OTHER CORPORATIONS FOR PROFIT

FOR MINING AND OTHER PURPOSES

7777. Formation—Purpose. [Repealed.]

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. Op. Atty. Gen. (92a-9), Jan. 18, 1940.

CO-OPERATIVE ASSOCIATIONS

7822. Formation—purposes.

Act Feb. 25, 1941, c. 20, authorizes renewal of corporate existence.

The Anoka County Cooperative Light and Power Association may not purchase franchise of an electric company granted by a village, since it may deal only with its own members and village may not become a member. Op. Atty. Gen. (624c-10), Nov. 18, 1942.

7823. Formation—Rural telephone business—Powers. [Repealed.]

Repealed. Laws 1943, c. 318, §1.

7824. May engage in any lawful enterprise.—A cooperative association may be formed for the purpose of engaging in any lawful mercantile, manufacturing, agricultural or rural telephone business. Its certificate of incorporation shall be filed for record with the register of deeds of the county of its principal place of business, and thereupon it shall become a corporation and enjoy all the power and privileges, and can buy and hold stock in other corporations organized for the same general purpose, and be subject to all duties, restrictions and liabilities set forth in all general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this section. A majority of the incorporators that reside in this state shall be residents of the county of its principal place of business, and its duration without renewal shall not exceed 20 years. (As amended Apr. 6, 1943, c. 318, §2.)

7826. Capital—Limit of interest—Shares.

Shares mentioned include both common and preferred stock. Op. Atty. Gen. (93a-37), March 12, 1943.

7827. Liability of officers—Dissolution. [Repealed.]

Repealed. Laws 1943, c. 317.

7828. Distribution of profits.

Profits and earnings may be distributed to those entitled thereto by by-laws, and need not be members. Op. Atty. Gen. (93A-11), Feb. 28, 1941.

A cooperative elevator receiving grain on which government loans are made, but which was not redeemed by farmers taking loans, storage on grain netting elevator considerable profit, grain becoming property of government, which pays storage, elevator may pay patronage dividends to farmers obtaining loans and United States would not be entitled to patronage refund under articles of incorporation and by-laws. Op. Atty. Gen., (93a-11), June 3, 1941.

SUPPLEMENTARY LAWS

7834. Co-operative associations—Who may organize—Purpose—Powers.—A co-operative association may be formed for the purpose of conducting any agricultural, dairy, marketing, transportation, warehousing, commission, contracting, building, mining, telephone, manufacturing, or any mechanical, mercantile or electrical heat, light or power business, or for all such purposes or for any other lawful purpose, upon the co-operative plan, and in addition to other powers such co-operative association shall have the power either as agent or otherwise to buy, sell or deal in its own products, the products of its individual members or patrons, the products of any other co-operative association or of its members or patrons, whether such co-operative associations be organized under the provisions of this act or otherwise. It shall be lawful for such co-operative association to sell its own products as well as the products of its members or patrons for them, or the products of any other co-operative association or of its members or patrons for them, as

the case may be, either individually or collectively, and to negotiate the price at which such products may be sold either for itself or for its members or patrons, or such other co-operative association and its members or patrons, individually or collectively, as the case may be; also to enter into or become a party to any contract or agreement either for itself or for its individual members or patrons, or between it and its member. For the purposes above stated such co-operative association shall have the power and authority as a corporation, to purchase and hold, lease, mortgage, encumber, sell, exchange and convey such real estate, buildings and personal property as the business of the association may require, also to erect buildings or other structures or facilities upon its own lands or leased grounds, or upon right of way legally acquired by such co-operative association. Such co-operative association shall have the power and authority to issue bonds or other evidence of indebtedness and to borrow money to finance the business of the association, or to make advances to its members or patrons upon produce delivered by such members or patrons to the association provided, however, that the indebtedness so incurred shall not exceed the limit of indebtedness fixed in the articles of incorporation of such co-operative association, as hereinafter required. For the purpose of empowering and authorizing co-operative associations incorporated under the provisions of this act to join with other co-operative associations in this state or other states, whether incorporated under this act or under the laws of any other state, to form district, state or national organizations or market agencies, any co-operative association incorporated under this act, by vote of the governing board thereof may purchase, acquire, hold or dispose of the stock of any other co-operative association or corporation, whether incorporated under this act or under the laws of any other state, and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership of such stock. A co-operative association incorporated under this act shall also have the power and authority, either for itself or for its individual members or patrons, to do and perform every act and thing necessary or proper to the conduct of its business or the accomplishment of the purposes set forth in this act, and in addition any other rights, powers or privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this act.

A co-operative association incorporated under this act, constituted wholly or partially of other co-operative associations organized under this act or under the laws of this or any other state, shall have the power to accept deposits of money or securities from such co-operative associations, to loan or borrow upon such security as it may consider sufficient in dealing with its member co-operatives and to exercise any and all fiduciary powers in its relations with such co-operatives as constitute its membership.

For the purpose of this act a co-operative association shall be defined as any corporation or association of ultimate producers and consumers organized under this act or any other statute of the state of Minnesota now existing providing for the incorporation of co-operative associations; also any central corporation or association composed wholly or in part of such associations. No corporation or association hereafter organized in this state shall be entitled or permitted to use the term "co-operative" as part of its corporate or business name or title, or to represent itself as a co-operative association, unless it has complied with the provisions of this act, or any other law of this state now existing or hereafter enacted providing for the incorporation of co-operative associations. Any corporation or association which violates this provision shall be guilty of a misdemeanor. (As amended Apr. 1, 1941, c. 114, §1.)

Laws 1941, c. 20, provides for renewal of the corporate existence of co-operative companies and associations and validates acts done and contracts entered into by them.

Laws 1943, cc. 50, 51, provide for renewal of corporate existence of co-operatives and legalizes certain corporate acts and contracts.

Persons who are not served by an electrical cooperative are not eligible for membership. Op. Atty. Gen., (93a-42), Sept. 25, 1939.

Corporation for profit may not use word "cooperative" in its name, but statute has no retroactive effect. Id.

Provision in articles for division or distribution of profits on basis of patronage is essential element of a cooperative. Id.

An electric cooperative, having articles of incorporation authorizing it, may make loans to members for purpose of financing wiring of premises and acquisition and installation of electrical and plumbing appliances and equipment. Op. Atty. Gen., (93B-29), Oct. 25, 1939.

A cooperative may be formed for purpose of furnishing light and power to its members. Op. Atty. Gen., (93B-29), Nov. 8, 1939.

Shares of stock cannot be cancelled for non-user or in event holders cease to be ultimate consumers or ultimate producers, without payment of value thereof. Op. Atty. Gen., (93a-38), April 1, 1940.

A co-operative elevator company organized under Laws 1923, c. 326, may amend its articles of incorporation so as to become bound by provisions of Laws 1923, c. 264. Op. Atty. Gen., (93a-2), Apr. 21, 1941.

Cooperative creamery associations equipped to process skim milk and other dairy products and required to supply such products under Lend Lease Act and deal directly with other cooperative creamery associations who are members thereof and operating within the law can do so without jeopardizing their exemption under the Wholesale Produce Dealers Act, since when such processing cooperative associations deal directly with creamery associations which have corporation membership therein, they are not dealing directly with members of latter who should not be considered as nonmember patrons. Op. Atty. Gen. (832d), June 22, 1942.

Statutes contemplate that cooperative company shall have by-laws, and it be the duty of directors to prepare proposed by-laws to be submitted to the first meeting of the stockholders for their approval and adoption. Op. Atty. Gen. (93a-1), May 21, 1943.

7835. Incorporators—Number—Articles of incorporation—filing.—A co-operative association may be organized under the provisions of this act by five or more incorporators, who may act for themselves as individuals or as the agents of other co-operative associations, whether organized under this act or otherwise.

Persons forming a co-operative association under this act shall sign and acknowledge written articles of incorporation. The articles of incorporation of any association organized under or subject to the provisions hereof shall always contain provisions specifying (1) the name of the association, its purpose, the general nature of its business, and the principal place of transacting the same. Such name shall distinguish it from all other corporations, domestic or foreign, doing business in the state and shall be preserved to it during its corporate existence; (2) the highest amount of indebtedness to which the association shall at any time be subject; (3) the period of its duration, which shall not exceed 50 years in the first instance, but the articles of incorporation may from time to time be amended so as to provide for an additional term or terms not exceeding 50 years each; (4) if organized on a capital stock basis the total authorized number of shares and the par value of each share; a description of the classes of shares, if the shares are to be classified; a statement of the number of shares in each class and relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and a provision that only common stockholders shall have voting power; (5) that individuals owning common stock shall be restricted to one vote in the affairs of the association; (6) that shares of stock shall be transferable only with the approval of the board of directors of the association; (7) that dividends upon capital stock of the association shall not exceed six per cent annually; (8) in what governing board its management shall be vested, the time of the annual meeting of the stockholders at which such governing boards shall be elected, and the names and places of residence of those who shall compose such governing board until the first annual meeting of the stockholders; and (9) that net income in excess of dividends and additions to reserves and surplus

shall be distributed on the basis of patronage, and that the records of the association may show the interest of patrons, stockholders and members in the reserves and surplus. The articles of incorporation may contain any other lawful provision. Co-operative associations may be incorporated for any of the purposes for which an association may also be formed upon a membership basis and without capital stock. Such associations organized on a capital stock basis may be organized, and shall have the same powers and authority as are conferred upon such associations, and the articles of incorporation, of any such nonstock association shall contain the provisions required in the articles of incorporation of an association organized upon a capital stock basis wherever the same are applicable to an association organized upon a membership basis. No member of an association organized upon a membership basis shall have more than one vote. Common stockholders shall be deemed to be members of associations organized on a capital stock basis.

Co-operative associations organized under or subject to the provisions hereof shall be subject to the provisions of Mason's Minnesota Statutes of 1927, Chapter 21b, as amended, except as specifically provided in Mason's Supplement 1940, Section 3996-2 (9).

The original articles of incorporation, or a certified copy thereof, verified as such by the affidavits of two of the incorporators, shall be filed with the secretary of state and a copy thereof, certified as above required, shall be recorded in the office of the register of deeds of the county in which the principal place of business of the association is located. For filing the articles of incorporation or amendments thereto with the secretary of state there shall be paid to the state treasurer a fee of $5.00. (As amended Act Apr. 1, 1941, c. 114, §2; Apr. 14, 1943, c. 438, §1.)

Attorney General is not authorized to approve resolutions of extension of corporate existence of cooperatives, his approval being limited to articles and by-laws and amendments thereto. Op. Atty. Gen., (93a-8), Sept. 26, 1939.

All cooperatives are subject to securities act except those dealing in agricultural, dairy, livestock and produce businesses and the operation of rural telephone and rural electric distribution systems. Op. Atty. Gen., (616B-5), Oct. 10, 1939.

Amendments to charters made before effective date of Laws 1941, c. 114, must be published. Op. Atty. Gen. (93A-2), Aug. 9, 1941.

7836. Capital — Limits of interest — Vote.—The amount of the authorized capital stock and the number of shares may be increased or diminished at any regular meeting of the stockholders of the association or at any special meeting of the stockholders called for such purposes, in the manner hereinafter provided for amending the articles of incorporation.

Within 30 days after the adoption of an amendment increasing or diminishing the authorized capital stock, articles of amendment shall be filed and recorded as provided in Section 7844. The association may commence business whenever 20 per cent of the authorized capital stock has been subscribed and paid in and the amount of the capital stock outstanding shall at no time be diminished below 20 per cent of the amount of the authorized capital. No shares shall be issued for less than its par value nor until the same has been paid for in cash or its equivalent.

Any co-operative association organized under this act may acquire and hold stock in any other corporation organized under any law of this state or any other state of the United States, the purpose of which may be a federation of co-operative associations or for the purpose of forming a district, state or national marketing, sales or service agency or for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states. A stockholder in any co-operative association organized under this act shall not be entitled to more than one vote which shall be in person, or by mail as hereinafter provided, and not by proxy, except that any such co-operative association that is a stockholder in any other corporation shall have the power and authority by its board of directors or by its stockholders to elect or appoint any person or persons to represent it at any meeting of the stockholders of any corporation in which it owns stock and the person or persons so elected or appointed shall have full power and authority to represent such co-operative associations and also to cast its vote or votes at any such meeting.

Provided, however, that in cooperative associations wholly or partially constituted of other co-operative associations organized under this act or under the laws of this or any other state, each affiliated member co-operative shall have an additional vote for a certain stipulated volume of business done by it with its central organization or a certain stipulated number of members in such associations, to be determined in either or both cases by the articles and by-laws of the central association.

Provided further, that any such co-operative central association organized under this act or under the laws of this or any other state having at any time more than 3,000 individual members or stockholders may group such members or stockholders in local units or territorial or other basis as may be determined by the articles and by-laws of the central association.

The grouping of such members or stockholders shall be determined by the directors of the central association at their first meeting immediately following the adoption of such provisison in the articles and by-laws of the central association.

Each of said units shall be entitled to be represented at any and all stockholders' meetings of the central association by a delegate or delegates of their own choosing and such delegates shall exercise the same powers at such stockholders' meetings as any shareholder of the central association may exercise on such basis of voting rights as is provided for in the articles and by-laws of the central association pertaining to such shareholders.

The directors of the central association shall have the power to do all things necessary to give full force and effect to this section including the power to fix the time and place and rules of conduct for the holding of meetings by such units for the purpose of their electing a delegate or delegates to all stockholders' meetings of the central association.

Stock in any co-operative association organized under this act shall be sold or transferred only with the consent and approval of the board of directors and the by-laws of such co-operative association shall provide that it shall have the first privilege of purchasing stock offered for sale by any stockholder. Any stock so acquired by the board of directors for such co-operative association may be held as treasury stock or may be retired and cancelled. Any stockholder who knowingly, intentionally or repeatedly violates a provision of the by-laws adopted by any co-operative association organized under this act may be required by the board of directors of the co-operative association to forfeit his stock, in which case the association shall refund to the stockholder the par value of his stock or in case the book value of such stock shall be greater or lesser than the par value, the stockholder shall be paid the amount of the book value of the stock. Stock so forfeited shall be retired and cancelled by the board of directors and such stockholders shall thereafter have no rights, privileges or benefits in such co-operative association.

Any stockholder who is absent from any meeting of the stockholders of any association organized under the provisions of this act, may, as herein provided but not otherwise, vote by mail on the ballot herein prescribed, upon any motion, resolution or amendment to be acted upon at such meeting. Such ballot may be in the form prescribed by the board of directors of such association and shall contain the exact text of the proposed motion, resolution or amendment to be acted upon at such meeting and the date of the meet-

ing; and shall also contain spaces opposite the text of such motion, resolution or amendment in which such stockholder may indicate his affirmative or negative vote thereon. Such stockholder shall express his choice by marking an "X" in the appropriate space upon such ballot. Such ballot shall be certified to and signed by the stockholder if an individual, or if a corporation by the president or secretary thereof, and when received by the secretary of the association holding the meeting, shall be accepted and counted as the vote of such absent stockholder at such meeting. (As amended Apr. 1, 1941, c. 114, §3.)

Board may refuse to approve sale and transfer of stock, and if by-laws restrict membership to producers of agricultural products, that controls. Op. Atty. Gen. (93A-11), Feb. 28, 1941.

Not all co-operative associations are organized under the same authority and certain co-operative associations have powers not possessed by other associations by reason of fact that they were organized under different laws and at different times. Op. Atty. Gen. (93a-37), March 12, 1943.

7839. Directors—Election of, etc.

It is mandatory that articles provide for a vice-president. Op. Atty. Gen. (93a-28), June 26, 1940.

Board of directors shall be composed of individual members of association or duly elected or appointed representatives of local constituent or affiliated cooperative association members of the central association, and a person not a producer or consumer could not qualify as a bona fide member and could not be elected to a board of directors. Op. Atty. Gen. (93a-9), Oct. 5, 1942.

7840. Earnings—Reserve fund—Distribution.—An asssociation organized under this act may set aside such part of its net income during its first two fiscal years as its board of directors deems advisable, for the purpose of creating a reserve for permanent surplus, and annually thereafter its board of directors shall set aside for the purpose of such reserve at least ten per cent of the annual net income until the reserve for permanent surplus shall equal 50 per cent of the paid-up capital, and thereafter the reserve for permanent surplus may be increased from time to time by the board of directors of the association to such an amount as it deems advisable. In addition to such reserve for permanent surplus the directors of any such association may set aside a sum not to exceed five per cent of the annual net income of the association, which shall be used for the purposes of promoting and encouraging co-operative organization, and may establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes. Net income in excess of dividends on capital stock and additions to reserve and surplus shall be distributed on the basis of patronage. The stockholders may provide in the by-laws of the association that non-member patrons shall participate in the distribution of net income upon equal terms with member patrons. If the patron is qualified and eligible for membership, the amount of patronage refund due him shall be credited to his individual account, and when such credits shall equal the value of a share of common stock or a membership a share of common stock or a membership shall be issued to him. If the patron is not qualified or eligible for membership, the refund due him may be credited to his individual account, and when such credits shall equal the value of a share of preferred stock or a certificate of interest a share of preferred stock or a certificate of interest may be issued to him, and thereafter such patron may participate in the distribution of income upon the same basis as a common stockholder or member.

Distribution of net income shall be made annually or oftener, provided, however, that net income of a co-operative association arising from trucking operations shall be distributed only annually. The directors of such associations shall present to the stockholders at their annual meeting a report covering the operations of the association during the preceding fiscal year.

Dividends may be paid on capital stock only when the net income of the association for the previous fiscal year is sufficient and shall not be cumulative. (As amended Apr. 1, 1941, c. 114, §4.)

Minnesota non-profit wholesale cooperative association required by Minnesota law to distribute a patronage dividend out of any profits on coal business held not entitled to register as a "distributor" under the bituminous coal act of 1927. Midland Cooperative Wholesale v. Ickes, (CCA8), 125F(2d)618. Cert. den. 316US673, 62SCR1045. Reh. den. 316US712, 62SCR1289. Second petition for reh. den. 317US706, 63SCR67. See Dun. Dig. 1989.

In a proper case state may participate in cooperative oil association. Op. Atty. Gen., (93a-22), May 28, 1940.

Co-operative trucking association operating under permit from railroad and warehouse commission may transport goods for its members, and such association may distribute net income arising from such trucking operations to its members who are ultimate producers and consumers, but may not distribute such income to members who are engaged in exclusively mercantile pursuits. Op. Atty. Gen., (93a-11), July 7, 1941.

Section makes it mandatory that board of directors set aside for purpose of creating a reserve the permanent surplus after first two fiscal years of corporate existence 10% of annual net income until the reserve equals 50% of paid-up capital, and paid-up capital means all capital stock including preferred stock. Op. Atty. Gen. (93a-37), March 12, 1943.

7843. Associations heretofore organized.—Any co-operative corporation or association heretofore organized and doing business under prior statutes of this state, or under the laws of other states, or which has conducted its business upon the co-operative plan, which retains the same corporate name or title, may come under the provisions of this act and be bound thereby upon amending its articles of incorporation to conform to the requirements of this act in the manner hereinafter provided for the adoption of amendments. Co-operative associations organized under the laws of other states shall be required to amend their articles of incorporation, in the manner required by the laws of the state in which such association was incorporated, so as to comply with the provisions of this act, whereupon it shall be entitled to file a certified copy of its articles of incorporation and amendments thereto with the secretary of state, subject to the fees and requirements prescribed by this act, and such association shall henceforth be considered as a co-operative association in this state and subject to the provisions of this act. Provided, that any co-operative association originally organized under the laws of another state, which has heretofore complied with the provisions of Section 11 of said original act, and has received a certificate of incorporation from the secretary of state of Minnesota, shall be, and it hereby is declared to be a de jure corporation under the provisions of this act without any further act by it or any officer of this state, and all acts of any such corporation heretofore had or taken as a Minnesota corporation are hereby in all things validated and confirmed.

Voluntary proceedings for dissolution of any association organized under or subject to the provisions of this act or any other law of Minnesota relating to the organization of co-operative associations may be instituted whenever a resolution therefor is adopted by two-thirds of the voting power voting thereon at a meeting duly called for that purpose. The resolution may provide that the affairs of the association shall be wound up out of court, in which case the resolution shall designate a trustee or trustees to conduct the winding up, and may provide a method for filling vacancies in the office of trustee; but such appointment shall not be operative until a certificate setting forth the resolution and the manner of adoption thereof, signed and acknowledged by the president or vice president and by the secretary or assistant secretary shall be filed for record with the secretary of state. If a vacancy occurs in the office of trustee, it may be filled by resolution adopted by a majority of the voting power represented at a meeting of stockholders or members. The meeting may be called by the remaining trustee or trustees, if any, and if none, then by any stockholder or member.

Unless the resolution to dissolve otherwise provides, the trustee or trustes may be removed with or without cause by the vote of a majority of the voting power at a meeting called for that purpose. The resolution to dissolve may provide that the affairs of the corporation shall be wound up under the supervision of the court, in which case the resolution shall authorize certain directors or stockholders to sign and present a petition to the court praying that the corporation be wound up and dissolved under the supervision of the court. Where a corporation is being wound up and dissolved out of court, the trustee, or if there be more than one then a majority of the trustees, may by petition apply to the court for a receiver and to have the proceedings continued under the supervision of the court, and thereafter the proceedings shall continue as if originally instituted subject to the supervision of the court.

Except as otherwise provided in the resolution for dissolution, the trustee or trustees appointed by the stockholders or members to conduct the winding up out of court shall, as speedily as practicable after his or their appointment has become operative as hereinabove provided, proceed to collect all sums due or owing to the corporation; to sell and convert into cash all corporate assets; to collect any amounts remaining unpaid on subscriptions to shares, and to pay all debts and liabilities of the association according to their respective priorities. Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the stockholders, members, or patrons of the association. Stockholders shall first be paid the par value of their shares, and the remainder of such property shall be distributed among patrons, members and common stockholders in accordance with their interest in the reserves and surplus as shown by the records of the association. (As amended Apr. 1, 1941, c. 114, §5.)

In view of laws 1939, c. 14, a rural telephone company organized in 1911, for a period of 20 years may extend its period of corporate existence if it acts prior to February 14, 1940, but it must comply with sections 7843 and 7844. Op. Atty. Gen., (93a-8), Dec. 19, 1939.

7844. Amending articles of incorporation.—The articles of incorporation of any association organized under this act or which may elect to come under the provisions of this act may be amended in the following manner: The board of directors, by majority vote of its members may pass a resolution setting forth the full text of the proposed amendment. Upon such action by the board of directors, notice shall be mailed to each and every stockholder containing the full text of the proposed amendment. Such notice shall also designate the time and place of the meeting at which such proposed amendment shall be considered and voted upon, in the same manner as elsewhere provided in this act. An association having in excess of 200 stockholders or members may publish such notice in two successive issues of a legal newspaper of general circulation in the area served by such association in lieu of notice by mail. If a quorum of the stockholders is registered as being present or represented by mail vote at such meeting a majority of the members so present or represented by mail vote, may adopt or reject such proposed amendment. After an amendment has been adopted by the stockholders, articles of amendment setting forth the amendment and the manner of adoption thereof shall be signed and acknowledged by the president or vice president and by the secretary or assistant secretary, and filed in the office of the secretary of state and recorded in the office of the register of deeds of the county of its principal place of business.

(1) Articles of incorporation and of amendment shall be approved by the attorney general before the same are filed in the office of the secretary of state. (As amended Apr. 1, 1941, c. 114, §6.)

Where special meeting was called to amend articles of incorporation by proper mailing and advertising, but a quorum was not present, changes may not be taken up at following annual meeting without going through process of advertising again. Op. Atty. Gen., (93a-2), Oct. 20, 1939.

A co-operative elevator company organized under Laws 1923, c. 326, may amend its articles of incorporation so as to become bound by provisions of Laws 1923, c. 264. Op. Atty. Gen., (93a-2), Apr. 21, 1941.

7846. Laws repealed.

A cooperative organized under G. S. 1913, §6479 et seq, which has been repealed, may not renew its corporate life under the repealed act. Op. Atty. Gen., (93a-8), Sept. 26, 1939.

7847. Application.

Editorial note.—The word "not" appears to have been omitted from the session laws of 1923 through clerical or typographical error.

7847-1 and 7847-2. [Repealed.]

Repealed. Laws 1941, c. 114, §7.

7848 to 7859. [Repealed.]

Repealed. Laws 1943, c. 304.

7859-11. Renewal of corporate existence, etc.

Laws 1943, c. 60, authorizes renewal of corporate existence of certain cooperative corporations and corporations doing business on cooperative plan, whose period of duration expired less than 20 years prior to the passage of this act, on February 18, 1943, but such renewal must be obtained within one year after passage of this act.

Laws 1943, c. 51, authorizes renewal of corporate existence of any cooperative company or cooperative association organized under the laws of this state whose period expired less than twenty years prior to the passage of this act (Feb. 18, 1943) and which has continued to carry on business without renewal, provided proceedings for such renewal shall be taken within one year after passage of this act.

A rural telephone company organized in 1911 for a period of 20 years may extend its period of corporate existence if it acts prior to February 14, 1940. Op. Atty. Gen., (93a-8), Dec. 19, 1939.

A rural telephone corporation organized as a cooperative under a law which has not been repealed may extend period of corporate existence under Laws 1939, chapter 14. Op. Atty. Gen. (93a-8), Jan. 17, 1940.

AGRICULTURAL SOCIETIES

STATE AGRICULTURAL SOCIETY

7860. Confirmation—Purposes.

State Agricultural Society is a department of the state and thereby entitled to all privileges, immunities and obligations of a state agency. Op. Atty. Gen. (4), Jan. 7, 1941.

7861. Membership in state agricultural society.

A county agricultural society in order to be eligible to be a member in state agricultural society must maintain an active existence and hold annual fairs and comply with all instructions and orders of public examiner regarding methods of keeping accounts and be eligible for state aid. Op. Atty. Gen., (4*l*), May 20, 1940.

7878. May contract in its own name.

This section authorizes temporary borrowing of money in connection with functions of society in its operation of affairs, in order to meet current obligations, but society does not have authority to pledge credit of state nor pledge nor encumber any of its property, or to be sued. Op. Atty. Gen. (4), Aug. 31, 1940.

COUNTY AGRICULTURAL SOCIETIES

7885. County agricultural societies—Formation—General powers.

Renewal of period of corporate existence of certain county agricultural societies whose period of duration has expired, and validation of acts thereof. Laws 1941, c. 147.

Laws 1943, c. 48, authorizes the renewal of corporate existence of any county agricultural society which is a member of the State Agriculture Society, of which the period of duration has expired less than seven years before the passage of this act (February 18, 1943) and which has continued to carry on business without renewal of its period for thirty years, and all acts performed by such society since the expiration of such period of duration is validated, but renewal must be within eight years from the expiration.

Renewal of corporate existence. Laws 1943, c. 364.

Laws 1937, c. 352, amending this section, did not repeal Laws 1923, c. 146, amending this section, and a new corporation should contain in its articles provisions set forth in Laws 1923, c. 146. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

A county agricultural society may have membership only without issuance of capital stock. Id.

A county agricultural society organized under this section may take advantage of Laws 1939, c. 294, if it can satisfy the requisites of that act. Id.

A county agricultural society may be dissolved only upon affirmative vote of majority of voting stock or members. Id.

Section 7455 is the only statute under which a county agricultural society may renew its corporate life. Id.

Laws 1923, chapter 146, is a complete incorporation act in itself, and county agricultural societies should be organized under that act. Op. Atty. Gen. (772a-5), Jan. 15, 1940.

Site of fair of County Agricultural Association may not be changed without amendment of articles. Op. Atty. Gen. (772a-5), March 8, 1940.

Articles of incorporation of a county agricultural association should contain provisions set out by Laws 1923, chapter 146, which was not repealed by Laws 1923, chapter 232. Id.

County Agricultural Associations may be formed under this section and its articles of incorporation may be amended under §7472. Id.

Jurisdiction of society over fair grounds is not exclusive, and sheriff, or any other duly authorized peace officer, has same rights and duties to see that law is obeyed on fair grounds as in any other instance, and it is advisable that fair board work in conjunction with sheriff and county attorney. Op. Atty. Gen. (772c-4), July 15, 1940.

7886. Aid to county agricultural societies.

Act Apr. 28, 1941, c. 521, §6, provides that any association or society enumerated in section 7886, may suspend the holding of its annual fair for one year, and upon resumption of the holding of such annual fair shall be entitled to its pro rata distributive share as provided in said section.

An Act authorizing the county board of commissioners in any county having not less than 18 nor more than 20 townships, full or fractional, and an area of not less than 425,000 or more than 427,000 acres to levy an annual tax for the aid of county agricultural societies or other organizations. Laws 1943, c. 510, §1.

County board may not make an appropriation to a village fair which is not a member of state agricultural society. Op. Atty. Gen., (125B-10), May 14, 1940.

The Wabasha County Agricultural Fair Association is entitled to the aid provided for in this section upon furnishing proof of the intention of the Wabasha County Industrial Fair Association to discontinue holding annual fairs; that there has been an annual fair in the county for more than ten years preceding April 17, 1939; and that a second agricultural society was incorporated prior to the dissolution of the existing society. Op. Atty. Gen., (772-c9), July 1, 1941.

A horse pulling contest at a county fair would not be considered an amusement feature, and payment of a premium to the winner of said contest would be payment to an exhibitor. Op. Atty. Gen., (772c-7), July 9, 1941.

If county fair association holds no county fair in 1942, nothing can be done for its 4-H members, and it may not receive any state aid, and it may not hold small community fairs and receive any state appropriations or aid therefor. Op. Atty. Gen. (772a-6), July 7, 1942.

Proviso that certain agricultural societies which hold annual fairs may suspend the holding of their annual fair for one year, and upon resumption of holding shall be entitled to pro-rata distributive share, did not extend to poultry associations in general but does apply to Lyon County Poultry Association, if in the year ending June 30, 1943, it has qualified to participate in payment of premiums at exhibitions of poultry. Op. Atty. Gen. (772g), Oct. 28, 1942.

Reimbursement of county agricultural society cannot exceed amount paid in premiums. Op. Atty. Gen. (772a-6), July 7, 1943.

7889. Appropriations by certain municipalities.

Charter cities of Fergus Falls and Waseca may make appropriations to agricultural society. Op. Atty. Gen., (59a-3), April 30, 1940.

It is question of fact for village council to determine whether or not a fair held 8 miles from its limits is in "close proximity." Op. Atty. Gen. (476B-5), Feb. 6, 1941.

City may not appropriate money to a 4-H Club which is arranging an exhibit or fair at which premiums will be awarded. Op. Atty. Gen. (59A-3), Aug. 19, 1941.

7891-1. Incorporation of County Agricultural Society—Appropriations.

A county agricultural society organized under §7885 or §7892 may take advantage of this act if it can satisfy requisites thereof. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

SOCIAL AND CHARITABLE CORPORATIONS

GENERAL PROVISIONS

7892. Enlarging powers of social and charitable corporations.

Laws 1941, c. 104, authorizes the renewal of corporate existence of any social or charitable corporation organized under Mason's Minnesota Statutes of 1927, §§7892 or 7901, or fraternal corporation, whose period of duration has expired less than 21 years prior to passage of such act.

Renewal of existence. Laws 1943, c. 421.

Renewal of corporate existence. Laws 1943, c. 463.

Op. Atty. Gen. (772a-5), Jan. 15, 1940; note under §7885.

Bar association organized as a social and charitable corporation is doing business within state within meaning of corrupt practices act, and cannot contribute money, property or services to any political party, organization, committee or individual for political purposes, but expenditures to defray expense of a plebescite and furnishing services of officers in managing the same in connection with election of judicial officers does not constitute contribution of money or services. La Belle v. H., 206 M290, 288NW788. See Dun. Dig. 2994.

Scholarship and loan fund organization, non-profit, may properly be organized under social and charitable laws. Op. Atty. Gen., (102), Nov. 3, 1939.

A county agricultural society may be formed under this section, in which case articles should contain matter required to be stated by §7893. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. Op. Atty. Gen. (614G), Nov. 28, 1940.

Articles of a corporation of Temple Bar College did not comply with statutory requirements and could not be filed with secretary of state. Op. Atty. Gen. (92b-15), Apr. 2, 1943.

South St. Paul police belonging to the benevolent association of that city may retire from the public employees' retirement association and obtain a refund of their accrued salary deductions. Op. Atty. Gen. (331b-5), Sept. 20, 1943.

A corporation may be organized for the improving of the mental and moral condition of mankind with special attention to law enforcement by the securing of evidence. Op. Atty. Gen. (92b-15), Nov. 16, 1943.

7893. Certificate—Contents—Filing, etc.

Op. Atty. Gen. (772a-5), Jan. 15, 1940; note under §7885.

7899. Colleges and seminaries—Diplomas. [Repealed.]

Repealed. Laws 1941, c. 169, except as therein provided. Reenacted as 3156-1(25).

Commissioner of education in making annual report to the legislature should include at least a summary statement of information contained in reports from private incorporated colleges. Op. Atty. Gen. (160h), Aug. 16, 1940.

NON-PROFIT HOSPITAL SERVICE PLAN CORPORATIONS

7900a. Non-profit hospital service plan corporations—Laws governing.—Any corporation organized under the laws of this state, on a strictly non-profit basis, for the purpose of establishing and operating a non-profit hospital service plan whereby hospital service is provided by hospitals with which such corporation has a contract, to persons who become subscribers to said plan under a contract with such corporation for such hospital service shall be subject to, and governed by the provisions of this act and shall not be subject to the laws of this state relating to insurance, and insurance companies, except as hereinafter specifically provided. (Act Mar. 10, 1941, c. 53, §1.)
[309.10]

7900b. Same—Subscribers—Emergency service.—The hospital service plan operated by such corporation, may also provide for hospital service to such subscribers in other than contracting hospitals, in case of emergency or expediency, and subject to the approval of the governing body of such hospital service plan corporation. (Act Mar. 10, 1941, c. 53, §2.)
[309.11]

7900c. Same—Certificate of incorporation—Filing.—A copy of the certificate of incorporation of all such non-profit hospital service plan corporations, and all amendments, shall be filed with the commissioner of insurance of the state of Minnesota, at the time the originals are filed with the secretary of state, provided, however, that any hospital service plan corporation that has heretofore incorporated under the social and charitable laws of the State of Minnesota, and is now operating such a non-profit hospital service plan in this state, shall forthwith file a copy of the certificate of incorporation, and all amendments thereto, with the commissioner of insurance, and thereupon be subject to the provisions of this act. (Act Mar. 10, 1941, c. 53, §3.)
[309.12]

7900d. Same—Governing body of contracting hospitals—Members.—A majority of the governing body of every such non-profit hospital service plan corporation shall, at all times, be administrators or members of the governing body of hospitals which have agreed with such non-profit hospital service plan corporation to furnish hospital service to the subscribers to such non-profit hospital service plan.

Every such contracting hospital shall be represented in every such non-profit hospital service plan corporation with which it has entered into an agreement to furnish such hospital service to subscribers thereto, provided, however, that any two or more such contracting hospitals may have the same representative therein. (Act Mar. 10, 1941, c. 53, §4.)
[309.13]

7900e. Same—Statement of financial condition—Filing.—Every such corporation shall annually, on or before the last day of March, file with the commissioner of insurance, a statement verified by not less than two of its principal officers, showing the financial condition of such corporation as of the 31st day of December next preceding. (Act Mar. 10, 1941, c. 53, §5.)
[309.14]

7900f. Same—Access to books and records—Examination of officers and employes—Expenses.—The commissioner of insurance, or any deputy or examiner designated by him, shall have the right, at all reasonable times, to free access to all books and records of such corporation, and may summon and examine, under oath, the officers and employees of such corporation in all matters pertaining to its financial condition. The expense of any such examination of its books and financial condition shall be borne by such corporation. (Act Mar. 10, 1941, c. 53, §6.)
[309.15]

7900g. Same—Investment of funds.—The funds of any corporation subject to the provisions of this act shall be invested only in those securities and property designated by the laws of this state for the investment of the capital, surplus and other funds of domestic life insurance companies. (Act Mar. 10, 1941, c. 53, §7.)
[309.16]

7900h. Same—Practice of healing or medicine.—Nothing herein shall authorize any person, association, or corporation to engage, in any manner, in the practice of healing, or the practice of medicine, as defined by law. (Act Mar. 10, 1941, c. 53, §8.)
[309.17]

CORPORATIONS TO ADMINISTER CHARITIES

7901. Formation—Requisites.
Act Mar. 28, 1941, c. 104, authorizes renewal of corporate existence.

CHAMBER OF COMMERCE, ETC.

7903. Corporations may be formed for certain purposes.
A chamber of commerce does not have a perpetual corporate existence. Op. Atty. Gen. (92a-9), Nov. 9, 1940.

SOCIETIES FOR SECURING HOMES FOR CHILDREN

7920. Provisions for incorporating homes for dependent children, etc.
Corporations organized under this section may be dissolved under 7492-45. Laws 1943, c. 209.

CORPORATIONS FOR MAINTAINING HOMES FOR AGED MEN AND WOMEN

7926-2. Voluntary dissolution of certain corporations.—Any corporation organized under Mason's Minnesota Statutes of 1927, Sections 7920-7926, both inclusive, relating to corporations for the establishment and maintenance of homes for dependent children and to corporations for maintaining homes for aged men and women, may be dissolved by complying with the provisions of Laws 1933, Chapter 300, Sections 45 to 55 inclusive. Such corporations having no shareholders, the directors thereof shall act in the place and stead of shareholders for all purposes of such dissolution. (Act Mar. 29, 1945, c. 209, §1.)
[301.563]

LODGES, FRATERNAL ORDERS, ETC.

7937. Incorporation.
Renewal of fraternal benefit associations. Laws 1943, c. 289.

Transfer by a subsidiary lodge in good faith to a nonstock, nonprofit corporation, whose membership was confined to members of lodge, of a lot and a sum of money in consideration of a ten-year lease of a lodge hall in a building to be erected on the lot so transferred was not in violation of a regulation of Grand Lodge forbidding disposition of real or personal property except for purpose of applying proceeds thereof to uses and purposes of order, there being evidence that transfer was not for purpose of defeating reversionary interest of Grand Lodge. Grand Lodge of Minnesota, I. O. O F. v. Lakeside Lodge No. 105, 214M343, 8NW(2d)19.

7951. Fraternal order of Eagles—Power to incorporate.
A fraternal organization employing and paying physician to care for members cannot interfere by injunction with any proceedings that may be brought by board of medical examiners to revoke license of physician for unprofessional conduct in being employed by a corporation. Fisch v. S., 208M102, 292NW758. See Dun. Dig. 7483.

RELIGIOUS CORPORATIONS

7963. Election of board of trustees, etc.
Curative Act. Laws 1943, c. 400.

7963-1. Certain religious corporations validated.—Any religious corporation organized pursuant to the provisions of Mason's Minnesota Statutes of 1927, Section 7963, and any religious corporation which has complied with the provisions thereof except in respect to the objections hereinafter set forth, is hereby legalized and validated as against the following objections:

(1) That no notice was given or posted and no definite time set for the meeting of the worshippers;

(2) That no record was kept of the meeting of the worshippers and no record exists to show how the meeting was conducted or who was elected chairman or secretary thereof; that the chairman and the secretary, whether elected at such meeting or otherwise, did not sign the certificate in the presence of witnesses or did not acknowledge the certificate; that the certificate signed by the chairman and secretary of such corporation and acknowledged by them was not filed in the office of the register of deeds;

(3) That the certificate together with a certificate of acknowledgment and a copy of the notice of the meeting of worshippers and affidavit of posting the same, were not recorded in the office of the register of deeds. (Act Apr. 10, 1941, c. 180, §1.)
[647.22]

Act Apr. 10, 1941, c. 180, §2 provides that this act shall not apply to corporation whose charter has been forfeited by the court, nor affect any corporation in regard to which an action is pending.

7964. Powers of certain corporations.
In proceeding against church for permission to disinter a body, defendant had a sufficient adverse interest so that it should have been served with a summons instead of a notice. Uram v. S., 207M569, 292NW200. See Dun. Dig. 89.

7965. Certificate to be recorded; etc.
Articles of incorporation in the Norwegian language cannot be recorded. Op. Atty. Gen. (373B-17(d)), Dec. 18, 1940.

MINNESOTA HISTORICAL SOCIETY

8008-1. Custodianship of records, etc., by Minnesota Historical Society—Authority to destroy—Copies as evidence.—The Minnesota Historical Society is hereby authorized to receive and is made the custodian of such records, files, documents, books, and papers as may be turned over to it from any of the public offices of the state, including state, county, city, vil-

lage, and township offices. The Minnesota Historical Society is hereby authorized to destroy all such records, documents, and papers, which it deems to be without legal or administrative value or historical interest, provided, however, that no public document less than six years old shall be destroyed. An accurate descriptive list of the records so disposed of and a record of the disposal itself shall be filed and preserved by the Minnesota Historical Society and by the department or agency in which the records originated. It shall provide for the classification, arranging, and indexing of all public records which it deems to be of sufficient value and interest to preserve, so that they may be made available for the use of the public. Copies and photographic reproductions of all such papers, documents, files, and records, including reproduction of records, the originals of which have been destroyed, when certified under oath as true copies by the superintendent of the said society, shall be admitted as evidence in all courts, with the same effect as if certified to by the original custodian thereof. (As amended Act Apr. 28, 1941, c. 553, §5.)

Birth and death records deposited by local registrars with Minnesota Historical Society for years previous to 1908 need not be turned over to state registrars or local registrars. Op. Atty. Gen. (225L), Sept. 3, 1941.

Where society, as a method of destroying the same, sold, as waste paper, old records, papers and documents, coming into its possession under this act, proceeds of sale belong to the state, title to the salvage following title to the property and the society being only the "custodian" of the records. Op. Atty. Gen. (851S), Feb. 3, 1942.

This act does not repeal Laws 1939, c. 41 (Mason's St., §53-23½v), and director of division of forestry may dispose of documents and papers under either act. Op. Atty. Gen. (851r), Jan. 21, 1942.

Records of Minnesota compensation rating bureau are not "public records", and their destruction need not be pursuant to terms of this law, being a non-governmental agency. Op. Atty. Gen. (851f), Sept. 8, 1942.

Reports workmen's compensation insurance carriers filed with compensation insurance board setting forth experience with respect to payroll premiums and losses for different classes of employees, come within this act and disposal must be governed thereby. Op. Atty. Gen. (851f), Sept. 8, 1942.

Destruction of public record. Op. Atty. Gen. (851f), Dec. 2, 1943.

8008-2. Same—Records, etc., how transferred to society.—Any public official is hereby authorized, upon the conditions hereinafter provided, to turn over to the said society, such records, files, documents, books and papers in his custody as are not in current use; provided, however, that said society shall present to such official a petition or application in which such records, files, documents, books, or papers shall be described in terms sufficient to identify the same, and which said petition shall be approved by the Governor, in case of the state officer, the board of county commissioners, in case of a county officer, and by the governing body of any city, village or town in case of a city, village or town officer, and which said application shall be filed in the office from which said records, files, documents, books, or papers have been turned over to said society; provided, also, that this act shall not repeal or annul the provisions of Section 145 of Mason's Minnesota Statutes 1927. (As amended Act Apr. 28, 1941, c. 553, §6.)

ACTIONS RESPECTING CORPORATIONS

8013. Sequestration—Receiver—Distribution.

9. General nature of action.

General rule is that right and title vest in receiver in corporate sequestration as of time of his appointment. State v. District Court, 206M645, 287NW491. See Dun. Dig. 2157(78).

12. Powers and duties of receiver.

Where one contracted with the receiver of a corporation to perform services to obtain the passage of legislation which would give the corporation a claim against the federal government, fact that court in which receivership proceedings were being conducted did not give its written consent to the appointment of such person as agent would not deprive him of a right to recover for his services on a quantum meruit basis. Grover v. Merritt Development Co., (DC-Minn), 47FSupp309. See Dun. Dig. 8253b.

8020. Insolvent banks and insurance companies.

Section 9311, requiring written findings of fact and conclusions of law separately stated, applies in hearing of a contested claim against an insolvent corporation in receivership proceedings for dissolution. Fredsall v. M., 207M18, 289NW780. See Dun. Dig. 2141.

8025. Enforcement of stockholders' liability.

First State Bank of Correll, 206M250, 288NW709; note under §8028.

8026. Hearing upon petition.

First State Bank of Correll, 206M250, 288NW709; note under §8028.

8027. Enforcement of stockholder's liability—Hearing—Order.

First State Bank of Correll, 206M250, 288NW709; note under §8028.

In action by receiver of bank for benefit of only creditor against only stockholder to recover assets alleged to have been fraudulently transferred to the stockholder, issue whether creditor's claim was satisfied was conclusively decided in proceeding brought by creditor for an order assessing stockholder's liability. Bolsta v. Bremer, 212M269, 3NW(2d)430. See Dun. Dig. 824b.

8028. Action for assessments.

While scope and purpose of §8026 is limited to provisions thereof and as such is conclusive only as "to the amount, propriety, and necessity" of the assessment, in view of §8027, yet where it conclusively appears that enforcement is impossible of attainment of anything beneficial to corporation's creditors, court was justified in sustaining defendant's contention that statute of limitations was applicable in proceeding to have court order an assessment. First State Bank of Correll, 206 M250, 288NW709. See Dun. Dig. 802.

Statute of limitations starts running against stockholders' constitutional liability from date corporation goes into hands of a receiver. Id. See Dun. Dig. 802.

Appointment of a receiver is a sufficient judicial declaration of insolvency, and order of assessment is not necessary to start statute running. Id. See Dun. Dig. 802.

Statute of limitations was properly in case where plaintiff had been permitted to amend his complaint by striking from it allegation showing running of statute against his cause and defendant was thereupon given right to amend his answer by pleading statute. Id. See Dun. Dig. 5661, 7498a(38).

Liability of stockholder for debts incurred by domestic corporation prior to 1930 amendment of Constitution, which attaches as soon as his relationship is assumed, is fixed by constitution and stands as surety for corporate debts, and cause of action accrues, so as to set statute of limitations running, when corporation is declared insolvent and a receiver has been appointed, and not upon date of order for assessment, and mere fact that there was delay caused to some extent by objecting stockholders did not deprive court of jurisdiction to hear and determine need for assessments, and court in action and withholding decision over a period of six months on application for assessment and leave to sue did not suspend running of statute. Knipple v. Lipke, 211M238, 300 NW620, 137ALR783. See Dun. Dig. 2168, 5617.