

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
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251-33. Revisor shall complete annotations.—The revisor shall complete the preparation of annotations of the constitution and statutes in force at the close of the 1943 session of the Legislature, and the same

shall be printed and sold or otherwise distributed as now provided by law. (Act Apr. 20, 1943, c. 545, §4.) [482.047]

CHAPTER 5A

Salaries of Certain State Officers and Employees

252. Amount—Payment * * * * *

1. Office of Governor

Effective July 1, 1945, Governor, \$8,500; private secretary, \$5,000; executive clerk, \$3,000; recording clerk, who shall be also clerk of the pardon board, \$2,000; executive messenger, \$2,000; assistant executive messenger, \$1,200; notary clerk and stenographer, \$1,800. (As amended Apr. 24, 1943, c. 664, §1.)

2 to 21. * * * * *

22. District Court Judges

The judges of the District court, six thousand dollars each from the state and fifteen hundred dollars additional, payable monthly from each county in their respective districts having a population of seventy-five thousand or more and three hundred dollars additional in each judicial district having an area of more than fifteen thousand square miles, payable monthly from the counties comprising such judicial district in

such proportion as the assessed valuation of each county bears to the total assessed valuation of such judicial district in the preceding year; provided, however, that whenever any district judge shall preside upon the trial or hearing of any cause outside of his resident judicial district, wherein the district judge receives a larger salary, he shall receive as additional compensation during the period of such trial or hearing the difference between his fixed compensation and the compensation of the district judge of the district where he has been so engaged, the same to be paid by the county wherein said trial or hearing was held upon certification of the senior resident district judge thereof. (As amended Act Apr. 10, 1941, c. 195, §1.)

(22). District court judges.

Judge is not entitled to receive additional compensation during period of time when he may be traveling from his home to district where he is actually to hold court or conduct a hearing, and correct per diem is to be determined by dividing monthly salary by number of days in month. Op. Atty. Gen. (141d-6), July 29, 1941.

CHAPTER 5B

Public Officers and Employees in General

STATE EMPLOYEES' RETIREMENT ASSOCIATION

254-1. Definitions.—Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases shall, for the purposes of this act, be given the meaning subjoined to them.

Subd. 2. Definitions.—(1) "State employee" means any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting elective state officers, court commissioners, district judges; physicians, dentists, clergymen and other professional people whose employment by the state is incidental to their regular professional duties and whose compensation is paid on a per diem basis; the members of the board of tax appeals, the civil service board, and the members of any other state board or commission who serve the state intermittently and are paid on a per diem basis; and the president, deans, professors, and instructors in the state university and in the state teachers' colleges, and teachers in state institutions who are eligible to membership in the teachers' retirement fund, but shall not include students who secure employment with the state or a state institution incidental to and in furtherance of their education. Temporary employees as defined by the civil service act shall not be eligible to membership, but probationers thereunder and temporary employees in the unclassified service shall become members at the expiration of six months continuous employment, and deductions shall be made from the salaries of such employees beginning on the first day of the calendar month following the completion of six months continuous employment. Permanent employees in the unclassified service shall become members upon acceptance of state employment, and temporary employees in the unclassified service and

all employees in the classified service shall become members on the first day of the calendar month following the completion of six months continuous employment regardless of the classification by any department, commission, or agency of the state. Any former employee who has made contributions under former employment who has not taken a refundment from the retirement fund shall become a member immediately upon returning to the state service, regardless of his classification as temporary, provisional or probationary by any department, commission, or agency of the state, and salary deductions shall be made according to the age at the time of again becoming a state employee. Permanent seasonal employees in either the classified or unclassified service shall in no event be considered temporary employees.

(2) Employees of the department of education who are eligible to membership in the Teachers' Retirement Fund shall have the option of electing whether to be a member of the State Employees' Retirement Association or the Teachers' Retirement Fund. (As amended Apr. 23, 1941, c. 391; §1, Apr. 24, 1943, c. 622, §1.)

Subd. 3. "Head of Department" shall mean the head of any department, institution, or branch of the state service which directly pay salaries out of its income or which prepares, approves and submits salary abstracts of its employees to the state auditor and state treasurer.

Subd. 4. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member, and the total amount of assessments paid by a member in lieu of such deductions prior to July 1, 1939, and credited to his individual account in the retirement fund, without interest.

Subd. 5. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions

from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, prior to July 1, 1939, and all other moneys paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon, including contributions on the part of the state and departments thereof.

Subd. 6. "Monthly Deductions from Salaries" shall mean the actual receipts received or credited to the fund from salary deductions in any calendar month.

Subd. 7. "Prior Service" shall mean the service of a member rendered before the first day of July, 1929, and shall include the service during the world war of officers, soldiers, sailors, marines, and army nurses who were "State Employees" at the time of enlisting or being drafted into the military service of the United States, and who returned directly to the service of the state upon returning from the world war.

Subd. 8. "Proportional Deferred Annuity" shall mean an annuity beginning at the time the member would have been eligible to receive an annuity for superannuation if his state service had not terminated, the amount of which is in the same proportion as the number of years service, for which the member is entitled to credit, is to the number of years service required had the member continued in the state service until eligible to receive a full superannuation annuity as provided by this act. (As amended Act Apr. 23, 1941, c. 391, §1; Apr. 24, 1943, c. 622, §1.)

(2).

Amended. Laws 1943, c. 664.

An employee engaged in welfare work, receiving part of compensation from state and federal funds and part from county is not eligible for membership in state employees retirement association but is eligible as a county employee to membership in public employees retirement association. Op. Atty. Gen. (331B-1), Dec. 14, 1939.

Employee of department of education summer teacher training schools, six weeks each summer from 1900 to 1914, was entitled to credit as an employee. Op. Atty. Gen., (331a-7), Jan. 29, 1940.

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

Child welfare worker in county which has elected to come under Retirement Act, who receives her full compensation from the state, is not eligible under either the state employees retirement act or the municipal employees retirement act. Op. Atty. Gen., (331B-1), Aug. 27, 1940.

Employees in classified service as provisional, emergency, or temporary employees are not entitled to membership. Op. Atty. Gen. (331a-8), May 8, 1941.

Promotion probationers are entitled to membership and deductions should be made from their salaries. Op. Atty. Gen. (331a-7), June 3, 1941.

Persons employed by commissioner of banks in liquidation of closed banks are not state employees. Op. Atty. Gen. (331a-7), June 13, 1941.

Provisional employee paid by state warrants, reimbursement to state being made by federal government out of natural defense funds, who had six months of service on or prior to April 23, 1941, became eligible for retirement fund. Op. Atty. Gen. (331a-8), June 25, 1941.

Retirement board has power to determine that professional people employed on a per diem basis intermittently and as circumstances demand, are not employees. Op. Atty. Gen. (331A-8), July 2, 1941.

Employees of Minnesota Livestock Breeders' Association, Minnesota Crop Improvement Association and State Horticultural Society are not state employees and deductions should not be made from their pay. Op. Atty. Gen. (136A-7), Sept. 24, 1941.

Permanent classified employees "laid off" or between seasonal work are entitled to retain membership in association while they are provisional employees in other department and deductions should be made from their pay. Op. Atty. Gen. (331A-8), Sept. 24, 1941.

Employees of department of administration, division of administrative management and research, are state employees. Op. Atty. Gen. (331A-7), Jan. 27, 1942.

Farmers' Institute was a state agency, and its employees were "state employees" within retirement law. Op. Atty. Gen. (331A-13), Jan. 30, 1942.

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.

Annuity of a member of association does not cease if he is elected and serves as a member of the legislature, elective officers not being "state employees." Op. Atty. Gen. (331a-1), July 24, 1942.

State employee transferred to United States employment service who resigned from the state service after December 31, 1942, is employee on leave of absence, and must reimburse retirement fund upon returning from leave of absence. Op. Atty. Gen. (331a-9), Sept. 21, 1943.

(7).

One who became a "state employee" in January, 1941, was not entitled to credit for former service as an elective officer from 1903 to April, 1929, performing no service, elective or otherwise, from July 1, 1929, to 1939, when elective officers became barred from membership. Op. Atty. Gen. (331A-13), Jan. 30, 1942.

254-2. State employees' retirement association created.—Subdivision 1. There is hereby established a state employees' retirement association the membership of which shall consist only of state employees. Membership in such association shall be optional on the part of persons in the employ of the state on July 1, 1929, but all new state employees entering the service of the state thereafter, except elective state officers, shall become members of the association by acceptance of state employment and the head of the department shall thereupon cause deduction to be made from the salary of such new employees. No person in the employ of the state on July 1, 1929, shall be eligible to apply for membership in the retirement association after July 1, 1931, except as provided in this act.

Subd. 2. **State employees' retirement association—state employees, who may be members.**—(1) Any person employed by the state on July 1, 1941, who was a state employee on July 1, 1929, and did not exercise his option to become a member of the association on or before July 1, 1931, shall become a member as of July 1, 1941, the same as though he had on that day become a new state employee. Such persons and and person who has prior to July 1, 1941, or may thereafter become a member by reason of being a new state employee shall have the option of electing to become a member as of July 1, 1929, by making payments in lieu of salary deductions from July 1, 1929, to the date of becoming a member, at the rate required for the person's age on July 1, 1929, according to the rate schedule in effect at the date of becoming a member, plus interest at four per cent per annum compounded annually. Such payments to be based upon the salary, wages, or compensation actually received, subject to the \$300.00 minimum provision, including any allowance for maintenance of housing not in excess of \$50.00 a month. Nothing herein shall give any person required to become a member on July 1, 1941, or any person electing to become a member as of July 1, 1929, credit for any service prior to July 1, 1929, nor shall any person becoming a member as provided herein have the right to make any payments in lieu of salary deductions, or receive credit for service for any period he was out of the state service or when he was on leave of absence or lay-off from July 1, 1929, to the date of becoming a member; and beginning with the date of his return to the state service, or active service as the case may be, payments shall be at the rate required for his age at the date of returning to work.

(2) All payments provided for in this section must be paid not later than 27 months from the date of becoming a member, and shall be paid in either a lump sum or in monthly installments by payroll deductions. Any person who has not completed the payments provided for in this section within 27 months from the date of becoming a member, shall have returned to him the sums paid less \$10.00 and shall thereupon be a member from July 1, 1941, or the date of becoming a member by reason of being a new state employee. The retirement board shall at the member's option accept notes for any balance due at the expiration of the 27 months, such notes to be paid in installments on or before July 1, 1947, but the entire principal sum

with interest at four per cent per annum must be paid before the member is entitled to credit for service subsequent to June 30, 1929, and prior to July 1, 1941. (As amended Apr. 23, 1941, c. 391, §2; Apr. 24, 1943, c. 622, §2.)

Executive council has no authority to approve or put into operation a welfare group plan of accident, health, and surgical benefits sponsored by an insurance company, whereby deductions are to be made from salaries of state employees for payment of premiums. Op. Atty. Gen., (249B-9), Feb. 27, 1940.

Failure of department head to make salary deductions required by act does not prejudice rights of employee thereunder, and he may pay up amount that should have been deducted. Op. Atty. Gen. (331a-1), Feb. 25, 1943.

Subd. 2.

Amended. Laws 1943, c. 622, §2. See above text.

Board may exempt from deductions employees who could not complete sufficient service to be entitled to an annuity. Op. Atty. Gen. (331a-12), June 17, 1941.

No annuity may be granted until deductions have been made from employee's salary for period of five years after becoming member. Op. Atty. Gen. (331a-1), June 30, 1941.

A member of legislature on July 1, 1929, and who was a member of retirement association on July 1, 1941, has options pursuant to Laws 1941, c. 391, to elect to become a member of retirement association as of July 1, 1929. Op. Atty. Gen. (331A-7), Sept. 3, 1941.

In order to be entitled to become a member as of July 1, 1929, person so seeking must have been an employee on July 1, 1929. Op. Atty. Gen. (331a-7), July 12, 1943.

254-3. Board of managers—Officers.—The management of the state employees' retirement fund is hereby vested in a board of seven members, who shall be known as the State Employees' Retirement Board. This board shall consist of the state auditor, the state treasurer, the insurance commissioner, and four state employees who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of the board so elected shall hold office for a term of four years and until their successors are elected and qualified. A state employee on leave of absence shall not be eligible for election or re-election to membership on the retirement board; and the term of any board member who is on leave for more than six months shall automatically terminate upon the expiration of such period. Any vacancy in the board caused by the death, resignation, or removal of any member so elected shall be filled by the retirement board for the unexpired portion of the term in which such vacancy occurs. The members of the retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund for expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and appoint a secretary and such other employees as may be necessary, and fix their compensation. The board shall, from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (As amended Act Apr. 23, 1941, c. 391, §3.)

254-4. Payments into retirement fund.—Subdivision 1. **Payments into retirement fund.**—(1) Persons in the employ of the state on July 1, 1929, who exercised their option to become members pursuant to Laws 1929, Chapter 191, Section 2, shall pay into the retirement fund, beginning July 1, 1939, according to their age on July 1, 1929, and persons entering or reentering the state service and becoming members of the association after July 1, 1929, shall pay into the retirement fund, beginning July 1, 1939, according to their age at the date of becoming or last becoming members of the association in accordance with the following schedule: those under 30 years of age, three and one-half per cent; those 30 years of age and under 40 years of age, four per cent; those 40 years of age and under 45 years of age, four and one-half per cent; those 45 years of age and under 50 years of age, five per cent; those 50 years of age and under 55 years of age, five and one-half per cent; and those 55 years

of age or over, six per cent of the compensation paid them including compensation for overtime and any allowance for maintenance or housing. Such payments shall be made by deduction thereof from salary. No deduction shall be made from salaries on any amount thereof in excess of \$300.00 per month. The head of each department is hereby required to cause such deduction to be made from the salary of each member of the retirement association on every payroll abstract and to approve one voucher payable to the state treasurer for the aggregate amount so deducted from the salaries covered by the payroll abstract; provided, that deductions from salaries of employees paid direct by any department, institution, or agency of the state shall be made by the officer or employee authorized by law to pay such salaries, and remitted by him to the secretary of the retirement association with a statement showing the amount of each of such deductions and the names of the employees on whose account the same have been made.

Every department, bureau, division, commission, committee, or board which functions regularly as a permanent unit of the state government, shall pay to the state treasurer, for the uses and purposes of the state employees' retirement fund, in the manner and at the times hereinafter specified, the amount of money hereinafter provided for, which payments shall be credited to the retirement fund by the state treasurer.

Every such unit of the state government which is wholly or substantially financially self-sustaining by reason of income or revenue derived from its own activities shall, beginning with the state's fiscal year ending June 30, 1940, and continuing with each fiscal year thereafter, allocate to the state employees' retirement fund an amount equal to one-half of the total amount of superannuation annuities paid during the fiscal year to employees who were retired by such unit of the state government. Within 60 days after the end of each fiscal year, the secretary of the state employees' retirement association shall compute the amounts due from such units of state government and certify the same to the state auditor who shall immediately transfer the amounts involved from the unit accounts to the state treasurer to the credit of the retirement fund, and notify the unit head of such transaction and this authority of the state auditor to transfer shall include all sums not transferred prior to the passage of this act.

The secretary of the retirement board shall also compute and certify to the state auditor within 60 days of the close of each fiscal year, the total sum paid during the preceding fiscal year to the retired employees of all other units of the state government, and the state auditor shall immediately credit to the retirement fund from the general revenue fund an amount equal to one-half of the super-annuation annuities paid during the preceding fiscal year to employees who were retired by all other units of the state government.

The moneys necessary to provide for the contributions to the retirement fund by the state from the general revenue fund are hereby appropriated out of any funds in the state treasury not otherwise appropriated.

The moneys necessary to provide for contributions to the retirement fund by the various units of the state government which are wholly or substantially financially self-sustaining by reason of income or revenue derived from their own activities are hereby appropriated for such purpose out of any funds derived by such units of government as income or revenue from their own activities.

If an employee has worked in departments other than the one in which he was last employed, that portion of the annuity herein provided to be paid by the department shall be paid by the department where he was last employed.

(2) All such salary deductions and the contributions herein provided by the state shall be credited to a fund to be known as the retirement fund and all in-

terest and other income of the association shall be credited to this fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of the association and the annuities herein provided upon retirement shall be paid only from such fund. Under the direction of the retirement board the head of each department shall furnish such information and keep such records as the board may require for the discharge of its duties.

Subd. 2. In computing the length of service of members for retirement purposes, who were required to pay a membership fee full credit shall be given for prior service, and in computing the length of service of those entering the state service after July 1, 1929, who have had service prior to July 1, 1929, full credit shall be given for prior service, but no credit for service rendered prior to the date of becoming a member by reason of being a new state employee shall be given to any person who was a state employee on July 1, 1929, and did not exercise his option to become a member; except that a person electing to become a member as of July 1, 1929, as herein provided, shall be entitled to credit for service subsequent but not prior to July 1, 1929.

Subd. 3. (1) No credit for service shall be allowed any member for periods such member may have been a state employee from June 30, 1929, to July 1, 1939, unless deductions shall have been made from the salary of such member or he has made payment in lieu thereof. From and after July 1, 1939, no credit for service shall be allowed any member for any calendar month in which he receives no salary or wages unless the head of the department gives notice, in writing, to the secretary of the retirement board within or prior to the calendar month when no salary or wages are received, that the member is on leave, or is on sick leave, or is inactive because of the seasonal nature of his work, as the case may be; unless the member's name is carried on the department payroll abstract marked "on leave", "sick leave", or "inactive".

(2) Members who are absent from their duties because of temporary disability resulting from injuries for which the state is liable under the Workmen's Compensation Law shall be given credit for service during such temporary disability, and the Industrial Commission shall furnish the retirement board with a copy of each abstract submitted to the state auditor and to be charged to the state compensation revolving fund, which shall be construed as notice to the retirement board that the employees listed thereon have sustained injury arising out of and in the course of employment by the State of Minnesota and are entitled to credit for service on the records of the association during the time compensation is received for temporary disability resulting from such injury, but shall not be used for any other purpose.

(3) From and after July 1, 1939, no member shall be entitled to make payments in lieu of salary deductions for periods no salary or wages are received; the deductions made from the compensation received shall cover periods of inactivity, provided notice is given or the payroll abstract is marked as provided herein. Salaries paid for a fractional part of any calendar month shall be considered the compensation for the entire calendar month unless state service has terminated.

(4) Any member, however, who is granted a leave of absence to accept employment in essential war work during the present war emergency and until the cessation of hostilities as declared by proper federal authority, or until July 1, 1945; whichever may first occur, shall be required to pay into the retirement fund during such leave of absence, a sum equal to the deductions required on the basis of the salary received from the state at the time such leave began, payments to be made either monthly or within one year from the date of returning to the service of the state. Those members of the state employment service of the Division of Employment and Security who were transferred

to the United States Employment Service for the purpose of the war emergency shall be considered as engaged in essential war work. (As amended Apr. 23, 1941, c. 391, §4; Apr. 24, 1943, c. 622, §3.)

Subd. 4. No member shall be entitled to credit for former service upon entering the employ of the state after having received a refundment of accumulated deductions pursuant to the provisions of this act, unless he shall restore the amount thereof to the fund as provided by this act.

Subd. 5. The final power to determine the status of any individual in the employ of the state for the purposes of this act is hereby vested in the retirement board. (As amended Act Apr. 23, 1941, c. 391, §4; Apr. 24, 1943, c. 622, §3.)

Provisions by which units of state government which are wholly or substantially financially self-sustaining by reason of revenue derived from their activities are required to pay into fund an amount equal to one-half of total amount of annuities paid during fiscal year to employees who are retired by such departments, are applicable to Railroad and Warehouse Commission. Op. Atty. Gen., (331A-12), Sept. 20, 1940.

Where an employee has contracted tuberculosis in line of his employment and is being hospitalized at expense of his department and is carried on department's payroll on a leave of absence with pay, deductions for retirement fund should be based only on amount of salary employee is actually receiving, and money paid for hospitalization is no part of salary. Op. Atty. Gen., (331A-12), Jan. 15, 1941.

Regular employees of Secretary of State furnishing transcript of records of registrations of cars after working hours as "overtime" must contribute to fund. Op. Atty. Gen. (331A-12), July 29, 1941.

Self-sustaining departments whose receipts are first placed in general fund do not lose their characteristics of self-sustaining units and auditor should transfer to retirement fund a sum equal to 50% of amount paid in annuities to employees who are retired by such units. Op. Atty. Gen. (331A-4), Mar. 27, 1942.

Payments due retirement association and manner of payment determined as to the railroad and warehouse commission. Op. Atty. Gen. (331A-4), July 28, 1943.

State employee transferred to United States employment service is now on leave of absence, being engaged in essential war work, and may make payments into retirement fund commencing as of January 1, 1942, at which time he obtained leave of absence for one year. Op. Atty. Gen. (331A-9), Sept. 21, 1943.

State employee transferred to United States employment service who resigned state service prior to December 31, 1942 (the date of expiration of original leave of absence) is still an employee on leave of absence under Laws 1943, c. 640, and may reimburse retirement fund upon returning from leave of absence. Op. Atty. Gen. (331A-9), Sept. 25, 1943.

Employee on leave of absence engaged in essential war activity to make payments in the retirement fund commencing as of date of original leave of absence. Op. Atty. Gen. (331A-9), Oct. 4, 1943.

Where employee desiring employment in essential war work was refused a leave of absence by his department and resigned and obtained a refundment of his accumulated deductions, and was then granted a leave for employment by statute, he is required to repay the refundment and make payments into the retirement fund commencing on the date leave of absence became effective. Op. Atty. Gen. (331A-9), Oct. 11, 1943.

Subd. (1). Amended. Laws 1943, c. 622, §3, see text above.

Subd. (2). Amended. Laws 1943, c. 622, §3, see above text.

One who became a "state employee" in January, 1941, was not entitled to credit for former service as an elective officer from 1903 to April, 1929, performing no service, elective or otherwise, from July 1, 1929, to 1939, when elective officers became barred from membership. Op. Atty. Gen. (331A-13), Jan. 30, 1942.

Subd. (3). Amended. Laws 1943, c. 622, §3, see above text.

Credit for service should be given for fractional portions of month, but no credit should be given suspension when without pay. Op. Atty. Gen., (331A-8), March 11, 1940.

Contribution by state departments or units which are wholly or substantially financially self-sustaining determined. Op. Atty. Gen., (331A-4), April 11, 1940.

Where employee has no stated salary but is paid on a percentage basis, such as district boiler inspectors, deductions are to be computed upon average salary. Op. Atty. Gen., (331A-12), July 16, 1940.

Contributions by self-sustaining units of government are not obviated by fact that unit borrows money from time to time. Op. Atty. Gen., (331A-12), Aug. 22, 1940.

Sections 254-4 and 254-19a, now 254-18, are to be construed together as requiring contributions from general revenue fund to extent of one-half of annuities paid during any fiscal year to retired employees of non-self-sustaining unit, but not exceeding \$50,000 for each year, and contribution from self-sustaining unit to extent of

one-half of annuities paid during each fiscal year to the retired employees of such units, without any maximum limit, and deduction proviso of §254-19a, now 254-18, should be disregarded. Op. Atty. Gen., (331a-4), Aug. 31, 1940.

Absence for military service is a leave of absence without pay and upon employee's restoration to status, he may continue his membership in the retirement fund, as provided by law and rules thereunder. Op. Atty. Gen., (331a-9), Sept. 20, 1940.

Subd. (5).

Board may exempt from deductions employees who could not complete sufficient service to be entitled to an annuity. Op. Atty. Gen. (331a-12), June 17, 1941.

Retirement board has power to determine that professional people employed on a per diem basis intermittently and as circumstances demand, are not employees. Op. Atty. Gen. (331-A-8), July 2, 1941.

254-5. State Treasurer to be treasurer of association.—The state treasurer shall be ex-officio treasurer of the retirement funds of the association, and his general bond to the state shall cover all liability for his acts as treasurer of these funds. All moneys of the association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall deliver to the secretary of the retirement board each month copies of all payroll abstracts of the state together with the state auditor's warrants covering the deductions made on these payroll abstracts for the retirement funds; whereupon the secretary shall cause to be made, in triplicate, a list of the auditor's warrants and these warrants shall then be deposited with the state treasurer to be credited to the retirement fund. He shall pay out of this fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investments may be signed by the secretary of the state board of investment. (As amended Act Apr. 23, 1941, c. 391, §5.)

After board of directors of retirement fund has certified to Railroad and Warehouse Commission total sum paid in superannuation annuities during preceding year to employees who were retired by commission, it is mandatory upon such commission to issue a warrant to the state treasurer, but state auditor is not authorized to transfer and credit contribution to fund, if commission does not issue a warrant. Op. Atty. Gen., (331a-12), Sept. 20, 1940.

254-6. Investment board to invest funds.—The retirement board shall, from time to time, certify to the state board of investment for investments such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized legal investments for savings banks and trust companies, and shall sell any such securities upon request of the retirement board. (As amended Act Apr. 23, 1941, c. 391, §6.)

254-7. Status of state employes—Civil service department to furnish list.—Upon the request of the retirement board, the civil service department shall furnish such information relative to the status of state employes as may be required by the board in the performance of its duties. (As amended Act Apr. 23, 1941, c. 391, §7.)

254-9. Amount paid to be refunded in certain cases.—Should a member before becoming eligible to receive a superannuation annuity become separated from the state service by resignation or dismissal, and have no right of re-instatement or re-employment under the civil service act, or have pending any action claiming the right thereto not finally adjudicated, he shall be entitled to the return of the full amount of the accumulated deductions standing to the credit of his individual account upon making application therefor on blanks furnished by the retirement board. Any such person who has been a member of the retirement association for not less than ten years may, in lieu thereof, elect, in writing, within 90 days from the termination of his employment to take a proportional deferred annuity beginning at the date he would have been eligible to receive an annuity if his state service

had not been terminated. Such proportional deferred annuities to begin on the first day of the calendar month. Instead of taking a refundment or a proportional deferred annuity as provided in this act, any person who has been a member of the retirement association five years or more may elect in writing within 90 days from the termination of his employment to take for each year of service during which he has made payments to the retirement fund and for which he is entitled to credit on the records of the retirement association, an annuity equal to one-seventieth of his average salary upon which deductions for the retirement fund have been made while a "state employee"; these annuity payments may be either immediate or deferred and shall begin on the first day of the calendar month following that in which the member attains the age of 65, or if state service does not terminate until after the age of 65, on the first day of any calendar month thereafter. Any member who elects to take a deferred annuity cannot thereafter make application for refundment unless he shall again become a "state employee" and his state service shall again terminate. In the event of the death of a member who has elected to take either a proportional deferred annuity or a deferred annuity, refundment shall be made as provided by this act. The right to a proportional deferred annuity or a deferred annuity shall be evidenced by a certificate signed by the chairman and secretary of the retirement board. Members who have elected to take either a proportional deferred annuity or a deferred annuity who again become "state employees" shall surrender their certificates and shall be entitled to full credit for the service covered by the surrendered certificate. Salary deductions are to be made according to the age at the time of again becoming a "state employee".

No annuity provided for in this section shall exceed the maximum provided by this act. (As amended Act Apr. 23, 1941, c. 391, §8.)

So long as a state employee has any right of reinstatement or carries his name at head of any employees register, as available for state employment, no refund of salary deduction should be granted. Op. Atty. Gen. (331a-11), Oct. 26, 1939.

An employee whose service was terminated prior to date of passage of Laws 1941, c. 391, §8, amending this section, but less than 90 days prior thereto, may take annuity referred to therein if he makes proper application within ninety days from date of his termination. Op. Atty. Gen. (331a-1), May 2, 1941.

Employees who resign or who do not return to the state service after one year's leave of absence may within one year thereafter be reinstated upon request of appointing authority with approval of Director of Civil Service, and this is not a "right" of reemployment but a privilege of the appointing authority, and such employee upon making proper application is entitled to a refundment of accumulated deductions standing to his credit. Op. Atty. Gen. (331a-11), May 8, 1941.

Board may exempt from deductions employees who could not complete sufficient service to be entitled to an annuity. Op. Atty. Gen. (331a-12), June 17, 1941.

Members "resigning" from state service to serve in military forces are entitled to a refund of sum to their credit in retirement fund. Op. Atty. Gen. (331a-11), Nov. 18, 1941.

Member taking "leave of absence" is not entitled to refund. Id.

A member of association who has been a state employee for thirty-six years can have a refund of salary deductions in one lump sum, even though eligible to receive a superannuation annuity. Op. Atty. Gen. (331a-11), Jan. 30, 1942; Feb. 16, 1942.

Failure of department head to make salary deductions required by act does not prejudice rights of employee thereunder, and he may pay up amount that should have been deducted. Op. Atty. Gen. (331a-1), Feb. 25, 1943.

Employees obtaining leave of absence to enter essential war activity are not entitled to refund of their accumulated deductions, and this applies to personnel of the employment service who entered the United States employment service. Op. Atty. Gen. (331a-11), June 11, 1943.

State employee with United States employment service on extended leave of absence from state service is not entitled to refundment. Op. Atty. Gen. (331a-9), Sept. 21, 1943.

Employee transferred to United States employment service having separated herself from state service and the United States employment service is no longer a member of the retirement association and is entitled to a refund. Op. Atty. Gen. (331a-14), Sept. 21, 1943.

Where employee desiring employment in essential war work was refused a leave of absence by his department and resigned and obtained a refundment of his accumulated deductions, and was then granted a leave for employment by statute, he is required to repay the refundment and make payments into the retirement fund commencing on the date leave of absence became effective. Op. Atty. Gen. (331a-9), Oct. 11, 1943.

254-10. Members may be reinstated.—Subdivision 1. Members reinstated.—(1) When a state employee who has so withdrawn his accumulated deductions shall re-enter the employment of the state and restores to the retirement fund his accumulated deductions that were withdrawn, with interest from the date of withdrawal to the date of repayment at four per cent per annum compounded annually, the annuity rights forfeited at that time shall be restored. If the amount so withdrawn is not restored within one year from the date of again becoming a member of the retirement association, the employee becomes a member but not entitled to credit for former service. The retirement board shall at the member's option accept notes payable in instalments on or before five years from date as repayment of refundments, but the entire principal sum with interest at four per cent per annum must be paid before the member is entitled to credit for service for the period or periods covered by the refundment. In the case of a member returning to the service of the state without restoring a refundment and again leaving and having a refundment and later returning, such member can only restore the last refundment and will not be entitled to credit for service prior to that covered by the last refundment; provided, that if any member who has received a refundment from the retirement fund has not repaid it upon again becoming a member, and later becomes eligible to receive an annuity or a proportional deferred annuity, such annuities shall be computed on the compensation upon which deductions for the retirement fund were based after June 30, 1929, including that covered by the refundment or refundments, and then reduced in the same proportion as the number of years service covered by the refundment or refundments is to the total service.

(2) Any member who returned to the state service prior to January 1, 1943, who failed to repay his refundment or refundments upon again becoming a member of the association as provided by laws in effect at the time of again becoming a member, shall be given a period of one year from May 1, 1943, in which to make such repayment, which repayment may be made by the giving of notes in the manner hereinabove provided. Such repayment shall be the amount of the refundment or refundments plus interest at four per cent per annum compounded annually from the date of withdrawal to the date of repayment. Should any former member who has received either an annuity, a proportional deferred annuity, or a deferred annuity again be employed by the state, his annuity shall cease during the period of employment and deductions shall be made from his earnings. Upon the termination of his employment annuity payments shall be resumed and there shall be no change in the amount of such annuity because of such employment. (As amended Apr. 23, 1941, c. 391, §9; Apr. 24, 1943, c. 622, §4.)

Where employee in classified service resigned to accept employment in a war activity and withdrew his accumulated deductions and thereafter applied for leave of absence is not required to restore his withdrawal with interest as a condition to his again becoming a member of the fund, but if he does not restore he has no credit for previous service. Op. Atty. Gen. (331a-11), June 10, 1943.

Employees obtaining leave of absence to enter essential war activity are not entitled to refund of their accumulated deductions, and this applies to personnel of the employment service who entered the United States employment service. Op. Atty. Gen. (331a-11), June 11, 1943.

State employee transferred to United States employment service who resigned from the state service after December 31, 1942, is employee on leave of absence, and must reimburse retirement fund upon returning from leave of absence. Op. Atty. Gen. (331a-9), Sept. 21, 1943.

State employee transferred to United States employment service who resigned state service prior to Decem-

ber 31, 1942 (the date of expiration of original leave of absence) is still an employee on leave of absence under Laws 1943, c. 640, and may reimburse retirement fund upon returning from leave of absence. Op. Atty. Gen. (331a-9), Sept. 25, 1943.

Where employee desiring employment in essential war work was refused a leave of absence by his department and resigned and obtained a refundment of his accumulated deductions, and was then granted a leave for employment by statute, he is required to repay the refundment and make payments into the retirement fund commencing on the date leave of absence became effective. Op. Atty. Gen. (331a-9), Oct. 11, 1943.

254-11. Retirement age — Annuities. — Whenever any member of the retirement association has been an employee of the state for a period of 20 years and has attained the age of 65 years, or when any such employee has been in the service of the state for a period of 35 years, he shall be eligible for retirement for superannuation, but such retirement shall not be compulsory prior to attaining the age of 70; provided that in computing such term of service the time during which any member of the association shall have maintained his membership by the payment of assessments during the period July 1, 1929, to July 1, 1939, shall be included.

Members who have left the service of the state to serve in the military forces of the United States or of the State of Minnesota, subsequent to July 1, 1940, shall be considered as on leave of absence; and in computing the amount of annuities of such members, the period of such leave shall be included in computing time of service for the state, and excluded in computing the annuity, so that no reduction will be made in the amount of the annuity by reason of such military service. Such retirement may be made upon application of the member or of some one acting in his behalf, or in case of an employee in active service, upon the application of the head of the department in which the member is employed. Upon retirement the member shall receive an annuity for the remainder of his life equal to 50 per cent of his average salary upon which deductions for the retirement fund have been based while a state employee; provided, that no such retirement annuity shall exceed the sum of \$100.00 per month. If the total of annuities shall during any month become greater in amount than the monthly deductions from salaries and contributions made by the state, the board shall proportionally reduce the amount of annuities for that month. In determining the contributions made by the state in any month, it shall be considered that one-twelfth of the amount appropriated for the fiscal year is the amount of the contributions made by the state for that month; provided, such one-twelfth does not exceed 50 per cent of the annuities paid and payable for that month. If such one-twelfth exceeds 50 per cent of the annuities paid and payable for that month, then, in that case, 50 per cent of the annuities paid and payable for that month shall be considered the amount of the contributions made by the state for that month. The balance of any annuities heretofore not paid in full by reason of the fact that the total of annuities and refundments were greater than the monthly deductions from salaries, shall be paid proportionally in the first and subsequent months when the salary deductions exceed the total of annuities and refundments. Any annuity payments which may subsequent to July 1, 1939, be proportionally reduced by reason of the fact that annuities exceed the salary deductions and contributions made by the state, shall be paid proportionally in the first and subsequent months when the salary deductions and contributions by the state exceed the annuity payments. In making proportional annuity payments for prior months in which the annuities were not paid in full, full payments shall be made for the first month in which annuities were proportionally reduced before any proportional payments shall be made to apply on subsequent months when annuity payments were reduced, and this method shall be followed for each month when only proportional an-

nunity payments were made. (As amended Act Apr. 23, 1941, c. 391, §10.)

A pensioner or beneficiary has no vested right in a pension granted by government except as payments become due him absolutely under the law. *Johnson v. S.*, 208M111, 292NW767.

Pension accruing for first 22 days of April, 1939, should be computed at rate fixed by statute in effect prior to taking effect of Laws 1939, c. 432. *Id.*

Members "resigning" from state service to serve in military forces are entitled to a refund of sum to their credit in retirement fund. *Op. Atty. Gen.* (331a-11), Nov. 18, 1941.

Member taking "leave of absence" is not entitled to refund. *Id.*

Annuity of a member of association does not cease if he is elected and serves as a member of the legislature, elective officers are being "state employees." *Op. Atty. Gen.* (331a-1), July 24, 1942.

State employees who were on military leave and were granted further leave after honorable discharge are only entitled to benefits of this section, and not to benefits of Laws 1941, c. 120. *Op. Atty. Gen.* (331a-9), June 7, 1943.

254-12. [1940 Supp. Repealed.]

Repealed Apr. 22, 1935, c. 238, §2.

254-12. Surviving spouse or legal representative of deceased member to receive lump sum.—Whenever a member of the association shall die without having received an annuity, or without having received in annuities an amount equal to the total amount of the accumulated deductions from his salary, the full amount of the accumulated deductions, less the annuity payments, if any, as have been paid to such member shall be paid in one lump sum to the beneficiary or beneficiaries designated by the member, or, if none, to the surviving spouse, or, if none, to the legal representatives of the member, upon the establishment of a valid claim therefor. Any annuity payment to which a member is entitled at the time of his death shall be paid in the same manner. Any member who dies without having designated a beneficiary, or if the beneficiary should die before making application for refundment or annuity payment as the case might be, and there is no surviving spouse and no legal representative of such member, the accumulated deductions to the member's credit and any annuity payment to which he was entitled at the time of death shall, after five years, be credited to and become a part of the retirement fund. (As amended Act Apr. 23, 1941, c. 391, §11.)

Editorial note.—This section was formerly section 254-14, of Supp. 1940. It was amended and rearranged as 254-12 by Act Apr. 23, 1941, c. 391, §11.

Words "one lump sum", mean that money is payable at one time and if there are two or more beneficiaries they shall receive their money at one time, and does not mean that money may not be divided in equal amounts in accordance with deceased member's instructions. *Op. Atty. Gen.*, (331B), June 10, 1940.

Where deceased annuitant left no children, brothers or sisters and no estate to be probated, and designated beneficiary had pre-deceased him, and annuity payment due him at time of his death could not be paid his sister-in-law who had cared for him and was named in a separate instrument as sole beneficiary. *Op. Atty. Gen.*, (331a-1), Dec. 10, 1940.

Surviving spouse is entitled to accumulated deductions where designated beneficiary predeceases member. *Op. Atty. Gen.* (331a-1), July 3, 1943.

254-13. [1940 Supp. Repealed.]

Repealed Apr. 22, 1935, c. 238, §2.

254-13. To be paid in monthly installments.—All annuities granted under the provisions of this act shall be paid in equal monthly installments, and shall not be increased, decreased, or revoked except as provided herein. (As amended Act Apr. 23, 1941, c. 391, §12.)

Editorial note.—This section was formerly section 254-15 of Supp. 1940. It was amended and rearranged as 254-13 by Act Apr. 23, 1941, c. 391, §12.

254-14. [1940 Supp. Amended and rearranged.]

Subject matter amended and rearranged as 254-12 by Act Apr. 23, 1941, c. 391, §11.

254-14. Annuities—When members may receive.—No member of the retirement association shall be entitled to receive an annuity until he shall have paid into the retirement fund, by deductions from salary

for a period of five years after becoming a member. (As amended Act Apr. 23, 1941, c. 391, §13.)

Editorial note.—Subject matter of this section was formerly under 254-16. It was amended and rearranged as 254-14, by Act Apr. 23, 1941, c. 391, §13.

Failure of department head to make salary deductions required by act does not prejudice rights of employee thereunder, and he may pay up amount that should have been deducted. *Op. Atty. Gen.* (331a-1), Feb. 25, 1943.

Credit of deceased employee leaving no surviving spouse and whose designated beneficiary has predeceased her should be paid to the legal representative of her estate, and not to an undertaking establishment. *Op. Atty. Gen.* (331a-1), July 13, 1943.

254-15. [1940 Supp. Amended and rearranged.]

Subject matter amended and rearranged as 254-13 by Act Apr. 23, 1941, c. 391, §12.

254-15. Funds not subject to process.—None of the moneys, annuities, or other benefits mentioned herein shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process, nor shall they be subject to any state income tax. (As amended Act Apr. 23, 1941, c. 391, §14.)

Editorial note.—Subject matter of this section was formerly under 254-17. It was amended and rearranged as 254-15, by Act Apr. 23, 1941, c. 391, §14.

State employee at teachers college may not assign his state check, especially a check on the retirement fund. *Op. Atty. Gen.* (270m-6), Apr. 1, 1941.

254-16. [1940 Supp. Amended and rearranged.]

Subject matter amended and rearranged as 254-14 by Act Apr. 23, 1941, c. 391, §13.

254-16. Insurance laws not to apply.—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. (As amended Act Apr. 23, 1941, c. 391, §15.)

Editorial note.—Subject matter of this section was formerly under 254-18. It was amended and rearranged as 254-16, by Act Apr. 23, 1941, c. 391, §15.

254-17. [1940 Supp. Amended and rearranged.]

Subject matter amended and rearranged as 254-15 by Act Apr. 23, 1941, c. 391, §14.

254-17. May receive gifts and bequests.—The retirement board is hereby authorized and empowered to credit to the retirement fund any moneys received in the form of donations, gifts, appropriations, bequests, or otherwise, or derived therefrom. (As amended Act Apr. 23, 1941, c. 391, §16.)

Editorial note.—Subject matter of this section was formerly under 254-19. It was amended and rearranged as 254-17, by Act Apr. 23, 1941, c. 391, §16.

254-18. [1940 Supp. Amended and rearranged.]

Subject matter amended and rearranged as 254-16 by Act Apr. 23, 1941, c. 391, §15.

254-18. Appropriation for fund.—There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$50,000 for each year for the biennium ending July 1, 1943 or as much thereof as may be necessary to carry out the provisions of this act. (As amended Act Apr. 23, 1941, c. 391, §17.)

Editorial note.—Subject matter of this section was formerly under 254-19a. It was amended and rearranged as 254-18, by Act Apr. 23, 1941, c. 391, §17.

Contribution by state departments or units which are wholly or substantially financially self-sustaining determined. *Op. Atty. Gen.*, (331a-4), April 11, 1940.

Sections 254-4 and 254-19a, now 254-18, are to be construed together as requiring contributions from general revenue fund to extent of one-half of annuities paid during any fiscal year to retired employees of non-self-sustaining unit, but not exceeding \$50,000 for each year, and contribution from self-sustaining unit to extent of one-half of annuities paid during each fiscal year to the retired employees of such units, without any maximum limit, and deduction proviso of §254-19a, now 254-13, should be disregarded. *Op. Atty. Gen.*, (331a-4), Aug. 31, 1940.

254-19. [1940 Supp. Amended and rearranged.]

Subject matter amended and rearranged as 254-17 by Act Apr. 23, 1941, c. 391, §16.

254-19. Board of directors may make rules and regulations.—Any changes or additions which may be

found necessary or advisable for the management of the retirement fund, may be made by a majority vote of the board of directors, provided no increase is made in the amount of deductions from salaries, or decrease in the amount of benefits paid. (As amended Act Apr. 23, 1941, c. 391, §18.)

Editorial note.—Subject matter of this section was formerly under 254-22. It was amended and rearranged as 254-19, by Act Apr. 23, 1941, c. 391, §18.

Act Apr. 23, 1941, c. 391, §19 provided that Mason's Supplement 1940, Sections 254-20, 254-21 and 254-22a, are hereby repealed.

Board may permit employees on military leave to make payments in a manner other than by salary deductions. Op. Atty. Gen., Sept. 15, 1941.

254-19A. [1940 Supp. Amended and rearranged.]
Subject matter amended and rearranged as 254-18, by Act Apr. 23, 1941, c. 391, §17.

254-20. Provisions separable. [Repealed.]
Repealed. Act Apr. 23, 1941, c. 391, §19.

254-21. Payments to begin July 1, 1929. [Repealed.]
Repealed. Act Apr. 23, 1941, c. 391, §19.

254-22. [1940 Supp. Amended and rearranged.]
Subject matter amended and rearranged as 254-19, by Act Apr. 23, 1941, c. 391, §18.

254-22a. Rights not affected by this act. [Repealed.]
Repealed. Act Apr. 23, 1941, c. 391, §19.

HIGHWAY PATROLMEN'S RETIREMENT ASSOCIATION

254-22b. Highway Patrolmen's Retirement Association established.—There is hereby established a Highway Patrolmen's Retirement Association, the membership of which shall consist of highway patrolmen. Every highway patrolman who is employed by the State of Minnesota, as such, when this Act becomes effective, and every person employed as a patrolman thereafter, shall become a member of this Association. Each patrolman while in the service of the State Highway Patrol shall pay a sum equal to 6 per cent of his monthly salary not exceeding the sum of \$15 per month except as hereinafter provided. Such amounts shall be deducted monthly by the Commissioner of Highways, who shall cause the total amount of said monthly deductions to be paid to the State Treasurer, and shall cause a detailed report of all monthly deductions to be made each month to the Secretary of the Association. In addition thereto, there shall be paid out of highway funds, monthly, by the Commissioner of Highways a sum equal to the amount of said salary deductions each month, the same to be credited to the fund created by this act. All monies received by said Association shall be deposited by the State Treasurer in the Highway Patrolmen's Retirement Fund by this Act created. Out of said fund shall be paid the expenses of the Association, and the benefits and annuities as hereinafter provided. The amount of contributions required from state highway patrolmen may be increased from time to time to insure the actuarial soundness of the highway patrolmen's retirement fund in this Act created. (Act Apr. 24, 1943, c. 637, §1.)
[172.01]

254-22c. Officers of association—terms.—(a) The officers of this Association shall consist of the Chief of the State Highway Patrol, who shall be President, the State Treasurer, who shall be ex-officio Treasurer, and a Secretary, who shall be a member of the Association, to be chosen by the membership thereof for a term of 2 years. Said officers shall administer the provisions of this Act, and may make such rules and regulations therefor, not inconsistent herewith, as may be necessary for such purposes. The general bond of the State Treasurer at the time of the passage of this Act shall cover all liability for his acts as Treasurer, and no additional bond shall be required.

(b) All monies of the Association received by him pursuant to the provisions of this Act shall be set aside by him in the State Treasury and credited to the Highway Patrolmen's Retirement Fund. He shall transmit, monthly, to the Secretary of the Association, a detailed statement showing all credits to and disbursements from said fund. He shall disburse monies from such fund only on warrants issued by the State Auditor upon vouchers signed by the Secretary of the Association. (Act Apr. 24, 1943, c. 637, §2.)
[172.02]

254-22d. Duties of secretary.—The Secretary of this Association shall keep a record of all the acts and proceedings taken by the officers, and he shall keep a complete record of the names of all of the members, their ages and length of service, the salary of each member, together with such other facts as may be necessary in the administration of the provisions of this Act, and for the purpose of obtaining such facts, he shall have access to the records of the various departments of the State. A certified copy of birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named therein. (Act Apr. 22, 1943, c. 637, §3.)
[172.03]

254-22e. State Board of Investment to invest funds.—The State Board of Investment is hereby authorized to invest such funds of the Association as in the judgment of the officers of this Association are not needed for immediate purposes, in such securities as are duly authorized or legal investments for savings banks and trust companies, and shall sell any such securities upon request from the officers of the Association so as to provide money for the payment of benefits or annuities. (Act Apr. 24, 1943, c. 637, §4.)
[172.04]

254-22f. Highway Patrolmen's Retirement Fund created.—There is hereby created the Highway Patrolmen's Retirement Fund and all monies received under the provisions of this Act shall be credited to said fund. In addition thereto, 66% of all monies heretofore paid by any highway patrolman into the State Employees' Retirement Fund is hereby appropriated therefrom and credited to the fund hereby created. The State Treasurer shall, upon the passage of this Act, ascertain the amount heretofore paid by highway patrolmen as aforesaid and transfer the amount so paid to the fund hereby created. It shall be the duty of the Commissioner of Insurance to make a bi-annual audit of the condition of said fund, and a bi-annual report to the legislature of its condition on an actuarial basis. (Act Apr. 22, 1943, c. 637, §5.)
[172.05]

The appropriation (Laws 1943, c. 637, §5), and the transfer affect only 66% of sum paid into the employees retirement association, and that percentage of the entire amounts that have been contributed to the retirement fund by men who are now highway patrolmen shall be transferred regardless of whether or not some of the monies were contributed while some of them were employed in other classification prior to becoming patrolmen. Op. Atty. Gen. (331a-4), July 3, 1943.

Transfer of all monies which have been paid into the state employees retirement association by highway patrolmen is to be made as of July 1, 1943, and statute is applicable as well to monies which have been paid into the state employees retirement fund by a patrolman who is on leave of absence from his duties and is performing other services for the state. Op. Atty. Gen. (331a-4), July 8, 1943.

Highway patrolman resigning on June 23, 1943, to be effective as of June 30, 1943, was entitled to full amount of accumulated deductions, since this act did not apply to him. Op. Atty. Gen. (331f), July 3, 1943.

254-22g. Association to be represented by attorney general.—The Association may sue or be sued in the name of the Association, and in all actions brought by or against it, the Association shall be represented by the Attorney General who shall also be the legal adviser for the Association. (Act Apr. 24, 1943, c. 637, §6.)
[172.06]

254-22h. Who are eligible to membership.—(a) Every patrolman who shall have been in the employ of the State as such for 20 years or more and during such time shall have paid by salary deductions, or otherwise, into the State Employees' Retirement Fund, the amount required by law and into the fund hereby created or into either fund and who shall have attained the age of 58 years; shall be entitled to receive a life annuity, upon his separation from State service, of an amount equal to 60 per cent of the average annual salary which he received during the 5 years immediately prior to said separation from State service, except as hereinafter limited, which life annuity shall be paid in monthly installments during the remainder of his life. Provided, however, that any patrolman who has been employed by the State as such for more than 15 years, and less than 20 years, when he attains the age of 58 years, may, if physically qualified, continue as such patrolman until he has attained the age of 60 years, or he may pay a sum which will result by multiplying the number of months which he would be required to serve so as to complete 20 years of service, by the amount of his monthly salary deductions at the time when he attained 58 years of age, and thereupon, and upon his compliance with the provisions hereof relative to salary deductions, and upon his separation from State service, he shall be entitled to the annuity, as provided for in this subsection; provided, however, that no patrolman shall continue as such after he attains the age of 60 years and in the event that he has not served 20 years as a patrolman, when he attains said age of 60 years, he shall pay a lump sum equal to the salary deductions which would have been made had he continued in State employment until he had acquired a total of 20 years of service.

(b) Patrolmen whose employment with the State has been less than 15 years and more than 10 years, and during such time have paid, by salary deductions or otherwise, into the State Employees' Retirement Fund, the amount required by law and into the fund hereby created, or into either fund and who shall have attained the age of 58 years, shall be entitled to receive a life annuity upon his separation from State service of an amount which the years of service in the Highway Patrol prior to his retirement bears to 20 years, except as hereinafter limited, which life annuity shall be paid in monthly installments during the remainder of his life.

(c) No patrolman shall receive an annuity in excess of \$100 per month.

(d) In the event that any patrolman should die after he has become eligible to receive an annuity as herein provided for, the amount he has paid into said funds, less the annuity payments he received prior to his death, shall thereupon be paid to the surviving spouse, if any, and if there be no surviving spouse, then to the heirs as provided by the laws of descent. (Act Apr. 22, 1943, c. 637, §7.) [172.07]

254-22i. Disability benefits.—(a) Any patrolman less than 58 years of age who has been employed as such for at least 10 years, and who shall become disabled and physically unfit to perform his duties as such, subsequent to the effective date of this Act as a direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty, which shall render him physically unable to perform his duties as such highway patrolman, shall receive disability benefits during the period of such disability of an amount equal to 60 per cent of his salary as it shall be at the time when such disability occurs, but not to exceed \$100.00 per month, to be paid to such patrolman in monthly payments. In the event that such patrolman shall die during the period of such disability, the amount he has paid into said funds, less the amount of the disability benefits received by him prior to his death, shall be paid to the surviving spouse, if any, and if there be no surviving spouse,

then to the heirs as provided by the laws of descent. Provided, however, that any income under the Workmen's Compensation Law, or income from employment earned by any disabled patrolman, shall be deducted from the amount that said disabled patrolman would be entitled to receive under the benefits of this Section.

(b) No patrolman shall receive any disability benefit payments when there remains to his credit unused annual leave or sick leave or under any other circumstances, when during the period of disability there has been no impairment of his salary or while receiving workmen's compensation from the State on account of such disability.

(c) No disability benefit payments shall be made except upon adequate proof furnished to the Association of the existence of such disability, and during the time when any such benefits are being paid, the Association shall have the right, at reasonable times, to require the disabled patrolman to submit proof of the continuance of the disability claimed. (Act Apr. 24, 1943, c. 637, §8.) [172.08]

254-22j. Retired patrolmen—refundments of payments.—(a) Should any patrolman, prior to becoming 58 years of age, and with less than 20 years of service, become separated from state service as a patrolman, either voluntarily or involuntarily, such patrolman shall thereupon be entitled to receive all payments which have been made by salary deductions into the fund created by this act; and in the event of his death the amount he had paid into said funds, less all payments received by him hereunder, shall be paid to the surviving spouse, if any, and if there be no surviving spouse, then to the heirs as provided by the laws of descent.

(b) In the event that a patrolman who has served as such for 20 years, and during such period has paid by salary deductions into the State Employees' Retirement Fund, or into the fund created by this Act, the amount required by law, shall die before reaching the age of 58 years, the amount he has paid into said funds shall thereupon be paid to the surviving spouse, if any, and if there be no surviving spouse, then to the heirs as provided by the laws of descent. (Act Apr. 24, 1943, c. 637, §9.) [172.09]

254-22k. Annuities not subject to process.—All annuities or benefits which any person shall be entitled to receive under the provisions of this Act shall not be subject to garnishment, attachment or levy, and the same shall at all times be exempt. (Act Apr. 24, 1943, c. 637, §10.) [172.10]

254-22l. Highway patrolmen must become members of association.—Every highway patrolman shall, upon the passage of this Act, become a member of this Association, and thereafter such patrolman shall not be eligible to membership in the State Employees' Retirement Association, and the provisions of said law shall not apply to the highway patrolmen. (Act Apr. 24, 1943, c. 637, §11.) [172.11]

254-22m. Who are highway patrolmen.—Whenever used in this Act "Highway Patrolmen" or "Highway Patrolman" shall deem to mean the persons referred to and employed pursuant to the provisions of Laws 1929, Chapter 355, and all acts amendatory thereof and supplementary thereto, their chief supervisor and all assistant supervisors, whose salaries or compensation is paid out of funds of the State of Minnesota. (Act Apr. 24, 1943, c. 637, §12.) [172.12]

254-22n. Inconsistent acts repealed.—All acts, or parts of acts, inconsistent herewith are hereby suspended in so far as may be necessary to give full force and effect to this Act. (Act Apr. 24, 1943, c. 637, §13.)

254-220. Provisions severable.—The provisions of this Act shall be severable, and if any provision of this Act or the application thereof, to any person or circumstances, is held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application. (Act Apr. 24, 1943, c. 637, §14.)

254-22p. Effective date.—This act shall take effect and be in force from and after July 1, 1943. (Act Apr. 24, 1943, c. 637, §15.)

Highway patrolman resigning on June 23, 1943, to be effective as of June 30, 1943, was entitled to full amount of accumulated deductions, since this act did not apply to him. Op. Atty. Gen. (331F), July 3, 1943.

MUNICIPAL EMPLOYEES' RETIREMENT ASSOCIATION

254-23. Definitions.—The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meaning:

1. "Public Employee" shall mean any person holding a position, either by election, appointment or contract in and for any of the several counties, cities, villages or school districts which are now or hereafter may be affected by the provisions of this act, whose salary is paid, in whole or in part, through taxation, or by fees, assessments or revenue from any one or more of the governmental subdivisions hereinbefore enumerated, irrespective of whether or not such person is directly employed by the authority of, or is under the control and supervision of the governing body of any such county, city, village or school district, except (a) any temporary employe, as hereinafter defined; (b) any employe of any governmental subdivision affected by the provisions of this act, who, by virtue of his former employment in the public service is a beneficiary of, or a contributing member to, or who has an unrealized interest in, or is designated as a future beneficiary by the rules of, any pension, relief or retirement fund established and maintained by authority of the laws of this state, provisions of any municipal charter, or ordinance of any municipality or other governmental subdivision thereof; or (c) any employe of any governmental subdivision who by virtue of his present employment is required to contribute to, or is eligible for membership in, or to be designated as a future beneficiary of, any retirement, relief or pension system established and maintained by authority of and pursuant to any one or more of the following sections of the 1940 Supplement to Mason's Minnesota Statutes for 1927, to-wit: 254-1 to 254-22, relating to retirement annuities for state employes; 1264-6 to 1264-13½j, relating to police pensions in certain villages; 1358 to 1366, relating to pensions for teachers in certain cities; 1432 to 1442, relating to police pensions in cities of the first class; 1442-1 to 1442-10, relating to pensions for employes of the bureau of health in certain cities of the first class; 1442-11 to 1442-56, relating to pensions and retirement allowances in certain cities of the first class; 1643-1 to 1643-9, relating to police pensions in cities of the second class; 1716-4 to 1716-18, relating to police pensions in certain cities of the third class; 1828-16½, relating to pension funds in cities of the fourth class; 1828-16¾ to 1828-16¾n, relating to police relief associations in cities of the fourth class; 1828-16¾ to 1828-16¾j, relating to firemen's relief associations in cities of the fourth class; 2950-1 to 2950-16, relating to teachers' pensions; 3723 to 3728, relating to the establishment of firemen's relief associations; 3728-1 to 3728-7, relating to firemen's relief associations in cities of the third class; and 3750-1 to 3750-38, relating to firemen's relief associations in cities of the first class. The term "public employe" shall also be construed to mean any person appointed as a district court reporter in this state.

2. "Head of Department" shall mean the head of any department, institution, office or branch of service of any governmental subdivision which directly pays salaries out of its revenue or is empowered to authorize the payment of such salaries.

3. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member and the total amount of assessments paid by a member in lieu of such deductions and credited to his or her individual account in the retirement fund, without interest.

4. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, and all other monies paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon.

5. "Governmental Subdivision" shall mean a county, or a city, or a village, or a school district, as the case may be.

6. "City" shall be deemed to mean and include any incorporated city of this state, whether operating under a home rule charter or otherwise.

7. "Village" shall be deemed to mean and include any incorporated village of this state now or hereafter having a population of more than five thousand (5,000) inhabitants.

8. "School District" shall be deemed to mean and include any independent, common or special school district of this state, which is now or hereafter may be wholly or partly within the limits of any such city, or any such village, and shall also mean any unorganized school territory governed by any county board of education.

9. "Salary" shall mean the periodical compensation of any public employe and shall also be deemed to mean "wages," and, in case of officers elected to a fee office, shall be deemed to include the term "fees".

10. "Present Public Employee" shall mean any public employe receiving salary from any county, city, village or school district on the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed or from whose funds his salary is paid.

11. "New Public Employee" shall mean any public employe who enters the public service in any county, city, village or school district subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed, or from whose funds his salary is paid.

12. "Temporary Employee" shall mean any person employed by or for any of the governmental subdivisions affected by the provisions of this act, who holds any position for a period not exceeding six (6) months within any twelve (12) month period as (a) a substitute for another regularly employed and on leave of absence, or (b) any employe holding any position of an essentially temporary character, excepting seasonal employment. The term "temporary employe" shall also be deemed to mean any part-time employe whose compensation does not exceed three hundred (\$300.00) dollars per annum, but shall not be construed to include any person employed in the classified civil service of any such governmental subdivision, whether as a probationer or otherwise. (As amended Act Apr. 17, 1941, c. 285, §1.)

Laws 1943, c. 492, provides:

"Sec. 1. **Application of act.**—This act shall apply to every city of the third class having an assessed valuation of more than \$12,000,000.

"Sec. 2. **City may pay penalty and interest due Minnesota Public Employees Retirement Associations, when.**—The governing body of such cities and the governing body of the Water and Light Commission thereof, may appropriate and pay from their revenues the accrued penalties and accrued interest to the Minnesota Public Employees Retirement Association for those employes of the Water and Light Department in such cities to

enable such employees to become members of such association, provided, such employees pay the back payroll deductions required by law."

Child welfare worker in county which has elected to come under Retirement Act, who receives her full compensation from the state, is not eligible under either the state employees retirement act or the municipal employees retirement act. Op. Atty. Gen., (331B-1), Aug. 27, 1940.

One belonging to Brainerd Fire Department Relief Association which provides no retirement benefits or pensions whatever is eligible for membership in Public Employees Retirement Association. Op. Atty. Gen. (331b-1), Oct. 22, 1942, Dec. 12, 1942.

City of Rochester, acting through the public utility board, may provide for payment of annuities or pensions to its employees greater than, and in addition to, those which are provided as a result of membership in state association, but the additional compensation and benefits under the city plan must be earned by the employee after the plan goes into effect, and cannot be mere additional compensation for past services already rendered. Op. Atty. Gen. (59a-33) Jan. 26, 1943.

Act of 1943, c. 492, approved Apr. 17, 1943, is constitutional. Op. Atty. Gen. (331b-1), June 1, 1943.

Amount required to enable employees of Virginia Water and Light Department to join association is payable from general fund. Op. Atty. Gen. (331b-1), June 1, 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.

School teachers who are not eligible in any other plan are eligible for membership, when the school board accepts this act. Op. Atty. Gen. (331b-1), Dec. 7, 1943.

(1). An employee engaged in welfare work, receiving part of compensation from state and federal funds and part from county is not eligible for membership in state employees retirement association but is eligible as a county employee to membership in public employees retirement association. Op. Atty. Gen. (331B-1), Dec. 14, 1939.

Persons employed in hospitals under authorization of Laws 1931, c. 56, are public employees within Municipal Employees Retirement Act. Op. Atty. Gen. (331b-1), Mar. 27, 1941.

Employees of a sanatorium operated by a commission appointed by county boards of two counties, financed principally by a tax levy on all of taxable property in the two counties computed on a basis of population, are public employees, but are not entitled to membership unless both counties operate under retirement act. Op. Atty. Gen. (331B-1), Jan. 28, 1942.

Employees of fire department, which is composed of both full time and voluntary firemen, may not waive their pension rights as members of Firemen's Relief Association and become members of Public Employees Retirement Association. Op. Atty. Gen. (331b-1), Apr. 30, 1942.

Special policeman and watchman in police department is not eligible if he is also a volunteer fireman and in which capacity he is a member of a local volunteer firemen's relief association which will pay pension benefits at such time as funds may warrant. Op. Atty. Gen. (331b-1), Aug. 26, 1942.

(2). Whether county employees shall be members of retirement association resides in county board and not county welfare board, and it is compulsory for employees of welfare board to have deductions made for retirement purposes, regardless of any determination by the county welfare board. Op. Atty. Gen. (331b-1), Nov. 25, 1942.

(12). In determining whether stenographer of county attorney is a temporary employee so that deductions may not be made from her salary, a temporary employee is a person who holds a position for a period not exceeding six months within any twelve month period, or also one whose compensation does not exceed \$300 per annum, and this \$300 means money paid to her by the county and does not include any money which county attorney may pay her for his own personal work. Op. Atty. Gen. (331b-1), June 23, 1942.

254-24. Public employees' retirement association established.—There is hereby established a public employees retirement association, the membership of which shall consist only of public employees, and employees of said association. Membership in said association shall be optional on the part of the present public employees, but all new public employees except elective public officers shall become members of said association by acceptance of public employment. In all governmental subdivisions, heretofore operating under and affected by the provisions of this act prior to January 1, 1933, present public employees who apply for membership therein after January 1, 1932, shall pay a membership fee of ten (\$10.00) dollars, but no present public employee shall be eligible to

apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee, every present public employee who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employee become a member of the retirement association July 1, 1931, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, present public employees who apply for membership in the retirement association after January 1, 1934, shall pay a membership fee of ten (\$10.00) dollars, but no such present public employee shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee every such present public employee who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such public employee become a member of the retirement association July 1, 1933, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to May 1, 1935, present public employees may apply for membership in said association at any time within a period of two (2) years from the first (1st) day of the first (1st) calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such present public employee who shall apply for membership in said association shall be required to pay a membership fee of ten (\$10.00) dollars. In addition thereto, any such present public employee shall pay into the retirement fund a sum equal to all accrued deductions which would have been made had such present public employee become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date of acceptance of the terms of this act by the governing body of the governmental subdivision concerned, together with interest thereon at the rate of five per cent (5%) per annum, compounded annually.

An elected public officer, eligible for membership in said association, may exercise his option to become a member thereof, but such option, once exercised, may not be withdrawn during the incumbency of such officer in the office to which he was elected or re-elected. If holding office at the time of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, the terms and conditions of membership pertaining to a present public employee shall govern the admission of such elected public officer to membership in said association. Any person elected to a public office in any governmental subdivision affected by the provisions of this act, subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, may apply for membership in said association at any time within a period of two (2) years from the date he first became eligible for membership in said association, and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such person who applies for membership in said association shall be required to pay a membership fee of ten (\$10.00) dollars. In addition thereto, any such elected public officer shall pay into

the retirement fund a sum equal to all accrued deductions which would have been made had such elected public officer become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date he first assumed the office to which he was elected, together with interest thereon at the rate of five per cent (5%) per annum, compounded annually.

Any person appointed to fill a vacancy in an elective office and becomes eligible thereby to membership in said association may likewise exercise his option to become a member thereof under the terms and conditions that govern the admission of elective public officers to membership in said association.

Except as in this act otherwise provided, membership in said association may not be terminated by resignation, or in any manner other than by death, or by leaving the employ of the governmental subdivision concerned. On or after the passage of this act, no employe of any governmental subdivision shall be required to become a member of any retirement fund or relief association, or to contribute to any fund established for such purpose, except the retirement fund established pursuant to the provisions of this act. (As amended Act Apr. 17, 1941, c. 285, §2.)

Absence for military service is a leave of absence without pay and upon employee's restoration to status, he may continue his membership in the retirement fund, as provided by law and rules thereunder. Op. Atty. Gen. (331a-9), Sept. 20, 1940.

Where a county elected from under act on July 31, 1931, one serving as county commissioner from 1926 to 1930 and from 1934 to 1942 and became county auditor January 4, 1943, he cannot elect to become a member of the association without making back payment for salary earned as county commissioner from 1934 to 1942, plus additional penalty prescribed by rules of the board, and a membership fee of \$10, and average earnings from February 1, 1935 to date of retirement would be considered in determining the annuity. Op. Atty. Gen. (331b-1), May 26, 1943.

Under Laws 1943, c. 492, §2, amount required to enable employees of Virginia Water and Light Department to join association is payable from general fund. Op. Atty. Gen. (331b-1), June 1, 1943.

Payments required of old employee not joining association from July 1, 1931, to July 1, 1943, and since such date, and an old highway department employee not contributing to fund must contribute from July 1, 1931, and not from date he was elected as county auditor and applied for membership. Op. Atty. Gen. (331b-1), Aug. 12, 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.

254-26. Retirement fund.—Every member of the retirement association shall pay into the retirement fund three and one-half per cent (3½%) of his salary as a public employe as and when paid, which shall be credited to the accumulated deductions of such member, and from and after July 1, 1943, every member shall pay into the retirement fund an additional one-half of one per cent (½%) of his salary as a public employe as and when paid, such additional one-half of one per cent (½%) shall be credited to the accumulated deductions of such member until the date upon which he, as an employe member, shall become eligible for non-employe membership in the association, but thereafter such additional payments so paid, from and after July 1, 1943, and subsequent additional payments shall be irretrievable by such member, or in the case of his death shall be irretrievable by the beneficiary or beneficiaries designated by such member, or, if none, by the legal representative of such member, and non-refundable by the association. Such additional one-half of one per cent (½%) so paid by all employe members who have attained eligibility for non-employe membership on or before July 1, 1943, and by all non-employe members shall, on and after July 1, 1943, be irretrievable by such members or in the case of death shall be irretrievable by the beneficiary or beneficiaries designated by such members, or, if none, by the legal representative of such members, and non-refundable by the association. Such payments shall be made by deduction thereof from

such salary, provided, however, that under such regulations as the retirement board may by general rule prescribe, any member may, at his option, continue to make contributions to the retirement fund on the basis of his last regular salary, in case said salary is diminished or reduced for any cause and thereby become entitled to the same annuity as though there had been no diminution or reduction in such salary. The head of each department is hereby directed to cause such deductions to be made at least once each month from the salary of each member of the retirement association and to issue or approve one voucher payable to the state treasurer for the aggregate amount so deducted from such salaries and to cause the same to be remitted within fifteen (15) days thereafter to the secretary of the retirement board together with a statement showing the amount of each of such deductions, the amount of salaries from which such deductions have been made and the names of the employes on whose accounts the same have been made. Such statement may be furnished in the form of a carbon or duplicate copy of departmental payroll abstracts and if not submitted in such form, the head of each department of any governmental subdivision affected by the provisions of this act is hereby required to furnish the secretary of the retirement board a carbon or duplicate copy of his departmental payroll abstract for the first (1st) pay period during the months of January and July, respectively, in each year and it shall be the duty of said secretary to check the copies of all such payroll abstracts against the membership records of said association so as to ascertain whether or not any omissions have been made by the several department heads in the reporting of any new public employes, as required by the 1940 Supplement of Mason's Minnesota Statutes of 1927, Section 254-29. All remittances so received by the secretary of the retirement board shall be promptly deposited with the state treasurer. Deductions from the salaries of district court reporters shall be made by the several county auditors of the state. Each county auditor of the state shall make such deduction from the amount of each warrant issued by him in payment of the salary of a district court reporter and shall, on or before the fifteenth (15th) day of each month, issue a warrant to the order of the state treasurer for the aggregate amount of all such deductions made by him during the preceding month and shall transmit the same to the secretary of the retirement board with a statement showing the amount of each of such deductions and the names of the district court reporters on whose account the same have been made, provided that the deductions from the salary of a district court reporter in a judicial district consisting of two or more counties shall be made by the auditor of the county in which the bond and official oath of such district court reporter are filed from the portion of his salary paid by such county. All salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of the association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from said fund. On and after July 1, 1943, every non-employe member of the association shall be required to pay into the retirement fund an additional amount equal to a one-half of one per cent (½%) salary deduction, or one-seventh (1/7) of the amount of his monthly assessment in lieu of such salary deduction, and such additional amounts so paid shall be irretrievable by such member, or in the case of his death shall be irretrievable by the beneficiary or beneficiaries designated by such member, or, if none, by the legal representative of such member, and non-refundable by the association. (As amended Apr. 17, 1941, c. 285, §3; Mar. 22, 1943, c. 167, §1.)

Contributions of persons found by court not entitled to membership may be refunded. Op. Atty. Gen. (331b-5), Feb. 11, 1943.

Laws 1943, c. 167, increasing employees contribution to retirement fund, is valid and violates no vested rights of an employee, and he cannot demand a refund and still remain an employee. Op. Atty. Gen. (331b), July 7, 1943.

254-29. Heads of departments to make monthly statements.—Within ninety (90) days after the acceptance of the terms of this act by the governing body of any governmental subdivision, the heads of departments affected shall submit to the retirement board a statement showing the name, age, sex, title, compensation, and length of service in his department of every public employe in his department as defined in the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-23, and on the first (1st) day of each calendar month thereafter shall furnish the retirement board a like statement of all new officers or employes who have entered the public service as public employes in his department, and at the same time shall notify the board of all removals, withdrawals and changes in salaries of any members of the retirement association which have occurred during the preceding month, and shall furnish to said board a like statement of all new officers or employes who have entered the service as public employes. (As amended Apr. 17, 1941, c. 285, §4.)

254-31. Payments upon retirement.—Whenever any member of said association shall cease to be a public employe for any reason other than death or retirement, he shall be paid, on demand, after thirty (30) days' notice, the full amount of the accumulated deductions standing to the credit of his or her individual account. Provided that any such member who has been in the public service for not less than ten (10) years and who has been a contributing member for not less than four (4) years immediately prior thereto, may, in lieu thereof, upon application in writing to the retirement board within sixty (60) days from the termination of his or her employment, become a non-employe member and to enjoy all the rights and privileges thereof upon such terms and conditions as to his employment and the payment of assessments in lieu of salary deductions as the retirement board may by general rule prescribe. Any member of the retirement association who has maintained his or her membership after leaving the public service by the payment of such assessments may terminate such membership by notice in writing to the retirement board, whereupon he or she shall be paid on demand, after thirty (30) days' notice, the full amount of the accumulated deductions standing to the credit of his or her individual account. (As amended Mar. 22, 1943, c. 167, §2.)

Leave of absence is not considered a separation from the service, though it may become such if it is prolonged beyond period of leave, and is not deducted in computing a person's years of service. Op. Atty. Gen. (331E-1), Jan. 28, 1942.

254-33. Retirement.—Except as in this act otherwise provided, whenever any member of the retirement association has been a public employe for a period of twenty (20) years and has attained the age of sixty-five (65) years, or when any such employe has been a public employe for a period of thirty-five (35) years and shall have attained the age of sixty (60) years, he shall be eligible for retirement, provided that in computing such terms of service, the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service as a public employe, in lieu of deductions, shall be included. Provided, however, that no person shall be entitled to receive a retirement annuity unless he has either attained the age of sixty-five (65) years and has been a public employe for a period of twenty (20) years, or has attained the age of sixty (60) years and has been a public employe for a period of at least thirty-five (35) years. Such retirement shall be made upon application of the member or of someone acting in his or her behalf, or in the case of any employe in active service upon the application of the head of the department in

which such member is employed. Except as in this act otherwise provided, upon such retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of the average annual salary received for the entire period of his or her membership in said association, provided, that in computing the average annual salary of members who have contributed by assessments, in lieu of salary deductions or otherwise, the average annual salary received while such member was in the public service as a member of said association shall, for the purpose of construing this section, be considered the salary of such member for that period of his membership in said association during which he made contributions to the retirement fund by assessments, in lieu of salary deductions or otherwise, and provided, further, that in computing the period of past service, employment by or for any of the governmental subdivisions as defined and enumerated by this act shall be counted, irrespective of whether or not the governing body of such governmental subdivision has qualified its public employes for membership in said association, and provided further, that no such retirement annuity shall, in any event, exceed the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per annum. Membership in said association for any present public employe shall commence upon the date of the acceptance of the application for membership by the retirement board, and, in no event, shall said retirement board grant to any member any pro rata annuity, as hereinafter provided for in the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-38, until and unless for (4) full years of membership in said association shall have elapsed, nor shall said retirement board grant any pro rata annuity based on a greater number of years of contributions to the retirement fund than then stand to the credit of such member on the books of said association, or any full retirement annuity, as hereinafter provided, until and unless five (5) full years of membership have so elapsed. No taxes shall be levied or raised for the aid of said retirement association or the membership thereof by any governmental subdivision of this state affected by the provisions of this act, unless the governing body of any such governmental subdivision, or any agency, board or commission thereof, shall by enactment of any ordinance, resolution, rule or regulation, cause the retirement of any public employe, as herein defined, solely by reason of having attained any fixed age. In the event that any such governmental subdivision shall adopt, by appropriate local legislation, compulsory retirement ages for public employes, as herein defined, then such governmental subdivision shall also assume the liability to pay one-half of the cost of all annuities thereafter granted by the retirement board pursuant to the provisions of this act to any public employe affected by such compulsory retirement requirements. The total amount of such contributory share of such annuities shall before September 30th of each year be duly determined by the said retirement board and certified to any such governmental subdivision for the period of the previous twelve months ending June 30th immediately preceding. Such said amount so certified by said retirement board shall be included in the next budget of any such governmental subdivision subsequent to the certification by said retirement board and shall be levied, collected and apportioned in the same manner as other taxes are levied, collected and apportioned, and for the express purposes of this section, the payment of all such annuities are hereby made obligations of the governmental subdivisions concerned in the proportion and to the extent provided. Any levy authorized under this section shall be in addition to and exclusive of all levies authorized for other purposes. (As amended Apr. 17, 1941, c. 285, §5; Mar. 22, 1943, c. 167, §3.)

254-36. Heirs or legal representatives to receive benefit of funds.—Whenever any member of said association shall die without having received an annuity

or without having received in annuity payments an amount equal to the total amount of the accumulated deductions from his or her salary, and such additional accumulated deductions, if any, as may have been paid into the retirement fund under and pursuant to the provisions of the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-38, exclusive, however, of any payments representing accrued interest, the full amount of such total accumulated deductions and additional accumulated deductions, if any, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the legal representatives of such member, upon establishment of a valid claim therefor. Provided, however, if no valid claim is established therefor, the said accumulated deductions shall remain with and become the property of said retirement association. (As amended Act Apr. 17, 1941, c. 285, §6.)

Upon demise of member, accumulated deductions are payable only to named beneficiary or legal representative of deceased, and cannot be paid to judge of probate for summary assignment to creditors. Op. Atty. Gen. (331b), July 23, 1941.

Where refund from Public Employees Retirement Association if claimed by two parties, the association should not assume to decide which one of claimants is entitled to the money but should deposit the amount in court. Op. Atty. Gen. (331b-5), May 13, 1943.

Procedure where employee died after wife named as beneficiary obtained a divorce. Op. Atty. Gen. (331b-5), Sept. 20, 1943.

254-37. Annuities payable monthly.—All annuities granted under the provisions of this act shall commence with the first (1st) day of the first (1st) calendar month next succeeding the date of termination of public service for the purpose of retirement, and shall be paid in equal monthly installments commencing one month thereafter, and continuing only during the lifetime of the annuitant, and shall not be increased, decreased or revoked, except as provided in this act. (As amended Act Apr. 17, 1941, c. 285, §7.)

254-38. Date of retirement.—No retirement annuity shall be granted under the provisions of this act until July 1, 1935, nor shall any member of the retirement association be entitled to receive a retirement annuity until he shall have contributed to the retirement fund either by salary deductions or otherwise for a period of four (4) full years, and unless he shall have been a member of said association for a like period. Provided, however, that if any member who is eligible for retirement and who has attained to the age of sixty-five (65) years has contributed to the retirement fund for a period of less than twenty (20) years, he shall be entitled to receive a pro rata retirement annuity for the remainder of his life in an amount bearing the same ratio to the full retirement annuity that the period of his salary deductions, or assessments in lieu thereof, bears to twenty (20) years, but fractional parts of a year shall not enter into the computation of such pro rata retirement annuity. Provided, further, that whenever any such member shall have become eligible to receive a pro rata retirement annuity, as hereinbefore provided, and shall have contributed to the retirement fund for a period of five (5) full years, and shall have been a member of said association for a like period, such member may, if he shall so elect at any time before making application for such pro rata retirement annuity make application for a full retirement annuity, or for a pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to his credit on the books of said association, and, in either case, the same shall be granted to him upon compliance with the following terms and conditions, to-wit:

(a) In case such member shall make application for a full retirement annuity, the retirement board, before granting said application, shall do the following things, to-wit:

1. Determine the number of full years of contributions required of such member to make a total of

twenty (20) full years of contributions by him to the retirement fund.

2. Determine the average annual amount of the accumulated deductions of such member for the period of his membership in said association.

3. Determine the amount of the additional accumulated deductions to be required of such member by multiplying the number of years as determined by the method prescribed in subparagraph one (1) hereof by the average annual amount of his accumulated deductions, as determined in the manner prescribed by subparagraph (2) hereof.

4. Require that such member shall pay into the retirement fund, before such full retirement annuity shall be granted, the total amount of his additional accumulated deductions, as determined by the methods prescribed by subparagraph three (3) hereof, and in addition thereto, a further amount representing an accrued interest payment, to be determined as follows:

In the case of fifteen (15) years of additional contributions required, an amount equal to forty-eight (48%) per cent of the total accumulated deductions required for such period, and in case of fourteen (14) years of additional contributions required, or less, an amount to be determined in like manner, based on percentages of the total accumulated deductions required in each instance, as hereinafter set forth, to-wit: Fourteen (14) years, fifty (50%) per cent; thirteen (13) years, fifty-two (52%) per cent; twelve (12) years, fifty-four (54%) per cent; eleven (11) years, fifty-six (56%) per cent; ten (10) years, fifty-eight (58%) per cent; nine (9) years, sixty (60%) per cent; eight (8) years, sixty-two (62%) per cent; seven (7) years, sixty-four (64%) per cent; six (6) years, sixty-six (66%) per cent; five (5) years, sixty-eight (68%) per cent; four (4) years, seventy (70%) per cent; three (3) years, seventy-two (72%) per cent; two (2) years, seventy-four (74%); one (1) year, seventy-six (76%) per cent.

Provided, that after the total amounts required of such member have been determined, as hereinbefore set forth, credit thereon shall be allowed such member for the amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for a full retirement annuity.

(b) In case such member shall make application for a pro rata retirement annuity based on a greater number of full years of contributions than then stand to his credit on the books of said association, the retirement board, in the manner hereinbefore provided, shall determine the amount of the additional accumulated deductions required under such application, and shall require that such applicant shall pay into the retirement fund before such greater pro rata retirement annuity is granted, all additional accumulated deductions required, and in addition thereto, such further and additional amounts representing accrued interest payments as may be determined in the manner hereinafter set forth, to-wit:

In case of one (1) additional year's credit, an amount equal to that percentage of the total accumulated deductions required for one (1) year as may be determined by multiplying the number of full years such member has contributed to the retirement fund by four (4%) per cent. In case of two (2) additional years' credit, an amount equal to that percentage of the additional accumulated deductions required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount equal to two (2%) per cent of the total accumulated deductions required. In like manner for three (3) additional years' credit, or more, an amount equal to that percentage required as in the case of one (1) additional year's credit, and, in addition thereto, the further amount computed on the following percentage of the total accumulated deductions required in each instance as hereinafter set forth, to-wit: Three (3) additional years' credit, four (4%) per cent; four (4) additional years' credit, six (6%) per cent; five (5)

additional years' credit, eight (8%) per cent; six (6) additional years' credit, ten (10%) per cent; seven (7) additional years' credit, twelve (12%) per cent; eight (8) additional years' credit, fourteen (14%) per cent; nine (9) additional years' credit, sixteen (16%) per cent; ten (10) additional years' credit, eighteen (18%) per cent; eleven (11) additional years' credit, twenty (20%) per cent; twelve (12) additional years' credit, twenty-two (22%) per cent; thirteen (13) additional years' credit, twenty-four (24%) per cent; fourteen (14) additional years' credit, twenty-six (26%) per cent; fifteen (15) additional years' credit, twenty-eight (28%) per cent. Provided that after such total amount required of such member has been determined, as hereinbefore set forth, credit thereon shall be allowed such member for any amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for such greater pro rata retirement annuity. Provided, further, nothing done under the terms of this act shall create or give any contract rights to any person, except the right to receive back upon withdrawal from the association, through separation from the public service any salary deductions made or assessments paid hereunder.

As hereinbefore provided, the minimum requirements for a retirement annuity for any applicant who has attained to the age of sixty-five (65) years, shall be twenty (20) years of contributions to the retirement fund or its equivalent, with an amount representing accrued interest earnings, as hereinbefore set forth. In the case of any member who becomes eligible for retirement at any age earlier than sixty-five (65) years, but not earlier than sixty (60) years, the said minimum requirements as to years of contributions before any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than then stand to his credit on the books of said association shall be granted, shall be twenty (20) years increased by one (1) year for each year that the said applicant is under the age of sixty-five (65) years, in accordance with the following schedule, to-wit: Age sixty-four (64), twenty-one (21) years; age sixty-three (63), twenty-two (22) years; age sixty-two (62), twenty-three (23) years; age sixty-one (61), twenty-four (24) years; age sixty (60), twenty-five (25) years, provided, however, that in the case of any member who shall have reached the age of sixty (60) years on May 1, 1937, and who, prior to June 1, 1936, shall have left the public service and maintained membership by payment of assessments, the minimum requirements for a full retirement annuity shall be twenty (20) years, regardless of the attained age at the time of any such retirement. No full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than the number of years he shall have been a member of said association shall be granted to any member of said association who has not attained to the age of sixty (60) years,

The retirement board shall by general rule adopt regulations and schedules of rates of payments required of applicants who shall become eligible for retirement at ages earlier than sixty-five (65) but not earlier than sixty (60) years, which regulations shall be provided for the granting of pro rata retirement annuities in amounts bearing the same ratio to a full retirement annuity as the period in full years of salary deductions, or assessments received in lieu thereof, or its equivalent with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the above schedule of minimum requirements as to years of contributions for a full retirement annuity at any given age of the applicant. Provided, however, that the retirement board shall not grant any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then

stand to the credit of the applicant until such member shall have been a member of said association for a period of five (5) full years. The total amount available from the retirement fund for distribution in annuity payments during any one month shall in no event exceed the total amount received from salary deductions and assessments in lieu thereof during the preceding month and should the total of annuities previously granted and then in force exceed such amount, it shall be the duty of the retirement board to restrict the total amount available for distribution in annuities for any such month accordingly and all annuities payable shall be proportionately reduced. The balance of any annuities not paid in full by reason of such restriction shall be paid proportionately during the first and subsequent months when such salary deductions and assessments exceed the total of all outstanding annuities then payable. (As amended Apr. 17, 1941, c. 285, §8; Mar. 22, 1943, c. 167, §4.)

254-40. Annuities not assignable.

Association may not deliver warrants in payment of refunds to employees' credit union to which employee is indebted, though it holds power of attorney. Op. Atty. Gen. (331b), Nov. 12, 1941.

254-44. Board may make regulations.—All matters and administrative details not specifically provided for in this act shall be governed by rules and regulations issued and promulgated by the retirement board. The final power to determine the status of any individual in the employ of any governmental subdivision, for the purposes of this act, is hereby vested in said board. (As amended Act Apr. 17, 1941, c. 285, §9.)

254-46. Application of the act.—The provisions of this act shall not apply to any county, city, village or school district, or the employes thereof, until and unless the governing body of any such county, city, village or school district shall have duly approved by a majority vote and by a resolution in writing of salary deductions for public employes, as contemplated by the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-46, and shall have filed a duly certified copy of such resolution of approval with the proper officials of the county, city, village or school district, whose duty it is to pay or authorize the payment of salaries, and one (1) such certified copy with the secretary of the retirement board. Salary deductions for present public employes in all governmental subdivisions heretofore operating under and affected by the provisions of this act prior to January 1, 1933, shall be computed from the first (1st) day of July, 1931, and in all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, shall be computed from the first (1st) day of July, 1933. Salary deductions for present public employes in all governmental subdivisions wherein the governing body thereof has duly accepted the terms and provisions of this act subsequent to May 1, 1935, and who shall thereafter become members of the retirement association shall be computed from the first (1st) day of the first (1st) calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned. (As amended Act Apr. 17, 1941, c. 285, §10.)

Whether county employees shall be members of retirement association resides in county board and not county welfare board, and it is compulsory for employees of welfare board to have deductions made for retirement purposes, regardless of any determination by the county welfare board. Op. Atty. Gen. (331b-1), Nov. 25, 1942.

MISCELLANEOUS PROVISIONS

254-47. Auto hire for municipal employees.

County auditor attending meeting called by tax commission in his own automobile is limited to a mileage of 5 cents per mile. Op. Atty. Gen., (104a-8), Mar. 12, 1941.

Sheriff going to another state for a prisoner is to be allowed his actual expenses which would be railroad fare, hotel, taxi bills, etc., and if he goes by car he is only allowed his actual expenses limited by statute. Op. Atty. Gen. (390a-11), Apr. 3, 1941.

This section does not affect mileage allowance provided in §854 to members of board of audit. Op. Atty. Gen. (124a), May 17, 1941.

Sheriffs acting under Laws 1941, c. 158, are to be paid on certification by judge of probate and he has no authority to certify mileage in excess of five cents per mile. Op. Atty. Gen. (390A-11), Aug. 5, 1941.

Members of county welfare board may under Laws 1939, c. 99, §16, receive seven cents per mile for use of an automobile in performance of their duties as members. Op. Atty. Gen. (104A-8), Sept. 29, 1941.

Section applies only to use by public officer of his own automobile and does not apply where he borrows or rents a car. Op. Atty. Gen. (104A-8), Mar. 3, 1942.

Sheriff's compensation in Rice County is controlled by sheriff's general salary law and the general mileage statute, and sheriff's salary is in full for his services in serving an insane warrant and conveying patient to state institution, and this applies to insane, feeble-minded and inebriate cases, and sheriff receives mileage at seven cents per mile and actual disbursement for travel, board and lodging of himself and patient and his authorized assistants paid on order of probate court, and sheriff is not entitled to any fees because his services for the county in juvenile cases are covered by general salary act, and sheriff's mileage rate for services rendered upon order of juvenile court is five cents per mile. Op. Atty. Gen. (390a-11), Oct. 21, 1942.

Statute applies where sheriff transports patients, either insane, feeble minded or inebriate, to a state institution, if no disbursements are made by sheriff for travel and he uses his car. Op. Atty. Gen. (390a-11), March 30, 1943.

Sheriff using own car in transporting person to state institution is limited to seven cents per mile. Op. Atty. Gen. (390a-12), Apr. 10, 1943.

Reimbursement by city of the fourth class for use of private automobile by employee may be made only on mileage basis, and not upon flat monthly basis. Op. Atty. Gen. (59a-29), Apr. 22, 1943.

254-49. Certain persons ineligible to appointment to office.—No county, city, village, borough, town or school district officer shall be appointed to fill a vacancy in any elective office if he has the power, either alone or as a member of a board, to make the appointment; and his ineligibility shall not be affected by his resignation before such appointment is made. This section shall not prevent the appointment of a member of a city or village council to a different office on the council. (As amended Apr. 9, 1943, c. 346, §1.)

Position of manager of municipal liquor store is not an elective municipal office. Op. Atty. Gen., (471J), May 22, 1940.

A town office is a "municipal office" within this section. Op. Atty. Gen., (47a-21), Jan. 10, 1941.

Where at annual election in village mayor was defeated and a councilman resigned, old council, including mayor, had power to meet and fill vacancy in office of councilman, but mayor was ineligible for appointment, even though appointment was not to become effective until after expiration of his term of office or after resignation as mayor. Op. Atty. Gen. (471H), Jan. 20, 1942.

Section does not apply in case of appointment of a part-time superintendent of village utility commission. Op. Atty. Gen. (624A-3), Jan. 29, 1942.

Where president of village council was defeated at December election and opposing candidate thereafter qualified and resigned after January 2, 1942, former president was eligible for appointment to fill vacancy. Op. Atty. Gen. (471H), Feb. 5, 1942.

If office of president of a village council becomes vacant because of his absence abroad, council may not appoint one of its members as president. Op. Atty. Gen. (471h), Feb. 9, 1943. This has been changed by Laws 1943, c. 99. Op. Atty. Gen. (471h), March 5, 1943.

Offices of village recorder and village assessor are incompatible. Op. Atty. Gen. (358e-2), May 28, 1943, overruling Apr. 21, 1943.

President or member of a village council may resign and become eligible for appointment to a vacancy which has occurred, or is about to occur, in the office of village clerk. Op. Atty. Gen. (470i), Sept. 10, 1943.

254-50. Sales by public officers.—No department or agency of the State of Minnesota, or any political subdivision thereof, or member or officer, acting in such capacity, of any town or county board or common council of any village or city, or any purchasing agent or purchasing agency of the state or any political subdivision thereof, shall sell or procure for sale or have in its possession or under its control for sale to any employees of the state or of any political sub-

division thereof, any article, material, product or merchandise of whatsoever nature, except any article, material, product or merchandise, the sale or distribution of which is or may hereafter be specifically authorized by law or ordinance. (Act Mar. 12, 1941, c. 58, §1.)

[15.055]

Statute intends to prevent governmental employee from acquiring benefit of quantity discounts secured by state in purchase of supplies and to require all employees to make such purchases through usual commercial channels. Op. Atty. Gen. (556A-9), Aug. 16, 1941.

County Sanatoria may sell drugs to employees at cost if such practice has a direct relationship to healthful employment of purchaser. Id.

Statute prohibits sale of merchandise to faculty members of a state teachers college when college book store is operated by college itself, and as a matter of fact such a college violates constitution in engaging in a private business. Op. Atty. Gen. (90F), Oct. 16, 1941.

Co-operative store for sale of books and school supplies operated at the University of Minnesota, open to students and faculty members upon payment of a small membership fee, and its only connection with the University being that board of regents permits it to use a room in one of its buildings, does not violate this section. Op. Atty. Gen. (618a-3), July 27, 1942.

254-50a. Same—Misdemeanor—Separate offenses.—Any person violating the provisions of Section (1) shall be deemed guilty of a misdemeanor. Each act prohibited by this Section shall constitute a separate violation and offense thereunder. (Act Mar. 12, 1941, c. 58, §2.)

[15.055]

MILITARY AND NAVAL SERVICE

254-50b. State officers and employees—Military or naval service—Leave of absence—Reinstatement.—Subdivision 1. Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who shall be a member of the national guard, the naval militia, or any other component of the militia of the state now or hereafter organized or constituted under state or federal law, or who shall be a member of the officers' reserve corps, the enlisted reserve corps, the naval reserve, the marine corps reserve, or any other reserve component of the military or naval forces of the United States now or hereafter organized or constituted under federal law, shall be entitled to leave of absence from his public office or employment without loss of pay, seniority status, efficiency rating, vacation, sick leave, or other benefits for all the time when he is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding a total of 15 days in any calendar year. Such leave shall be allowed only in case the required military or naval service is satisfactorily performed, which shall be presumed unless the contrary is established. Such leave shall not be allowed unless the officer or employee (a) returns to his public position immediately on being relieved from such military or naval service and not later than the expiration of the time herein limited for such leave, or (b) is prevented from so returning by physical or mental disability or other cause not due to his own fault, or (c) is required by proper authority to continue in such military or naval service beyond the time herein limited for such leave.

Subdivision 2. In case any such officer or employee shall be required by proper authority to continue in such military or naval service beyond the time for which leave with pay is allowed, he shall be entitled to leave for absence from his public office or employment without pay for all such additional service, with right of reinstatement thereafter upon the same conditions as hereinafter provided for reinstatement after active service in time of war or other emergency. (Apr. 4, 1941, c. 120, §1.)

[192.26]

Act applied to members of military organization who were called into service by federal government prior to

passage, and one called into service is entitled to fifteen days pay immediately upon expiration of fifteen days, and pay is not dependent upon his return to his public office or employment. Op. Atty. Gen. (310h), May 7, 1941.

City employees entering service of United States in some civilian capacities during existing emergencies are not entitled to leave of absence with pay. Op. Atty. Gen. (59a-41), June 12, 1941.

Entitlement to leave with or without pay and sick leave of state officers and employees engaged in training or active service with military or naval forces. Op. Atty. Gen. (644), June 25, 1941.

Right to military leave is automatically granted and no request for leave is necessary. Op. Atty. Gen. (172c-2), July 18, 1941.

State in paying for any number of days less than month obtained proper per diem payment by dividing monthly salary by number of days in month. Op. Atty. Gen. (644), July 29, 1941.

School teachers, members of National Guard, who entered service on December 16, 1940, so that a fifteen day leave period immediately following that date would include a Christmas vacation period for a part of which teachers do not receive pay, are entitled to military leave pay for full fifteen days, even if interrupting vacation would require period to extend into next year. Op. Atty. Gen. (310h), July 31, 1941.

Persons entering military service prior to passage of act and in 1940 are not entitled to 15 days pay for 1940 and 1941, being entitled to leave pay for only 15 days. Id.

Limitation of military leave with pay is 15 days, and one remaining in service in subsequent years is not entitled to additional pay for the second or succeeding calendar year. Id.

Entitlement of municipal employee to military leave with pay. Id.

There is a distinction between a resignation and a leave of absence. Op. Atty. Gen. (331a-11), Nov. 18, 1941.

Members of Minnesota Defense Force are entitled to leave of absence with pay, as well as to further leave of absence without pay under certain conditions. Op. Atty. Gen. (310H-1), Jan. 5, 1942.

An employee called in Minnesota Defense Force for active duty is entitled to immediate payment for accumulated annual leave as well as compensation for service with defense force, though his name will appear simultaneously on state payroll for his former department and on payroll for defense force. Op. Atty. Gen. (644D), Jan. 13, 1942.

Member of Minnesota defense force is not entitled to 15 days pay in nature of military leave unless called to active duty with that force. Op. Atty. Gen. (644D), Mar. 6, 1942.

City employee who was member of National Guard and was ordered into active service in 1941 and served in Alaska and was furloughed to Reserve and returned to work for city eleven months later, when he was again called into active service, was entitled to fifteen days' leave of absence with pay for year 1941 and fifteen days' leave with pay for year 1942. Op. Atty. Gen. (310H-1(a)), Mar. 13, 1942.

State employee ordered to report for active military duty during period of time he was on approved leave of absence without pay is not entitled to 15 days military pay provided by this act. Op. Atty. Gen. (644D), Mar. 26, 1942.

Village president of council in armed forces is not entitled to continue to draw his salary for balance of his entire term. Op. Atty. Gen. (310h-1-a), Apr. 1, 1942.

Director of institutions is the appointing authority with reference to positions as superintendents of state mental hospitals and other institutions under their jurisdiction, and has responsibility for granting military leaves and reinstating persons on such leaves. Op. Atty. Gen. (644d), Apr. 9, 1942.

Act applies to employees in classified and unclassified service alike. Id.

Act applies to village employees with fixed terms, and they may be reappointed while absent on military leave of absence. Op. Atty. Gen. (310h-1-a), Apr. 10, 1942.

Court may appoint an acting incumbent to position of clerk of probate court to take office when regular clerk leaves for services in state guard, and appointment of an acting incumbent need not be deferred until expiration of fifteen days military leave, and compensation for fifteen days may be paid to both regular clerk and acting clerk, notwithstanding that maximum clerk hire prescribed by previous acts will be exceeded thereby. Op. Atty. Gen. (310h-1-a), Apr. 21, 1942.

Act does not cover those going into war or defense industries unless they are enrolled in the armed forces of the military organizations described in the act, and those going into merely war defense industries must obtain usual leave of absence. Op. Atty. Gen. (644d), May 9, 1942.

An employee receiving meals as a part of his compensation is entitled to an allowance for meals while on annual leave. Id.

Act is self-executing and requires no application for leave. Op. Atty. Gen. (121a-1), Aug. 22, 1942.

Act applies to office of justice of the peace. Op. Atty. Gen. (310h-1-a), Sept. 4, 1942.

Alderman entering armed forces does not thereby vacate his office, but there is a vacancy if he resigns, and it is a question of fact whether there is a vacancy when an alderman accepts a defense job which makes it im-

possible to attend council meetings, and if there is a vacancy it must be filled by proper authority. Op. Atty. Gen. (63a-11, 310h-1-a), Sept. 21, 1942.

Members of Women's Reserve of the Naval Reserve of United States, popularly known as the Waves, are entitled to privileges of act. Op. Atty. Gen. (644d), Oct. 17, 1942.

Resignation of county superintendent of schools entering army air force may be held up to determine whether or not he desires to make application for leave of absence. Op. Atty. Gen. (310h-1), Oct. 29, 1942.

Inductees who are later transferred to enlisted reserve corps are not entitled to 15 days military leave with pay. Op. Atty. Gen. (310h-1-a), Nov. 10, 1942.

County attorney called into war service may either take a leave of absence without pay, or, with consent and approval of county board, appoint an assistant county attorney and pay him out of his official salary. Op. Atty. Gen. (121a-1), Jan. 30, 1943.

There is no provision in the law for leave of absence to be granted to a county officer elected by the people, except to enter the armed forces. Op. Atty. Gen. (399), Feb. 5, 1943.

County attorney may appoint assistant before entering military service, subject to approval of county board. Op. Atty. Gen. (121a-1), Feb. 11, 1943.

Duties of office of county surveyor may be performed by deputy while county surveyor is in military service. Op. Atty. Gen. (123), Feb. 11, 1943.

Status of an employee in either the classified or unclassified service of the state is not affected by taking the oath upon entry into the military or naval service of the United States, but when employee enters into active duty he must elect to do one of three things, inform his appointing authority that he will be on military leave under Laws 1941, c. 120, request a leave of absence under the state civil service act, or resign from the service of the state, and appointing authority is required to immediately prepare and transmit proper documents to director of the state civil service. Op. Atty. Gen. (644d), Apr. 17, 1943.

Teacher under contract for term of employment to begin in the future is not entitled to reinstatement. Op. Atty. Gen. (172c-2), May 11, 1943.

City employees who are members of state guard are entitled to military leave with pay while attending field training activities under orders issued by Adjutant General. Op. Atty. Gen. (319h-1-a), June 30, 1943.

Police officer of Duluth enlisting in Navy Reserves and later ordered to report for assignment to active duty was not entitled to 15 days military leave with pay by virtue of this act. Op. Atty. Gen. (310h-1-a), Aug. 4, 1943.

Leave of absence is granted by virtue of law, not because of action of school board. Law does not authorize leave of absence to enter Red Cross service. Authorizes leave on entering military service. Upon reinstatement, the teacher has the same right as though there had been no leave of absence but employment had been continuous. Op. Atty. Gen. (174a), Sept. 27, 1943.

Inductees later transferred to Reserve Corps are not entitled to 15 days military leave with pay, notwithstanding that they continued to work at public employment during the customary 21 days furlough. Op. Atty. Gen. (310h-1-a), Oct. 21, 1943.

(1).

This subdivision is inapplicable to men inducted under selective training and service act of 1940 during their training period, until completion at which they are not transferred to a reserve component of the land or naval forces of the United States. Op. Atty. Gen. (310h), Apr. 30, 1941.

254-50c. Same—Conditions.—Subdivision 1. Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who engages in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the state or of the United States for which leave is not otherwise allowed by law shall be entitled to leave of absence from his public office or employment without pay during such service, with right of reinstatement as hereinafter provided. This shall not be construed to preclude the allowance of leave with pay for such service to any person entitled thereto under Section 1 of this act.

Subdivision 2. Except as otherwise hereinafter provided, upon the completion of such service such officer or employee shall be reinstated in the public position which he held at the time of entry into such service at the same salary which he would have received if he had not taken such leave, upon the following conditions: (1) that the position has not been abolished or that the term thereof, if limited, has not expired; (2) that he is not physically or mentally

disabled from performing the duties of such position; (3) that he makes written application for reinstatement to the appointing authority within 45 days after termination of such service; (4) that he submits an honorable discharge or other form of release by proper authority indicating that his military or naval service was satisfactory. Upon such reinstatement the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if he had been actually employed during the time of such leave. No officer or employee so reinstated shall be removed or discharged within one year thereafter except for cause, after notice and hearing; but this shall not operate to extend a term of service limited by law.

Subdivision 3. Any public officer elected or appointed for a definite term who, before the expiration of such term, returns from military or naval service under leave of absence without pay under this act, in lieu of making written application for reinstatement as hereinbefore provided, shall file in the same office where his official oath is filed within 45 days after termination of such military or naval service a verified certificate that he has complied with the conditions for reinstatement hereinbefore prescribed, and he shall thereupon be deemed to have resumed his office, with all the rights and privileges granted by this act; provided, that any false statement in such certificate shall be ground for his removal.

Subdivision 4. No person who is engaged in active service in any of the military or naval forces of the state or of the United States within or without the state shall thereby be disqualified from being a candidate for or from being elected or appointed to any public office within the state if he is otherwise eligible therefor. A person who is elected or appointed to any such office and who at the commencement of the term thereof is engaged in any such active military or naval service shall not thereby be disqualified from assuming and holding such office if he is otherwise eligible therefor and if his military or naval service is not constitutionally or legally incompatible therewith. Such person, if prevented by his military or naval duties from taking office in person, may file his oath of office, also his bond, if required, by mail or other means of transmittal, and shall thereupon be deemed to have assumed office, subject to all the provisions of this act, so far as applicable. (Apr. 4, 1941, c. 120, §2.)

[192.261]

Section grants to draftee leave of absence of municipal employment, but without pay. Op. Atty. Gen. (310h), Apr. 30, 1941.

Right of returning soldier and sailor to same position discussed. Op. Atty. Gen. (310H-1(a)), Mar. 14, 1942.

Whether teacher entering into contract with a district is an "employee" of district when inducted into federal service before school term begins is a question of fact, depending upon nature of contract. Op. Atty. Gen. (310h-1-a), Apr. 14, 1942.

School trustee who entered military service did not thereby vacate office—Acting substitute serves for unexpired term until soldier return—No vacancy to be filled by election. Op. Atty. Gen. (7680), May 11, 1942.

Employees in civil service of city of Mankato who are in military or naval service are entitled to leave of absence with right of reinstatement. Op. Atty. Gen. (310h-1-a), July 31, 1942.

When physician on board of health of a city leaves for military service, he is entitled to leave of absence, and appointing authority may have a substitute installed. Op. Atty. Gen. (310h-1-a), Aug. 3, 1942.

Member of volunteer officer corps not receiving a commission and placed on enlisted reserve is entitled to resume his office with public schools. Op. Atty. Gen. (310h-1-a), Nov. 9, 1942.

Inductees who are later transferred to enlisted reserve corps are not entitled to 15 days military leave with pay. Op. Atty. Gen. (310h-1-a), Nov. 10, 1942.

Qualification of members of legislature for leave of absence on account of military service. Op. Atty. Gen. (280d), Nov. 21, 1942.

Where county treasurer entered military service and was granted a leave of absence and an acting substitute was appointed, and was later re-elected, he should qualify for office by taking oath and furnishing bond

before appointment of acting incumbent for new term, and upon appointment of an acting incumbent, such incumbent should take oath of office and furnish same bond as required of county treasurer. Op. Atty. Gen., (450a), Dec. 18, 1942.

It is up to the state senate to determine whether or not its members absent in armed forces may receive their compensation. Op. Atty. Gen. (280d), Jan. 22, 1943.

Status of teachers in military service, and right to and order of reinstatement. Op. Atty. Gen. (310h-1-a), March 1, 1943.

Where a teacher goes on military leave and two other teachers are respectively advanced and first teacher returns from military service, all will be reinstated in their original positions, since advancement of those remaining is only temporary and in the nature of substitution. Op. Atty. Gen. (172c-2), May 11, 1943.

Leave of absence to a clerk of court entering military service is automatically granted by law and no certificate of any kind need be filed anywhere until he returns from the service when he will file his certificate in the office where his oath is filed, showing that his military service terminated within 45 days previous thereto. Op. Atty. Gen. (144a), June 3, 1943.

Members of the Gilbert Fire Department Relief Association are entitled to a leave of absence during military service with right of reinstatement. Op. Atty. Gen. (198a-3), June 4, 1943.

A school district cannot terminate contract of teacher on military leave, either with or without cause, since a person in military service is entitled to a hearing and a hearing may not be held while he is in service. Op. Atty. Gen. (172c-2), June 5, 1943.

Until the time that an employee makes application for reinstatement, within 45 days of discharge, he is on leave of absence granted by authority of this law. Op. Atty. Gen. (331a-9), June 7, 1943.

Merchant Marine members are not entitled to military leave. Op. Atty. Gen. (310h-11-a), Sept. 3, 1943.

Reinstatement of court commissioner upon completion of military or naval service. Op. Atty. Gen. (310h-1-a), Sept. 16, 1943.

Subd. 2.

A "short call" substitute teacher is entitled to same status on return from military service. Op. Atty. Gen. (172), May 27, 1942.

254-50d. Rights accrued.—Any public officer or employee receiving leave of absence under this act and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all such rights accrued up to the time of taking such leave, and shall have all rights subsequently accruing under such system as if he had been actually employed during the time of such leave, provided, that so far as any increase in the amount of money benefits accruing with respect to the time of such leave is dependent upon the payment of any contributions or assessments, the right to such increase shall be conditioned upon the payment of such contributions or assessments within such reasonable time after the termination of such leave and upon such terms as the authorities in charge of such system may prescribe. (Apr. 4, 1941, c. 120, §3.)

[192.262]

Employees Retirement Association board may permit employees on military leave to make payments in a manner other than by salary deductions. Op. Atty. Gen., Sept. 15, 1941.

A police relief association may make provisions for continuing pension benefits to members in military service. Op. Atty. Gen. (785j), June 3, 1942.

When physician on board of health of a city leaves for military service, he is entitled to leave of absence, and appointing authority may have a substitute installed. Op. Atty. Gen. (310h-1-a), Aug. 3, 1942.

Where both municipal judge and special municipal judge are on leave in service of military service of the United States, their positions should be filled by the Governor, but in the meantime Mayor should appoint a practicing attorney from day to day. Op. Atty. Gen. (307j), Nov. 2, 1942.

Member of volunteer officer corps not receiving a commission and placed on enlisted reserve is entitled to resume his office with public schools. Op. Atty. Gen. (310h-1-a), Nov. 9, 1942.

Members of the Gilbert Fire Department Relief Association are entitled to a leave of absence during military service with right of reinstatement. Op. Atty. Gen. (198-3), June 4, 1943.

One who was on military leave and discharged honorably from army must file application for reinstatement within 45 days who enjoyed benefits of this act, and if employing department merely gives notice to State Employees Retirement Association that the employee is still on leave, such leave entitled employee only to those rights granted under Laws 1941, c. 391, §10. Op. Atty. Gen. (331a-9), June 7, 1943.

Until the time that an employee makes application for reinstatement, within 45 days of discharge, he is on leave of absence granted by authority of this law. Id.

254-50e. Acting incumbent.—In any case where a public officer or employee is absent with leave under the provisions of this act and where it is necessary in the public interest to provide for the performance of the duties of his position during such absence, the authority having power to fill a vacancy in the position may appoint a substitute, to be known as acting incumbent, who shall qualify as required for the regular incumbent, shall receive the same compensation as fixed by law, otherwise such compensation as may be fixed by proper authority, and shall have all the powers and perform all the duties of the position until the return of the regular incumbent; provided, that this shall not preclude the making of any other provision for the discharge of the duties of the position which may be otherwise authorized by law. (Apr. 4, 1941, c. 120, §4.)

[192.263]

Where director of division of game and fish is ordered into active military service, a vacancy exists, and deputy director performing duties of director is entitled to salary of director during vacancy to be paid from fund allotted and encumbered to pay director's salary instead of salary of deputy. Op. Atty. Gen. (983F), Feb. 5, 1942.

Where members of police force under civil service are called or have enlisted in active military or naval service, their places may be temporarily filled during their absence by an "acting incumbent", and persons elected could be chosen from qualified list of applicants, and then if a vacancy should arise in same position otherwise than by reason of temporary absence for military or naval service, so-called "acting incumbent" could be assigned to that vacancy permanently, and another selection could be made from qualified list to fill the "acting incumbent" vacancy, and a civil service commission has power to make a rule to that effect. Op. Atty. Gen. (785E-2), Feb. 24, 1942.

Schoolboard is not required to fill a vacancy created by a member of the board entering army during present war unless it deems it necessary in the public interest to appoint a substitute. Op. Atty. Gen. (161a-25), July 24, 1942.

Where county attorney is inducted into military service and appoints an assistant who becomes too ill to attend to his duties, it is duty of county board to communicate with county attorney with respect to appointment of an assistant, but if county attorney decides to take leave of absence under Laws 1941, c. 120, county board should appoint a substitute to act until county attorney returns. Op. Atty. Gen. (121a-1), Aug. 13, 1942.

Civil service commission fearing shortage of firemen due to the war should conduct examination and endeavor to secure names for eligible list though it believes that no one would be interested in taking the examination, and then if necessary, appoint temporary firemen, and employees may be given leaves of absence and temporary substitutes may be appointed to serve during their absence in the military service. Op. Atty. Gen. (688b), Aug. 18, 1942.

Where county attorney went into military service without making an effectual appointment of an assistant, county board had power either to appoint an attorney for county, or to appoint an acting county attorney to serve during absence of regular county attorney in military service, if such action was necessary in public interest. Op. Atty. Gen. (121a-1), Aug. 22, 1942.

Section applies only to primary elections. Op. Atty. Gen. (911q), Sept. 16, 1942.

A county commissioner who is elected and qualified may enter the armed forces with privileges of this act, but he cannot appoint anyone to perform duties of his office during his absence, this section covering method of filling his position. Op. Atty. Gen. (310h-1-a), Sept. 29, 1942.

Contract of teacher who substitutes during absence of one who is on military leave must be in writing. Op. Atty. Gen. (172c-2), Apr. 13, 1943.

Judge of district court has the appointing authority to appoint an acting incumbent to perform the duties of the office of clerk of court during the time that the regular clerk is on leave in the military service. Op. Atty. Gen. (144a), June 3, 1943.

Teacher who is employed to fill position temporarily when regular teacher is in military service should have a contract stating that it is a temporary employment, and stating the facts giving rise to the vacancy. Op. Atty. Gen. (172c-2), June 5, 1943.

County surveyor and county attorney absent in military service and having made their own financial arrangement with assistant or deputies selected by them are entitled to receive salary and to pay their assistant, and county board should not pay such assistant directly. Op. Atty. Gen. (121a-1), July 14, 1943.

When village President leaves for military service, council may appoint President pro tem, when public

necessary does not require acting substitute. Op. Atty. Gen. (471h), Aug. 3, 1943.

It is possible that a city attorney may act for the county in some specific matter without engaging in an incompatible activity. Op. Atty. Gen. (358a-1), Aug. 13, 1943.

Acting incumbent is appointed by judges of district court when court commissioner is on military leave. Op. Atty. Gen. (310h-1-a), Sept. 16, 1943.

County board need not appoint an acting substitute if deputy can carry on the work and the personal presence of the absent officer is not required for any purpose. Op. Atty. Gen. (310h-1-a), Nov. 2, 1943.

254-50f. Right and privileges not exclusive.—The rights and privileges granted by this act shall be supplementary to and not exclusive of any other rights or privileges conferred by law on public officers or employees, but shall not obtain in any case where the military or naval service is constitutionally or legally incompatible with the public office or employment. (Apr. 4, 1941, c. 120, §5.)

[192.264]

Act Apr. 4, 1941, c. 120, §6, repeals Masons Supp., 1940, §2425.

OFFICIAL RECORDS

254-50g. Public officers to keep records—Manner.

—All officers and agencies of the state, and all officers and agencies of the counties, cities, villages, and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities. All such public records shall be made on paper of durable quality and with the use of ink, carbon papers, and typewriter ribbons of such quality as to insure permanent records. Every public officer and agency is empowered to record or copy public records by any photographic device, approved by the Minnesota Historical Society, which clearly and accurately records or copies them. (Act Apr. 28, 1941, c. 553, §1.)

[15.17]

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.

254-50h. Duty of administrative officers.—The

chief administrative officer of each public agency shall be responsible for the preservation and care of the agency's public records, which shall include written or printed books, papers, letters, contracts, documents, maps, plans and other records made or received pursuant to law or in connection with the transaction of public business. It shall be the duty of each such agency, and of the chief administrative officer thereof, to carefully protect and preserve public records from deterioration, mutilation, loss or destruction. Records of record books may be repaired, renovated, or rebound when necessary to preserve them properly. (Act Apr. 28, 1941, c. 553, §2.)

[15.17]

254-50i. Same—Delivery of public records to successors.—Every legal custodian of public records, at the expiration of his term of office or authority, or on his death his legal representative, shall deliver to his successor in office all public records in his custody;

and the successor shall receipt therefor to his predecessor or his legal representative and shall file in his office a signed acknowledgment of the delivery. Every public officer shall demand from his predecessor in office, or his legal representative, the delivery of all public records belonging to his office. (Act Apr. 28, 1941, c. 553, §3.)

[15.17]

254-50j. Arrangement — Inspection — Certified copies.—Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use. Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person;

and he shall, upon the demand of any person furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law. (Act Apr. 28, 1941, c. 553, §4.) [15.17]

Jail register is not a public record open to the inspection of the public and sheriff should permit examination thereof only in proper cases of which he is the judge. Op. Atty. Gen. (8511), June 18, 1943.

Records of persons engaged in hairdressing and beauty culture business are public records and anyone has right to inspect and copy the list. Op. Atty. Gen. (8511), July 9, 1943.

Records kept by Division of Public Institutions may be disclosed to selective service organization but not to private charity organization. Op. Atty. Gen. (851b), Sept. 10, 1943.

STATE CIVIL SERVICE

254-51. Civil Service Board created—Members, etc.

Act Apr. 24, 1941, c. 423, provides for the creation of a county civil service commission in counties having a population of over 150,000 and an area of over 5,000 square miles, and sets out the powers and duties of such commission.

Laws 1941, c. 423, §§5h, 7, and 30 amended. Laws 1943, c. 608.

Act Apr. 28, 1941, c. 513, creates a county civil service commission in counties having populations of between 250,000 and 450,000, and prescribes duties of city civil service bureaus therein.

Laws 1941, c. 513, §§4(13), 6, 7 and 13 amended. Laws 1943, c. 259.

Laws 1943, c. 259, An Act relating to civil service for counties having a population of 250,000 to 450,000, and amending Laws 1941, c. 513, §4, subd. 13, and §§6, 7 and 13.

Laws 1943, c. 608, amends §§5h, 7 and 30, Laws 1941, c. 423, which provided for the creation of a county civil service commission in counties having a population of over 150,000 and an area of over 5,000 square miles.

Effective date of provision restricting amount of pay to board members to \$450 in any one year was May 20, 1941. Op. Atty. Gen. (644A), Sept. 22, 1941.

254-52. Director of State Civil Service—Appointment, qualifications, examination—Etc.

This section is not a legislative recognition of continuance of the veterans' preference act. State v. Stassen, 294NW647. See Dun. Dig. 7986.

Director of civil service is an officer of the state. Op. Atty. Gen. (644), May 9, 1940.

It is neither mandatory nor permissible for a bond to be required or authorized from the director. Id.

254-53. Director to be administrative and executive head; etc.

Responsibility for determining method of conversion of monthly salary to daily equivalent is upon the state auditor. Op. Atty. Gen. (644f), Nov. 23, 1942.

(2)(b).

Employees of state highway department working on a purely hourly basis could have no claim to any vacation prior to date of a rule of civil service board giving them right to a vacation since vacation with pay for such period would be a mere gratuity, and one which could not be paid from trunk highway fund. Nollet v. H., 210M 88, 297NW164, 134ALR192. See Dun. Dig. 8846ccc.

Whether or not Civil Service Board may authorize payment of difference between military pay and state salary to an employee ordered into military service, its order or rule therefor would be ineffective without an appropriation for that purpose. Op. Atty. Gen. (644), Oct. 28, 1940.

Entitlement to leave with or without pay and sick leave of state officers and employees engaged in training or active service with military or naval forces. Op. Atty. Gen. (644), June 25, 1941.

State in paying for any number of days less than month obtained proper per diem payment by dividing monthly salary by number of days in month. Op. Atty. Gen. (644), July 29, 1941.

Rule permitting unused vacation pay to be paid to heirs or estate of deceased employe is valid. Op. Atty. Gen. (644f), Nov. 6, 1941.

Question whether civil service board may adopt a compensation policy providing additional compensation to employees in the classified service for the duration of the war involves questions of fact and policy, final determination of which is beyond scope of authority of attorney general. Op. Atty. Gen. (644f), June 22, 1942.

(2)(d).

Deceased employee's heirs or estate not entitled to pay for accumulated unused annual leave or vacation. Op. Atty. Gen. (644), July 29, 1941.

Entitlement of municipal employe to military leave with pay. Op. Atty. Gen. (310h), July 31, 1941.

254-54. Duties and powers of civil service board.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction

in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. Op. Atty. Gen. (644), Nov. 22, 1939.

The civil service board does not have the power to modify its rules so as to uniformly permit all employees in the state service who are presently earning more than the maximum salary provided for the appropriate class of employment to continue to receive that salary without reduction to the maximum on the effective date of the compensation plan. Op. Atty. Gen. (644), June 28, 1941.

The civil service board has the power to modify its rules so as to uniformly permit all employees earning less than a specified sum to be determined, to retain subsequent to the effective date of the compensation plan, the present salary even if such salary is in excess of the maximum provided for the appropriate class. Id.

The civil service board has the power to modify its rules so as to uniformly permit employees who have had a specified duration of state employment, to retain their present salaries subsequent to the effective date of the compensation plan, even if such salary is in excess of the maximum provided for the appropriate class. Id.

The civil service board has the power to modify its rules so as to provide that all employees who are either earning less than a certain specified sum, or who have had a specified duration of state employment, to retain their present salaries subsequent to the effective date of the compensation plan even if such salary is in excess of the maximum provided for the appropriate class. Id.

Civil Service Act superseded former veterans preference law as to state employees, and gave a veteran employee a civil service status without a probation period if on effective date of act the veteran was a state employee, and civil service board had the power and it was its duty to grant a hearing as to status of a war veteran claiming to have been wrongfully discharged before effective date of act, though he was not on the payroll of the state on the effective date of the act. State v. Elston, 7NW(2d)750. See Dun. Dig. 8846ccc.

State director of civil service has neither the duty nor power to approve or disapprove of lay-off action by appointing authority. Op. Atty. Gen. 644(a), Dec. 9, 1943.

(a). Question whether civil service board may adopt a compensation policy providing additional compensation to employees in the classified service for the duration of the war involves questions of fact and policy, final determination of which is beyond scope of authority of attorney general. Op. Atty. Gen. (644f), June 22, 1942.

(c). Number of hours of work and compensation for overtime are governed by rules of board. Op. Atty. Gen. (644), Apr. 16, 1941.

(g). Civil service board has power to determine status of an individual claiming to be entitled to a permanent civil service status growing out of a wrongful discharge of a veteran prior to effective date of act. State v. Stassen, 294NW647.

254-57. Divisions—unclassified service—classified service.—The civil service of the state of Minnesota is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

a. Chosen by election or appointed to fill an elective office;

b. heads of departments required by law to be appointed by the governor or other elective officers and the executive or administrative heads of departments, divisions and institutions specifically established by law, except that with respect to state institutions, the provisions of Mason's Minnesota Statutes of 1927, Section 4405, are hereby continued in effect; provided, this sub-section shall not apply to heads of divisions now existing in the department of labor and industry, nor to the director of the division of vocational rehabilitation in the department of education. (As amended Apr. 28, 1941, c. 533, §1; Apr. 24, 1943, c. 605, §1.)

c. Except as herein otherwise enlarged, one private secretary to each of the elective officers of this state, and in addition thereto, one deputy, clerk or employee to the secretary of state, state auditor and state treasurer;

d. All deputy registrars of motor vehicles, and seasonal help employed by the registrar and his deputies to assist in the issuance of motor vehicle licenses;

e. One executive secretary and five other confidential employes in the office of the governor, and one confidential employee for the governor in the office of the adjutant general;

f. Officers and employees of the senate and house of representatives of the legislature;

g. Teachers, research assistants, student employees on less than half-time pay basis, presidents, deans, and administrative officers in the teachers' colleges; but this subdivision shall not be construed to include the custodial, clerical, or maintenance employees, or any administrative officers, or clerical workers performing duties in connection with the business administration of such institutions;

h. Officers and enlisted men in the national guard and the naval militia;

i. Election officers;

j. Persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority;

k. Persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make, or conduct a special inquiry, investigation, examination or installation;

l. Deputy attorneys general, assistant attorneys general, legal assistants, examiners, three confidential employees, and special counsel to state departments appointed by the attorney general or employed with his authorization;

m. All courts and all employees thereof, referees, receivers, jurors and notaries public, except referees and adjusters employed by the industrial commission;

n. Patient and inmate help in state charitable, penal and correctional institutions;

o. State highway patrolmen now operating under the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, sections 2554 1/2, 2554 1/2 a, 2554 1/2 b, 2554 1/2 c, 2554 1/2 d and 2554 1/2 e; providing, however, that with respect to the method of selection and appointment only, all state highway patrolmen who shall be appointed subsequent to the effective date of this act shall be selected and appointed in accordance with the provisions hereof relating to the classified service, but in all other respects the provisions of this act shall not apply to state highway patrolmen.

p. The deputy commissioner of agriculture, dairy and food. (As amended Act Apr. 20, 1943, c. 543, §1.)

(2) All positions involving unskilled labor shall constitute a labor service: The civil service board shall designate the class or classes of positions which shall comprise the labor service and shall create rules for that service designed to expedite and make more economical the personnel processes in such service. Such rules shall provide, among other things, for: (a) certification of the entire list of eligibles, which list may be supplemented by eligibles certified by any appointing authority, to appointing authorities from which selection and appointment to positions in the labor service may be made without limitation; (b) layoff and reemployment of employees within the discretion of the appointing authority without recourse and without regard to factors considered in similar transactions in classified positions in other than the labor service; (c) simplified and expedient procedures of effecting and reporting personnel transactions concerning employees in the labor service; (d) temporary demotion and promotion of employees in the labor service as the needs of the service may require; (e) control, in the labor service, of leaves of absence with and without pay, sick leave and hours of employment by the appointing authority; provided that any proposed deviation from the rules on these subjects governing the classified service other than the labor service shall be subject to the approval of the civil service board; (f) appointments of special labor, under project or other unusual employment circumstances, to positions in the labor service; without regard to existing reinstatement, reemployment, and original entrance lists, for such periods of time as the needs of the service may require as approved by the civil serv-

ice board; (g) certification as to physical fitness of eligibles by persons having knowledge of the facts. Any such appointments which shall be for a total period of not to exceed five months in any calendar year may be made by the appointing authority not subject to other approval, providing payroll notice of such employment is regularly made to the department of civil service.

(3) The classified service shall include the labor service and shall consist of all positions now existing or hereafter created and not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible lists prepared upon the basis of examination which so far as practicable shall be competitive. No person shall be appointed, transferred, promoted, reduced or discharged as an officer, clerk, employee, or laborer in the classified service in any manner or by any means other than those prescribed in this act and the rules adopted in accordance therewith.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of this act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate registers of eligibles maintained by the department of civil service.

(5) The state civil service act shall not be deemed to have been heretofore or hereafter applied to the Regents of the University of Minnesota, nor to persons, institutions or employees under their control. (As amended Act Apr. 28, 1941, c. 533, §1; Apr. 20, 1943, c. 543, §1; Apr. 24, 1943, c. 605, §1.)

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.

Employee in classified service may act as secretary of volunteer fire department or firemen's relief association. Op. Atty. Gen., (644), June 17, 1940.

Consulting physicians, dentists, surgeons, ophthalmologists, oculists and aurists rendering special medical services to patients and inmates at state institutions are in the classified service where they serve part time and make regular calls and receive flat monthly compensation, but persons called in for special services and receiving flat sums for each day or trip called into service are independent contractors and not employees and should be paid on vouchers, rather than from payroll. Op. Atty. Gen. (644), Oct. 8, 1940.

Employees in various offices of deputy registrars of motor vehicles, including those in Minneapolis, are not state employees, even though paid in part by state warrants. Op. Atty. Gen., (644), Jan. 8, 1941.

It cannot be asserted that power of removal of commissioner of education by state board of education for cause was, by the repeal of Mason's Minn. Stat. §2969 transferred to civil service board, for that board has no jurisdiction over "administrative heads of departments." State v. State Board of Education, 6NW(2d)251. See Dun. Dig. 8846ccc.

Laws 1943, c. 660, §46, relating to war salary adjustment, is not effective as to employees in the unclassified service, and does not apply to salaries of employees hired by registrar of motor vehicles to assist in issuance of motor vehicle licenses. Op. Atty. Gen. (644b), July 9, 1943.

(1).

Amended by adding new provision. Laws 1943, c. 543. See above text.

Secretary to Railroad and Warehouse Commission is within classified service. Op. Atty. Gen., (644), Jan. 21, 1941.

Persons acting as chaplains in state institutions, regardless of duration of work or manner of payment, are in unclassified service. Op. Atty. Gen. (644), Aug. 6, 1941.

Clerk of board of tax appeals is in classified service. Op. Atty. Gen. (644B), Jan. 23, 1942.

Employees of State Board of Law Examiners held to be in unclassified service. Op. Atty. Gen. (644b), Oct. 14, 1942.

Position of a track and hopper supervisor under the railroad and warehouse commission is in the classified service. Op. Atty. Gen. (644b), Oct. 13, 1942.

(1) (b).

Amended. Laws 1943, c. 605. See above text. Position of secretary to soldiers' home board is within classified service. Op. Atty. Gen. (644), Dec. 6, 1939.

The hotel inspector, now referred to as director of division of hotel inspection under the department of

health, is head of a division established by law and is of the unclassified service. Op. Atty. Gen. (644), Sept. 20, 1940.

Deputy Commissioner of Agriculture is within classified service. Op. Atty. Gen., (644), Jan. 21, 1941.

Chief grain inspector is "head of a department or division" and is not in classified civil service. Op. Atty. Gen. (644), June 6, 1941.

Executive secretary of board of hairdressing is in unclassified service. Op. Atty. Gen. (644B), Jan. 31, 1942.

Secretary of state athletic commission is the head of a department and in unclassified service. Op. Atty. Gen. (644B), May 1, 1942.

(1) (d). Seasonal help employed by registrar and his deputies to assist in issuance of motor vehicle licenses have no civil service status, and any person who acquired civil service status as "seasonal help" in classified service under act as originally enacted has lost such status by virtue of Laws 1941, c. 533. Op. Atty. Gen. (644b), July 13, 1942.

(1) (g). Librarians in teachers' colleges should be considered teachers and in the unclassified service. Op. Atty. Gen. (644), Nov. 9, 1939.

State teachers' college board, and not college president, is appointing authority for both classified and unclassified service, subject to civil service act. Op. Atty. Gen. (644b), Nov. 27, 1941.

Cook in a teachers college is in classified service as a custodial employee. Op. Atty. Gen. (644d), May 9, 1942.

(1) (h). Employees of railroad and warehouse commission engaged in special telephone investigation and doing work of a specialized nature, come within the unclassified service, unless they are regular employees assigned to aid in such investigations from time to time. Op. Atty. Gen. (644), Nov. 3, 1939.

"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence discussed. Op. Atty. Gen. (250), Nov. 27, 1939.

An employee of the department of education in the classified service cannot be given leave of absence to serve as executive secretary of interim committee of legislature on education, but could be continued on payroll of department of education and his services be made available to interim committee on education, and could probably be paid extra compensation by the committee for extra and more arduous work. Op. Atty. Gen. (644), Dec. 14, 1939.

(1) (k). Persons employed in department of administration, division of administrative management and research, are in unclassified service, research being made under a gift which must be expended by June 30, 1943. Op. Atty. Gen. (644B), Jan. 27, 1942.

(1) (p). If a highway patrol register of eligibles once established is exhausted, a provisional appointment may be made to fill positions until re-establishment thereof by examination or otherwise, and three months limit does not apply. Op. Atty. Gen. (644b), Nov. 25, 1941.

Reinstatement of highway patrolmen as affecting appointees prior to civil service law is wholly within discretion of highway commissioner. Op. Atty. Gen. (644e), March 22, 1943.

(2). State v. State Board of Education, 213M184, 6NW(2d) 251, 143ALR503.

(3). Consulting physicians, dentists, surgeons, ophthalmologists, oculists and aurists rendering special medical services to patients and inmates at state institutions are in the classified service where they serve part time and make regular calls and receive flat monthly compensation, but persons called in for special services and receiving flat sums or each day or trip called into service are independent contractors and not employees and should be paid on vouchers, rather than from payroll. Op. Atty. Gen. (644), Oct. 8, 1940.

With certain exceptions, employees in state institutions are in the classified service. Op. Atty. Gen. (644), Apr. 16, 1941.

Owners of trucks hired to perform work in construction division of highway department on a WPA project were independent contractors and not employees of the state, though payment for trucks and operation thereof was carried on two payrolls and deductions were made for retirement fund. Op. Atty. Gen. (644), May 26, 1941.

Part-time stenographer employed by State Soil Conservation Committee comes under act. Op. Atty. Gen. (705a), July 25, 1941.

Employees engaged in administering high school pupil aid program are in the classified service in department of education. Op. Atty. Gen. (644B), Aug. 19, 1941.

(5). A biologist and public health engineer of the state department of health furnished to training center at University where their salaries are paid from money furnished by the United States but administered by the University, are not state employees in classified service,

though in their spare time they have rendered some service to state department of health. Op. Atty. Gen. (644b), Aug. 6, 1942.

254-58(1). Tenure—five year provision—discharge—qualifying—removals.—All persons holding offices or employments in the classified service on the effective date of this act who have been employed by the state, which employment need not be continuous, for a total of five years or more prior to the effective date of this act; and persons holding offices or employments in the Minnesota State Employment Service (a division of the Industrial Commission, not however including the employees of the Unemployment Compensation division) who have taken and passed a civil service examination conducted by the United States Employment Service, and who are employed by the state on the effective date of this act, shall automatically receive a civil service status without examination and shall be subject to and protected by the provisions of this act, but shall first be subject to the following: (a) the general classification directed to be made by section 12 of this act; and, (a) the six months' probationary period provided by section 21 of this act. The probationary period in the case of persons holding offices or employments covered by this section shall begin to run on the effective date of this act. The words "employed by the state" as used in this subsection shall include persons employed by joint federal and state agencies administering state and federal relief funds; and persons employed by the Commissioner of Banks in the liquidation of closed banks under the provisions of Mason's Supplement 1940, Section 7689, provided, however, that any status which may accrue under this section to employees of the Liquidation Unit of the Banking Department shall be limited to such Liquidation Unit and to state-wide reinstatement or reemployment status as defined in this act and the rules made thereunder. (As amended Apr. 28, 1941, c. 533, §2; Apr. 24, 1943, c. 640, §1.)

(2) to (5) * * * * *

(6) **Status of incumbents.**—Incumbents of positions placed in the classified service by amendments to the state civil service act shall take such status as would have accrued to them had such amendments been originally contained in this act.

(7) **Qualifying examinations.**—The rights, privileges and obligations concerning qualifying examinations as defined in subsection (2) of this section shall be extended to all persons holding offices or employment in the classified service on June 1, 1941, who have been continuously employed by the state for six months or more prior to said date and who do not have a probationary or non-probationary civil service status, and who are not subject to qualifying examinations under subsection (2) of this section. The additional qualifying examinations prescribed by this section shall be administered before January 1, 1942, and the probationary period shall be applicable to such persons from the date they are certified as having passed the qualifying examination. (As amended Act Apr. 28, 1941, c. 533, §§2, 3; Apr. 24, 1943, c. 640, §1.)

For six months from April 22, 1939, employees of the state were only probationers and were subject to summary dismissal without cause. State v. Debel, 212M52, 2 NW(2d)432. See Dun. Dig. 8846ccc.

Civil Service Board has the authority and duty to determine status of war veteran claiming to have been wrongfully discharged before effective date of act. State v. Elston, 214M205, 7NW(2d)750. See Dun. Dig. 8846ccc.

A person who was employed during 1938-1939 re-registration of motor vehicles period, who executed an agreement that employment must be terminated after work diminished with no preference or right to future employment, and who was not working on Apr. 22, 1939, was not entitled to status of a permanent employee by virtue of being a veteran, a 5-year employee subject to probation, or an employee subject to qualifying examination, and a person who was employed during 1938-1939 re-registration period under such an agreement and who was not working on Aug. 1, 1939, was not entitled to status of an employee subject to a qualifying examination. Op. Atty. Gen., (644), Jan. 8, 1941.

An employee who was engaged from year to year during rush period in motor vehicle division of office of Secretary of State, and who was actually working on April 22, 1939, and had a total previous employment, not continuous, equal to 60 months on that date, was entitled to status of a 5-year employee subject to 6 months probationary period. *Id.*

Certification at end of probation period as unsatisfactory, done in error and mistake, may be corrected and proper entry made in record. *Op. Atty. Gen., (644), Feb. 6, 1941.*

(1).

Amended. Laws 1943, c. 640. See above text. Employee, having been certified to the position of state Director of Vocational Education, in accordance with §21 of the Civil Service Act, after expiration of the probationary period provided for in §10 (1) thereof, acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with provisions of the act providing for a hearing upon charges. *State v. Civil Service Board, 215M 515, 10NW(2d)422. See Dun. Dig. 8846ccc.*

A person employed by the CWA and the FERA and assigned to work for the state, and receiving his compensation entirely from federal funds, was not an employee of the state. *Op. Atty. Gen., (644), March 11, 1940.*

Where certain persons were in employ of state on Apr. 22, 1939, and on that date had 5 years or more previous service with state and consequently would otherwise have come within provision of §10, thereby beginning a 6 months probationary period on Apr. 22, 1939, but were wrongfully considered to possess permanent status by virtue of military service, appointing authority should now be given opportunity to certify either as satisfactory or unsatisfactory such employees, and employees should not be made to suffer thereby nor apply rights to which he might not have been entitled. *Op. Atty. Gen., (644), Feb. 12, 1941.*

"State employment" as applied to: Students working part time; services performed by other than students where no salary or fee has been made but which involves grant of room or board, or both, in exchange for part or full time services performed; county employees under the County Reimbursement Plan; employment in positions now in unclassified service, including those under the legislative, judicial, and executive jurisdictions; university employees; Fellowships at University of Minnesota; Fellowships at colleges and universities other than the University of Minnesota; persons not actually performing services for the state but receiving compensation payments for injury received while performing state duties; employments where payment may have been made by state, federal, municipal or county warrant or a combination thereof, including administrative or project pay-roll; State Emergency Relief Administration and S.R.A. and F.E.R.A. and E.R.A. and C.C.C. and E.C.W. and C.W.A. and S.C.W.A. and N.Y.A. and N.R.S. and W.P.A. and P.W.A. and L.E.C.; employees of Executive Council; State Forest Service Cooperation under the National Industrial Recovery Act; National Park Service on Minnesota State High Projects; State Highway Personnel paid by both county and state; highway employees loaned to county and paid by county. *Op. Atty. Gen., (644), Mar. 4, 1941.*

Dormitory employees of teachers' colleges not paid by regular state warrants are "employed by the state". *Id.*

(2).

Where it was intention of appointing authority that employees should be employed on August 1, 1939, but due to press of work and other circumstances they were not attached to payroll until middle of August, 1939, they are not eligible to take qualifying examinations. *Op. Atty. Gen., (644), June 11, 1940.*

Termination of employment by mistake just before August 1, 1939 should not deprive employee of right to take qualifying examinations. *Id.*

Chainmen and checkers used in survey crews in construction division on a temporary and local basis by the highway department are not entitled to take qualifying examinations, though employed August 1, 1939. *Op. Atty. Gen., (644), June 21, 1940.*

(3).

Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. *State v. Hoffman, 296NW24.*

If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under existing statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. *Reed v. T., 296NW535.*

Dismissal of an employee on July 31, 1939, under clear mistake of fact as to his work and conduct, at which time he had worked for the state more than five years and at time of dismissal was on probation, may be treated as a complete nullity and certification for permanent service status be accepted nunc pro tunc as of date of expiration of his probationary period, though there cannot be a restoration of probationary status. *Op. Atty. Gen., (644), Feb. 15, 1940.*

A member of classified service who had been employed for more than five years in service of state could be dis-

charged in June, 1939, without cause, although he was then a probationer under act. *State v. Gravin, 293NW 257.*

Legislature possessed power to incorporate a provision in state civil service act completely shearing old employees of any protective quality for six months following passage of act. *Id.*

(5).

Op. Atty. Gen., (644), Mar. 4, 1941; notes under §254-71. Employees with permanent civil service status take precedence over employees who have not yet fulfilled requirements for such status. *Op. Atty. Gen., (644), Feb. 15, 1940.*

(7).

Legislature wished to provide means for conformity with federal requirements and special rules may be adopted which will preclude those employed in division of employment and security from rights and privileges of qualifying examinations unless they were employed prior to January 1, 1940, but employees wishing to take qualifying examinations for their particular classifications and obtain a transfer to another department where such a requirement of conformity does not exist, should be afforded the privilege. *Op. Atty. Gen., (644), June 11, 1941.*

Persons may take qualifying examinations either for positions held on June 1, 1941, or for positions held at time examination is administered. *Op. Atty. Gen., (644C), Sept. 22, 1941.*

254-59. Temporary employment in absence of available eligibles.

A provisional employee, whether employed on basis of a monthly salary or at an hourly rate, is not entitled to privileges accorded a classified employee such as annual leave, sick leave and other allowances. *Op. Atty. Gen., (644), Nov. 28, 1940.*

Provisional employees are entitled to privileges conferred under laws existing prior to enactment of Civil Service Act, such as annual leave, sick leave, and other allowances, until such time as they acquire civil service status or are replaced by employees certified according to provisions of Civil Service Act. *Op. Atty. Gen., (644), Dec. 20, 1940.*

Provisional appointees prior to availability of eligible register may be appointed without regard to citizenship. *Op. Atty. Gen., (644), July 31, 1941.*

Veterans Preference Act, which was in effect as to all state employees prior to Civil Service Act, is applicable to employees appointed prior to time that lists of eligibles were available. *Op. Atty. Gen., (644D), Mar. 26, 1942.*

254-60. Classification and grading of employees; etc.

—(1) Classification—Use—Changes.—*****

(2) Director to classify employees—schedule of salaries.—The director of the state civil service shall, as soon as practicable after the adoption of an additional classification, prepare a schedule of salary or wage rates and ranges for each such class, grade or group of positions in the classification plan, and may propose amendments to salary schedules now or hereafter in effect when necessary to correct inequities or inequalities. Such salary and wage schedules when approved by the civil service board after public hearing shall be submitted to the commissioner of administration, who may approve, amend or reject, such schedules. When approved by the commissioner of administration, they shall be used by the commissioner in connection with all pay-rolls and accounting records and with all budget estimates for all departments or agencies of the state government. The salary schedules for each class, grade, and group shall be submitted to the legislature at the opening of the next legislative session. Unless changed by the legislature the salary and wage schedules so prepared by the director of the civil service and approved by the civil service board and the commissioner of administration shall become the current official compensation rates applicable to the various classes and grades as enumerated. Nothing in this section shall prevent the legislature from increasing or reducing the salary or wage rates of all positions in an entire grade or group uniformly but it shall not increase the rate of pay of any grade or group beyond the rate in the next higher grade or group, nor reduce the pay of any grade or group below the rate of pay fixed for the next lower grade or group in the same service. (As amended Apr. 24, 1943, c. 639, §1.)

Laws 1943, c. 638, §9, provides: Every regular, full time employee in the classified service, except department heads, whose salaries are paid from the appropriations herein made, shall receive a war salary increase of 5% of his regular base salary, plus \$7.50 per month, on

July 1, 1943, to continue until the end of the second month after the cessation of hostilities in the present war, as declared by proper Federal Authority; provided that no war salary increase shall exceed the sum of \$15.00 per month, and provided, further, that said war salary increase shall not be calculated upon any war salary increase received by any employee on the effective date of this act, but shall be calculated upon the regular base salary of said employee without regard to existing war salary increase of said employee. The minimum regular salary payable from appropriations shall be \$80.00 per month. Necessary revisions of salary schedules by the Civil Service Board to provide adequate and equitable salaries for position classifications within such agencies or departments are hereby authorized; the appropriations herein made include provision therefor.

Laws 1943, c. 651, §14, authorizes salary increases to certain employees whose salaries are paid out of the funds appropriated by that chapter.

As to the first salary and wage schedules of employees, legislative emergency committee must take classifications as they have been prepared by director of civil service and approved by civil service board, and has no authority to modify the classifications or to create any new classifications. Op. Atty. Gen. (644), Oct. 14, 1940.

Commission of administration has control over employment and compensation of agents of Railroad and Warehouse Commission in weighing and inspection of grain, but power to approve salaries and salary schedules is vested in director of civil service, to be thereafter approved by civil service board, and thereafter approved by commissioner of administration, but after salary schedules have once been approved, commissioner of administration has no power or right to change or reduce individual salaries within classification and schedules. Op. Atty. Gen., (644), Aug. 22, 1940.

Act positively imposes upon the director of civil service duty of classifying "all offices, employments, and positions in the classified service", and of allocating "each office, position or employment in the classified civil service", and employees long in the service at time of passage of the act are clearly entitled to classification and allocation. State v. Pennebaker, 215M75, 9NW(2d) 257. See Dun. Dig. 8846ccc.

Evidence sustained finding that director of civil service had made no original classification or allocation of a veteran of World War I as of the effective date of the act. State v. Pennebaker, 215M79, 9NW(2d)259. See Dun. Dig. 8846ccc.

An attorney at law who was a veteran of World War I and had been performing duties as legal consultant and performing legal services as an attorney at law for the state in connection with its relief program for many years at the time the act went into effect was entitled to classification and allocation. Id. See Dun. Dig. 8846ccc.

The civil service board has the power to modify its rules so as to uniformly permit all employees earning less than a specified sum to be determined, to retain subsequent to the effective date of the compensation plan, the present salary even if such salary is in excess of the maximum provided for the appropriate class. Op. Atty. Gen. (644), June 23, 1941.

The civil service board does not have the power to modify its rules so as to uniformly permit all employees in the state service who are presently earning more than the maximum salary provided for the appropriate class of employment to continue to receive that salary without reduction to the maximum on the effective date of the compensation plan. Id.

The civil service board has the power to modify its rules so as to uniformly permit employees who have had a specified duration of state employment to retain their present salaries subsequent to the effective date of the compensation plan, even if such salary is in excess of the maximum provided for the appropriate class. Id.

(1). Employee, having been certified to the position of state Director of Vocational Education, in accordance with §21 of the Civil Service Act, after expiration of the probationary period provided for in §10 (1) thereof, acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with provisions of the act providing for a hearing upon charges. State v. Civil Service Board, 215M 515, 10NW(2d)422. See Dun. Dig. 8846ccc.

(2). Amended. Laws 1943, c. 639. See above text. Civil service board has no power to amend salary schedule which has been approved, but may establish salary ranges for classes of employment not in existence at times of adoption of compensation plan, subject to approval of governor. Op. Atty. Gen. (644), June 16, 1941.

(3). Question whether civil service board may adopt a compensation policy providing additional compensation to employees in the classified service for the duration of the war involves questions of fact and policy, final determination of which is beyond scope of authority of attorney general. Op. Atty. Gen. (644f), June 22, 1942.

Revised Rule 19.4 creating war salary adjustment extends to employees of Division of Employment and Security who are paid exclusively from federal fund. Op. Atty. Gen. (644f), July 9, 1943.

(4). Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. State v. Hoffman, 296NW24.

254-61. Competitive examinations; etc.

(2). Provisional appointees prior to availability of eligible register may be appointed without regard to citizenship. Op. Atty. Gen. (644), July 31, 1941.

254-64. Oath of office.

Oaths of officers or employees are to be filed with secretary of state, and may be taken as a part of application for employment. Op. Atty. Gen., (644), Jan. 30, 1940.

254-65. Appointments to be made from certified lists.

Where a promotional register contains fewer than three names and an original entrance register exists for the same class, Director has power to certify first names on promotional register and augment such certification by sufficient names from original entrance register to make a total of three names for a specific vacancy. Op. Atty. Gen. (644a), Oct. 22, 1942.

254-68. Positions filled without competition.

A position is "permanent" when work will continue indefinitely and is temporary when, at the completion of the work, such additional employees will no longer be needed, and "provisional" appointments are usually made in absence of eligible list to meet emergencies until civil service commission can fill position by competitive examination. Op. Atty. Gen. (644), Dec. 5, 1939.

A provisional employee, whether employed on basis of a monthly salary or at an hourly rate, is not entitled to privileges accorded a classified employee such as annual leave, sick leave and other allowances. Op. Atty. Gen. (644), Nov. 23, 1940.

Employees in classified service as provisional, emergency, or temporary employees are not entitled to membership in retirement association. Op. Atty. Gen. (331a-8), May 8, 1941.

If a highway patrol register of eligibles once established is exhausted, a provisional appointment may be made to fill positions until re-establishment thereof by examination or otherwise, and three months limit does not apply. Op. Atty. Gen. (644b), Nov. 25, 1941.

254-69. Appointments for probationary period.

State v. Gravin, 293NW257; note under §254-58(3). For six months from April 22, 1939, employees of the state were only probationers and were subject to summary dismissal without cause. State v. Debel, 212M52, 2NW(2d)432.

Employee, having been certified to the position of state Director of Vocational Education, in accordance with §21 of the Civil Service Act, after expiration of the probationary period provided for in §10 (1) thereof, acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with provisions of the act providing for a hearing upon charges. State v. Civil Service Board, 215M515, 10NW(2d)422. See Dun. Dig. 8846ccc.

Employees who were serving their probationary period beginning April 22, 1939, and who were dismissed as permanent employees July 31, 1939, by a letter which re-employed them as temporary employees effective August 1, 1939, have no rights as to seniority or restoration of probationary status and are not eligible for a qualifying examination. Op. Atty. Gen. (644), Nov. 3, 1939.

Certification at end of probation period as unsatisfactory, done in error and mistake, may be corrected and proper entry made in record. Op. Atty. Gen., (644), Feb. 6, 1941.

Where certain persons were in employ of state on Apr. 22, 1939, and on that date had 5 years or more previous service with state and consequently would otherwise have come within provision of §10, thereby beginning a 6 months probationary period on Apr. 22, 1939, but were wrongfully considered to possess permanent status by virtue of military service, appointing authority should now be given opportunity to certify either as satisfactory or unsatisfactory such employees, and employees should not be made to suffer thereby nor apply rights to which he might not have been entitled. Op. Atty. Gen., (644), Feb. 12, 1941.

Dismissal of an employee on July 31, 1939, under clear mistake of fact as to his work and conduct, at which time he had worked for the state more than five years and at time of dismissal was on probation, may be treated as a complete nullity and certification for permanent service status be accepted nunc pro tunc as of date of expiration of his probationary period, though there cannot be a restoration of probationary status. Op. Atty. Gen., (644), Feb. 15, 1940.

254-70. Transfers—Leaves of absence.—(1) Transfers in the classified service may be made from a position in one grade and class to a position in another grade and class when the duties and compensation are

similar and when such action is specifically approved by the director of the civil service.

(2) **Transfers within classified service—leave of absence—reinstatement.**—Any person holding a permanent position in the classified service of this state may be granted a leave of absence on the grounds of sickness, disability or other good and sufficient reason; provided, however, that no leave except military leave, sick or disability leave, and leave to accept an appointive position in the state unclassified service shall exceed one year, except as provided in subsections (4), (5) and (6) of this section. (As amended Apr. 28, 1941, c. 533, §4; Apr. 24, 1943, c. 640, §2.)

(3) Leave of absence shall be granted to an officer or employee holding a position in the classified service to enable such person to take an appointive position in the state unclassified service. Persons having accepted or accepting appointive positions in the unclassified service shall upon the termination thereof be restored to the status and position which they last held at any time within one year after the termination of their appointment in the unclassified service upon application therefor to the director of civil service.

(4) Any person who has held a position by permanent appointment in the classified service under the civil service law and rules and who has been separated from the service without any delinquency or misconduct on his part or who has been granted a leave of absence under subsection (2) of this section, may be reinstated within one year from the date of such separation or within one year from the expiration of an approved leave of absence, to a position in the same or similar grade or class in the classified service, but such action shall be subject to the approval of the director of civil service. (As amended Act Apr. 28, 1941, c. 533, §4.)

(5) **Leave granted to persons engaging in war work.**—Upon the approval of the appointing authority, any person holding a position in the classified service as a permanent or probationary employee who accepts employment in an essential war activity shall be granted a leave of absence expiring 45 days after the cessation of hostilities in the present war as declared by proper federal authority.

Upon the same approval, permanent or probationary employees who resigned from the state service after December 7, 1941, to accept such employment shall be granted such leave of absence effective as of the date of resignation, provided application therefor is made within six months from the effective date of this act but not later than cessation of hostilities in the present war as declared by proper federal authority. For good and sufficient reason fully set forth by the employee concerned, approved by the appointing authority and by the director of the state civil service, such leave may be extended for an additional period of time as may be so approved.

An employee who has been refused a leave of absence provided in this sub-division may request the director of the state civil service to cause an investigation to be made of the circumstances involved in the refusal. It shall be the duty of the director to report the results of such investigation and his recommendations to the appointing authority and the employee. The director may, in his discretion, grant such leave or place the name of the employee upon the state-wide reemployment register.

Leaves of absence granted by the director of the division of employment and security and approved by the director of the state civil service to employees of the division by reason of a temporary transfer of the personnel and functions of the employment service of the division to the United States employment service in accordance with executive order No. 12 of the governor dated December 20, 1941, are herewith reinstated and extended until such time as the personnel and functions of the employment service of the division shall be returned to the state, provided that such employees, except those who have been granted

military leave, are in the employ of the United States employment service at the time of the return of the state employment service to the state. (As added Apr. 24, 1943, c. 640, §3.)

(6) **Employment with probationary status.**—All persons who have been or hereafter may be employed or promoted by the United States employment service subsequent to the temporary transfer of the personnel and functions of the employment service of the division of employment and security to the United States employment service may be employed with probationary status by the director of the division of employment and security when the personnel and functions of the employment service of the division are returned to the state if such persons are in the employment of the United States employment service when such personnel and functions are returned to the state and have qualified under a civil service examination approved by the director of the state civil service. (As amended Apr. 28, 1941, c. 533, §4; Apr. 24, 1943, c. 640, §§2, 3, 4.)
[43.22(5)(6)]

Subdivisions (5) and (6) were added to the above text by Laws 1943, c. 640, §§3 and 4.

A provisional employee, whether employed on basis of a monthly salary or at an hourly rate, is not entitled to privileges accorded a classified employee such as annual leave, sick leave and other allowances. Op. Atty. Gen. (644), Nov. 28, 1940.

Where an employee has contracted tuberculosis in line of his employment and is being hospitalized at expense of his department and is carried on department's payroll on a leave of absence with pay, deductions for retirement fund should be based only on amount of salary employee is actually receiving, and money paid for hospitalization is no part of salary. Op. Atty. Gen., (331a-12), Jan. 15, 1941.

A mandatory provision for granting leave of absence in classified service to take an appointment in unclassified service is retroactive in effect and mandatory in operation. Op. Atty. Gen. (644D), Jan. 13, 1942.

Employee under classified service cannot be granted a leave of absence for purpose of running for public office. Op. Atty. Gen. (644E), Feb. 27, 1942.

Employee of county resigning from welfare board and immediately taking employment in another county office on regular pay is not entitled to salary in lieu of vacation not taken. Op. Atty. Gen. (104a-9), Oct. 8, 1942.

Status of an employee in either the classified or unclassified service of the state is not affected by taking the oath upon entry into the military or naval service of the United States, but when employee enters into active duty he must elect to do one of three things, inform his appointing authority that he will be on military leave under Laws, 1941, c. 120, request a leave of absence under the state civil service act, or resign from the service of the state, and appointing authority is required to immediately prepare and transmit proper documents to director of the state civil service. Op. Atty. Gen. (644d), Apr. 17, 1943.

(2) "Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence discussed. Op. Atty. Gen. (250), Nov. 27, 1939.

Annual leave and sick leave should be based on employment prior to effective date of act as well as after. Op. Atty. Gen. (644), Feb. 23, 1940.

In event it becomes necessary to grant a leave of absence without pay under civil service rule, pending recovery from disabling illness or some disease contracted in line of duty, leave of absence is restricted to a period of one year, subject to provision that employee may be reinstated within one year from expiration of an approved leave of absence. Op. Atty. Gen., (644), June 4, 1940.

There is no restriction on period of time that an employee may receive continued payment at full or partial rates for illness or injury suffered or contracted in line of duty, under civil service rules. Id.

Hospitalization may be provided by state under Laws 1939, c. 116 during same period of time that employee is receiving salary or sick leave allowance under a rule of the civil service director. Id.

Employee of state hospital contracting tuberculosis in line of duty need not use his accumulated sick leave as a classified employee before hospitalization is used under Laws 1939, c. 116, but must use his accumulated sick leave before continued payment for sick leave and a full or partial rate permitted under civil service rule. Id.

Employee in classified service, who is being paid for jury duty, can also be granted full salary payment by state during time involved in jury duty. Op. Atty. Gen., (644), June 17, 1940, June 18, 1940.

An employee during continuance of compensation payments arising from contraction of pulmonary tubercu-

lois in line of duty is not on leave of absence, and one-year limitation is not applicable. Op. Atty. Gen. (644D), Jan. 28, 1942.

An employee receiving meals as a part of his compensation is entitled to an allowance for meals while on annual leave. Op. Atty. Gen. (644d), May 9, 1942.

(3). An employee of the department of education in the classified service cannot be given leave of absence to serve as executive secretary of interim committee of legislature on education, but could be continued on pay roll of department of education and his services be made available to interim committee on education, and could probably be paid extra compensation by the committee for extra and more arduous work. Op. Atty. Gen. (644), Dec. 14, 1939.

(4). Op. Atty. Gen. (644d), Nov. 18, 1941.

(5). Employee in classified service who resigned after December 7, 1941 to accept employment in essential war work and afterward applied for leave of absence, must pay into the retirement fund a sum equal to the deductions that would have been made if he had not resigned, from the date of resignation and not from the date that leave of absence was requested. Op. Atty. Gen. (331a-11), June 10, 1943.

Where employee in classified service resigned to accept employment in a war activity and withdrew his accumulated deductions and thereafter applied for leave of absence is not required to restore his withdrawal with interest as a condition to his again becoming a member of the fund, but if he does not restore he has no credit for previous service. Id.

Employees obtaining leave of absence to enter essential war activity are not entitled to refund of their accumulated deductions, and this applies to personnel of the employment service who entered the United States employment service. Op. Atty. Gen. (331a-11), June 11, 1943.

Where state appointing authority has granted a leave of absence to an employee to accept employment in an essential war activity, leave will continue until 45 days after cessation of hostility, regardless of a change of his employment in such war activity to other war work or to employment not connected with war activity. Op. Atty. Gen. (644d), July 16, 1943.

State employee transferred to United States employment service who resigned from the state service after December 31, 1942, is employee on leave of absence, and must reimburse retirement fund upon returning from leave of absence. Op. Atty. Gen. (331a-9), Sept. 21, 1943.

State employee transferred to United States employment service is now on leave of absence, being engaged in essential war work, and may make payments into retirement fund commencing as of January 1, 1942, at which time he obtained leave of absence for one year. Id.

State employee transferred to United States employment service who resigned state service prior to December 31, 1942 (the date of expiration of original leave of absence) is still an employee on leave of absence under Laws 1943, c. 640, and may reimburse retirement fund upon returning from leave of absence. Op. Atty. Gen. (331a-9), Sept. 25, 1943.

Employee on leave of absence engaged in essential war activity to make payments in the retirement fund commencing as of date of original leave of absence. Op. Atty. Gen. (331a-9), Oct. 4, 1943.

Where employee desiring employment in essential war work was refused a leave of absence by his department and resigned and obtained a refundment of his accumulated deductions, and was then granted a leave for employment by statute, he is required to repay the refundment and make payments into the retirement fund commencing on the date leave of absence became effective. Op. Atty. Gen. (331a-9), Oct. 11, 1943.

254-71. Lay-offs—Seniority rights—Notice—Certification of reasons—Etc.

Where function and personnel are transferred from one department to another by legislative action, period of service of employees in previously-existing department or agency should be included in computation of their seniority in department or agency to which they have been transferred, but where function was transferred by legislative action with no specific provision as to personnel, period of service in former department or agency need not be included in computation of seniority and this also applied to administrative transfer of function, and in case of consolidated departments or agencies period of employment in all departments and agencies entering into consolidation should be included in computation of seniority. Op. Atty. Gen., (644), Mar. 4, 1941.

Where services are performed in one department but payment for services is made by another department, seniority of employees is acquired within department by which he was paid. Id.

Where payment of compensation was made out of relief funds, employee acquired seniority in department or agency wherein he was working rather than in department or agency by which he was paid by state warrants. Id.

In computation of seniority within a department there should be included period of employment in unclassified service of such department. Id.

(1). An employee having a permanent civil service status takes precedence over one having only a civil service status, in matter of seniority. Op. Atty. Gen. (644), Dec. 1, 1939.

Employees with permanent civil service status take precedence over employees who have not yet fulfilled requirements for such status. Op. Atty. Gen., (644), Feb. 15, 1940.

Rules as to seniority should consider period of employment prior to effective date of civil service act well as thereafter, and employees should be laid off in inverse order of employment in department in which they are employed at time of lay-off. Op. Atty. Gen., (644), Feb. 23, 1940.

Rule giving seniority in accordance with service in department regardless of nature of work is valid. Op. Atty. Gen. (644c), Nov. 18, 1941.

There could be no question as to seniority as between Attorney III and Attorney IV, being different classifications. Id.

(2). Fifteen days' notice required in case of a lay-off is confined to permanent officers and employees. Op. Atty. Gen. (644), Nov. 3, 1939.

Fifteen days' notice is only required as to officers and employees who have a permanent civil service status. Op. Atty. Gen. (644), Dec. 1, 1939.

There is no statutory authority for ordering of pay during period that an employee has been improperly laid off, but there is authority to reimburse for loss of pay where lay-off has become a dismissal because of non-compliance with this section. Op. Atty. Gen., (644), March 9, 1940.

254-72. Removals—reasons for in writing—hearings—decisions.—(1) No permanent employee in the classified service under the provisions of this act or the rules made pursuant thereto shall be removed, discharged, suspended without pay for more than 30 days, or reduced in pay or position except for just cause, which shall not be religious or political. In case of any such disciplinary action as enumerated above in this section, the employee shall, before such action is taken, be furnished with a statement in writing specifically setting forth the reasons for such disciplinary action. A copy of such statement shall be filed with the director of civil service prior to the effective date thereof.

Such employee, upon written request to the civil service board made within 30 days thereafter, may demand a hearing to determine the reasonableness of such action and the board shall grant the employee a hearing within 45 days after receipt of such request. In the event such hearing is not held within the 45-day period herein specified, following receipt of request for such hearing, then the employee shall be forthwith reinstated in his position with full pay for lost time, but this shall not jeopardize the right of the board to finally determine the matter at a later date. After hearing and considering the evidence for and against such disciplinary action, the board shall approve or disapprove the action. In case of approval the disciplinary action shall be deemed final as ordered. In case of disapproval the board shall reinstate the employee under such conditions as it deems proper, and may order full pay for lost time.

Any employee who wilfully practiced, or attempted to practice, any deception or fraud in his application, in his certificate, in his examination, or in securing his eligibility or appointment, shall, upon discovery and proof thereof, be removed and discharged. Charges alleging such deception or fraud may be initiated by the head of the department in which the employee is working at the time, or by the director of civil service, in conformity with the provisions of this section relating to notice of discharge and hearing before the civil service board.

If the board finds that the disciplinary action was for religious or political reasons, then the employee shall forthwith be reinstated in his position and be reimbursed for any loss of pay occasioned by such disciplinary action.

(2) Provisional employees as provided for in subsection (1), emergency employees as defined in subsection (2), and temporary employees as defined in

subsection (4) of section 20 (254-68) may be dismissed at any time at the discretion of the appointing officer. (As amended Apr. 24, 1943, c. 607, §1.)

For six months from April 22, 1939, employees of the state were only probationers and were subject to summary dismissal without cause. *State v. Debel*, 212M52, 2NW(2d)432.

Where war veteran claiming to have been wrongfully discharged before effective date of civil service act applied to civil service board for determination as to his status, refusal of board to hear his claim, especially its failure to give him an opportunity to present his proof on the vital subject of his claimed wrongful discharge, amounted to a complete failure by the board to act upon the application, requiring reversal in certiorari proceedings, though board consulted printed record of a court case involving the applicant. *State v. Elston*, 214M205, 7NW(2d)750. See Dun. Dig. 8846ccc.

Status of a war veteran employee as of effective date of act remains in effect until there is a valid discharge. *Id.*

Employee, having been certified to the position of state Director of Vocational Education, in accordance with §21 of the Civil Service Act, after expiration of the probationary period provided for in §10 (1) thereof, acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with provisions of the act providing for a hearing upon charges. *State v. Civil Service Board*, 215M515, 10NW(2d)422. See Dun. Dig. 8846ccc.

Classified employees are not barred from appearing before legislative bodies or their committees by the act as individuals or in a representative capacity. *Op. Atty. Gen.* (644), Dec. 12, 1939.

Dismissal of an employee on July 31, 1939, under clear mistake of fact as to his work and conduct, at which time he had worked for the state more than five years and at time of dismissal was on probation, may be treated as a complete nullity and certification for permanent service status be accepted nunc pro tunc as of date of expiration of his probationary period, though there cannot be a restoration of probationary status. *Op. Atty. Gen.* (644), Feb. 15, 1940.

(1).

A war veteran having permanent employment status under division of unemployment compensation and who obtained leave of absence and filed as a candidate for office prior to effective date of civil service law did not lose his status of permanent employment, though he continued his candidacy for office after effective date of that act, without filing of charges and a hearing. *Op. Atty. Gen.* (644), Oct. 18, 1939.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. *Op. Atty. Gen.* (644), Nov. 22, 1939.

This section authorizes board to order restoration and pay where there is non-compliance with §254-71(2), or a lay-off has become a dismissal for religious or political reasons. *Op. Atty. Gen.* (644), March 9, 1940.

Employee's demand for hearing must be made upon board within 30 days of effective date of action to which he complains. *Op. Atty. Gen.* (644), March 26, 1940.

254-74. Unauthorized expenditures—Directors shall certify payrolls.—(1) **Certified payrolls.**—Neither the state auditor nor other fiscal officer of this state shall draw, sign or issue, or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing office of the state, nor shall the treasurer or other disbursing officer of the state pay any salary or compensation to any persons in the classified or unclassified service of the state; unless an estimate payroll or account for such salary or compensation containing the name of every person to be paid shall bear the certificate of the director of the civil service that the persons named in such estimate, payroll or account have been appointed, employed, reinstated or promoted and are performing service as required by law and the rules established hereunder and that the salary or compensation is within the salary or wage schedule fixed pursuant to law, provided that this provision shall not apply to positions defined in subdivisions (a), (d), (f), (h), (i), (j), (k), (m), (n), and (o), of subsection 1 of section 9 of this act, nor to teachers, research assistants, student employees on less than half time pay basis, presidents, deans, and administrative officers in the teachers' colleges. (As amended Act Apr. 28, 1941, c. 533, §5.)

(2) * * * * *

(3) * * * * *

Act Apr. 28, 1941, c. 533, §6, provides that the director shall have power to make special rules and regulations for matters requiring conformance to federal law or regulations.

254-77. Political activities and executions—Etc.

An employee in classified service who is also a member of a Bill Posters' Union, may stamp and post bills, including those of candidates for political offices, during his vacation and spare time. *Op. Atty. Gen.* (644), April 26, 1940.

Classified employee may pay for and sign political newspaper advertisement for a friend. *Op. Atty. Gen.* (644), Sept. 5, 1940.

(1).

Provision does not act as a complete bar to membership in a political party or an organization whose purposes may be political, unless membership necessarily entails participation in some prohibited activity. *Op. Atty. Gen.* (644), Oct. 13, 1939.

Inspectors employed by a state board should not campaign for or promote candidacy of a member of the board for reappointment. *Op. Atty. Gen.* (644), Nov. 17, 1939.

(2).

A classified employee may not accept appointment to unexpired term of an elective office without resigning from public service, though office is one that would not interfere with performance of work in classified service. *Op. Atty. Gen.* (644), Oct. 13, 1939.

A war veteran having permanent employment status under division of unemployment compensation and who obtained leave of absence and filed as a candidate for office prior to effective date of civil service law did not lose his status of permanent employment, though he continued his candidacy for office after effective date of that act, without filing of charges and a hearing. *Op. Atty. Gen.* (644), Oct. 18, 1939.

"Public office" includes nonsalaried public offices. *Op. Atty. Gen.* (644), April 29, 1940.

Classified employee need not resign upon accepting an appointive public office if it does not interfere with his employment with state. *Op. Atty. Gen.* (644b), Oct. 28, 1941.

Employee under classified service cannot be granted a leave of absence for purpose of running for public office. *Op. Atty. Gen.* (644E), Feb. 27, 1942.

254-79. Veterans' preference.—In all examinations under this act a veteran's preference shall be given to soldiers, sailors, nurses, marines and members of Women's Auxiliary Army Corps honorably discharged from the army, navy, marine corps and Woman's Auxiliary Army Corps of the United States, who had served in the Civil War, Spanish American War, Philippine Insurrection, China Relief Expedition, World War and the present war between the United States of America and its Allies, and Germany, Japan, Italy and their Allies; who are citizens of the United States and have been residents of the state of Minnesota five years immediately preceding their application or who enlisted from the State of Minnesota. And the veteran thus preferred shall not be disqualified from holding any position in the classified service on account of his age or by reason of any physical disability provided such age or physical disability does not render him incompetent to perform the duties of the position.

Recognizing that training and experience in the services of the government and loyalty and sacrifice for the government are qualifications of merit which cannot be readily discovered by examination; there shall be added to the examination rating of a disabled veteran a credit of ten points, and if such augmented rating gives to such disabled veteran a passing grade and such disabled veteran is able to perform the duties of the position sought with reasonable efficiency, his name shall be placed at the head of the eligible list for such position.

There shall be added to the examination rating of all other veterans a credit of five points, and if such augmented rating gives to such veteran a passing grade and if such veteran is able to perform the duties of the position with reasonable efficiency, his name shall be placed on the list of eligibles with the names of other eligible persons. The name of a veteran with such augmented rating shall be entered ahead of a non-veteran when their ratings are the same.

Such preference is hereby extended to the widows of deceased veterans and to the spouse of a disabled

veteran, who because of such disability is unable to qualify.

The fact that an applicant has claimed a veteran's preference shall not be made known to the examiners and the preference credit shall be added to the examination rating by the director, and the records shall show the examination rating and the preference credit.

A disabled veteran is one who is rated as disabled by the United States Veterans' Administration, and which disability is existing at the time preference is claimed.

In the event of the rejection by the appointing officer of the person so preferred when certified for promotion or to fill a vacancy or a new position, the appointing officer shall forthwith file in writing with the director the reasons for such rejection and shall furnish to the rejected veteran a copy thereof. (As amended Mar. 19, 1943, c. 157, §1.)

Department of Veterans' Affairs. Laws 1943, c. 420. State Veterans' Preference Act does not give a veteran a vested right in his employment and such employment may be abolished by legislative act. *State v. Stassen*, 208M523, 294NW647. See Dun. Dig. 7986.

Whatever rights a veteran has in his employment must be found in civil service act once his status matured under that act. *Id.*

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employee, including a pending action in mandamus which was not perfected by final judgment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. *State v. Railroad and Warehouse Com'n*, 209M530, 296NW 906. See Dun. Dig. 8923.

Employees of the state in the unclassified service are still entitled to soldier's preference, subject to limitations upon its application which have heretofore existed. *Op. Atty. Gen.*, (644), May 10, 1940.

A veteran employed after Apr. 22, 1939, and prior to Aug. 1, 1939, would have had to take a qualifying examination under the act, and 5-year residence period would apply to him, and veterans employed after Aug. 1, 1939, would have to take a competitive examination, and would also be subject to requirement of 5-year residence unless they had been residents of state at time of their enlistment or entry into service so that their services could be credited to the state, and date to be used for calculation of required 5-year residence is date of application. *Op. Atty. Gen.*, (644), Feb. 12, 1941.

Five-year residence period does not apply to veterans who were in employ of state on April 22, 1939, as they did not have to take an examination. *Id.*

Veteran's discharge from draft is not "honorable discharge" within meaning of this act. *Op. Atty. Gen.*, (644), Mar. 24, 1941.

Veterans Preference Act, which was in effect as to all state employees prior to Civil Service Act, is applicable to employees appointed prior to time that lists of eligibles were available. *Op. Atty. Gen.* (644D), Mar. 26, 1942.

Rule requiring mandatory retirement at age 70 does not apply to veterans. *Id.*

Widows of deceased veterans and spouses of disabled veterans should receive the preference to which their veteran husband or wife would have been entitled. *Op. Atty. Gen.* (644g), July 1, 1942.

Discussion of benefits conferred upon veterans, their widows and wives by social welfare rules as compared with Soldiers Preference Act and the State Civil Service Act. *Op. Atty. Gen.* (125a-64), Sept. 28, 1942.

254-82. Definitions.

(3).

Civil Service Act superseded former veterans preference law as to state employees, and gave a veteran employee a civil service status without a probation period if on effective date of act the veteran was a state employee, and civil service board had the power and it was its duty to grant a hearing as to status of a war veteran claiming to have been wrongfully discharged before effective date of act, though he was not on the payroll of the state on the effective date of the act. *State v. Elston*, 214M205, 7 NW(2d)750. See Dun. Dig. 8846ccc.

254-86. Laws superseded.

Where a veteran would have been blanketed into civil service on effective date of civil service act if he had not been discharged prior to that date, he is entitled to be placed in same position as he would have been had he not been discharged, if discharge was unlawful. *State v. Stassen*, 208M523, 294NW647. See Dun. Dig. 7986.

Where a veteran was discharged prior to passage of civil service act, he could not maintain mandamus for reinstatement after passage of that act, mandamus being only available by statutory grant and such statutes being repealed by the civil service act so far as he was concerned. *Id.*

Whatever rights a veteran has in his employment must be found in civil service act once his status matured under that act. *Id.*

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employee, including a pending action in mandamus which was not perfected by final judgment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. *State v. Railroad and Warehouse Com'n*, 209M530, 296 NW906. See Dun. Dig. 8923.

Civil Service Act superseded former veterans preference law as to state employees, and gave a veteran employee a civil service status without a probation period if on effective date of act the veteran was a state employee, and civil service board had the power and it was its duty to grant a hearing as to status of a war veteran claiming to have been wrongfully discharged before effective date of act, though he was not on the payroll of the state on the effective date of the act. *State v. Elston*, 214M205, 7NW(2d)750. See Dun. Dig. 8846ccc.

Evidence sustained finding that director of civil service had made no original classification or allocation of a veteran of World War I as of the effective date of the act. *State v. Pennebaker*, 215M79, 9NW(2d)259. See Dun. Dig. 8846ccc.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. *Op. Atty. Gen.* (644), Nov. 22, 1939.

Soldiers' preference applies only to those of the World War who served between sixth day of April, 1917, and eleventh day of November 1918, and date of enlistment on discharge papers controls. *Op. Atty. Gen.* (644), Dec. 21, 1939.

Employees of the state in the unclassified service are still entitled to soldier's preference, subject to limitations upon its application which have heretofore existed. *Op. Atty. Gen.*, (644), May 10, 1940.

A person who was employed during 1938-1939 re-registration of motor vehicles period, who executed an agreement that employment must be terminated after work diminished with no preference or right to future employment, and who was not working on Apr. 22, 1939, was not entitled to status of a permanent employee by virtue of being a veteran, a 5-year employee subject to probation, or an employee subject to qualifying examination, and a person who was employed during 1938-1939 re-registration period under such an agreement and who was not working on Aug. 1, 1939, was not entitled to status of an employee subject to a qualifying examination. *Op. Atty. Gen.*, (644), Jan. 8, 1941.

A war veteran engaged in motor vehicle division during re-registration period to assist in handling increased volume of work, signing an agreement that work was only for that particular period each year and employment might be terminated as the work diminished with no preference or right to future employment was entitled to permanent civil service status if he was working on April 22, 1939. *Id.*

Where certain persons were in employ of state on Apr. 22, 1939, and on that date had 5 years or more previous service with state and consequently would otherwise have come within provision of §10, thereby beginning a 6 months probationary period on Apr. 22, 1939, but were wrongfully considered to possess permanent status by virtue of military service, appointing authority should now be given opportunity to certify either as satisfactory or unsatisfactory such employees, and employees should not be made to suffer thereby nor apply rights to which he might not have been entitled. *Op. Atty. Gen.*, (644), Feb. 12, 1941.

If persons claiming preference as members of S.A.T.C. have a certificate or instrument indicating membership in that organization subsequent to its recognition as a unit of the United States Army, for service during period entitling them to preference and such service was under honorable condition, they are entitled to preference. *Id.*

A copy of resignation of a midshipman in 1920 indicating payment of bonus for war service constituted an "honorable discharge", if separation from service was under honorable conditions. *Id.*

A veteran employed after Apr. 22, 1939, and prior to Aug. 1, 1939, would have had to take a qualifying examination under the act, and 5-year residence period would apply to him, and veterans employed after Aug. 1, 1939, would have to take a competitive examination, and would also be subject to requirement of 5-year residence unless they had been residents of state at time of their enlistment or entry into service so that their services could be credited to the state, and date to be used for calculation of required 5-year residence is date of application. *Id.*

Veteran's discharge from draft is not "honorable discharge" within meaning of this act. *Op. Atty. Gen.*, (644), Mar. 24, 1941.

Rule requiring mandatory retirement at age 70 does not apply to veterans. Op. Atty. Gen. (644D), Mar. 26, 1942.

254-87. Laws to be continued in force.

Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. State v. Hoffman, 296NW24.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or-for political reasons. Op. Atty. Gen. (644), Nov. 22, 1939.

254-88. Political subdivision may insure officers and employees in group insurance.—Any County, Municipal Corporation, Town, School District or other political subdivision of this state may, through its governing body, insure its officers and employees, or any class or classes thereof, under a policy or policies of group insurance covering life, health, accident, surgical benefits, and hospitalization insurance, or any one or more of such forms of insurance. The premiums required from time to time to maintain such insurance in force shall be paid by its insured officers and employees jointly, and the appropriate officer of such political subdivision shall deduct from the salary or wages of each officer and employee who elects to become insured, on the officer's or employee's written order, the officer's or employee's share of such premiums and remit the same to the insurer. (Act Apr. 24, 1943, c. 615, §1.) [471.62(1)]

Group insurance covering life, health, accident, surgical benefits and hospitalization must be paid for from deductions from salaries of insured officers or employees, and in this respect the same is true as to employees of water, light, power and building commission, and law is not retroactive but applies from and after April 25, 1943, and act applies to all insurance now in effect. Op. Atty. Gen. (249b-9), June 4, 1943.

Act is constitutional. Op. Atty. Gen. (249b-8), June 18, 1943.

254-89. State may insure officers and employees in group insurance.—The state, through the insurance board, may insure its officers and employees, or any class or classes thereof, under a policy or policies of group insurance covering life, health, accident, surgical benefits, and hospitalization insurance, or any one or more of such forms of insurance. The premiums required from time to time to maintain such insurance in force shall be paid by its insured officers and employees, and the auditor shall deduct from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, the officer's or employee's share of such premiums, and issue his warrant therefor to the insurer. The insurance board shall be composed of the governor, the commissioner of insurance and the state treasurer. (Act Apr. 24, 1943, c. 615, §2.) [471.62(2)]

Statutes requiring the contract for supplies, materials, and equipment shall be based upon competitive bids, have no application to this act. Op. Atty. Gen. (249b-8), June 18, 1943.

254-90. Payroll deductions.—A like payroll deduction and remittance shall be made upon the written order of any such officers or employees who are, or become, subscribers under a contract with a non-profit hospital service plan corporation as defined by law. (Act Apr. 24, 1943, c. 615, §3.) [471.62(3)]

254-91. State not to contribute.—The state or any of its political subdivisions shall not at any time contribute any part of such premiums required from its insured employees. (Act Apr. 24, 1943, c. 615, §4.) [471.62(4)]

DECISIONS

RELATING TO OFFICERS AND EMPLOYEES IN GENERAL

1. In general.

Contracts by state or political subdivisions must contain provision against discrimination on account of race, creed or color in hiring labor. Laws 1941, c. 238.

A public officer or employee appointed pursuant to statutory authority does not have a vested right to continue in his position, and legislature may abolish and modify any civil service or preference rights which it has granted as well as remedies for enforcement of them. Reed v. T., 209M348, 296NW535. See Dun. Dig. 1619.

A public office is a public trust, created for benefit of public, not for benefit of incumbent. Removal of Mesenbrink, 211M114, 300NW398. See Dun. Dig. 7984, 7985.

Duties imposed upon a public officer are functions and attributes of the office to be performed by the incumbent, though they may have been left undone by a predecessor. Id. See Dun. Dig. 7998.

The administrative head of a governmental department cannot escape a charge of inefficiency in performing a public duty by pleading that the inefficiency, if any, was that of a subordinate. State v. State Board of Education, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 8010.

Original specifications of charges against an official charged with misconduct in office may be supplemented or amended during progress of removal proceedings before a referee, proper opportunity to meet such additional or amended charges having been given. State v. State Board of Education, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 8010, 8318.

Customhouse brokers are not public officers but perform purely personal services as agents of the shippers, though licensed by government. Union Brokerage Co. v. Jensen, 215M207, 9NW(2d)721. See Dun. Dig. 7984.

5. Vacations.

University employee during paid vacation may be employed and paid by state for performance of duties in another department of the government. Op. Atty. Gen. (618a-13), Aug. 5, 1943.

6. Wages and salaries.

Officers and employees of municipal corporation who, knowing city's financial straits and the need for retrenchment, have acquiesced in contributions from their salaries to the city by accepting pay checks and signing the payroll, are estopped from subsequently seeking to recover the amounts by which their salaries had been reduced, although the reductions were acted upon by the city by resolution of council, rather than by municipal ordinance. Pratts v. C., 206M557, 289NW788. See Dun. Dig. 8007.

Unearned compensation of state institutional employees cannot be assigned, and it is not possible to make deductions for insurance premiums from pay roll checks upon written request and authorization by employee. Op. Atty. Gen. (88a-19), Feb. 14, 1940.

State employee at teachers college may not assign his state check, especially a check on the retirement fund. Op. Atty. Gen. (270m-6), Apr. 1, 1941.

7. Liabilities.

A public officer whose functions are judicial or quasi judicial is not liable to persons injured by the honest exercise of his judgment within his jurisdiction, however erroneous his judgment may be. Robinette v. Price, 214M521, 8NW(2d)800. See Dun. Dig. 8002a.

CHAPTER 5C

Public Contracts in General

254-101. Mandatory nondiscriminatory provisions.—Civil rights of employees protected.—Every contract for, or on behalf of, the state of Minnesota, or any county, city, borough, town, township, school, school district, or any other district or districts, in the state of Minnesota, for materials, supplies, or construction, shall contain provisions by which the contractor agrees:

(a) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract hereunder, no contractor, material supplier, or vendor, shall by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States who are qualified and available to perform the work to which such employment relates.