1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

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

Edited by
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APPENDICES

Appendix No. 1
Conveyancing Forms

Form 1. Warranty deed—Individual to individual.
A conveyance of land by state auditor with an acknowledgment omitting customary statement of venue preceding acknowledgment should be recorded when presented to a register of deeds, but in order to avoid any question as to validity of conveyances an appropriate curative act is suggested. Op. Atty. Gen. (24D)(320F), Jan. 24, 1942.

Appendix No. 2
Session Laws

[Annotations to session laws not included in Mason's 1927 Minn. Stats. or the 1940 Supp.]

Territorial Laws 1851, c. 3.
State v. VanReed, 125 M. 194, 145 N. W. 967.
Legislature may not constitutionally restrict or limit powers conferred upon university regents, but may grant additional powers not conferred by original law. Op. Atty. Gen. (407Q), Jan. 8, 1942.
Employment agreement between the University of Minnesota and Public Building Service Employees Union Local. Op. Atty. Gen. (270d), Oct. 23, 1943.

Laws 1854, c. 36.
Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727. Judgment aff'd 60SCR92. Reh. den., 60SCR135.

Laws 1854, c. 43.
No land owned by the trustees of Hamline University is subject to taxation, i. e., general taxes. Op. Atty. Gen., (414B-4), May 3, 1940.
Land acquired by Hamline University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-6), May 6, 1940.

Laws 1857, c. 64. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Laws 1865, c. 30.
Vacancy on school board of Owatonna school district created by special laws is governed by special act and is to be filled by city council. Op. Atty. Gen., (161a-25), March 21, 1940.

Special Laws 1868, c. 30. [Repealed.]
Repealed. Laws 1943, c. 117, §5.
Since this law was repealed by Laws 1943, c. 117, the village of Brownsville is now operating under the general law, including those fixing compensation of councilmen and village clerk. Op. Atty. Gen. (471k), Aug. 5, 1943.
§4.
Village election in Brownsville should be held on first Tuesday after first Monday in December, in view of Laws 1929, c. 413, §1. Op. Atty. Gen., (472f), Oct. 30, 1939.
§25.
Recorder cannot receive compensation in excess of $20 in any one year. Op. Atty. Gen. (470b), July 16, 1942.

Special Laws 1868, c. 34.
Borough of Belle Plaine cannot by contract construct a sewer costing $5,000 without first advertising for bids. Op. Atty. Gen. (707a-15), May 28, 1943.

Special Laws 1868, c. 36.
Borough of Belle Plaine has power to establish a fire department and make provisions for compensating its firemen and chief, but this must be done by appropriate resolution or ordinance. Op. Atty. Gen., (688J), May 3, 1940.
Candidate for office in borough of Belle Plaine, should be nominated by filing affidavit of candidacy or otherwise as provided by general election law and not as provided in incorporation act. Op. Atty. Gen. (472h), Jan. 9, 1941.
Lands dedicated by plat as a park cannot be leased or sold. Op. Atty. Gen., (469a-9), June 9, 1941.

Laws 1869.
Jan. 20, 1869.
Curative act. Laws 1943, c. 353.

Special Laws 1869, c. 92.
Sauk Center School Dist.
District court has no jurisdiction of a contest of a school district election. Johnson v. D., 208M557, 294NW 839.

Laws 1870, c. 31.
Police civil service act applies to chief of police as well as other officers and employees of police department. Op. Atty. Gen., (785E-1), May 25, 1940.
While act fixes date of annual election, conduct thereof is governed by general election law, and while a candidate for office may withdraw, he is not entitled to refund of the filing fee. Op. Atty. Gen. (911q), Mar. 27, 1941.
Elections in City of Waterville are regulated, at least in part, by portions of general election law, but removal of officers is regulated by organic act of city. Op. Atty. Gen., (64g), June 16, 1941.
§20.
Council may not raise salaries of appointed officials because of rising cost of living, except in month of April for each year. Op. Atty. Gen. (59A-41), Feb. 14, 1942.

Special Laws 1871, c. 10. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Special Laws 1872, c. 97.
Meetings and elections, and procedure for changing school district into independent school district. Op. Atty. Gen. (166d-9), July 15, 1942.

Special Laws 1872, c. 187.
Abstract clerk in Ramsey County is separate and distinct from office of Register of Deeds, and county commissioners may prescribe what, if anything, shall be paid to abstract clerk for indexing tract index books, including power to say what shall be paid "for indexing the first description" and to define meaning of term, if additional compensation for this work is to be fixed by board upon a fee basis. Op. Atty. Gen. (1L), Jan. 5, 1942.

Special Laws 1873, c. 3.
Village of Madelia first incorporated under Sp. Laws 1873, c. 3, and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and therefor then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under Revised Laws of 1905, in view of Laws 1943, c. 117. Op. Atty. Gen. (471*l*), June 1, 1943.

Special Laws 1873, c. 9. [Repealed.]
Repealed. Laws 1943, c. 117, §5.
Special Laws 1873, c. 111.
§1.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212.

Special Laws 1873, c. 51.
Time for school election is fixed by this act, and was not affected by Laws 1939, c. 62, amending §2793. Op. Atty. Gen., (187a-6), Jan. 8, 1940.

Special Laws 1874, c. 9. [Repealed.]
Repealed. Laws 1943, c. 117, §5.
Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. Op. Atty. Gen., (476a-1), Dec. 5, 1939.
Compensation of president and trustees of Village of Blooming Prairie is governed by §1163-1(6). Op. Atty. Gen. (471K), Jan. 2, 1941.

Special Laws 1874, c. 10. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Special Laws 1875, c. 19. [Repealed.]
Repealed. Laws 1943, c. 117, §5.
Village of Osseo is authorized to cause a village street to be repaired, paved or improved and charge cost thereof to lots fronting on the improvement, and procedure to be followed should be provided by ordinances. Op. Atty. Gen. (396G-7), Sept. 23, 1940.

Special Laws 1875, c. 23. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Laws 1875, c. 49.
Laws 1875, c. 49, which provided that no conviction could be had upon uncorroborated evidence of woman upon whom abortion was performed, was repealed by the state penal code of 1885, and State v. Pearce, 56 M226, 57NW652, 1065, is overruled insofar as it holds that such statute is in force and effect. State v. Tennyson, 212M158, 2NW(2d)833, 139ALR987. See Dun. Dig. 26, 2457.

Special Laws 1875, c. 90.
Assessor for Ramsey County has authority to appoint an assessor for the city of White Bear subject to the approval of the city council of White Bear, and equalization thereafter is to be had under special act in addition to the general laws on the subject. Op. Atty. Gen. (12d), Apr. 2, 1943, Apr. 10, 1943.

Laws 1875, c. 139.
An assessor should have been elected in Heron Lake at Dec., 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.
§4.
Recorder of village of Sauk Rapids is an officer and not an employee, and is entitled to his salary during illness and incapacity, and the council may employ and pay competent person to do his work in his absence. Op. Atty. Gen. (470B), Nov. 9, 1940.
§18.
Procedure for levying of special assessments for sidewalk repairs in Village of Heron Lake. Op. Atty. Gen. (480A), Jan. 23, 1942.

Special Laws 1876, c. 3. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Laws 1876, c. 28.
As affecting necessity for renewal of corporate existence of corporation for mining and smelting ores and for manufacturing iron, copper and other metals, this act was in existence in 1903. Op. Atty. Gen., (92a-9), Jan. 18, 1940.

Special Laws 1876, c. 212.
Assessor for Ramsey County has authority to appoint an assessor for the city of White Bear subject to the approval of the city council of White Bear, and equalization thereafter is to be had under special act in addition to the general laws on the subject. Op. Atty. Gen. (12d), Apr. 2, 1943, Apr. 10, 1943.

Special Laws 1877, c. 18. [Repealed.]
Repealed. Laws 1943, c. 117, §5.
A city or village may issue bonds for purpose of refunding outstanding bonds which have not matured, if bondholders are willing. Op. Atty. Gen. (44B-12), Jan. 17, 1941.

General Laws 1877, c. 106.
§9.
Bonds issued by a city in 1899 to refund bonds issued in 1882 by a city to a railroad, or bearer, were express contract obligations of city to pay a specified sum of money on a certain date, and an action on such bonds accrued to holder on due date and not upon later date when demand for payment was made, notwithstanding that taxes were levied for their payment and turned over to city treasurer for purpose of paying such bonds, as against contention that tax money transmitted to treasurer became a trust fund. Batchelder v. City of Faribault, 212M251, 3NW(2d)778. See Dun. Dig. 6735.

Special Laws 1877, c. 114.
Boundaries of Duluth school district may not be changed by consolidation proceedings. Op. Atty. Gen. (166c-9), Dec. 12, 1941; Dec. 24, 1941.

Laws 1878, c. 45.
Bonds issued by a city in 1899 to refund bonds issued in 1882 by a city to a railroad, or bearer, were express contract obligations of city to pay a specified sum of money on a certain date, and an action on such bonds accrued to holder on due date and not upon later date when demand for payment was made, notwithstanding that taxes were levied for their payment and turned over to city treasurer for purpose of paying such bonds, as against contention that tax money transmitted to treasurer became a trust fund. Batchelder v. City of Faribault, 212M251, 3NW(2d)778. See Dun. Dig. 6735.

Special Laws 1878, c. 69.
Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727, Judgment aff'd 60SCR92. Reh. den., 60SCR135.

Special Laws 1878, c. 157.
No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. Board of Education v. Erickson, 209M39, 295NW302. See Dun. Dig. 6579.
Members of Minneapolis school board cannot vote salaries to themselves. Op. Atty. Gen. (161A-6), Aug. 6, 1941.
§1.
Civil service commission of Minneapolis is invested with power over "entire service of the city", and classified employees of board of education are included, since the board is a branch of the city government, although a separate corporation. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 6558a.

Laws 1878, c. 155.
Board of Education of Winona may not use regular school funds for purpose of football equipment and supplies, but could probably purchase such supplies from recreational fund pursuant to a program of public recreation and playgrounds. Op. Atty. Gen., (159B-1), May 31, 1940.

Special Laws 1881, c. 3.
Date of village election. Op. Atty. Gen. (472f), Sept. 4, 1943.

Special Laws 1881, c. 8.
A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen. (470g), Jan. 15, 1941.
An assessor should have been elected in Heron Lake at Dec. 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.
Procedure for levying of special assessments for sidewalk repairs in Village of Heron Lake. Op. Atty. Gen. (480A), Jan. 23, 1942.

Special Laws 1881, c. 15. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Special Laws 1881, c. 19. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Special Laws 1881, c. 27.
In view of Municipalities Emergency Act of 1935, provision requiring letting of contract to lowest responsible bidder is not violated by separate purchase of materials and performance of work by day labor in connection with federal grant. Op. Atty. Gen., (396c-6), Jan. 10, 1940.

Special Laws 1881, c. 30.
Unplatted property may be detached from village of St. Vincent under general law. Op. Atty. Gen. (484e-2), June 10, 1942.

Special Laws 1881, c. 36. [Repealed.]
Repealed. Laws 1943, c. 117, §5.

Special Laws 1881, c. 43. [Repealed.]
Repealed. Laws 1943, c. 117, §5.
Unplatted property may be detached from village of St. Vincent under general law. Op. Atty. Gen. (484e-2), June 10, 1942.

Special Laws 1881, c. 76.
Civil service commission of Minneapolis is invested with power over "entire service of the city", and classified employees of board of education are included, since the board is a branch of the city government, although a separate corporation. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 6558a.
Subch. 4.
§5.
Power of city of Minneapolis extends to care and control of its streets and it may regulate and even exclude carrying on of a transportation business thereon for private gain, or grant privilege to some and exclude others, in harmony with its judgment of public con-

venience and necessity. State v. Palmer, 212M388, 3NW (2d)666. See Dun. Dig. 6618.

Subch. 8.

§1.

Power of city of Minneapolis extends to care and control of its streets and it may regulate and even exclude carrying on of a transportation business thereon for private gain, or grant privilege to some and exclude others, in harmony with its judgment of public convenience and necessity. State v. Palmer, 212M388, 3NW (2d)666.

Special Laws 1881, c. 134.

§3.

Whether a special district should reorganize into an independent district. Op. Atty. Gen. (187b-4), July 23, 1943.

Special Laws 1881, c. 178.

Anoka school district.

Time of annual meeting is now last Tuesday of June in each year, in view of Laws 1941, c. 169, Art. 5, §3. Op. Atty. Gen., (187b-4), May 5, 1941.

Special Laws 1881, c. 376.

Amended. Special Laws 1889, c. 333, 350.

Special Laws 1881, Ex. Sess., c. 5.

Recorder of village of Sauk Rapids is an officer and not an employee, and is entitled to his salary during illness and incapacity, and the council may employ and pay competent person to do his work in his absence. Op. Atty. Gen. (470B), Nov. 9, 1940.

Special Laws 1881, Ex. Sess. c. 73.

Assessor for Ramsey County has authority to appoint an assessor for the city of White Bear subject to the approval of the city council of White Bear, and equalization thereafter is to be had under special act in addition to the general laws on the subject. Op. Atty. Gen. (12d), Apr. 2, 1943, Apr. 10, 1943.

Laws 1883, c. 73.

Village of Madelia first incorporated under Sp. Laws 1873, c. 3, and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and therefor then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under Revised Laws of 1905, in view of Laws 1943, c. 117. Op. Atty. Gen. (471*l*), June 1, 1943.

Laws 1885, c. 231.

Village of Medelia first incorporated under Sp. Laws 1873, c. 3, and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and therefor then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under Revised Laws of 1905, in view of Laws 1943, c. 117. Op. Atty. Gen. (471*l*), June 1, 1943.

Special Laws 1887, c. 5.

In absence of any prohibition in city charter, city may lawfully expend public money for rental of quarters for relief agencies of federal government such as W.P.A. and N.Y.A., but cannot expend money for improvement of real estate owned by county. Op. Atty. Gen. (59a-3), Feb. 4, 1941.

Subch. 3.

§12.

Members of city board of equalization of Winona are not entitled to compensation over and above their yearly official salaries. Op. Atty. Gen. (406c), Aug. 24, 1942.

Subch. 6.

§5.

Members of city board of equalization of Winona are not entitled to compensation over and above their yearly official salaries. Op. Atty. Gen. (406c), Aug. 24, 1942.

Special Laws 1887, c. 27. [Repealed.]

Repealed. Laws 1943, c. 117, §5.

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

Special Laws 1887, c. 261.

Boundaries of Duluth school district may not be changed by consolidation proceedings. Op. Atty. Gen. (166c-9), Dec. 12, 1941; Dec. 24, 1941.

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

Special Laws 1887, c. 315.

Amended. Special Laws 1889, c. 348.

Special Laws 1887, c. 356.

§7. [Repealed.]

Repealed. Laws 1943, c. 130.

Special Laws 1887, c. 358.

§7. [Repealed.]

Repealed. Laws 1943, c. 131.

Laws 1887, c. 10.

§2.

Civil service commission of Minneapolis is invested with power over "entire service of the city", and classified employees of board of education are included, since the board is a branch of the city government, although separate corporation. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 6558a.

Laws 1887, c. 25.

§1.

A city, such as Chatfield, has power to accept a hotel building as a gift and lease it temporarily, and it is subject to tax. Op. Atty. Gen. (59a-40)Oct. 6, 1942.

Laws 1887, c. 97.

Deed to county for ditch purposes did not constitute ditch subsequently constructed by private parties a county or judicial ditch, and there is no authority to expend public funds thereon for repairs. Op. Atty. Gen. (602b), Dec. 15, 1941.

Special Laws 1889, c. 34.

§2.

Section 9221, Mason's Minn. Stat. 1938 Supp., is not applicable to an action or proceeding pending in the municipal court of the city of Minneapolis. State v. Anderson, 207M78, 289NW883. See Dun. Dig. 4962.

§8.

Amended. Laws 1943, c. 147.

Special Laws 1889, c. 40.

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

Special Laws 1889, c. 118.

School district elections in Brainerd should be held at the same time as general state-wide election and not at the time of holding city election. Op. Atty. Gen., 768(1), Apr. 28, 1943.

Special Laws 1889, c. 351.

§44.

A judgment of municipal court of St. Paul for recovery of money becomes a lien upon judgment debtor's real estate by filing a transcript thereof with clerk of district court. Keys v. Schultz, 212M109, 2NW(2d)549. See Dun. Dig. 6904, 6907.

Where transcript of judgment of municipal court of St. Paul for recovery of money is filed with clerk of district court, judgment remains subject to jurisdiction of municipal court to vacate and set it aside in a proper case. Id.

Special Laws 1889, c. 355.

Abstract clerk in Ramsey County is separate and distinct from office of Register of Deeds, and county commissioners may prescribe what, if anything, shall be paid to abstract clerk for indexing tract index books, including power to say what shall be paid "for indexing the first description" and to define meaning of term, if additional compensation for this work is to be fixed by board upon a fee basis. Op. Atty. Gen. (1L), Jan. 5, 1942.

Special Laws 1889, c. 420.

Abstract clerk in Ramsey County is separate and distinct from office of Register of Deeds, and county commissioners may prescribe what, if anything, shall be paid to abstract clerk for indexing tract index books, including power to say what shall be paid "for indexing the first description", and to define meaning of term, if additional compensation for this work is to be fixed by board upon a fee basis. Op. Atty. Gen. (1L), Jan. 5, 1942.

Special Laws 1889, c. 421.

Abstract clerk in Ramsey County is separate and distinct from office of Register of Deeds, and county commissioners may prescribe what, if anything, shall be paid to abstract clerk for indexing tract index books, including power to say what shall be paid "for indexing the first description", and to define meaning of term, if additional compensation for this work is to be fixed by board upon a fee basis. Op. Atty. Gen. (1L), Jan. 5, 1942.

Special Laws 1891, c. 2.

Subchap. III.

§14.

Offices of city treasurer and city park overseer in city of Chaska are incompatible. Op. Atty. Gen. (358e-1), Mar. 24, 1943.

Subchap. IV.

§3.

City council granting a liquor license may revoke its action before it has been acted on by the liquor control commissioner. Op. Atty. Gen., (218g-6), June 24, 1941.

Special Laws 1891, c. 7.

§7.

City may collect water bills by action or by turning off service, but cannot add them to taxes. Op. Atty. Gen. (624c-4), Nov. 26, 1941.

Special Laws 1891, c. 45.

City may purchase a diesel unit without advertising for bids. Op. Atty. Gen., (707a-4), Dec. 20, 1939.

Special Laws 1891, c. 48.

Subchap. X.

In Independent School District No. 8 of Olmsted County which includes territory embraced in City of Rochester and some lands outside of city, notice of annual election should be posted in three places in district irrespective of boundaries of city and disregarding precincts and wards. Op. Atty. Gen. (187a-7), Feb. 24, 1943.

Special Laws 1891, c. 239.

Where a tie vote was cast for members of board of education of city of Brainerd, board should at next regular meeting or at a special meeting called determine that it will then cast lots in such manner as it may then direct for determination of the person to be declared elected. Op. Atty. Gen. (768m), Apr. 13, 1943.

School district elections in Brainerd should be held at the same time as general state-wide election and not at the time of holding city election. Op. Atty. Gen. 768(1), Apr. 28, 1943.

In special school district election resulting in tie vote, tie must be determined by lot and in no other manner. Op. Atty. Gen. (768*l*), Apr. 29, 1943.

Special Laws, 1891, c. 312.

Boundaries of Duluth school district may not be changed by consolidation proceedings. Op. Atty. Gen. (166c-9), Dec. 12, 1941; Dec. 24, 1941.

Construction of teachers tenure law in harmony with the expressed legislative policy does not permit a construction so liberal as entirely to destroy the right of school boards to determine matters of policy in the administration of school affairs. State v. Board of Education of Duluth, 213M550, 7NW(2d)544. See Dun. Dig. 8687a.

Superintendent of schools employed by board of education of the independent school district of Duluth is not within protection of the Teachers' Tenure Act. Eelkema v. Bd. of Education of City of Duluth, 215M590, 11NW (2d)76. See Dun. Dig. 8687a.

§8.

Organization meeting of school board of Duluth should be held on first Saturday in July, or as soon thereafter as practicable. Op. Atty. Gen. (161a-19), June 18, 1942.

§13.

Organization meeting of school board of Duluth should be held on first Saturday in July, or as soon thereafter as practicable. Op. Atty. Gen. (161a-19), June 18, 1942.

Laws 1893, c. 148.

Bonds issued by a city in 1899 to refund bonds issued in 1882 by a city to a railroad, or bearer, were express contract obligations of city to pay a specified sum of money on a certain date, and an action on such bonds accrued to holder on due date and not upon later date when demand for payment was made, notwithstanding that taxes were levied for their payment and turned over to city treasurer for purpose of paying such bonds, as against contention that tax money transmitted to treasurer became a trust fund. Batchelder v. City of Faribault, 212M251, 3NW(2d)778. See Dun. Dig. 6735.

Gen. Stats. 1894.

§§1045 to 1067.

A diesel engine for improvement of utility plant may be purchased without advertising for bids. Op. Atty. Gen., (707a-4), Apr. 25, 1941.

§1068.

A diesel engine for improvement of utility plant may be purchased without advertising for bids. Op. Atty. Gen., (707a-4), Apr. 25, 1941.

Offices of city attorney and member of library board are incompatible. Op. Atty. Gen., (358e-3), June 11, 1941.

§§1069 to 1195.

A diesel engine for improvement of utility plant may be purchased without advertising for bids. Op. Atty. Gen., (707a-4), Apr. 25, 1941.

City of Luverne has power to adopt blackout ordinance. Op. Atty. Gen. (835), Mar. 6, 1943.

Statute seems to require only one publication in official newspaper of ordinances, regulations, resolutions and by-laws, but practical construction might require two publications in a weekly paper. Op. Atty. Gen. (277B-4), Dec. 16, 1940.

Laws 1895, c. 229.

Judge of municipal court of Luverne, when acting as conciliation judge, cannot tax costs against either party, other than disbursement to prevailing party, and cannot require a fee from plaintiff upon entering a claim, to be retained by him, or tax a fee against the losing party as and for costs, which he retains. Op. Atty. Gen. (307e), June 1, 1943.

§5.

Bond of judge of municipal court of Ortonville, also acting as clerk of that court, should run to the city and be filed with secretary of state. Op. Atty. Gen., (307a), Nov. 28, 1939.

Laws 1895, c. 306.

Section 9221, Mason's Minn. Stat. 1938 Supp., is not applicable to an action or proceeding pending in the municipal court of the city of Minneapolis. State v. Anderson, 207M78, 289NW883. See Dun. Dig. 4962.

Laws 1903, c. 22.

This act did not validate a charitable trust even with city as trustee. Longcor v. C., 206M627, 289NW570. See Dun. Dig. 9878.

Laws 1903, c. 253.

§1.

State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212.

Laws 1903, c. 382.

Village of Lindstrom may order improvement consisting of oiling streets without petition of property owners, pursuant to this act, but entire procedure provided herein must be followed, including determination of special benefits and making of assessments therefor, in addition to issuance of village order to pay excess of aggregate of assessment. Op. Atty. Gen. (396G-7), June 22, 1940.

Act does not cover acquisition of a right-of-way for a new street. Op. Atty. Gen. (396g), Aug. 7, 1942.

Revised Laws 1905.

§1003.

State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212.

Laws 1909, c. 225.

§1.

Amended. Laws 1943, c. 461.

Laws 1909, c. 335.

§§1-4.

Amended. Laws 1943, c. 191, §1.

Laws 1911, c. 382.

Amended. Laws 1943, c. 465.

Laws 1913, c. 105.

§4.

Civil service commission of Minneapolis is invested with power over "entire service of the city", and classified employees of board of education are included, since the board is a branch of the city government, although separate corporation. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 6558a.

Laws 1913, c. 517.

§1.

Amended. Laws 1943, c. 461.

Laws 1915, c. 215.

Abstract clerk in Ramsey County is separate and distinct from office of Register of Deeds, and county commissioners may prescribe what, if anything, shall be paid to abstract clerk for indexing tract index books, including power to say what shall be paid "for indexing the first description", and to define meaning of term, if additional compensation for this work is to be fixed by board upon a fee basis. Op. Atty. Gen. (1L), Jan. 5, 1942.

Laws 1917, c. 83.

§1.

Amended. Laws 1943, c. 465.

Laws 1917, c. 156.

§3.

Amended. Laws 1943, c. 527.

Laws 1917, c. 187.

Board of poor and hospital commissioners of Itasca County are authorized to pay cash to poor people. Op. Atty. Gen. (339i-1), Apr. 3, 1943.

Laws 1917, c. 263.

§3.

Amended. Laws 1943, c. 148.

Laws 1917, c. 456.

§1.

Amended. Laws 1943, c. 426.

Laws 1917, c. 476.

In Isanti County which is a class C county under Laws 1917, c. 476, and in which clerk of court is paid a yearly salary of $800, as provided by Laws 1919, c. 229, the 15% increase in compensation provided by Laws 1943, c. 283, should be calculated on the basis of the $800 salary, and not on the basis of the $1500 minimum guaranteed income provided for in Laws 1919, c. 299. Op. Atty. Gen. (144a-4), May 22, 1943.

Laws 1919, c. 229.

In Isanti County which is a class C county under Laws 1917, c. 476, and in which clerk of court is paid a yearly salary of $800, as provided by Laws 1919, c. 229, the 15% increase in compensation provided by Laws 1943, c. 283, should be calculated on the basis of the $800 salary, and not on the basis of the $1500 minimum guaranteed income provided for in Laws 1919, c. 299. Op. Atty. Gen. (144a-4), May 22, 1943.

Laws 1919, c. 271.

§2.
"Per capita" means "per head" irrespective of race, and includes Indians. Op. Atty. Gen. (519i), May 21, 1943.
Money distributed to district on account of Indian children need not be segregated and devoted exclusively to the education of these children. Op. Atty. Gen. (519i), July 7, 1943.

Laws 1919, c. 331.

§1.
Amended. Laws 1943, c. 461.

Laws 1919, c. 382.

§7.
Midland Cooperative Wholesale v. Ickes, (CCA8), 125F (2d)618. Cert. den. 316US673, 62SCR1045. Reh. den. 316 US712, 62SCR1289. Second petition for reh. den. 317US 706, 63SCR67.

Laws 1919, c. 426.

§1.
Amended. Laws 1943, c. 426.

Laws 1921, c. 92.

Power of a village to issue bonds for erection of a white way has expired. Op. Atty. Gen. (44B-16), Aug. 21, 1941.

Laws 1921, c. 133.

§10.
Amended. Laws 1943, c. 453, §1.
§14.
Amended. Laws 1943, c. 471.
§19.
Amended. Laws 1943, c. 423.

Laws 1921, c. 357.

Laws 1941, ch. 363, §5, merely makes ineffective amendment of Laws 1921, ch. 357, after the year 1942. Op. Atty. Gen. (519m), Nov. 20, 1942.
§§2, 3, 4.
Amended. Laws 1943, c. 347.

Laws 1921, c. 414.

Repealed. Laws 1941, c. 169, except as therein provided.

Laws 1921, c. 417.

See Laws 1943, c. 526.

Laws 1921, c. 467.

§19.
"Per capita" means "per head" irrespective of race, and includes Indians. Op. Atty. Gen. (519i), May 21, 1943.
Money distributed to district on account of Indian children need not be segregated and devoted exclusively to the education of these children. Op. Atty. Gen. (519i), July 7, 1943.

Laws 1923, c. 77.

§§1, 3.
Amended. Laws 1943, c. 379.
§9.
Amended. Laws 1943, c. 269.

Laws 1923, c. 238.

§47.
Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 1400.
§52.
Amended. Laws 1943, c. 524.

Laws 1923, c. 370.

§§6, 7, 8.
Amended. Laws 1943, c. 250.

Laws 1923, c. 419.

Amended. Laws 1943, c. 423.
Amended. Laws 1943, c. 453, §1.

Laws 1925, c. 85.

§7.
Amended. Laws 1943, c. 524.

Laws 1925, c. 120.

Jury fee is a part of disbursements of a prosecution which municipal court of Faribault may add to and include in penalty in criminal prosecution. Op. Atty. Gen. (199a-3), Sept. 28, 1942.

Laws 1925, c. 392.

§74.
Property owner damaged by flooding caused by construction of dam and receiving satisfaction from the state and executing a release of damages could not recover damages for the same injury from another property owner who constructed the dam. Driessen v. M., 208M356, 294NW206. See Dun. Dig. 10187.

Laws 1927, c. 17.

§16.
A claim of a defendant stated in answer to a complaint in an action begun in conciliation court of Duluth and on appeal tried de novo in the municipal court need not be formulated to comply with ordinary rules of pleading a counterclaim unless other party so requests by proper motion. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7. See Dun. Dig. 1527a.

§19.
Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 1400.

§19(a).
Requirement that address of parties be shown in original demand or proof of service of the demand for trial in municipal court is directory in its nature and purpose, and municipal court had jurisdiction of an appeal though no address was given, since the defect was "amendable, or might be disregarded". Duff v. Usiak, 215M33, 9NW (2d)319. See Dun. Dig. 1527aa.

A claim of a defendant stated in answer to a complaint in an action begun in conciliation court of Duluth and on appeal tried de novo in the municipal court need not be formulated to comply with ordinary rules of pleading a counterclaim unless other party so requests by proper motion. Warner v. A. G. Anderson, Inc., 213M 376, 7NW(2d)7. See Dun. Dig. 1527a.

Laws 1927, c. 81.

Jury fee is a part of disbursements of a prosecution which municipal court of Faribault may add to and include in penalty in criminal prosecution. Op. Atty. Gen. (199a-3), Sept. 28, 1942.

Laws 1927, c. 110.

See Laws 1943, c. 526.

Laws 1927, c. 121.

§1.
Amended. Laws 1943, c. 427.

Laws 1927, c. 184.

Amended. Laws 1943, c. 453, §1.

Laws 1927, c. 207.

§1.
Amended. Laws 1943, c. 465.

Laws 1929, c. 45.

§1.
Amended. Laws 1943, c. 524.

Laws 1929, c. 56.

Salaries of clerks and employees of probate court in Otter Tail County are to be fixed by probate judge, and maximum clerk hire may not exceed $3500, and within statutory limits matter is entirely in hands of judge. Op. Atty. Gen. (348a), Jan. 5, 1943.

Laws 1929, c. 128.

§1.
Amended. Laws 1943, c. 461.

Laws 1929, c. 187.

Amended. Laws 1943, c. 453, §1.

Laws 1929, c. 208.

See Laws 1943, c. 526.

Laws 1929, c. 303.

Repealed in part. See Laws 1943, c. 526.

Laws 1931, c. 60.

Board of poor and hospital commissioners of Itasca County are authorized to pay cash to poor people. Op. Atty. Gen. (339i-1), Apr. 3, 1943.

Laws 1931, c. 87.

Act is intended to apply to bridges on highways and not a bridge on private land over a drainage ditch to enable a farmer to pass from one part of his land to another. Op. Atty. Gen. (602d), Apr. 15, 1943.

Laws 1931, c. 139.

Amended. Laws 1943, c. 465.

Laws 1931, c. 342.

Repealed in part. See Laws 1943, c. 526.

Laws 1931, c. 405.

See Laws 1943, c. 585.

Laws 1933, c. 26.

§1.
Amended. Laws 1943, c. 402.

Laws 1933, c. 143.

Amended. Laws 1943, c. 52.

Laws 1933, c. 210.

Repealed in part. See Laws 1943, c. 526.

Laws 1933, c. 211.
See Laws 1943, c. 526.

Laws 1933, c. 213.
§2(b).
Chain store tax statute is unconstitutional. National Tea Co. v. State, 208M607, 294NW230. See Dun. Dig. 1674, 9140.

Laws 1933, c. 275.
Repealed in part. See Laws 1943, c. 526.

Laws 1933, c. 415.
Repealed in part. See Laws 1943, c. 526.

Laws 1933-1934, Extra Session, c. 35.
Act was not passed by two-thirds of each house of legislature and is a nullity. State v. Welter, 209M499, 296 NW582. See Dun. Dig. 6899a.
§3.
Judge of a municipal court need not be an attorney at law and legislature cannot so require. State v. Welter, 208M338, 293NW914. See Dun. Dig. 4953.

Laws 1935, c. 51.
In condemnation of bottom land by state, involving 365 acres, a verdict of jury finding value to be $5,476.05 was sustained, over objection of both parties. State v. Andrews, 209M578, 297NW848. See Dun. Dig. 3046 to 3078a.

Laws 1935, c. 253.
Payment of salary to a municipal judge appointed under an act later held not validly passed by legislature was lawful and salary could not be recovered. Op. Atty. Gen. (307I), Aug. 25, 1941.

Laws 1935, c. 261.
Repealed in part. See Laws 1943, c. 526.

Laws 1935-1936, Ex. Sess. c. 101.
In condemnation of bottom land by state, involving 365 acres, a verdict of jury finding value to be $5,476.05 was sustained, over objection of both parties. State v. Andrews, 209M578, 297NW848. See Dun. Dig. 3046 to 3078a.

Veterans' relief to be administered includes relief to honorably discharged soldiers, sailors or marines, who have rendered service in the present war, and this relief extends to their families and dependents. Op. Atty. Gen. (310M), Mar. 10, 1942.

Laws 1937, c. 69.
Amended. Laws 1943, c. 221.

Laws 1937, c. 91.
§2.
Amended. Laws 1943, c. 212.

Laws 1937, c. 143.
Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 1400.

This legislation was inspired by someone not interested in economy or convenience to litigants or the distribution of the work of the courts, in taking away right of appeal from municipal court of Duluth to the district court and compelling appeals to be made direct to the supreme court. Duff v. Usiak, 215M33, 9NW(2d)319. See Dun. Dig. 6905, 6908.

Laws 1937, c. 248.
Amended. Laws 1943, c. 402.

Laws 1937, c. 291.
Amended. Laws 1943, c. 453, §1.

Laws 1937, c. 333.
Amended. Laws 1943, c. 558.

Laws 1937, c. 356.
See Laws 1943, c. 526.

Laws 1937, c. 451.
Division of social welfare may not after end of year out of original appropriation reimburse a county, because no money remains for that purpose, but if funds were encumbered during year for which appropriated, such division may pay a claim after expiration of year. Op. Atty. Gen. (521o), Feb. 5, 1942.

Laws 1937, c. 480.
§1.
Act does not authorize suit against state by one injured in an explosion in a garage where trucks of maintenance department were stored and repaired. Underhill v. S., 208M498, 294NW643. See Dun. Dig. 8831.

Laws 1937, c. 491.
§2.
Amended. Laws 1943, c. 97.

Laws 1937, Ex. Sess., c. 58. [Repealed.]
Repealed. Laws 1943, c. 68.

Laws 1937, Ex. Sess., c. 64.
Amended. Laws 1943, c. 502.

Laws 1937, Ex. Sess., c. 89.
State relief agency upon proper authorization by state executive council may lend property purchased by it from the government to counties operating transient camps. Op. Atty. Gen., (549B), Nov. 17, 1939.

Laws 1938, c. 187.
§§3, 4.
Amended. Laws 1943, c. 494.

Laws 1939, c. 61.
This act was not repealed by the reenactment of the Teachers' Tenure Act, and superintendent of schools of Duluth does not have right to continue in office after termination of his contract. Op. Atty. Gen. (172), July 31, 1943.

Laws 1939, c. 75.
§4.
In widening a street under this act, condemnation proceeding covers only acquisition of land or easement, assessment of damages for land taken, offset of benefits to remaining parts of parcels taken, and has nothing to do with assessment of benefits on other property owners, which are to be assessed under other laws applicable to the improvement in question. Op. Atty. Gen. (396c-6), Aug. 28, 1942, Sept. 2, 1942.

Laws 1939, c. 99.
§18.
Any excess of total compensation over $3,600 would be deducted from salary provided, and if fees alone exceeded $3,600, officer would receive no salary but would retain all fees collected. Op. Atty. Gen. (144a-4), Jan. 5, 1943.

Laws 1939, c. 185 [Repealed].
Repealed see §1152-12(N).

Laws 1939, c. 205.
§1.
Amended. Laws 1943, c. 181.

Laws 1939, c. 245.
Homesteads up to $4000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

Laws 1939, c. 268.
Compensation of officers in Minnetonka Township in Hennepin County. Op. Atty. Gen., (439b), June 17, 1941.

Laws 1939, c. 319.
This act is amended by Laws 1941, c. 169, art. 2, §11, in counties where applicable. Op. Atty. Gen. (399c), Jan. 21, 1943.

Laws 1939, c. 339.
§3.
Ladies of the G.A.R. Home receiving appropriation from the state must comply with requirements as to budget, purchases, etc. Op. Atty. Gen., (640a), Sept. 20, 1939.
§7(B).
Subject to approval of commissioner of conservation, tourist bureau may construct log cabin on capitol grounds. Op. Atty. Gen., (983i), Feb. 19, 1940.

Laws 1939, c. 365.
§1.
Under current appropriation act parole expenses incurred on account of inmates of hospitals for the insane, school for feeble-minded, and colony for epileptics, including compensation of parole agents, are to be paid from current expense fund of the respective institutions. Op. Atty. Gen., (640), Dec. 5, 1939.
§7.
An unused balance of appropriation made in Laws 1939, c. 365, §7, "addition to dairy barn", should be transferred to appropriation made by Laws 1941, c. 529, §1(5B), and should not be cancelled out, and might be used to increase appropriation of $1500 for machine shed despite wording of Laws 1941, c. 358, §21. Op. Atty. Gen. (9A-39), Jan. 13, 1942.
§18.
State sanatorium cannot sell telephone equipment at private sale to telephone company, which will install new equipment, and if it did sell the equipment it could not retain the money received and use it to help defray expenses on telephone service to be rendered, authority to sell obsolete and surplus property being in the commissioner of administration, and sale on basis of competitive bids being necessary, and the proceeds thereof would go to general revenue fund of the state. Op. Atty. Gen. (640), Oct. 22, 1940.
§§20, 22.
Disposition of certain balances of appropriations. Op. Atty. Gen. (640), Dec. 8, 1941.

Laws 1939, c. 367.
Division of social welfare may not after end of year out of original appropriation reimburse a county, because no money remains for that purpose, but if funds were encumbered during year for which appropriated, such division may pay a claim after expiration of year. Op. Atty. Gen. (521o), Feb. 5, 1942.
§4.
Aid granted to county based upon anticipated tax delinquencies should be adjusted when actual tax delinquencies are known, and if county in good faith levied an amount which, if collected, would have been sufficient to pay old age assistance according to reasonable estimates available at the time, law is satisfied. Op. Atty. Gen. (521W), Nov. 14, 1940.

Laws 1939, c. 369.
See §§526.09 to 526.11.

Laws 1939, c. 376.
§§1, 2, 8.
Amended. Laws 1943, c. 642.

Laws 1939, c. 420.
Provisions in act respecting liability on part of state and manner and means of enforcing payment are not so inseparably interwoven as to lead to conclusion that legislature would not have passed one without other, and part dealing with liability can and should be allowed to stand. Westerson v. S., 207M412, 291NW900.
Whether Laws 1939, c. 420, violates art. 16, §2 of our constitution, as interpreted in State ex rel. Wharton v. Babcock, 181M409, 412, 232NW718, need not be determined because not essential to decision on demurrer. Id.
Highway fines do not arise under or by virtue of Constitution article 16, and fund created by fines is subject to legislative control and may be used for same purposes for which constitutional fund is devoted, or put to use for some other purpose, such as is provided by Laws 1939, c. 420, relating to ascertainment of damages caused by construction of improvement of trunk highway. Id.
By Laws 1939, c. 420, the state waived its sovereign immunity to suit for damages caused by the location, relocation, construction, reconstruction, improvement, maintenance, and supervision of the trunk highways system to the extent and within the limits therein specified. Id. See Dun. Dig. 8831.

Laws 1939, c. 422.
§14(2).
Appropriation of $124,000 for "probation" was intended to cover salaries of agents and other expenses incurred in performance of functions of board of parole with respect to rural probation, and also with respect to supervision of paroled inmates of state prison, reformatories for men and women, state training school for boys, and state home school for girls. Op. Atty. Gen., (640), Dec. 5, 1939.
Under current appropriation act parole expenses incurred on account of inmates of hospitals for the insane, school for feeble-minded, and colony for epileptics, including compensation of parole agents, are to be paid from current expense fund of the respective institutions. Id.
§16.
Railroad and warehouse commission may pay attorney salary in excess of appropriation provided in this section. Op. Atty. Gen., (371a-1), June 30, 1941.
§17(3).
Indian war pensions earned prior to June 30, 1941, cannot be made out of new appropriation for current fiscal year. Op. Atty. Gen. (335A), Oct. 9, 1941.

Laws 1939, c. 436.
Homesteads up to $4000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.
§12.
Township may not enter into a contract with a firm of physicians for medical needs of a poor family for a term of one year payable in advance. Op. Atty. Gen. (339g-1), Jan. 14, 1941.

Laws 1939, c. 447.
Statement by attorney general of purpose and effect of this proposed amendment. Op. Atty. Gen., (86a-38), Feb. 5, 1940.
If amendment of constitution proposed by this act is adopted, publication will be required in only one qualified newspaper in connection with amendment of home rule charter. Id.

Laws 1941, c. 30.
§1.
Amended. Laws 1943, c. 461.

Laws 1941, c. 57.
Amended. Laws 1943, c. 101.
Laws 1941, c. 57, as amended by Laws 1943, c. 101, amended, Laws 1943, c. 489.

Laws 1941, c. 61.
§1.
Amended. Laws 1943, c. 189.

Laws 1941, c. 118.
Repealed in part. Laws 1943, c. 515, §4.
Payment of claims and payrolls of welfare board. Op. Atty. Gen. (125a-64), Dec. 7, 1943; note under §3197.

Laws 1941, c. 169.
Art. 2, §9.
Amended. Laws 1941, c. 471.
Art. 6, §6(14).
Amended. Laws 1941, c. 516.
Art. 9, §8.
Amended. Laws 1941, c. 328.

Laws 1941, c. 171.
Amendment proposed by this act is entitled to be designated as number one on pink ballot, notwithstanding Laws 1941, c. 555. Op. Atty. Gen. (86A-4), Jan. 7, 1942.

Laws 1941, c. 182.
§1.
Op. Atty. Gen (688m), Dec. 10, 1942; note under §1828-16⅞, Appen. 3A.

Laws 1941, c. 212.
§14.
Levy for poor fund by Itasca County is not controlled by this act. Op. Atty. Gen. (519j), Sept. 2, 1943.

Laws 1941, c. 215.
See §84.155.

Laws 1941, c. 297.
§2.
Amended. Laws 1943, c. 436.

Laws 1941, c. 300.
§10.
Amended. Laws 1943, c. 524.

Laws 1941, c. 311. [Repealed.]
Repealed. Laws 1943, c. 15, §12.

Laws 1941, c. 358.
§3.
Commission of village could not transfer an existing power line to state without a vote of two-thirds of electors. Op. Atty. Gen. (624c-10), Dec. 10, 1941.
Appropriation for piggery and slaughter-house at Moose Lake State Hospital is available until June 30, 1943. *notwithstanding §22 of this act.* Op. Atty. Gen. (640A), Mar. 6, 1942.
§13.
So much of appropriation as related to placement and supervision of children from state public school in free, boarding, and adoptive homes should be transferred to director of social welfare, if it can be identified. Op. Atty. Gen. (88A-2), Aug. 20, 1941.
§21.
Employees whose salary on effective date of civil service act was $150 or less per month shall not receive a reduction in pay and amounts above appropriated are to be used for such purpose so far as possible, and employees working more than five years on effective date of that act are not to receive a reduction in salary. Op. Atty. Gen., (644), May 8, 1941.
An unused balance of appropriation made in Laws 1939, c. 365, §7, "addition to Dairy Barn", should be transferred to appropriation made by Laws 1941, c. 529, §1(5B), and should not be cancelled out, and might be used to increase appropriation of $1500 for machine shed despite wording of Laws 1941, c. 358, §21. Op. Atty. Gen. (9A-39), Jan. 13, 1942.
If any part of money appropriated for salary increases is not used for that purpose it reverts to general revenue fund. Op. Atty. Gen. (9a-39), Mar. 31, 1942.
§23.
Operation of state owned farms by the State Reformatory at St. Cloud—Use of inmate labor thereon—Payment of expenses of operation—Funds available. Op. Atty. Gen. (270j), May 1, 1942.

Laws 1941, c. 363.
§5.
Laws 1941, ch. 363, §5, merely makes ineffective amendment of Laws 1921, ch. 357, after the year 1942. Op. Atty. Gen. (519m), Nov. 20, 1942.

Laws 1941, c. 385. [Repealed.]
Repealed. Laws 1943, c. 428.
Employees in sheriff's office may make campaign contributions. Op. Atty. Gen. (627e), July 15, 1942.

Laws 1941, c. 403.
§1.
Welfare board in its discretion may pay cash to persons on relief for purchase of necessities. Op. Atty. Gen. (125a-64), Feb. 3, 1943.
§2.
Bonds may be issued by County of Ramsey for purpose of securing funds for payment of salaries at Ancker Hospital and the Ramsey County Home, but not for purpose of paying salaries in division of Old Age Assistance and Department of Aid to Dependent Children, and whether or not bonds may be issued for paying salaries

in Administration and Child Welfare Departments of County Welfare Board is a question of fact. Op. Atty. Gen. (37B-6), Sept. 17, 1941.

§§3, 8.
Amended. Laws 1943, c. 377.

Laws 1941, c. 423.

Act which controls operation of civil service within St. Louis County is construed. Op. Atty. Gen. (120), July 2, 1943.

§§5h, 7.
Amended. Laws 1943, c. 608.

Laws 1941, c. 493.

Tax on gasoline used for aeronautical or aviation purposes is placed in separate fund if no claim for refund is made within six months of date of purchase, providing such taxes are identified within six months by verified statements, and appropriation of $10,000 from that fund is ineffective until that much has accumulated. Op. Atty. Gen. (234C), Aug. 9, 1941.

Laws 1941, c. 509.

Amended. Laws 1943, c. 453, §1.

Laws 1941, c. 513.

§§4(13), 6, 7, 13.
Amended. Laws 1943, c. 259.

Laws 1941, c. 521.

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

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

§6 (8) (b).
Excess over $1500.00 at end of fiscal year was properly transferred to general revenue fund though there were some outstanding bills at that time. Op. Atty. Gen. (640a), Aug. 27, 1942.

§6(9).
Minnesota State Poultry Association is entitled to $1000.00 for each fiscal year, and Southwestern Poultry Association is entitled to $400.00 for each year. Op. Atty. Gen. (772g), Nov. 17, 1941.

Laws 1941, c. 523.

§6.
If a school board of a district not maintaining a high school provides for free transportation of pupils to high school within its own area, it is compelled to pay an equivalent amount toward board and room of a pupil who wishes to attend a state school of agriculture, but act is not retroactive and a parent who sent a child to school during year 1940-41 without arrangements being made by resident school district cannot get reimbursement. Op. Atty. Gen., (168), July 11, 1941.

Department of education has no right or obligation to pay supervisor of high school pupil and program for any vacation time to which he might be entitled at time program was discontinued. Op. Atty. Gen. (397), Oct. 28, 1941.

§6(2).
Attendance at state school of agriculture does not entitle home district to reimbursement from the state, and if it did, there would be no obligation on part of home district to provide board or transportation. Op. Atty. Gen., Oct. 27, 1941.

§11.
Department of Education can refund fees paid for teachers' certificates where there has been an overpayment or applicant lacks qualifications for certification. Op. Atty. Gen. (454e), Oct. 27, 1941.

Laws 1941, c. 524.

§2.
Provision for allocation of Indian county aid is entirely distinct from provision as to allocation of distressed county aid. Op. Atty. Gen. (521w), Nov. 28, 1942.

Distressed county aid. Id.

§3.
Same procedure as outlined for disbursements of supplemental funds for old age assistance should also be followed in supplemental aid to dependent children funds to distressed counties. Op. Atty. Gen. (840A-6), Aug. 15, 1941.

Division of amount between two purposes covered by allocation is for director of social welfare to determine. Op. Atty. Gen. (521w), Nov. 28, 1942.

§8.
Appropriations under Laws 1941, Chapter 524, were expressly made subject to budgetary control of reorganization act, and thus unexpected balances on hand June 30, 1941, which were reappropriated, became subject to such control, though previously exempt therefrom. Op. Atty. Gen. (521w), Nov. 28, 1942.

§11.
Division of social welfare may not after end of year out of original appropriation reimburse a county, because no money remains for that purpose, but if funds were encumbered during year for which appropriated, such division may pay a claim after expiration of year. Op. Atty. Gen. (521o), Feb. 5, 1942.

Appropriations under Laws 1941, Chapter 524, were expressly made subject to budgetary control of reorganization act, and thus unexpected balances on hand June 30, 1941, which were reappropriated, became subject to such control, though previously exempt therefrom. Op. Atty. Gen. (521w), Nov. 28, 1942.

Laws 1941, c. 525.

See Laws 1943, c. 660, §59.

Veterans' relief to be administered includes relief to honorably discharged soldiers, sailors or marines, who have rendered service in the present war, and this relief extends to their families and dependents. Op. Atty. Gen. (310M), Mar. 10, 1942.

§10.
Veteran's relief may be handled on a cash grant basis instead of the prevailing relief order base, in a discretion of the commissioner of veteran's affairs. Op. Atty. Gen. (310s), June 29, 1943.

§17.
Administration of funds rests with county welfare board and not county commissioners. Op. Atty. Gen., (339i-3), June 20, 1941.

Veteran's relief may be handled on a cash grant basis instead of the prevailing relief order base, in a discretion of the commissioner of veteran's affairs. Op. Atty. Gen. (310s), June 29, 1943.

§26.
Village may not buy a membership in a burial association for funeral services for deceased relief clients. Op. Atty. Gen. (339c), Dec. 11, 1941.

Veteran's relief may be handled on a cash grant basis instead of the prevailing relief order base, in a discretion of the commissioner of veteran's affairs. Op. Atty. Gen. (310s), June 29, 1943.

Laws 1941, c. 529.

Unexpended funds reappropriated. Laws 1943, c. 617.

Present status of appropriations under this act. Op. Atty. Gen., Feb. 6, 1943.

§1.
A bequest to the Gillette State Hospital may be used for purchase of equipment of new receiving hospital so as to release part of appropriation under this section for building construction. Op. Atty. Gen. (88A-4), Feb. 20, 1942.

§1(5B).
An unused balance of appropriation made in Laws 1939, c. 365, §7, "addition to Dairy Barn", should be transferred to appropriation made by Laws 1941, c. 529, §1(5B), and should not be cancelled out, and might be used to increase appropriation of $1500 for machine shed despite wording of Laws 1941, c. 358, §21. Op. Atty. Gen. (9A-39), Jan. 13, 1942.

§6.
An unused balance of appropriation made in Laws 1939, c. 365, §7, "addition to Dairy Barn", should be transferred to appropriation made by Laws 1941, c. 529, §1(5B), and should not be cancelled out, and might be used to increase appropriation of $1500 for machine shed despite wording of Laws 1941, c. 358, §21. Op. Atty. Gen. (9A-39), Jan. 13, 1942.

Laws 1941, c. 537.

It is duty of state auditor to institute payments under act upon his own initiative, without allotment and encumbrance. Op. Atty. Gen. (9A), Jan. 9, 1942.

§85.
By accepting the appropriation made by Laws 1941, Chapter 537, §85, claimant is barred from claiming compensation under Laws 1941, c. 479. Wolner v. State, 5 N. W. (2d) 67. See Dun. Dig. 10388.

Laws 1941, c. 541.

§2.
Clerk hire in unorganized territory should be paid entirely from funds of unorganized school district. Op. Atty. Gen. (399c), Feb. 9, 1943.

Laws 1941, c. 548.

§13.
Laws 1941, c. 548, §§13, 14, 19, 22, appropriating moneys from the trunk highway fund to the offices of auditor, treasurer, civil service commission (department of civil service), and commissioner of administration respectively to defray expenses reasonably attributable to highway matters does not violate Const. Art. 16. Cory v. King, 214M535, 8NW(2d)614. See Dun. Dig. 8452.

§14.
Cory v. King, 214M535, 8NW(2d)614; note under §13.

§19.
Cory v. King, 214M535, 8NW(2d)614; note under §13.

§21(3).
Indian war pensions earned prior to June 30, 1941, cannot be made out of new appropriation for current fiscal year. Op. Atty. Gen. (335A), Oct. 9, 1941.

§22.
Cory v. King, 214M535, 8NW(2d)614; note under §13.
§25(9).
Provision contained in §48 does not prevent expenditure of funds received in addition to appropriation. Op. Atty. Gen., June 25, 1941.
§27(4).
So much of statutes as provide that state is in no way liable for salary of fire marshal, his deputies and employees, or for maintenance of office of state fire marshal, or for any expense incident thereto, are impliedly repealed by this act. Op. Atty. Gen., (197), May 13, 1941.
§30(3).
Expenses incurred in making investigations in cities and villages may be charged against "reassessment expenses" in event it is found a reassessment is unnecessary. Op. Atty. Gen. (130A), Oct. 7, 1941.
§36.
If board should find that moneys available are not sufficient to carry on a program of eradication throughout whole state, it may by proper action determine where greatest need for eradication of Bang's Disease exists, and may set aside all or part of money available to a specific part or parts of state providing that such action is not arbitrary. Op. Atty. Gen. (293A-8), Jan. 14, 1942.
§37.
Transfer of funds follow a reassignment of activities from one division to another. Op. Atty. Gen. (208b-4), Sept. 11, 1942.
§37(A).
Cost of publication of information or booklets cannot be paid from game and fish funds. Op. Atty. Gen. (208B-4), Aug. 15, 1941.
§37(C)(1).
Balance to credit of salary account of forestry division at the end of fiscal year consisting of federal contributions not subject to cancellation. Op. Atty. Gen. (9a-16), Aug. 18, 1943.
§37(E).
Even if commissioner of conservation has authority to accept a surrender of lease on Douglas Lodge, there is no authority or fund to purchase equipment in the lodge. Op. Atty. Gen. (333), Mar. 4, 1942.
§37(E)(4).
Methods of acquiring federal lands for state park purposes and operation thereof defined. Op. Atty. Gen (330a), Feb. 7, 1942.
§37(G).
Agreement between division of game and fish of department of conservation and secretary of the interior for project under federal aid to Wild Life Restoration Act, commonly known as the Pittman-Robertson Act, require approval and signature of attorney general, commissioner of administration, and state auditor, but exercise of discretion by those officers should not conflict with federal act. Op. Atty. Gen., (983f), May 24, 1941.
Provisions hereof did not operate to repeal or supersede laws creating or governing existing special funds, and except as expressly otherwise provided by other 1941 acts, the special funds should be continued and income thereof should be credited thereto as before, but subject to provisions of this section with respect to expenditures during current fiscal biennium. Op. Atty. Gen., (9a-17), July 15, 1941.
Funds available for repair of machinery to be used as sponsor's contribution in Beltrami Island project development work. Op. Atty. Gen. (208B-4), Aug. 15, 1941.
§37(G)(10).
Appropriations to State Soil Conservation Committee, expenditure, accounting and expenses. Op. Atty. Gen., (705a), May 13, 1941.
Allocation of $2,000 to State Soil Conservation Committee requires that those funds be used by that committee, provided projects for which they are used are incident to functions of the division of game and fish, are requested and approved by director of the division, and authorized by commissioner of conservation, but there is no compulsion to expend these funds. Op. Atty. Gen. (208B-4), Mar. 14, 1942.
§39.
Appropriation to the Minnesota Resources Commission, though created without legislative acts, is for a public purpose and valid. Op. Atty. Gen. (416a), Jan. 20, 1943.
§45.
State forest fund created by Laws 1933, c. 313, and appropriation of fifty per cent of certain revenues and disbursements to counties contained in such act were abolished and repealed as of July 1, 1941, rather than upon date when act was approved. Op. Atty. Gen. (9a-16), Apr. 23, 1942.
§47.
Balance to credit of salary account of forestry division at the end of fiscal year consisting of federal contributions not subject to cancellation. Op. Atty. Gen. (9a-16), Aug. 18, 1943.
§48.
So much of statutes as provide that state is in no way liable for salary of fire marshal, his deputies and employees, or for maintenance of office of state fire marshal, or for any expenses incident thereto, are impliedly repealed by this act. Op. Atty. Gen., (197), May 13, 1941.
School bus fees are not available for expenses of administration and must be turned into the general revenue fund. Op. Atty. Gen., (9a-18), June 12, 1941.
This section did not repeal by implication appropriation of receipts from rent of state-owned buildings to maintenance fund from which carrying expenses of such buildings are derived. Op. Atty. Gen., (640a), June 18, 1941.
Moneys collected from sale of tags or labels under Laws 1941, c. 472, may be used for administration and operation of that act. Op. Atty. Gen., (833f), July 28, 1941.
Reimbursements made by counties and townships to primary noxious weed fund should now be placed in general revenue fund. Op. Atty. Gen. (9A-3), Aug. 6, 1941.
State Forest Fund established by Laws 1933, c. 313, 419, is abolished. Op. Atty. Gen. (983E), Mar. 6, 1942.
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.
State forest fund created by Laws 1933, c. 313, and appropriation of fifty per cent of certain revenues and disbursements to counties contained in such act were abolished and repealed as of July 1, 1941, rather than upon date when act was approved. Op. Atty. Gen. (9a-16), Apr. 23, 1942.
This section governs disposition of money in produce inspection account. Op. Atty. Gen. (136), June 9, 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.
Balance to credit of salary account of forestry division at the end of fiscal year consisting of federal contributions not subject to cancellation. Op. Atty. Gen. (9a-16), Aug. 18, 1943.
§51.
Limitation of no obligation involving expediture of money shall be entered into unless there is a balance in the appropriation available not otherwise encumbered to pay obligations previously incurred refers to appropriation balances and not cash balances. Op. Atty. Gen., (9), May 5, 1941.
This section governs disposition of money in produce inspection account. Op. Atty. Gen. (136), June 9, 1942.
§52.
An allotment requested by president of a state teacher's college for salary of a publicity representative and travel expense comes under provisions of this section. Op. Atty. Gen. (640a), Aug. 28, 1942.

Laws 1941, c. 555.

Amendment proposed by Laws 1941, c. 171, is entitled to be designated as number one on pink ballot, notwithstanding direction in this act. Op. Atty. Gen. (86A-4), Jan. 7, 1942.

Laws 1941, c. 660.

§52.
Payments due retirement association and manner of payment determined as to the railroad and warehouse commission. Op. Atty. Gen. (331a-4), July 28, 1943.

Laws 1943, c. 60.

§3(2).
Amended. Laws 1943, c. 601.

Laws 1943, c. 81.

Amended. Laws 1943, c. 488.

Laws 1943, c. 105.

§4.
Section does not permit a flat allowance for subsistence, and it has been the practice for each member of such commission, to submit bills for actual expense in amounts allowed under the rules of the Commissioner of Administration, including the usual charge per mile when the member uses his own automobile. Op. Atty. Gen. (280c), Aug. 25, 1943.

Laws 1943, c. 117.

§3.
Amended. Laws 1943, c. 222, §2.

Laws 1943, c. 168.

§1.
A donation to the U.S.O. is not permitted. Op. Atty. Gen. (476b-2), Oct. 21, 1943.

Laws 1943, c. 193.

§1.
Amended. Laws 1943, c. 532.

Laws 1943, c. 234.

Licensing of solicitors. Laws 1943, c. 542.

Laws 1943, c. 273.

Amended. Laws 1943, c. 490.

Laws 1943, c. 295.

§1.
This act is merely a curative act. Op. Atty. Gen. (129), July 7, 1943.

Laws 1943, c. 397.

§10.
Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

Laws 1943, c. 411.

§1.
Amended. Laws 1943, c. 531.

Laws 1943, c. 485.

City may rent out snow fence to a private party for victory garden. Op. Atty. Gen. (835), Apr. 28, 1943.

Laws 1943, c. 526.

§1(b).
Village automatically came under law where it had more than $1,100,000 assessed valuation on April 20, 1943, without passage of any resolution, notwithstanding that its assessed valuation in prior years and thereafter was less than that amount. Op. Atty. Gen. (476a-4), June 2, 1943.

§2.
Levy for 1943 may not exceed $60 per capita to pay indebtedness existing December 31, 1940, in independent school district 35 of Buhl. Op. Atty. Gen. (519i), July 1, 1943.

§2(a).
Indebtedness to be refunded must have been incurred prior to January 1, 1943, and subsequent increases in the floating indebtedness cannot be refunded. Op. Atty. Gen. (44a-4), Aug. 20, 1943.

§3.
Disbursements of district for vocational education to prepare students for aviation duties in war, for which United States will reimburse district, may be considered as cash in treasurer's hands. Op. Atty. Gen. (170h), Aug. 25, 1943.

Laws 1943, S.F. 574.

Act would not prohibit state board of education from furnishing to local school boards plans and specifications for school buildings of two classrooms or less. Op. Atty. Gen. (622j), Mar. 20, 1943.

Laws 1943, c. 597.

For notes construing this act see §668.

Laws 1943, c. 598.

§5.
Expense of securing information necessary to make application is a lawful charge which may be allowed by county board. Op. Atty. Gen. (928e), Oct. 19, 1943.

Laws 1943, c. 631.

§103.
Reimbursement should be made to the person who actually paid the fee. Op. Atty. Gen. (632a-7), June 21, 1943.

Laws 1943, c. 644.

§20.
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.

Laws 1943, c. 655.

The 67 per cent provision applies only to those districts levying taxes for maintenance 30 to (but not including) 35 mills and 75 per cent shall be paid in districts levying 35 to (but not including) 40 mills, and 87 per cent shall be paid to districts levying 40 mills or more, and such mill rates apply to maintenance only, and in determining rate of levy, agricultural lands must be included. Op. Atty. Gen. (168d), May 11, 1943.

Provision that "transportation aid to districts receiving supplemental aid shall be paid on the basis of not less than 65 per cent" refers to high schools, graded schools, sei-graded schools and consolidated industrial and rural schools, and this aid is to be pro-rated at not less than 65 per cent, and the following provision that "all special aids shall be pro-rated at 75 per cent" applies in districts which do not receive supplemental aid. Id.

High school tuition aid and aid for special classes for handicapped children are special state aid which shall be "pro-rated at 75%". Op. Atty. Gen. (168), July 15, 1943.

§6.
A school district maintaining a high school teacher training department and spending up to $1800 for the maintenance of the teacher training department for the school year 1942-43 may be reimbursed up to $1800, and a salary increase during the year may be included. Op. Atty. Gen. (168), May 11, 1943.

Provision for prorating relates only to the appropriation provided in this act, and does not apply to revenue received from other sources. Op. Atty. Gen. (168), July 27, 1943.

Tuition for non-resident high school pupils, transportation of crippled children and teachers training department should be paid in full. Id.

Section does not authorize payment of granted aid or reimbursement to school district for transporting crippled child to agricultural school in year 1942-1943. Op. Atty. Gen. (168), Aug. 20, 1943.

§6(2).
Section prescribes minimum percentages to be paid as supplemental aid, and when money is available, greater percentages should be paid in the proportions stated. Op. Atty. Gen. (168d), Aug. 30, 1943.

§7.
Tuition for non-resident high school pupils, transportation of crippled children and teachers training department should be paid in full. Op. Atty. Gen. (168), July 27, 1943.

Fees collected for teachers' certificates must be deposited in general revenue fund. Op. Atty. Gen. (454e), Aug. 27, 1943.

§7(2).
Appropriation of $10,000 "for the printing of the elementary school curriculum" includes expense of preparing the copy for printing. Op. Atty. Gen. (9a-13), Sept. 7, 1943.

§11.
Fees collected for teachers' certificates must be deposited in general revenue fund. Op. Atty. Gen. (454e), Aug. 27, 1943.

Student activities, over and above contingent fund, should be deposited daily with state treasurer. Op. Atty. Gen. (316), Sept. 8, 1943.

Laws 1943, c. 660.

§21(4).
Commission may publish and distribute without charge a tariff of rates for truck operators. Op. Atty. Gen. (371a-3), Aug. 18, 1943.

§24.
Although the provision that "no portion of the appropriation herein provided for, shall be used in the program of gliding and soaring" does not apply to balance on hand at the end of the present fiscal year, references made thereto to show the attitude of the legislature relative to expending state funds for the purpose therein stated. Op. Atty. Gen. (9a-30), June 2, 1943.

§29.
Commissioner of banks may not pay to state treasurer miscellaneous funds and property accumulated in his hands and not distributed because of impracticability of so doing, since such funds do not belong to the state. Op. Atty. Gen. (29B-(7)), Dec. 8, 1943.

§40.
Director of the Division of Forestry may also hold the position of Surveyor General. Op. Atty. Gen. (403), May 7, 1943.

§44.
Income of the Department of Aeronautics must be deposited in general revenue fund, and balances of appropriation to Aeronautics Commission are not available to the department. Op. Atty. Gen. (234), July 22, 1943.

§46.
Section is not effective as to employees in the unclassified service, and does not apply to salaries of employees hired by the registrar of motor vehicles or his deputies by authority of §9 of the Civil Service Act. Op. Atty. Gen. (644b), July 9, 1943.

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.

§51.
Notwithstanding Laws 1943, c. 600, §17, all balances of funds heretofor appropriated by the executive council to the governor for civilian defense will be cancelled into the general revenue fund unless valid obligations are incurred prior to June 30, 1943 and same are property encumbered. Op. Atty. Gen. (9a-30), June 2, 1943.

Income of the Department of Aeronautics must be deposited in general revenue fund, and balances of appropriation to Aeronautics Commission are not available to the department. Op. Atty. Gen. (234), July 22, 1943.

§52.
Section does not apply to receipts from furnishing of transcripts of record by registrar of motor vehicles which are furnished to applicant for not less than the cost of preparing the same. Op. Atty. Gen. (385b), May 21, 1943.

Income of the Department of Aeronautics must be deposited in general revenue fund, and balances of appropriation to Aeronautics Commission are not available to the department. Op. Atty. Gen. (234), July 22, 1943.

Commissioner of banks may not pay to state treasurer miscellaneous funds and property accumulated in his hands and not distributed because of impracticability of so doing, since such funds do not belong to the state. Op. Atty. Gen. (29B-(7)), Dec. 8, 1943.

§59.
Veteran's relief may be handled on a cash grant basis instead of the prevailing relief order base, in a discretion of the commissioner of veteran's affairs. Op. Atty. Gen. (310s), June 29, 1943.

Appendix No. 3
City Charters and Ordinances

ALBERT LEA.

Charter.

City of Albert Lea has authority to improve Fountain Lake, an unmeandered artificial lake within city limits, issue bonds therefor and sell them to the state. Op. Atty. Gen., (928a-8), Oct. 17, 1939.

City council may adopt an ordinance prohibiting playing of music or making of advertising announcements from aircraft flying over city at low altitude. Op. Atty. Gen. (234a), Nov. 8, 1940.

There is no authority, either in the statutes or charter of city of Albert Lea which would authorize city to spend general tax funds in paying a part of premium on group life insurance. Op. Atty. Gen. (249B-8), Nov. 28, 1940.

§66.

Surplus in water fund may not be loaned to general fund or transferred thereto or be used to retire general fund bonds. Op. Atty. Gen. (59a-22), Dec. 5, 1941.

ALEXANDRIA.

Charter.

Offices of city justice and city assessor are not incompatible. Op. Atty. Gen., (385d-5), March 25, 1940.

Municipal court may be created by resolution of city council though city charter does not provide for creation of such court, and it is not necessary to amend city charter. Op. Atty. Gen., (306a-4), April 4, 1940.

In determining last day for filing for municipal office day of election should be counted and day of filing should be excluded and Sundays and holidays may be disregarded, except where day for doing of act falls on Sunday or a holiday. Op. Atty. Gen. (911a-1), Jan. 28, 1941.

C. 5.

§77.

City council may not appropriate money out of general fund towards buying of uniforms for city band. Op. Atty. Gen. (59B-3), Feb. 6, 1941.

§80.

Neither city park board, nor city council could borrow money from a bank and give a note therefore, without vote of electors, and note given by park board is void, but there may be a right in bank to recover from city under implied contract to extent that it has been benefited by money. Op. Atty. Gen., (59a-22), May 22, 1940.

ANOKA.

Charter.

C. 10.

§5.

Permanent improvement warrants do not constitute general obligations of city. Op. Atty. Gen., (59a-49), Feb. 16, 1940.

Ordinance.

No. 202.

A "Green River Ordinance", making it a nuisance for solicitors or peddlers to call at private residences without having been requested or invited so to do, has been held valid by some courts and invalid by others. Op. Atty. Gen., (59a-32), Dec. 22, 1939.

AUSTIN.

Charter.

Bonds deposited by city depository as collateral and placed in a federal reserve bank as custodian must be particularly described in assignment executed by depository, and custodian bank must keep particular bonds deposited with it and may not sell the same and substitute other bonds of the same kind. Op. Atty. Gen. (140a-13), June 25, 1942.

Suggestions for amendment of charter. Op. Atty. Gen. (58c), Aug. 28, 1942.

In absence of a limitation in charter, there is no reason why bonds for acquisition of land need be sold at any particular time, and no reason why proceeding cannot first be had for condemnation of land. Op. Atty. Gen. (234b), Feb. 27, 1943.

Proceedings by city to condemn land as an airport site must proceed under this charter rather than under general laws, but may survey premises prior to commencement of condemnation proceedings without the consent of owners. Op. Atty. Gen. (59a-14), Apr. 14, 1943.

Proceeding to condemn property may be abandoned before commissioners are appointed. Op. Atty. Gen. (817c), Apr. 17, 1943.

A building permit should not be refused because the proposed building may violate a restriction contained in the title to lots in the same addition, and an ordinance prohibiting construction of houses of less than a number of square feet ground area would probably be invalid if only ground therefor is the aesthetic. Op. Atty. Gen. (59a-32), Aug. 18, 1943, Aug. 23, 1943.

§7.

In condemnation proceeding in the widening of street pursuant to Laws 1939, c. 75, §4, the only matters considered are acquisition of land and determination of damages, with offsets for benefits to parts of parcels not taken, and matter of assessing benefits upon other property owners is to be taken care of in other proceedings relating to improvement itself. Op. Atty. Gen. (396c-6), Aug. 28, 1942, Sept. 2, 1942.

Authority is conferred to assess benefits for widening a street on a boundary of the city. Op. Atty. Gen. (396c-6), Aug. 28, 1942, Sept. 2, 1942.

§11.

To acquire land and improve it for an airport, procedure provided in city charter must be followed. Op. Atty. Gen. (234b), Oct. 15, 1942.

C. 5.

§6(53).

To acquire land and improve it for an airport, procedure provided in city charter must be followed. Op. Atty. Gen. (234b), Oct. 15, 1942.

C. 6, §2.

Where lands were annexed to city of Austin by resolution adopted by city council of July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen., (59a-1), Sept. 27, 1939.

C. 8.

§4.

City condemning property for an airport outside its boundary must proceed under its charter and not under general law. Op. Atty. Gen. (234b, 817f), Oct. 6, 1943.

C. 11.

Board of water, electric, gas and power commissioners of a city cannot enter into a closed shop contract. Op. Atty. Gen., (270), Feb. 28, 1940.

BELLE PLAINE.

Charter.

Borough of Belle Plaine has power to establish a fire department and make provisions for compensating its firemen and chief, but this must be done by appropriate resolution or ordinance. Op. Atty. Gen., (688J), May 8, 1940.

Candidate for office in borough of Belle Plaine, should be nominated by filing affidavit of candidacy or otherwise as provided by general election law and not as provided in incorporation act. Op. Atty. Gen. (472-h), Jan. 9, 1941.

Lands dedicated by plat as a park cannot be leased or sold. Op. Atty. Gen., (469a-9), June 9, 1941.

Borough cannot contract for construction of a sewer to cost $5000 without first advertising for bids. Op. Atty. Gen. (707a-15), May 28, 1943.

BEMIDJI.

Charter.

Where city council had knowledge that operator of sewage disposal plant was an honorably discharged veteran when he was employed and where his employment was continuous, he could not be discharged without notice and a hearing, and did not waive right to hearing by filing a new application for appointment each year thereafter, including year when application was rejected. State v. City of Bemidji, 209M91, 295NW514.

BENSON.

Charter.

In absence of express authority, a city may not lawfully enter into a contract for deed calling for periodical payments over a specified term of years, or take a conveyance, subject to assumption of mortgage. Op. Atty. Gen. (59a-40), Apr. 29, 1942.

BIWABIK.
Proposed Home Rule Charter.
§7(d).
Provision in home rule charter retaining unseparated status of village from township for election and assessment purposes would be valid. Op. Atty. Gen. (580), Aug. 14, 1941.

BLOOMING PRAIRIE.
Charter.
Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. Op. Atty. Gen., (476a-1), Dec. 5, 1939.

BLUE EARTH.
Ordinance.
No. 108 (N. S.)
§X.
"Owner," for purpose of consenting to non-conforming use, includes vendee, but not vendor; does not include lessee; all cotenants of joint property must join in consent. Op. Atty. Gen., (62b), June 2, 1941.

BOVEY.
Ordinance.
Revocation of unintoxicating liquor license and reconsideration of order of revocation. Op. Atty. Gen. (217b-9), Sept. 24, 1943.

BRAINERD.
Charter.
City engineer of Brainerd supervising construction of storm sewer by city employees had supervisory power under city charter to lower a house drain running to sanitary sewer system which obstructed construction of storm sewer, and in action by land owner against city for trespass and damage to wall, ultra vires was not a defence, though engineer acted without specific authorization. Clark v. City of Brainerd, 210M377, 298NW 364. See Dun. Dig. 6813.
Provisions of charter with reference to election of a city assessor and city treasurer may be amended in any desired respect by the people. Op. Atty. Gen., (58c), Apr. 3, 1941.
Term of judge of municipal court in Brainerd is four years, notwithstanding that city charter provides for a two-year term. Op. Atty. Gen. (307k), Apr. 21, 1942.
City sinking funds may be invested in war bonds if they mature before outstanding bonds which are to be met. Op. Atty. Gen. (551), July 31, 1942.
School board tie vote is to be determined by lot. Op. Atty. Gen. (768m), Apr. 13, 1943.
School district elections in Brainerd should be held at the same time as general state-wide election and not at the time of holding city election. Op. Atty. Gen. (768-1), Apr. 28, 1943.
Necessity for advertising for bids before purchasing equipment or letting contracts depends upon the nature of the work. Op. Atty. Gen. (707a-4), Nov. 15, 1943.
§33.
Position of member of water and light board is an "office," though appointive. Op. Atty. Gen. (90a-2), Feb. 1, 1943.
§84.
This section, rather than general state law, applies to vacation of street. Op. Atty. Gen. (396c-18), June 17, 1943.
Section is valid, but council should pass an ordinance providing procedure which will accord abutting owners due process. Op. Atty. Gen. (396c-18), June 23, 1943.
§131.
Sewage disposal plant is a "public utility" which should be operated by water and light board. Op. Atty. Gen., (387G-9), Oct. 27, 1939.

BRECKENRIDGE.
Charter.
§5.
City may create office of milk inspector and fix his salary, but may not enter into cooperative milk inspection agreement with another state and cities therein whereby each pays a specified part of his salary and travel expense. Op. Atty. Gen. (292e), Dec. 29, 1941.
§14.
Where one alderman resigned, leaving 5 and the mayor, who could vote only in case of a tie, vacancy could be filled by a vote of 3 aldermen, a majority being sufficient, and where council proceeded on theory that 4 votes were necessary at several meetings and declared no one appointed though some candidates received 3 votes, the meetings were without any legal effect and balloting may be done over at such time as a correct understanding is had. Op. Atty. Gen. (63a-11), Sept. 24, 1942.
§84.
Op. Atty. Gen. (292e), Dec. 29, 1941; note under §5.
§98(3).
Council may issue bonds in a sum not exceeding five percent of taxable property value of city, including bonds for purpose of installation of sanitary sewers to be eventually paid for by special assessments, regardless of $20,000 revolving fund limitation contained in subsection 2. Op. Atty. Gen. (36C-8), Sept. 16, 1941.
§199.
City may not pay out any part of the 25% retained percentage before contract is completed. Op. Atty. Gen. (59a-15), Aug. 20, 1942.

BROWNSVILLE.
Charter.
Village election should be held on first Tuesday after first Monday in December, in view of Laws 1929, c. 413. Op. Atty. Gen., (472f), Oct. 30, 1939.
Since Special Laws 1868, c. 30, was repealed by Laws 1943, c. 117, general law applying to villages applies to that village, including compensation of councilmen and clerk. Op. Atty. Gen. (471k), Aug. 5, 1943.
§25.
Recorder cannot receive compensation in excess of $20 in any one year. Op. Atty. Gen. (470b), July 16, 1942.
Brownsville School District.
Meetings and elections, and procedure for changing school district into independent school district. Op. Atty. Gen. (166d-9), July 15, 1942.

BUHL.
Ordinance.
No. 76.
Delinquent steam, light and power bill as a lien on property sold under mortgage foreclosure. Op. Atty. Gen., (624c-4), July 12, 1941.

CARLTON.
Ordinance.
Offices of member of city or village council and member or officer of a volunteer paid fire department are incompatible. Op. Atty. Gen. (358e-9), Nov. 28, 1941.

CHASKA.
Charter.
City council granting a liquor license may revoke its action before it has been acted on by the liquor control commissioner. Op. Atty. Gen., (218g-6), June 24, 1941.
C. 3.
§14.
Offices of city treasurer and city park overseer in city of Chaska are incompatible. Op. Atty. Gen. (358e-1), Mar. 24, 1943.

CHATFIELD.
Charter.
§1.
A city, such as Chatfield, has power to accept a hotel building as a gift and lease it temporarily, and it is subject to tax. Op. Atty. Gen. (59a-40), Oct. 6, 1942.

CHISHOLM.
Charter.
Offices of member of school board and mayor of Chisholm are incompatible. Op. Atty. Gen. (358f), Dec. 23, 1941.
City has authority to lease municipal tourist park to a private agency. Op. Atty. Gen. (59a-40), June 4, 1942.
Where city purchased windows from local lumber company, some of materials for which were furnished to lumber company by an outside concern, and work of installation was done by city employees, city was not required to obtain a bond and was not liable to outside concern, which local company failed to pay. Op. Atty. Gen. (59a-15), June 25, 1943.
A municipality can levy an amount sufficient to replace loss caused by repeal of tax on moneys and credits, but the total levy cannot exceed any statutory or charter per capita limitation. Op. Atty. Gen. (519i), Aug. 16, 1943.
No village may now hold primary elections. Op. Atty. Gen. (472t), Sept. 8, 1943.
§124.
Cost of a garbage truck may not be paid from permanent improvement fund. Op. Atty. Gen. (59a-22), June 9, 1942.
§240.
Judgment may be paid in installments when it so provides. Op. Atty. Gen. (63b-10), Aug. 11, 1942.
§257.
Judgment may be paid in installments when it so provides. Op. Atty. Gen. (63b-10), Aug. 11, 1942.

C. 8, §148.
Members of commission had no vested rights as to salary at time of adoption of home rule charter. Op. Atty. Gen. (624e-3), Mar. 31, 1942.

CLOQUET.
Charter.
§51.
City cannot enter into a contract with a cooperative society in which councilman is a stockholder, and member of board of directors. Op. Atty. Gen., (90e), Jan. 15, 1940.

COKATO.
Ordinance.
Whether an emergency exists permitting award of contract without advertising is a question of fact for determination of administrative officers in the first instance. Op. Atty. Gen. (707a-8), May 18, 1942.

CROOKSTON.
Charter.
Angle-parking on state truck highways in cities is permissible, only with consent of Highway Commissioner, regardless of charter provision giving city control over city streets. Op. Atty. Gen., (989a-16), Sept. 26, 1939.

DAWSON.
Charter.
Police officer of a city has right to serve warrant out of municipal court in any part of county. Op. Atty. Gen. (306b), Apr. 17, 1942.

C. 2, §11.
Removal of aldermen from ward of city for which elected creates a vacancy. Op. Atty. Gen. (63A-1), Sept. 20, 1941.

DELANO.
Ordinance.
No. 88.
Word "closed" requires that places where non-intoxicating malt liquor is sold must be closed at 1 o'clock A. M., and that all dealings with public and patrons cease at that time. Op. Atty. Gen. (218j-8), Apr. 15, 1942.

DETROIT LAKES.
Charter.
§53.
Provision with respect to compensation for publication is valid. Op. Atty. Gen. (277a-11), Mar. 14, 1941.

Ordinance.
City has no authority to donate money to Red Cross from profits of liquor store. Op. Atty. Gen., (59a-22), Nov. 1, 1939.

DULUTH.
Charter.
Notwithstanding that charter fixes salary of an officer or employee, those persons accepting checks for less than their salary during a financial emergency may be estopped to recover unpaid portion. Pratts v. C., 206M 557, 289NW788. See Dun. Dig. 8007.

Provision of Corrupt Practices Act requiring filing of expense accounts does not apply to city elections in first class cities. Op. Atty. Gen. (627B-1), Jan. 6, 1941.

Organization meeting of school board should be held on first Saturday in July, or as soon thereafter as practicable. Op. Atty. Gen. (161a-19), June 18, 1942.

Art. 1, §1.
City could probably rent out its snow fence during the summer for victory gardens under this section, and undoubtedly may do so under Laws 1943, c. 485. Op. Atty. Gen. (835), Apr. 28, 1943.

City council has no authority to refund unused portions of licenses voluntarily paid, or to authorize, by ordinance, or otherwise, payment of license fees by installments, in view of §64 (25) of Charter of 1900. Op. Atty. Gen. (59a-27), Sept. 17, 1940.

§22.
City council may, in case of a disabled fireman, authorize payment of difference between his salary and compensation received by him under Workmen's Compensation Act for a reasonable period. Op. Atty. Gen., (59a-21), Apr. 18, 1941.

§31.
Where all eight bids for coal are identical city council may divide the purchases among bidders, if there is no collusion among bidders, but eight identical bids is a suspicious circumstance. Op. Atty. Gen. (707), July 5, 1940.

It is mandatory upon city council to advertise for bids for purchase of coal where amount involves expenditure of more than $100.00. Id.

Ordinance.
One on public street at 3 A. M. in an intoxicated condition and with speech so incongruous and absurd as to waken a person in a nearby house and cause him to call the police was guilty of "open drunkeness". City of Duluth v. Oberg, 210M262, 297NW712.

EDINA.
Ordinance.
Where a real estate corporation owned a platted area in which it, installed water and sewer facilities at its own expense for purpose of making lots saleable, including cost of installation in purchase price of lots, and formed a service corporation as a convenient legal means by which it could conduct part of its business in connection with such system, no contract, express or implied, or quasi contract, arose from fact that village granted such service corporation a franchise with the "right and privilege to install, maintain and operate" the water and sewer systems and the "right" to erect and maintain fire hydrants approved by said village council, on which village could be held liable for services rendered the community in connection with the systems, though franchise contained a provision that "said hydrants may also be used by the village for fire protection purposes upon such terms as may be mutually agreed upon". Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 6670.

ELK RIVER.
Ordinance.
No. 32.
The Anoka County Cooperative Light and Power Association may not purchase franchise of an electric company granted by a village, since it may deal only with its own members and village may not become a member. Op. Atty. Gen. (624c-10), Nov. 18, 1942.

ELY.
Charter.
A city council or municipal court of a city of the fourth class may not establish a traffic court, absent a charter authority. Op. Atty. Gen., (306b), May 15, 1941.

§26.
If a vacancy arises in office of alderman, it is duty of remaining members to fill it by appointment. Op. Atty. Gen. (63a-11), Sept. 21, 1942.

§65.
City may establish a recreational fund and levy a tax for its support. Op. Atty. Gen. (519C), Aug. 26, 1941.

§72.
City may establish a recreational fund and levy a tax for its support. Op. Atty. Gen. (519C), Aug. 26, 1941.

§208.
Appropriation may be made to Commercial Club for promoting the best interests of the city. Op. Atty. Gen. (59a-3), Oct. 18, 1943.

EVELETH.
Charter.
City charter sets out no special qualifications for city engineer, but if he is to be placed in responsible charge of preparation of plans or specifications for any public work or public improvement, he must be registered. Op. Atty. Gen., (10a-3), Jan. 8, 1940.

City authorities may furnish water service to churches and charitable institutions at a lesser rate than charged other customers, but may not furnish free water service. Op. Atty. Gen. (624c-11), Feb. 25, 1941.

City furnishing water service may adopt reasonable rules and regulations to enforce payment of charges, but in absence of authority in charter, may not make a special assessment therefore, and levy against property serves. Op. Atty. Gen. (624D-5), Feb. 27, 1942.

§77.
City has power to furnish current for a clock in a church steeple to give inhabitants the time of day. Op. Atty. Gen. (59a-22), June 21, 1943.

C. 2.
§6.
Where special municipal judge was reelected to office on November 2d and died on November 11th, one appointed to fill the vacancy will hold office only until the next general city election, and in the city of Eveleth his compensation is on a per diem basis. Op. Atty. Gen. 307(J), Dec. 20, 1943.

§11.
Where office of mayor is vacated, three of remaining four council members may select a new mayor, and a council member may vote for himself as mayor as one of the three, and then remaining members of council and newly elected mayor may proceed to appoint a new council member. Op. Atty. Gen. (611), Nov. 12, 1942.

C. 6.
§49.
Where special municipal judge was reelected to office on November 2d and died on November 11th, one appointed to fill the vacancy will hold office only until the next general city election, and in the city of Eveleth his compensation is on a per diem basis. Op. Atty. Gen. 307(J), Dec. 20, 1943.

C. 8.
§1.
City may levy a tax for maintenance of municipally owned cemetery. Op. Atty. Gen. (870B), Mar. 9, 1942.

C. 10.
§90.
Granting unexclusive franchise to power and light company without receiving bids violated this section. Op. Atty. Gen., (707B-2), Feb. 5, 1940.

Ordinance.
City may not recover from innocent purchaser of premises water service charges against former occupant. Id.
There is no statute providing qualifications of an assistant health officer. Op. Atty. Gen. (225*l*-1), Nov. 18, 1941.

No. 13.
§15.
Personal liability of owner of property for water supplied to a tenant. Op. Atty. Gen. (624c-4), Apr. 9, 1943.

Fire Department Relief Ass'n.
Term "year" of service cannot be extended to mean a part of a year. Op. Atty. Gen. (688m), Dec. 10, 1942.

EXCELSIOR.
Charter.
Salaries of officials are those fixed by Mason's Stat., §1163-1(7). Op. Atty. Gen., (471K), Sept. 22, 1939.

FAIRFAX.
Ordinance.
No. 10.
A village ordinance declaring it to be unlawful to "build, erect or construct or cause to be built, erected or constructed any wooden or other combustible building" within certain designated fire limits, and further requiring anyone "desiring to build, erect or construct any building or desiring to repair any building already built" to obtain a permit therefor from the village council, but not making it unlawful to repair such buildings, was valid so far as it prohibited construction of building, but was ineffective and unenforceable so far as it required a permit for the "repair" of a building. Julius v. Lenz, 215M106, 9NW(2d)255. See Dun. Dig. 6525.
Remodeling of a building held to constitute "repair" and not "construction". Id.

FAIRMONT.
Charter.
City may not acquire gas plant without a vote of the people. Op. Atty. Gen. (59b-7), Sept. 2, 1943.

C. I.
§4.
City may construct sewage system outside of city limits to care for sewage from property owners outside city for the purpose of improving the city water supply. Op. Atty. Gen. (387g-9), July 24, 1943.

C. IX, §70.
City may by ordinance amend artificial gas franchise so as to permit distribution of natural gas without a vote of electors. Op. Atty. Gen., (624B-3), Oct. 26, 1939.

FARIBAULT.
Ordinance.
No. A194.
School board may withdraw from joint recreational program at end of stated period, and power to approve recreation board budget involves power to disapprove. Op. Atty. Gen. (159b-1), Apr. 29, 1943.
No. A195.
School board may withdraw from joint recreational program at end of stated period, and power to approve recreation board budget involves power to disapprove. Op. Atty. Gen. (159b-1), Apr. 29, 1943.

FERGUS FALLS.
Charter.
Charter may be amended so as to provide for annual payment to city of a franchise tax based on value of properties of water, light, power and building commission. Op. Atty. Gen., (624c-11), Dec. 5, 1939.
Offices of mayor and member of school board of district embracing city are incompatible. Op. Atty. Gen., (358f), Dec. 13, 1939.

§12.
City cannot contract with corporation of which member of city council is a stockholder, but may carry out contracts entered into before stockholder became member of city council. Op. Atty. Gen. (90e), June 19, 1942.
City may enter into contract with company in which member of city council is an employee, but only if he has no interest, directly or indirectly, in the contract. Op. Atty. Gen. (90e), June 19, 1942.

§94(8).
Expenditures of Park Funds may be made for certain recreational purposes. Op. Atty. Gen. (59a-22), June 26, 1943.
Cost of preliminary plans for future construction of an airport may be paid out of general fund. Op. Atty. Gen. (234b), Aug. 19, 1943.

§95.
Expenditure of Park Funds may be made for certain recreational purposes. Op. Atty. Gen. (59a-22), June 26, 1943.

§105.
Where commission has established four different rates based on nature of use of electricity, board cannot charge city a higher rate than is charged by the parties for a corresponding service. Op. Atty. Gen., (624c-11), Dec. 5, 1939.
Practice of commission in giving one month's free electric current each year, considered as a portion of the city rate, was not illegal as failing to establish a uniform rate because some consumers have been out of the city during that month. Op. Atty. Gen. (624c-11), Aug. 27, 1940.

§122.
While mayor still nominates members of police department, he must make nominations from name or names certified to him by police civil service commission, provisions of this section being superseded where inconsistent with police civil service commission act. Op. Atty. Gen., (785E-2), April 20, 1940.

C. 2.
§18.
Section governs compensation of chief of police, patrolmen, and other employees of police department. Op. Atty. Gen. (59a-41), Feb. 13, 1942.

C. 5.
§94.
Money in permanent improvement fund may not be invested, but may be transferred to sinking fund and then be invested in war bonds. Op. Atty. Gen. (551), Nov. 16, 1942.

C. 9.
§129.
Compensation of chief, patrolmen, and other employees must be fixed by resolution of council at first regular meeting of new council in April of each year, and such compensation is not subject to change during such year, but where resolution fixing monthly compensation makes no provision for purchase of uniforms and other equipment, council may later authorize purchase of uniforms. Op. Atty. Gen. (59a-41), Feb. 13, 1942.

GILBERT.
Ordinance.
Mason's Minn. Stat. 1927, §2616, authorizing requirement from one about to move a building over a street or other public highway of a sum of money sufficient to cover reasonable expense of removal, held to be a declaration of state law as against which a village ordinance requiring a substantial sum in excess is ultra vires. Moore v. V., 207M75, 289NW837. See Dun. Dig. 6752, 6753.
Inspectors of animals to be slaughtered need not be medical men or veterinarians, but it is still duty of health officer to make inspection, even though a layman inspector is appointed. Op. Atty. Gen. (59A-23), Mar. 17, 1942.

Fire Department Relief Ass'n.
Articles of incorporation establishing a fund for the relief and support of sick, injured or disabled members are sufficiently broad to include benefits for injury and sick benefits, and under the statute by-laws provided death benefits though articles only provide for relief for widows and orphans, and statutes authorized payment of pension benefits by an association when its certificate of incorporation or bylaws so provide. Statute is clear that to qualify for pension member shall have done "active" duty for 20 years or more and bylaws must be read to conform therewith. Ex-official members of the board of trustees have the same voice and functions as do other trustees elected from members of the association, though they are not members of the association and are not therefore entitled to attend and vote at meetings of the members. In city of Gilbert association cannot accept dues from members who have left the community and are no longer giving active service as firemen, unless such members are either on temporary leave for a period of no greater than 6 months immediately preceding annual

meeting of the association or are on temporary leave with the consent of the directors within a 2-year period provided, or have received honorable discharge from the Fire Department and have complied with the provisions of articles. Officers of association must drop members who tender dues and assessments to the association but who no longer live in the municipality, except those specified. Members in the military service are entitled to a leave of absence during such service with right of reinstatement. Op. Atty. Gen. (198a-3), Apr. 30, 1943, June 4, 1943.

GLENWOOD.

Charter.

§8.

Commission may appoint same person to perform duties of city attorney and city clerk unless ordinances have prescribed inconsistent duties. Op. Atty. Gen. (358E), Jan. 6, 1942.

Veteran's preference. Id.

C. 2, §8.

It is improper for city assessor to make a general revaluation of real property in a year other than the regular year for assessing property, but city may employ an appraiser to prepare a plot of the city, establish comparable land values, and make records of improvement and establish comparable values on improvement, and fix salary of such appraiser at any reasonable figure, which data may be used in proper year by assessor in arriving at his own independent judgment in making assessment. Op. Atty. Gen., (12e), July 23, 1941.

GRANITE FALLS.

Charter.

§3.

City may acquire by gift a cemetery lying outside the corporate limits. Op. Atty. Gen. (870b), June 28, 1943.

C. 4.

§34.

Unless contract deals with matter requiring length of public notice, council in its discretion may determine that one notice is sufficient. Op. Atty. Gen. (707a-1), May 15, 1943.

§59.

City may acquire by gift a cemetery lying outside the corporate limits. Op. Atty. Gen. (870b), June 28, 1943.

HASTINGS.

Charter.

C. 2.

§3.

Vacancy created when alderman resigned his office to enter armed forces can be filled by simple motion of city council, and an ordinance is not necessary. Op. Atty. Gen. (63a-11), Oct. 22, 1942.

C. 3.

§2.

Charter does not require that an assessor be appointed in March, and city council may adopt an ordinance appointing an assessor and may fix his term of office in April, and if council fails to appoint an assessor present incumbent holds over and continues to exercise duties, until a successor is appointed. Op. Atty. Gen., (12a-3), April 25, 1940.

§5.

City clerk may not be paid additional compensation for work in making out report of city affairs upon request of state public examiner. Op. Atty. Gen., (60), March 1, 1940.

§6.

Council after fixing salaries of officers and employees may change them. Op. Atty. Gen. (59a-41), July 10, 1942.

C. 4, §8.

A two-thirds vote is necessary to change salary of an officer or employee which has once been fixed. Op. Atty. Gen. (59a-41), July 10, 1942.

C. IX.

Oiling of streets is "sprinkling" for which assessment may be levied against abutting property. Op. Atty. Gen., (396a-2), Apr. 7, 1941.

HERON LAKE.

Charter.

Independent school district No. 1 was established by special act, and time for school election is fixed by Special Laws 1873, c. 51, and was not affected by Laws 1939, c. 62, amending §2793. Op. Atty. Gen., (187a-6), Jan. 8, 1940.

A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen. (470g), Jan. 15, 1941.

An assessor should have been elected in Heron Lake at Dec. 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.

Procedure for levying of special assessments for sidewalk repairs. Op. Atty. Gen. (480A), Jan. 23, 1942.

HIBBING.

Charter.

Tax collected under Laws 1935, c. 192, may not be used for purpose of purchasing fire fighting equipment for fire department. Op. Atty. Gen. (198B-10(c)), Jan. 14, 1941.

Villages may not hold primary elections. Op. Atty. Gen. (472t), Oct. 21, 1943.

HUTCHINSON.

Charter.

City may not lawfully purchase an automobile truck on an installment lease contract, though conditional sale contracts have been sustained where payment was not made out of proceeds of a tax levy. Op. Atty. Gen., (476a-6), Jan. 19, 1940.

Where home rule charter provides for selection of nominees at a primary city election but fails to provide for filling vacancies in such nominations, general law applies and person receiving next highest vote at primary automatically moves up and becomes candidate. Op. Atty. Gen., (186E), May 3, 1940.

INTERNATIONAL FALLS

Charter.

Power to maintain an airport or bathing beach outside city limits carries with it authority to adopt rules and regulations governing use thereof. Op. Atty. Gen., (62b), Apr. 9, 1941.

An ordinance directly limiting number of filling stations would be invalid, but a city may pass zoning ordinance and prohibit filling stations within certain zones, or prohibit operation of filling stations within certain distances from existing stations or from churches, schools, or other public buildings. Op. Atty. Gen. (62B), Sept. 26, 1941.

City may pay a reasonable portion of costs of installation of storm sewers applicable to intersecting streets, and between street intersections, and between street and alley intersections, but rest of it should be met by special assessment against benefited property. Op. Atty. Gen. (387B-1), Sept. 30, 1941.

Person employed by a city to audit its books need not be a certified public accountant. Op. Atty. Gen. (373b), July 1, 1943.

§26.

Provision for search warrants in liquor cases. Op. Atty. Gen. (218f-3), Dec. 2, 1943.

C. 1.

§1.

A city does not possess inherent power to install a storm sewer. Op. Atty. Gen. (387B-10), Feb. 19, 1942.

C. 7.

§26(57).

City may expend money for maintenance of cemetery outside the city limits. Op. Atty. Gen. (870b), Sept. 7, 1943.

C. 15.

§1.

Authority to install storm sewers is impliedly included under authority to establish a general system of sewers, but cost of installing a storm sewer must be met by special assessments, and not by a general tax levy. Op. Atty. Gen. (387B-10), Feb. 19, 1942.

Fire Relief Ass'n.

Pension may not be paid to any person while he is an active member of fire department. Op. Atty. Gen. (198a), Apr. 30, 1942.

JACKSON.

Charter.

Offices of city justice and assessor are not incompatible. Op. Atty. Gen. (358d-5), Apr. 29, 1942.

§11.

Justices of the peace are state officers and their courts are state courts and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 206M446, 288NW 845. See Dun. Dig. 8011.

§13.

Employee of Rural Electrification Association receiving straight salary may be elected to office of city councilman, though city and association are parties to a contract. Op. Atty. Gen., (90e), March 18, 1940.

JANESVILLE.

Charter.

A city or village may issue bonds for purpose of refunding outstanding bonds which have not matured, if bondholders are willing. Op. Atty. Gen. (44B-12), Jan. 17, 1941.

LAKE CITY.

Charter.

City having accepted and used bathing beach for the public benefit could pay balance thereof due on notes executed by city, and release guarantors on the notes, which ran to the city and not to the payees of the notes. Op. Atty. Gen., (59a-22), Dec. 6, 1939.

Under city ordinance authorizing hospital board to operate hospital "for the practice of medicine and surgery", chiropractors and osteopaths may use hospital within limitations of their practice in absence of any rule or regulation to the contrary by the board. Op. Atty. Gen., (1001a), March 26, 1940.

It is discretionary with city council whether it shall furnish municipal judge with a courtroom. Op. Atty. Gen. (306a), Sept. 1, 1942.

Offices of city assessor of Lake City and member of Water and Light Commission therein are not incompatible. Op. Atty. Gen. (358E-(1)), Dec. 29, 1943.

LE SUEUR.

Charter.

City may purchase a diesel unit without advertising for bids. Op. Atty. Gen., (707a-4), Dec. 20, 1939.

C. 7.

§7.

City may collect water bills by action or by turning off service, but cannot add them to taxes. Op. Atty. Gen. (624c-4), Nov. 26, 1941.

LITCHFIELD.

Charter.

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

LITTLE FALLS.

Charter.

Municipal court is not required to make reports of criminal actions to county attorney as is required of justices of the peace. Op. Atty. Gen. (121B-17), Jan. 21, 1942.

City may make an appropriation for establishment of child care center if it serves a public purpose. Op. Atty. Gen. (59A-(3)), Dec. 15, 1943.

Ordinance.

Requirements of casualty policies of insurance of those obtaining taxicab licenses. Op. Atty. Gen. (62c), June 10, 1943.

LUVERNE.

Charter.

If city is not required to advertise for bids, it may accept a bid which is not in compliance with specifications. Op. Atty. Gen., (707a-4), Oct. 9, 1939.

Statute seems to require only one publication in official newspaper of ordinances, regulations, resolutions and by-laws, but practical construction might require two publications in a weekly paper. Op. Atty. Gen. (277B-4), Dec. 16, 1940.

A diesel engine for improvement of utility plant may be purchased without advertising for bids. Op. Atty. Gen., (707a-4), Apr. 25, 1941.

Ordinance.

Ordinance does not require wholesale grocery selling cigarettes to dealers only to obtain a license. Op. Atty. Gen. (829C-1), Feb. 20, 1942.

MADELIA.

Charter.

Village of Madelia first incorporated under Sp. Laws 1873, c. 3, and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and therefor then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under Revised Laws of 1905, in view of Laws 1943, c. 117. Op. Atty. Gen. (471*l*), June 1, 1943.

MANKATO.

Charter.

City may not fix prices in service trade where there is no express statute or charter provision as basis for exercise thereof. Op. Atty. Gen. (62c), Aug. 27, 1940.

Money may not be appropriated from general funds for "musical entertainment". Op. Atty. Gen., (59b-3), Apr. 21, 1941.

City may not exact payment from "owners benefited" upon vacation of streets or alleys established by dedication or easement and not by purchase. Op. Atty. Gen., (396c-18), Apr. 30, 1941.

An ordinance limiting number of bowling alley licenses would probably be sustained if council acted in good faith and without intent to create a monoply. Op. Atty. Gen. (802B), Aug. 15, 1941.

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

Where city police department created a voluntary organization and gave public dances and subsequently disbanded and divided balance on hand, city council has no jurisdiction over such money. Op. Atty. Gen. (785V), Feb. 6, 1942.

City charter being silent on the subject, it is mandatory on city council to redistrict city into new voting districts or precincts if wards are present election districts with different numbers of voters and all have more than 700 voters, but courts cannot compel council to redistrict in any particular manner. Op. Atty. Gen. (64s), July 10, 1942.

Powers of police civil service commission prevail over powers of mayor under city charter in so far as state law and charter are inconsistent. Op. Atty. Gen. (785e-2), Apr. 28, 1943.

A city is not subject to Wages and Hours Law of the United States, and whether city is under order of state industrial commission is not decided. Op. Atty. Gen. (270g-1), Aug. 27, 1943, Aug. 30, 1943.

§30.

Since charter is silent on matter of establishing election districts, state laws govern. Op. Atty. Gen. (64S), Jan. 27, 1942.

Names of candidates are not to be placed on primary election ballot when there is no contest in that not more persons filed than twice number of places to be filled. Op. Atty. Gen. (186e), Mar. 117, 1943.

§45.

Chief of police department, and other members thereof, are subordinate to mayor and he may suspend them from office under civil service laws. Op. Atty. Gen., (785e-2), Apr. 12, 1941.

Chief of fire department, and other members thereof, are subordinate to councilman placed in charge of that department. Id.

§48.

City may in its discretion pay salary to policeman while he is receiving disability payments from insurance company. Op. Atty. Gen. (59a-41, 523e-1), July 25, 1942.

§71.

City council is not required to submit questions of continuing municipal liquor store to the voters. Op. Atty. Gen. (218g-13), Mar. 20, 1943.

§76.

Municipal court fines should be paid into general fund and sinking fund and not into municipal court fund. Op. Atty. Gen. (306b-6), May 23, 1941.

No order or warrant is necessary to effectuate transfer of fund. Op. Atty. Gen. (59a-22), Nov. 19, 1941.

It is permissible to take money from general fund and transfer it to a "Post War Fund," but fund may not be used for any other purpose than that for which originally raised. Op. Atty. Gen. (59a-22), Dec. 30, 1942.

§140.

Council may not lawfully grant mayor $10 a month in addition to his charter salary to compensate him for use of his car. Op. Atty. Gen. (61G), Aug. 6, 1941.

§219.

Publication of a notice for a period of two successive weeks requires that day on which notice first appeared in newspaper shall be excluded and fourteenth day thereafter included in computing two weeks, and publication is not complete until end of fourteenth day. Op. Atty. Gen. (396c-18), Apr. 30, 1941.

C. 4.

If clerk ascertains that person who signed a petition is a duly registered voter, notwithstanding his signature may vary from that on election register, he should accept it and certify accordingly. Op. Atty. Gen. (62b), Sept. 10, 1942.

§5.

General welfare clause of city charter, which amounts to a grant of all usual and necessary powers, does not limit a city to doing of the things enumerated therein but authorizes licensing and regulating of businesses not specifically referred to in charter. State v. Houston, 210M379, 298NW358. See Dun. Dig. 6768.

City council has power to require the grading of eggs and have all those not graded marked "unclassified". Id.

§6.

City council in prohibiting sale of nonintoxicating malt liquor without a license could prescribe definite and specific punishment of 90 days in workhouse. State v. Ives, 210M141, 297NW563. See Dun. Dig. 4920.

C. 7.

§60(7).

Building code ordinance may not be passed by reference thereto rather than by publishing entire ordinance. Op. Atty. Gen., (59a-32), Jan. 24, 1940.

An ordinance, such as a large building code, may not be published by reference thereto, but it may be printed in smaller type in a special page insert in newspaper. Op. Atty. Gen., (59a-9), April 23, 1940.

C. 8.

§69.

City council may appropriate funds to library board for purpose of constructing an addition to library building to house county historical society, though it has attempted to convey land to trustees of library. Op. Atty. Gen., (285a), Oct. 6, 1939.

City may acquire land by deed to be used solely as cemetery. Op. Atty. Gen. (870b), July 6, 1942.

City may require a license for dogs that are not allowed to run at large, being confined to restraint of liberty on private property or held by leash when on street or in public places. Op. Atty. Gen. (146d-1), Mar. 24, 1943.

§69(18).

Permitting temporary obstruction in street to aid war work. Op. Atty. Gen. (396c-3), Dec. 28, 1942.

§69(33).

City of Mankato may license transient merchants as defined by state law. Op. Atty. Gen. (290p), May 19, 1942.

§71(57).

City has authority to pass a curfew ordinance prohibiting persons under 16 on streets after nine o'clock. Op. Atty. Gen. (62b), Nov. 27, 1942.

C. 10.

§89.

City must advertise for bids for public liability insurance. Op. Atty. Gen. (59A-(25)), Dec. 23, 1943.

C. 12.

§6.

Apparent direction to state purpose of ordinance twice may be regarded as not mandatory but merely directory, but it would be safer to follow exactly directions as to ballot form set out. Op. Atty. Gen. (234b), Oct. 13, 1942.

§48.

City council could not fix maximum salary for policemen and then delegate to mayor the fixing of compensation of each police officer at the end of each month. Op. Atty. Gen. (61d, 785e-2), Sept. 23, 1942.

§112.

If clerk ascertains that person who signed a petition is a duly registered voter, notwithstanding his signature may vary from that on election register, he should accept it and certify accordingly. Op. Atty. Gen. (62b), Sept. 10, 1942.

§142.

City is not entitled to possession of land until payment of compensation therefor. Op. Atty. Gen. (59a-14), Sept. 18, 1942.

MINNEAPOLIS.

Charter.

Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to command under the police power. Bybee v. C., 208M55, 292NW617. See Dun. Dig. 6944.

Certiorari in district court to review order of a civil service commission demoting superintendent of fire prevention bureau of Minneapolis Fire Department was not "an action" within meaning of §9498(1), and decision of court affirming action of the commission was "a final order, affecting a substantial right, made in a special proceeding" within §9498(7), and appeal therefrom must be taken within 30 days after service of written notice under §9497, and it is not contemplated that any judgment be entered in the certiorari proceeding. Johnson v. C., 209M67, 295NW406.

Charter as adopted in 1920 is almost wholly a reenactment of applicable general laws together with special laws then in effect relating to government of that city. Tanner v. Civil Service Commission, 211M450, 1NW(2d) 602. See Dun. Dig. 6538.

Board of education may not make compulsory assessments against school pupils to create a fund called a "laboratory fee" to supply pupils with things which are not usually purchased with school funds, but such a fund may be established through voluntary contributions. Op. Atty. Gen. (169), June 6, 1940.

Members of Minneapolis school board cannot vote salaries to themselves. Op. Atty. Gen. (161A-6), Aug. 6, 1941.

While an ordinance prohibiting disposal of cigarettes or cigarette paper in any form to any person under 18 years of age, or to minors in educational institutions, could be upheld under the Minneapolis health clause of the charter of Minneapolis, the relation of licensing the sale of cigarettes at wholesale to the objects or purposes of the general welfare clause of the charter would be difficult to establish. Op. Atty. Gen. (829c-1), July 24, 1943.

C. 1.

1.

City of Minneapolis has power to lease land lawfully acquired for purposes of a river terminal, but thereafter found unnecessary for use as a part of public terminal facilities, it appearing that lease is adaptable to profitable private use in aid of and ancillary to public terminal, without interference with its efficient operation. Penn-O-Tex Oil Co. v. C., 207M307, 291NW131. See Dun. Dig. 6693.

C. 2.

§2.

Election of president and vice president requires a majority of the 26 members of the council, and in case of a tie vote present officers will hold until their successors are duly elected and qualified, and standing committees continue to function until discharged by the council. Op. Atty. Gen. (63a-7), July 2, 1943, July 3, 1943.

A majority vote of those present at the meeting may make committee appointments, a quorum being present. Op. Atty. Gen. (63a-7), Nov. 9, 1943.

City council has power to fill a vacancy in library board, but it requires a majority of the entire council or 14 votes. Op. Atty. Gen. (63a-7), Nov. 9, 1943.

§7.

Municipal primary election in Minneapolis should be held on second Monday in May, 1941, as provided by local charter, and not 7 weeks before Minneapolis city election as provided by state law. Op. Atty. Gen. (186E), Jan. 6, 1941.

§19.

City council has power to fill a vacancy in library board, but it requires a majority of the entire council or 14 votes. Op. Atty. Gen. (63a-7), Nov. 9, 1943.

C. 3.

§2.

Election of president and vice-president requires a majority of the 26 members of the council, and in case of a tie vote present officers will hold until their successors are duly elected and qualified, and standing committees continue to function until discharged by the council. Op. Atty. Gen. (63a-7), July 2, 1943, July 3, 1943.

§22.

Where city council on death of city treasurer is unable to agree on appointment of any person as city treasurer, charter is broad enough to authorize council to appoint an assistant city treasurer and vest such person with all powers and authority of a city treasurer. Op. Atty. Gen., (63a-1), Jan. 19, 1940.

C. 10.

§8.

City ordinances attempting to recoup losses of city on special improvements (sewer and water mains) assessed against a parcel of land forfeited to state for nonpayment of taxes by imposing upon purchaser from state a connection fee equal to the unrealized portion of the assessment as condition of using water and sewer facilities violated state law and city charter. Fortman v. City of Minneapolis, 212M340, 4NW(2d)349. See Dun. Dig. 9479.

§15.

City ordinances attempting to recoup losses of city on special improvements (sewer and water mains) assessed against a parcel of land forfeited to state for nonpayment of taxes by imposing upon purchaser from state a connection fee equal to the unrealized portion of the assessment as condition of using water and sewer facilities violated state law and city charter. Fortman v. City of Minneapolis, 212M340, 4NW(2d)349. See Dun. Dig. 9166, 9167.

C. 15.

§1.

Alderman who, as chairman of ways and means committee of city council, served as an ex-officio member of board of estimate and taxation of city of Minneapolis, is entitled to compensation for his services on board at full rate prescribed by 1931 Act up to maximum of $500 per year, notwithstanding that compensation of aldermen has been increased to $2400. Op. Atty. Gen. (63a-2), Nov. 6, 1940.

C. 16.

Procedures which may be taken where city sold tract of land to a can company, part of which is acreage and

part platted, and effect upon classification for taxation and vacation of street, stated. Op. Atty. Gen. (18D), Mar. 26, 1942.

C. 17.

§3.

City council has power to fill a vacancy in library board, but it requires a majority of the entire council or 14 votes. Op. Atty. Gen. (63a-7), Nov. 9, 1943.

C. 18.

It is impossible for any territory to become a part of school district for Minneapolis without being annexed to that city for all purposes. Op. Atty. Gen. (59a-42), Oct. 10, 1940.

§6.

No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. Board of Education v. Erickson, 209M39, 295NW302. See Dun. Dig. 6579.

C. 19.

§1.

An affirmative vote of a majority of the entire council is necessary to approve appointment of a civil service commissioner. Op. Atty. Gen. (63a-7), Nov. 9, 1943.

§4.

Civil service commission of Minneapolis is invested with power over "entire service of the city", and classified employees of board of education are included, since the board is a branch of the city government, although a separate corporation. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 6558a.

Civil service commission of Minneapolis may compel school janitors and engineers to take promotional examinations, and its action in so doing does not impair obligation of contract. Id.

Provision investing civil service commission with power over entire service of city does not conflict with legislative policy or State Constitution. Id.

School janitors and engineers are classified employees. Id.

§5.

Though Soldiers Preference Act probably does not apply to school districts, it does apply to hiring and promotions of janitors in Minneapolis school system, on the theory that they are city employees. Op. Atty. Gen. (85f). May 13, 1941.

§15.

Civil service provisions are subject to State Veterans Preference Act. Op. Atty. Gen. (85b), May 9, 1941.

C. 20.

§2.

Power of city of Minneapolis extends to care and control of its streets and it may regulate and even exclude carrying on of a transportation business thereon for private gain, or grant privilege to some and exclude others, in harmony with its judgment of public convenience and necessity. State v. Palmer, 212M388, 3NW (2d)666. See Dun. Dig. 6618.

Ordinance.

State v. Northwest Linseed Co., 209M422, 297NW635. App. dism'd 313US544, 61SCR960, 85LEd1511.

Cutting off and cleaning out roots clogging tile connecting the house sewage system with city sewer by use of an electrically powered cutting device, involving no change or disturbance of tile or change or addition to structure thereof, are not "repairs" within the meaning of the plumbing ordinance, requiring license for such work. State v. Gottstein, 206M246, 288NW221. See Dun. Dig. 6794.

One who bought property long after it was placed in light industrial zone could not install machinery and conduct a bag cleaning industry because at one time building had been used as a macaroni factory. State v. Miller, 206M345, 288NW713. See Dun. Dig. 6525.

Complaint, charging defendant with conducting a bag cleaning industry in light industrial zone of city where such industry is prohibited by a duly enacted zoning ordinance, states a public offense. Id.

Exclusion of the bag cleaning industry from light industrial zone cannot be held unreasonable, arbitrary or discriminatory or violative of constitution. Id.

An excavating land owner cannot recover from the owner of adjoining burdened land sums expended by the former to brace and shore the latter's property when the expenditures were made voluntarily even though excavation could not be safely carried on without such precautions and the owner of the burdened land refused to provide necessary protection. Braun v. H., 206Minn572, 289 NW553, 129ALR618. See Dun. Dig. 96.

Conviction of disorderly conduct was sustained by evidence of indecent exposure. State v. Mitchell, 207M 55, 290NW222. See Dun. Dig. 2751a.

Ordinance for parking meters does not contemplate illegal appropriation of public funds because meters are to be paid for only from receipts. Hendricks v. C., 207M 151, 290NW428.

Evidence held to sustain conviction for sale of liquor without a license in violation of city ordinance. State v. Russell, 209M488, 296NW575.

Evidence held to sustain conviction of being found in a disorderly house. State v. Turner, 210M11, 297NW108. See Dun. Dig. 2755.

Evidence held to sustain conviction of being a common prostitute. Id. See Dun. Dig. 7860c.

Ordinance requiring a permit from city council for maintenance of structures or premises for storage of oil and other named purposes is not so inconsistent with building and safety code or with ordinance for prevention of fire as to be impliedly repealed by either. State v. Northwest Linseed Co., 209M422, 297NW635. App. dism'd 313US544, 61SCR960, 85LEd1511. See Dun. Dig. 6790.

Ordinance requiring permit from city council for maintenance of structure for storage of linseed oil does not deny due process. Id. See Dun. Dig. 1646, 6794.

Evidence held to sustain conviction of keeping a disorderly and ill-governed house. State v. Key, 210M259, 297NW718. See Dun. Dig. 2756.

A plea of guilty to violation of city ordinance against drunkenness in a public place is not a bar to a prosecution under another city ordinance for driving a vehicle while under influence of intoxicating liquor, two offenses having been committed on same day. State v. Ivens, 210 M334, 298NW50. See Dun. Dig. 2426.

Evidence sustained conviction of sale of intoxicating liquor without a license. State v. Davis, 212M608, 3NW (2d)677. See Dun. Dig. 4920.

Evidence sustained conviction for selling intoxicating liquor on Sunday. State v. Wilson, 212M380, 3NW(2d) 677. See Dun. Dig. 4926.

Evidence held insufficient to sustain a conviction of a grocer, licensed to sell beer in bottles for consumption off the premises, for sale of beer for consumption on premises. State v. Oelschlager, 212M485, 4NW(2d)102. See Dun. Dig. 4920.

An ordinance requiring a license fee of $5.00 for each 5c coin vending machine and $1.00 for each 1c coin vending machine was a revenue measure and could not be sustained as a police regulation. Barron v. City of Minneapolis, 212M566, 4NW(2d)622. See Dun. Dig. 6800(10).

Commission of single or isolated disorderly or immoral act on premises does not constitute place a disorderly house. State v. Glenny, 213M177, 6NW(2d)241. See Dun. Dig. 2752.

Statute and ordinance of Minneapolis in rendering on sale liquor dealer liable for injuries caused by violation of statutes and ordinances, allows recovery on basis of a wrong done to a patron, but is a penalty and a punishment to proprietor for having violated the law, and fact that an individual is a beneficiary is merely incidental as giving incentive to someone to enforce the penalty. Mayes v. Byers, 214M54, 7NW(2d)403, 144ALR 821. See Dun. Dig. 4918.

In action by injured patron against on sale liquor dealer and surety on his bond, evidence held to sustain finding that basement stairs of defendant's premises were inadequately lighted and were of unsafe construction in violation of Minneapolis ordinance relating thereto and that such defect proximately caused plaintiff's fall and consequential injuries. Id.

In an action against an on sale liquor dealer and surety on his bond for injuries sustained as the result of a defective stairway maintained in violation of city ordinance, contributory negligence and intoxication of plaintiff were not a defense. Id.

Requirement of §21 of ordinance, relating to on sale liquor dealers, that stairs be of "safe and substantial construction," refers not merely to erection of the structure but also to its present condition. Id.

Evidence sustained conviction for selling intoxicating liquor without a license in violation of city ordinance. State v. Ronnenberg, 214M272, 7NW(2d)769. See Dun. Dig. 4920.

Under an ordinance prohibiting sale of intoxicating liquor without a license, a sale includes having liquor in possession for the purpose of sale. State v. McBride, 215M123, 9NW(2d)416. See Dun. Dig. 4919b.

Evidence sustained the conviction of manager of drugstore for sale of intoxicating liquor without a license in violation of a city ordinance, though sale in question was made by an employee in the store. Id. See Dun. Dig. 4920.

Evidence sustains conviction of having intoxicating liquor in possession for sale without a license in violation of an ordinance. State v. Capito, 215M320, 9NW(2d) 734. See Dun. Dig. 4919d.

"Tab charge" in municipal court that defendant "did wilfully, unlawfully and wrongfully keep a disorderly (tippling) house" at a designated place was sufficient to state a public offense. State v. Siporen, 215M438, 10NW (2d)353. See Dun. Dig. 2754.

In prosecution for keeping a "disorderly (tippling) house", evidence obtained in search of defendant's premises and reputation evidence was admissible. Id. See Dun. Dig. 2755.

In prosecution for keeping a "disorderly (tippling) house", sufficient foundation was laid for reputation evidence where witness testified that he had talked to several people concerning what was reputed to go on at the place in question. Id. See Dun. Dig. 3299, 3313.

Minneapolis Interurban & Suburban Motor Omnibuses Ordinance.

Minneapolis ordinance regulating motor bus transportation of passengers for hire from points without city to points within city and vice versa and requiring a license therefor was not nullified by Laws 1923, c. 418, §3(f), insofar, at least, as ordinance requires a license. State v. Palmer, 212M388, 3NW(2d)666. See Dun. Dig. 6618.

It was conceded that even if city council acted arbitrarily in denying a license to defendant to operate busses, it was no defense to a prosecution for violation of the ordinance by operating without a license. Id. See Dun. Dig. 6805.

Power of city of Minneapolis extends to care and control of its streets and it may regulate and even exclude carrying on of a transportation business thereon for private gain, or grant privilege to some and exclude others, in harmony with its judgment of public convenience and necessity. Id.

Minneapolis Intoxicating Liquor Ordinance.

City council had authority to adopt ordinance requiring seller of intoxicating liquor to obtain a license and to prescribe definite terms of punishment for violation thereof. State v. Hope, 212M319, 3NW(2d)499. See Dun. Dig. 6807.

Municipal court properly refused to grant a jury trial in prosecution for selling intoxicating liquor without a license. Id. See Dun. Dig. 5235.

Evidence sustained a conviction of selling intoxicating liquor without a license. Id. See Dun. Dig. 4920.

Milk Ordinance, §IV.

No one within city or its police jurisdiction may sell or offer to sell any unrated cream to a local milk plant. Op. Atty. Gen. (292E), Oct. 20, 1941.

Non-intoxicating Liquor.

§25.

A licensee "suffers" mixing or spiking of beverages to be done when, although possessed of power to act and duty requires action, he fails to act; word "suffer" being construed to be synonymous with "permit", "consent", to "approve of", and "not to hinder". State v. Jamieson, 211M262, 300NW809. See Dun. Dig. 4916.

Occupancy of a conspicuous booth, and leaving bottle upon table during operation of spiking was sufficiently open and notorious to charge licensee with guilty knowledge of what was going on. Id.

1934 Building Code.

§101.

Building code is entitled to such fair and "large" construction as will meet essential legislative purpose which is prevention of injury to guests and occupants of building. Judd v. Landin, 211M465, 1NW(2d)861. See Dun. Dig. 6525.

§107.2.

Neither Housing Act nor Building Code applied to a stairway in a building constructed before their passage though lumber was renewed after adoption of code. Pangolas v. Calvet, 210M249, 297NW741. See Dun. Dig. 6525.

Case of Pangolas v. Calvet, 210M249, 297NW741, was inapplicable where liability was based upon absence of construction of a second rail on a wide stairway. Judd v. Landin, 211M465, 1NW(2d)861. See Dun. Dig. 6525.

Requirement of two handrails on stairways more than 42 inches wide applies to a hotel building constructed prior to passage of building code, even though no inspector has ordered the construction of a second handrail. Id.

§604.

Legislative intent of code was to prescribe minimum requirements to safeguard and protect from injury guests and occupants of buildings governed thereby which reasonably might result from defective construction or unsafe conditions. Judd v. Landin, 211M465, 1NW(2d)861. See Dun. Dig. 6525.

§604.1.

Requirement of two handrails on stairways more than 42 inches wide applies to a hotel building constructed prior to passage of building code, even though no inspector has ordered the construction of a second handrail. Judd v. Landin, 211M465, 1NW(2d)861. See Dun. Dig. 6525.

Owner of hotel building was bound to comply with requirements of two handrails on wide stairway and could not evade that duty by leasing building, and lessee was liable also and could not shift duty and liability to a sublessee. Id.

Where both owners of hotel and their lessee contributed directly to injury of person using stairway by violating building code requiring two handrails, they were jointly and severally liable, though there was no conspiracy or joint concert of action. Id.

§3104.

Reservation in the lease of right to collect rent, to reenter in case of default, and to enter and make repairs made agreement a sublease and not an assignment of lease, as affecting liability of lessee as "owner" for violation of the building code. Judd v. Landin, 211M465, 1NW(2d)861. See Dun. Dig. 6525.

Civil Service.

If the duties of a position may reasonably be performed by either a man or woman, the civil service commission must certify all persons, whether male or female, who are entitled to veterans preference, and if duties of the position can be performed only by a man, it is the duty of the civil service commission to certify all men who are entitled to veterans preference, and if duties of a position can be performed only by a woman, it is the duty of the civil service commission to certify all women who are entitled to veterans preference. Op. Atty. Gen. (85a), May 14, 1943.

MINNEOTA.

Ordinance.

No. 165.

This ordinance was properly revoked or repealed by action of village council. Union Public Service Co. v. Village of Minneota, 212M92, 2NW(2d)555. See Dun. Dig. 6790.

MONTGOMERY.

Charter.

§20.

Council may not raise salaries of appointed officials because of rising cost of living, except in month of April for each year. Op. Atty. Gen. (59a-41), Feb. 14, 1942.

Ordinance.

Cigarettes.

Provision "nor shall any license be issued for the sale of cigarettes at more than one place of business" did not prohibit issuance of more than one license to same person. Op. Atty. Gen. (829C-1), Feb. 25, 1942.

MOORHEAD.

Charter.

Whether alderman leasing a building in another ward and moving his family there and leasing out his own home for 9 months, reserving a room therein for storage of his household goods, has changed his residence is a question of fact. Op. Atty. Gen. (63a-1), Nov. 4, 1940.

City has authority to establish a "stand-by ambulance service" to pick up persons who may be injured on streets, or otherwise, and may pay for this service. Op. Atty. Gen. (59B-5), Jan. 6, 1942.

It is illegal for councilman to make contract with the city embodying a liquor license bond. Op. Atty. Gen. (218g), May 6, 1943.

§12.

Member of Water & Light Commission may not be granted liquor license by city council, since execution of necessary bond would involve a contract. Op. Atty. Gen. (218g), May 21, 1943.

§98.

City of Moorhead has power to buy interest of state in land bid in for state at delinquent tax judgment sales, and county auditor was authorized to issue certificate assigning state's interest to buyer, and this right was not impliedly or otherwise affected by confession of judgment statutes, words "not assigned by it" referring to time owner offered to confess judgments, and not to moment law was approved. Adams v. Atkinson, 212M131, 2NW(2d)818. See Dun. Dig. 6693.

Owner of land sold for taxes desiring to confess judgment and redeem cannot take any advantage of irregularities of city council in procuring from county auditor certificate assigning state's interest to it. Id. See Dun. Dig. 9390, 9405a.

If city council desires authority to issue bonds in excess of $10,000 to enlarge the permanent improvement revolving fund, it will be necessary to amend the charter. Op. Atty. Gen. (36g), Apr. 26, 1941.

NASHWAUK.

Charter.

A primary election should be held in advance of village election in Nashwauk. Op. Atty. Gen., (186E), Oct. 27, 1939.

NEW ULM.

Charter.

City may not adopt and enforce a plan whereby it contracts for a group insurance policy covering all its employees and deduct from salary or wages sum required to pay premium, but this may be done for benefit of all employees consenting thereto. Op. Atty. Gen., (249B-9), Feb. 14, 1940.

§4.

City may lease unused portion of a public building for private purposes for a reasonable length of time. Op. Atty. Gen. (59b-10), Apr. 14, 1942.

§18.
Election of a city justice is not now authorized. Op. Atty. Gen. (266a-5), Apr. 28, 1942.

§147.
City council could award contract for printing to a local newspaper whose solicitor was a member of city council, where such councilman owned no interest in newspaper and was an employee on a purely salary basis. Op. Atty. Gen. (90e), July 14, 1941.

§158.
Acquisition by city of New Ulm of natural gas distribution system operated under a franchise providing for acquisition by the city at the end of 5-year period. Op. Atty. Gen. (624c-10), June 25, 1943.

§181.
Two mill tax authorized to be levied for municipal band purposes may be levied over and above, and in addition to, 25 mill levy limitation set out in city charter. Op. Atty. Gen. (519h), Mar. 19, 1941.

§216.
Where city constructed a sewage disposal plant and council by ordinance declared it a public utility and directed that it be managed by public utilities commission, the plant must remain a public utility at least until council shall have vacated or repealed its determination to that effect. Op. Atty. Gen. (387b-9), Feb. 26, 1943.

§222.
A sewage disposal plant is a "utility" within this section, but a swimming pool and bath house are not. Op. Atty. Gen. (59B-11), Aug. 14, 1940.

Public utilities commission may reduce rates charged by sewage disposal plant to nothing and thus compel support of plant from general revenue of city, notwithstanding that the rates had been fixed by city council before plant was turned over to commission. Op. Atty. Gen. (387b-9), Feb. 26, 1943.

Power to purchase lot and building for electric light plant rests in city council and not the Public Utilities Commission. Op. Atty. Gen. (624c-2), Nov. 1, 1943.

Ordinance.
City ordinance prohibiting employment of any person under age of 21 years in places licensed to sell nonintoxicating malt beverages is valid. Op. Atty. Gen. (217F-3), June 30, 1943.

Election is necessary for purchase of gas plant if no agreement can be reached with company holding gas franchise. Op. Atty. Gen. (624c-10), Sept. 13, 1943.

On purchase of gas plant, election is necessary unless price or method of ascertaining price can be agreed upon. Op. Atty. Gen. (624c-10), Sept. 15, 1943.

No. 113.
Soft drink license permits sale of malt liquor containing less than one-half of 1% of alcohol. Op. Atty. Gen. (217c), July 8, 1943.

No. 160.
Provision requiring licensees under "beer bill" to furnish a $1000 bond is valid. Op. Atty. Gen. (217C), Jan. 9, 1941.

Soft drink license permits sale of malt liquor containing less than one-half of 1% of alcohol. Op. Atty. Gen. (217c), July 8, 1943.

Liquor Ordinance.
Provision in a liquor ordinance that "all requirements and provisions of the state laws concerning sale of intoxicating liquors are hereby incorporated into and made a part of this ordinance" is valid. Op. Atty. Gen., (62a), Feb. 1, 1940.

NEW YORK MILLS.

Village councilmen of New York Mills attending court in defense of action against village are not entitled to reimbursement for expenses, though they are eligible to receive witness fees and mileage outside of village. Op. Atty. Gen., (469a-8), Jan. 4, 1940.

Charter.
Payment of salary to a municipal judge appointed under an act later held not validly passed by legislature was lawful and salary could not be recovered. Op. Atty. Gen. (307I), Aug. 25, 1941.

NORTHFIELD.

Charter.
Library funds may be invested in special improvement certificates of the city. Op. Atty. Gen. (285), Oct. 11, 1940.

The result of materials furnished by the city and labor furnished by WPA, if devoted to charitable purposes, must be used for such purposes and may not be sold. Op. Atty. Gen. (339S), Dec. 11, 1943.

§4.
Power to purchase lot and building for electric light plant rests in city council and not the Public Utilities Commission. Op. Atty. Gen. (624c-2), Nov. 1, 1943.

C. 8.
§15.
City treasurer as agent for fire insurance company would violate section by renewing old policy. Op. Atty. Gen., (90c-3), March 19, 1940.

C. 4.
§5(29).
Liability of city for pollution of river by canning factory. Op. Atty. Gen. (59b-12), May 23, 1941.

§14.
City council may purchase property in business district for use as a free public parking ground. Op. Atty. Gen. (59a-40), Apr. 21, 1941.

§19.
Transfer of fund resulting from collection of water rates to general fund is a matter for city council to determine. Op. Atty. Gen. (624a-6), Mar. 23, 1943.

C. 5.
§6.
Council is authorized to issue bonds to amount of $5,000 though there is outstanding $20,000 in bonds issued under authority of a statute permitting their issuance with approval of voters. Op. Atty. Gen. (36G), Sept. 19, 1941.

Debt limit of a city is ten per cent of last assessed value as finally equalized of all taxable property, including monies and credits, located in city. Id.

C. 7.
§4.
Condemnation provisions may be applied in purchase of public parking ground. Op. Atty. Gen. (59a-40), Apr. 21, 1941.

Ordinance.
No. 10.
Transfer of fund resulting from collection of water rates to general fund is a matter for city council to determine. Op. Atty. Gen. (624a-6), Mar. 23, 1943.

NORTH MANKATO.

Milk Ordinance.
§3.
A pasteurizing plant also engaging in manufacture of cottage cheese and condensed milk may not be supplied with producers with unrated milk for purpose of manufacturing into cottage cheese and condensed milk, but ordinance should be amended by adding an important provision against pasteurizing plant as well as producer. Op. Atty. Gen. (292E), Aug. 20, 1941.

ORTONVILLE.

Charter.
Bond of judge of municipal court of Ortonville, also acting as clerk of that court, should run to the city and be filed with secretary of state. Op. Atty. Gen., (307a), Nov. 28, 1939.

§60.
City council may not authorize mayor or clerk to pay claims for liquor bills prior to audit by council. Op. Atty. Gen. (218r), Dec. 21, 1942.

OSSEO.

Charter.
Village of Osseo is authorized to cause a village street to be repaired, paved or improved and charge cost thereof to lots fronting on the improvement, and procedure to be followed should be provided by ordinances. Op. Atty. Gen. (396G-7), Sept. 23, 1940.

OWATONNA.

Charter.
Vacancy on school board of Owatonna school district created by special laws is governed by special act and is to be filled by city council. Op. Atty. Gen., (161a-25), March 21, 1940.

Ordinance prohibiting transfer of licenses is not inconsistent with state liquor law, and on sale of exclusive liquor store business council has no authority to transfer license to purchaser, and cannot grant a license for unexpired term without a license fee. Op. Atty. Gen. (218G-10), Sept. 13, 1940.

Public Utilities Commission may invest surplus money in its funds in outstanding certificates of indebtedness of city issued for purpose of paying a part of cost of a city sewage disposal plant. Op. Atty. Gen. (624a16), Jan. 22, 1943.

C. III, §12.
Council may not fix compensation of city attorney at a nominal salary and an undetermined reasonable fee for unusual or unexpected work or services, but may fix a salary at a definite sum for routine work and a definite schedule for extraordinary services. Op. Atty. Gen., (59a-5), Dec. 12, 1939.

C. IV.
§10.
A zoning ordinance probably became effective upon its publication though it contained no effective date, but good judgment would require that ordinance be repassed and republished and contain an effective date to prevent future litigation. Op. Atty. Gen. (62b), Nov. 7, 1942.

C. V.
§12.
In absence of any other provision authorizing transfer of moneys from one fund to another, this section is controlling. Op. Atty. Gen. (59a-22), Jan. 28, 1941.

C. VII.
§15.
Before the council in any year may provide by contract for sprinkling a street and assess costs against abutting owners there must be before it a petition of a majority of owners and occupants of frontage and assessed value, and where an occupant signs petition, the owner's signature on a so-called protest is of no legal effect. Op. Atty. Gen. (396a-2), June 4, 1942.

C. X.
§4.
Hospital board has exclusive control of hospital fund, and such board, with or without sanction of council, has no authority to invest any part thereof in bonds or securities of any character. Op. Atty. Gen. (59A-22), Feb. 17, 1942.

C. XI, §3.
Op. Atty. Gen., (59a-5), Dec. 12, 1939; note under chapter III, §12.
Compensation of city engineer supervising construction of sewage plant. Op. Atty. Gen. (59a-41), Nov. 17, 1943.

PERHAM.
Charter.
Laws 1933-1934, c. 35, Ex. Sess., establishing a municipal court, was not passed by a two-thirds vote of each house of legislature and is a nullity. State v. Welter, 296NW582.

Municipal court.
Judge of municipal court need not be an attorney at law and legislature cannot so require. State v. Welter, 208M338, 293NW914.

PIPESTONE.
Charter.
§67(7).
Statute must be followed and vote of electors is a necessary condition precedent to issuance of bonds for purpose of acquiring golf course or airport lands. Op. Atty. Gen. (59A-22), Sept. 29, 1941; Op. Atty. Gen. (59A-22), Oct. 22, 1941.

§74.
Charter does not permit transfer of funds from water and light fund to general fund for purpose of acquiring golf course and airport so long as there is bonded indebtedness of city for any purpose. Op. Atty. Gen. (59A-22), Sept. 29, 1941.

C. 8.
§67.
City of Pipestone may lease land for golf course and airport purposes without a vote of electors, under a lease providing an option to purchase and to receive property as a gift if rentals are paid for a certain time. Op. Atty. Gen. (59a-40), June 3, 1942.

C. 9.
§74.
Surplus money in water and light fund may be paid into sinking fund and be invested in bonds of city, if council prefers. Op. Atty. Gen. (624A-6), Feb. 24, 1942.

Surplus moneys in water and light fund cannot be invested in securities so long as they remain in that fund, but may be transferred to sinking fund for investment in securities. Op. Atty. Gen. (624a-6), July 17, 1942.

RED WING.
Charter.
Provisions of will and deed of trustee conveying auditorium to city of Red Wing created a gift on condition and not a charitable trust. Longcor v. C., 206M627, 289 NW570. See Dun. Dig. 9878.

Payment of members of the police department and fire department while on sick leave depends upon question whether particular member is an officer or an employee, officers being entitled to pay on sick leave while employees are not. Op. Atty. Gen. (785), July 19, 1940.

§25.
City councilman may enter into contract with Sheldon Memorial Auditorium Board for improvement of auditorium. Op. Atty. Gen. (90e-1), May 28, 1941.

REDWOOD FALLS.
Ordinance.
No. 95.
City operating municipal liquor store may ration liquor, selling one bottle per week only to those living within the city and immediate vicinity. Op. Atty. Gen. (218j-10), Oct. 4, 1943.

RICHMOND.
Ordinance.
No. 45.
Village ordinance requiring all places licensed to sell nonintoxicating malt liquors to close their stores between 1 a.m. and 6 a.m. is valid. Op. Atty. Gen. (218j-8), Mar. 28, 1941.

ROBBINSDALE.
Charter.
§89.
Any newspaper of general circulation in city may be designated as official newspaper and, as such, is qualified to carry any public notice required by charter of any ordinance of city. Op. Atty. Gen. (314B-7), Oct. 16, 1940.

C. 9.
§88.
City justice of the peace of Robbinsdale may not lawfully write insurance for the city. Op. Atty. Gen. (90E-3), Feb. 19, 1942.

ROCHESTER.
Charter.
There is no authorization or requirement that a primary election be held for positions on school board, notwithstanding that school district holds its election at same time as city election, using same judges and clerks of election. Op. Atty. Gen., (187a-6), Jan. 17, 1940.

Board of Education of special school district of Rochester may contract with city aldermen for insurance. Op. Atty. Gen. (90c-5), Aug. 23, 1940.

In Independent School District No. 8 of Olmsted County which includes territory embraced in City of Rochester and some lands outside of city, notice of annual election should be posted in three places in district irrespective of boundaries of city and disregarding precincts and wards. Op. Atty. Gen. (187a-7), Feb. 24, 1943.

§131.
American Legion giving money which it borrowed to city to construct a swimming pool could be given a lease on the swimming pool with privilege of operating it for a period of five years, and not being repaid in that time could be given another lease for another five years for a nominal consideration. Op. Atty. Gen. (59b-11), May 1, 1941.

§163(1).
Common council may transfer monies from general fund to park improvement fund. Op. Atty. Gen., (59a-22), May 2, 1940.

§167.
Section does not seem broad enough to authorize investment of moneys belonging to the utility fund, but in any event it does not authorize investment of sinking fund in bonds of a school district in another city. Op. Atty. Gen. (624A-6), Jan. 24, 1942.

§295.
Salaries of firemen and policemen and other employes directly hired by council and subject to their approval may not be increased during the fiscal year. Op. Atty. Gen. (59a-41), Oct. 29, 1941.

C. 14.
§214.
Where state in constructing state highway along a city street acquired a tier of fifty foot lots parallel to one side of street, and proposed that state highway department construct curb, gutter and sidewalk on both sides of highway providing city will reimburse them in part for their expenses, such improvement may be made and charged to lots adjoining lots taken for highway, following charter provisions. Op. Atty. Gen. (59A-4), Jan. 17, 1942.

§251.
Where state in constructing state highway along a city street acquired a tier of fifty foot lots parallel to one side of street, and proposed that state highway department construct curb, gutter and sidewalk on both sides of highway providing city will reimburse them in part for their expenses, such improvement may be made and charged to lots adjoining lots taken for highway, following charter provisions. Op. Atty. Gen. (59A-4), Jan. 17, 1942.

§281.
Having in good faith advertised for bids and having received only one bid, the city may proceed under charter and award contract if circumstances are such that only

one bid can be received, subject to possibility of having its action overturned by a court. Op. Atty. Gen. (707a-4), Feb. 23, 1942.

Laws 1937, c. 416, §1 (Mason's St., §1933-76), requiring more than one bid, adds an additional restriction to any others imposed by city charter. Id.

Rochester Police Relief Ass'n.

Under by-law providing that applications for disability pension shall be made within sixty days after member has ceased to be an active employee, officer should be permitted to make an application after he resigns though he had discontinued active service many months before that time but was kept on payroll until shortly before he resigned. Op. Atty. Gen. (785m), Aug. 3, 1942.

RUSHFORD.

Charter.

C. 4.

§39.

Money cannot be transferred from utility fund to general fund. Op. Atty. Gen. (59a-22), Dec. 13, 1941.

§39C.

Sewage disposal system is a "public utility", and section also freezes rates charged for electrical energy until sewage disposal bonds have been paid for in full and until there is a sum sufficient to reproduce municipally owned electrical distribution system and water works system, and moneys collected as a result of taxes levied for purpose of paying of principal and interest of sewage disposal plant bonds as they become due must be devoted solely to payment of such principal and interest, and may not be expended for any other purpose, and city may pay off sewage disposal plant bonds with money in fund described as "electric light fund", no such fund being referred to in charter. Op. Atty. Gen. (36C-8), Feb. 24, 1942.

C. 5.

§46.

City is not obligated to repair and maintain privately financed sewers and water lines in the streets, but may regulate such matters, and may with consent of owners assume absolute control and supervision and then cause them to be repaired. Op. Atty. Gen. (59b-12), Oct. 28, 1941.

ST. JAMES.

Charter.

C. 2.

§14.

Vacancy in office of justice of the peace in St. James is to be filled by appointment by city council, and not by governor. Op. Atty. Gen. (266A-12), Feb. 16, 1942.

ST. PAUL.

Charter.

Civil service in Ramsey County and duties of city civil service bureau. Laws 1941, c. 513.

Contract of a teacher whose tenure rights have matured under Minn. Laws 1927, c. 36, 1 Mason's Minn. Stat. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 206M649, 289NW784, 785. Aff'd 60SCR1102.

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

A school teacher unlawfully dismissed because she was married could not recover compensation for period during which she performed no service where she acquiesced by inaction during period of unemployment. Shinners v. C., 208M25, 292NW621. See Dun. Dig. 8688b.

§52.

A city fireman absent on account of illness could not complain of deductions from his salary to pay a "substitute" on the ground that rules and charter did not provide for a substitute and person employed as "substitute" did not in fact perform services in the company in which ill person regularly served. Evans v. City of St. Paul, 211M558, 2NW(2d)35.

§101.

Evans v. City of St. Paul, 211M558, 2NW(2d)35; note under §52.

§223.

Owners of fractional ownership certificates are entitled to interest at rate fixed by sinking fund committee, but not to gain or income from securities held by committee against such certificate. Weiss v. City of St. Paul, 211M 170, 300NW795.

Where city condemned land to widen street and a small triangle was not used for street purposes and was designated as a "boulevard" in a resolution turning it over to the Department of Parks and Playgrounds, such triangle, if not a boulevard, was a "park" though diminutive in size, within meaning of this section authorizing city to acquire land for that purpose, beng landscaped by a public spirited citizen without cost of city. Kendrick v. City of St. Paul, 213M283, 6NW(2d)449. See Dun. Dig. 6608.

Where city condemned land for use in widening a city street and received a warranty deed from landowner upon payment of award, and a small triangular piece was not used for street but was turned over to Department of Parks and Playgrounds and was landscaped by a public spirited citizen, title which city acquired under the deed in addition to easement acquired by condemnation was a qualified or terminable fee, a sovereign or prerogative title, which it, as an agency of the state, holds in trust for the city and which it can neither sell nor devote to a private use, but this does not mean that fee-simple title cannot be lost or relinquished by abandonment of all public use. Id. See Dun. Dig. 6608a.

Where a city condemns land and landowner on receipt of award for damages delivers a warranty deed to the city, effect of deed is to be determined by law of conveyancing and not by the law of condemnation, as against contention that such a deed is merely a receipt for damages. Id. See Dun. Dig. 6694.

§351.

A city fireman absent on account of illness could not complain of the deductions from his salary to pay a "substitute" on the ground that rules and charter did not provide for a substitute and person employed as "substitute" did not in fact perform services in the company in which ill person regularly served. Evans v. City of St. Paul, 211M558, 2NW(2d)35. See Dun. Dig. 6600.

C. 9.

§4.

Bonds issued for cost of a sewage disposal plant under Laws 1933, c. 341, §18a, must be taken into consideration in determining aggregate outstanding bonded indebtedness in connection with a proposal to issue bonds for construction of a trunk sewer, unless such trunk sewer may properly be considered a part of the sewage disposal plant. Op. Atty. Gen. (36c-8), Sept. 13, 1940.

§315.

General election law regulating the purchase of voting machines controls over city charter, and city of St. Paul could purchase voting machines under a contract to pay 10 annual installments. Rice v. C., 208M509, 295NW529. See Dun. Dig. 6707.

Ordinance.

Failure to equip a motor vehicle with a device constructed and located so as to give an adequate signal of intention to stop, as required by ordinance, is evidence of negligence. Christensen v. Hennepin Transp. Co., 215 M394, 10NW(2d)406, 147ALR945. See Dun. Dig. 4162a.

No. 5079.

Where member of city bureau of fire prevention entered upon premises in his official capacity and not in discharge of any private duty due from him to occupant of premises but only that which he owed the public, occupant was not liable for an injury sustained as result of an obviously defective condition in an inside stairway not used or maintained for the public. Mulcrone v. Wagner, 212M478, 4NW(2d)97, 141ALR580. See Dun. Dig. 6973(1), 6985(62).

No. 5080.

Where member of city bureau of fire prevention entered upon premises in his official capacity and not in discharge of any private duty due from him to occupant of premises but only that which he owed the public, occupant was not liable for an injury sustained as result of an obviously defective condition in an inside stairway not used or maintained for the public. Mulcrone v. Wagner, 212M478, 4NW(2d)97, 141ALR580. See Dun. Dig. 6973(1), 6985(62).

No. 5840.

§16.

Owner of a building situated in commercial zone existing at time ordinance became effective was entitled to erect an addition to such building on street wall line without any action by city council. Morse v. Wind, 211 M356, 1NW(2d)369. See Dun. Dig. 6525.

No. 7034.

Contract of a teacher whose tenure rights have matured under Minn. Laws 1927, c. 36, 1 Mason's Stat. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 206M649, 289NW784, 785. Aff'd 60 SCR1102.

No. 7423.

Contract of a teacher whose tenure rights have matured under Minn. Laws 1927, c. 36, 1 Mason's Stat. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 206M649, 289NW784, 785. Aff'd 60 SCR1102.

St. Paul Building Code.

Complaint in a negligence action which alleged that plaintiff, while seeking a toilet in defendant's building, entered a dark, unfamiliar passageway and from it stepped into an open, totally dark basement doorway, thinking it to be the toilet entrance, and was injured, showed affirmatively that plaintiff was guilty of contributory negligence. Sartori v. Capitol City Lodge No. 48, 212M538, 4NW(2d)339. See Dun. Dig. 7023.

ST. PETER.

Charter.

General election laws govern filing by candidates in city election. Op. Atty. Gen. (184A), Mar. 10, 1942.

Ordinance.

No. 126.

Whether hospital created by city under ordinances is subject to unemployment compensation act is a question of fact. Op. Atty. Gen., (885d-7), Feb. 29, 1940.

ST. VINCENT.

Charter.

Unplatted lands may be detached from village under general law. Op. Atty. Gen. (484e-2), June 10, 1942.

Date of village election. Op. Atty. Gen. (472f), Sept. 4, 1943.

SAUK RAPIDS.

Charter.

Village recorder is an officer and not an employee and is entitled to his salary during illness and incapacity, and Council may employ any competent person to perform his ministerial and routine duties. Op. Atty. Gen. (470B), Nov. 9, 1940.

SLEEPY EYE.

Charter.

Home rule charter does not contain any detailed provisions as to conduct of municipal elections, and such elections are governed by §§601-11(4)n to 601-11(4)s, and a red ballot should be used in submitting question whether police civil service commission be abolished. Op. Atty. Gen. (785E-1). Mar. 14, 1942.

City may reimburse mayor for reasonable cost of defense in tort suit involving claim of tort committed by officer in performance of duty. Op. Atty. Gen. (61), Dec. 11, 1943.

C. 3.

§6.

Where mayor appointed a city attorney and council failed to approve appointment, old city attorney continues to hold office, and mayor may not appoint a city attorney to act from month to month, and there is no action that city council may take to force mayor to make appointment. Op. Atty. Gen., (59a-5), April 16, 1940.

§19.

It would be unlawful for the mayor to sell his property to the city. Op. Atty. Gen. (90e-6), June 12, 1942.

C. 4.

§2.

City council may pass on sufficiency of petition for abolishment of police civil service commission at either a duly called and held special or regular meeting. Op. Atty. Gen. (785E-1), Feb. 24, 1942.

§5.

City has no right to engage in project of deepening and lowering bed of Sleepy Eye Lake without effective consent of the State and landowners affected. Op. Atty. Gen. (273a-6). Sept. 25, 1942.

Ordinance.

Ordinance limiting speed of trains to 6 miles per hour is valid. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8180.

SOUTH ST. PAUL.

Charter.

City desiring to use only natural gas as a fuel in operation of sewage disposal plant must call for bids though there is only one company in vicinity able to furnish such gas, but city council may award contract to one bidder. Op. Atty. Gen., (707a-4), March 18, 1940.

City has no authority to contribute to payment of premium upon policies of group health and accident insurance covering members of police and fire departments. Op. Atty. Gen., (59a-25), April 23, 1940.

C. 2.

§4.

There is no law whereby electors can compel council to call a special election for purpose of voting upon question of issuing bonds to finance construction of trunk sewers, and there is no law determining how soon election must be held after adoption of resolution calling the same, unless it is proposed to sell bonds to the state. Op. Atty. Gen. (36b), May 13, 1942.

C. 3.

§3.

Mayor may not veto council's appointment of city attorney. Op. Atty. Gen. (59a-5), May 19, 1941.

City attorney need not be a resident of the city. Id.

C. 5.

§8.

In view of Laws 1943, c. 521, §7, one mill may be levied for special relief fund for police in addition to the 20 mill limit. Op. Atty. Gen. (519c), June 22, 1943.

Levy of tax under Laws 1943, c. 437, to create a public work's reserve fund must be within the 20 mill limitation. Op. Atty. Gen. (519c), June 29, 1943.

C. 6.

§1.

Provision fixing salary of an assessor was superseded by Laws 1933 ch. 234, and council may increase or diminish salary of elected assessor during his term. Op. Atty. Gen. (12a-1), Dec. 8, 1942.

C. 9.

§5.

A second issue of bonds for interceptor sewers and a sewage disposal plant may be had without a vote by electors under Laws 1933, c. 341, §18a (Mason's St., §1607-26). Op. Atty. Gen. (36C-8), Feb. 26, 1942.

Ordinance (Disposal Plant).

§8.

Member of South St. Paul Sewage Disposal Plant Commission cannot enter into contract with commission for purchase of supplies from his store. Op. Atty. Gen. (90e-5), Aug. 21, 1940.

STILLWATER.

Charter.

Operation of bathing beach in another state, governmental function, liability for accident occurring on bathing beach in Wisconsin. Op. Atty. Gen. (844b-1), July 28, 1943.

§5.

In absence of any charter or statute requirement to contrary, it is not necessary for a city to advertise for bids for sale of real estate belonging to municipality. Op. Atty. Gen. (59a-40), Sept. 23, 1940.

§56.

Council has authority to vote funds for support of a community college to furnish a means of summer adult advance education. Op. Atty. Gen. (59A-3), Feb. 10, 1942.

§231.

A purchaser of land takes it free of assessment for improvements made by city while state was owner of land if assessment was made before purchase, but subject to assessment for improvements made while land was owned by state if such assessment was not finally confirmed and established until after purchase. Op. Atty. Gen., (412a-26), Dec. 2, 1939.

§272.

Installation of parking meters without any cost or obligation to city except that seller would take 60 per cent of receipts until agreed purchase price is paid, would constitute a "contract" for purchase of "commodity" and city must advertise for bids. Op. Atty. Gen. (707a-4), Nov. 19, 1940.

Charter requires advertising for bids for public liability insurance to cost more than $500. Op. Atty. Gen. (707a-4), June 28, 1943.

§317.

Resolution vacating streets must be passed by a vote of all of the members of the council and not all votes of members present at meeting. Op. Atty. Gen. (396c-18), Dec. 6, 1940.

§346.

Where a tenant occupies a dwelling house and there are no arrears in water rent, water board may not at instance of landlord turn off water over objection of tenant, unless it has reasonable grounds for believing that tenant will work a malicious damage to the premises. Op. Atty. Gen., (624d-3), Sept. 27, 1939.

§546.

An ordinance attempting to make a payment of delinquent water bill incurred by former owner of tax-forfeited premises a condition precedent to supplying of water to purchaser from the state would be invalid. Op. Atty. Gen. (624d-5), July 8, 1942. See Dun. Dig. 1668, 1674, 9396.

Ordinance.

Ordinance regulating sale of soft drinks is not applicable to school district operating a cafeteria in which soft drinks are sold to pupils. Op. Atty. Gen. (634d), Sept. 24, 1942.

TRACY.
Charter.
C. 4.
§13.
Public funds may not be expended for purchase or construction or maintenance of a municipal hotel. Op. Atty. Gen. (59B-10), Aug. 11, 1941.

TWO HARBORS.
Charter.
City has no authority to purchase uniforms for a private organization which has contracted to render concerts for the public. Op. Atty. Gen., (59B-3), April 26, 1940.
In absence of any charter provisions prohibiting it, city council may enter into contract with a person to reassess property in city for agreed compensation. Op. Atty. Gen. (12a), Feb. 4, 1941.
City may not make appropriations to Lake County Development Association for purpose of advertising resources of county. Op. Atty. Gen. (59A-3), Mar. 26, 1942.

§4.
Board of Equalization is entitled to per diem from first Monday in June until Friday preceding first Monday in July, and can receive no further compensation because required to remain in session after that time to hear complaints. Op. Atty. Gen. (406c), Aug. 22, 1940.

C. 2.
§2.
Council may appoint a deputy treasurer to perform duties of a deputy treasurer who is ill. Op. Atty. Gen. (59a-29), Sept. 10, 1943.

C. 7.
City council may provide for employment of counsel to defend suit brought by city attorney against city. Op. Atty. Gen. (59a-5), Nov. 24, 1943.

§38.
Provision of city charter that city's public printing shall not exceed two-thirds of the amount allowed by law for legal advertising is valid. Op. Atty. Gen. (277b), June 21, 1943.

C. 9.
§3.
City council may provide for employment of counsel to defend suit brought by city attorney against city. Op. Atty. Gen. (59a-5), Nov. 24, 1943.

VIRGINIA.
Charter.
Where a primary city election is held January 23, and a general city election on February 6, voters may be registered during 20 days preceding primary election for purpose of voting at general city election, provided they are registered in such a manner that they do not appear qualified to vote at primary election. Op. Atty. Gen., (183q), Dec. 15, 1939, overruling Op. Atty. Gen., (183q), Nov. 22, 1939.

§25.
Where commission fixed salaries of police for a year and chief of police resigned and assistant chief was appointed acting chief, there was in effect creation of a new office and salary of assistant chief could be raised during year, but salary of a detective for whom no new office was created could not be raised. Op. Atty. Gen. (785d), July 29, 1941.
Notwithstanding vacancy in office of chief of police, assistant chief may not be given an increase in salary during year. Op. Atty. Gen. (785D), July 31, 1941.

§82.
A resolution awarding a contract for publication of council's proceedings in a sum exceeding $100 requires a two-thirds vote of all members of city council. Op. Atty. Gen. (277B-1), Jan. 18, 1941.

§83.
Two-third vote of council is necessary for passage of a resolution for purchase of insurance. Op. Atty. Gen. (59a-25), Dec. 3, 1940.

§99(5).
Garbage removal may be done by city itself or by contract. Op. Atty. Gen. (59b-4), Oct. 6, 1942.

§105.
Garbage removal may be done by city itself or by contract. Op. Atty. Gen. (59b-4), Oct. 6, 1942.

§177.
Where commission fixed salaries of police for a year and chief of police resigned and assistant chief was appointed acting chief, there was in effect creation of a new office and salary of assistant chief could be raised during year, but salary of a detective for whom no new office was created could not be raised. Op. Atty. Gen. (785d), July 29, 1941.

§321.
State statute controls notwithstanding charter provision concerning notice of claim. Olson v. City of Virginia, 211M64, 300NW42, 136ALR1365. See Dun. Dig. 6740.

Ordinance.
No. 165.
§4.
Necessity for obtaining license by local jeweler leasing an additional building to auction off merchandise which he has shipped in from other cities where he has maintained similar stores depends upon whether business to be conducted in leased building is of a transient or temporary nature or a part of his regular business. Op. Atty. Gen., (16B), Feb. 17, 1940.
Fire Department Relief Ass'n.
Non-active members may have their rights terminated by lump sum payments upon a vote of two-thirds of active members of association. Op. Atty. Gen. (198a-2), July 11, 1942.

WABASHA.
Charter.
This charter makes no provision for appointment of a deputy assessor, general statutes must be looked to for authority, under which payment of a salary is discretionary with city council. Op. Atty. Gen. (12E), June 26, 1940.
City attorney has no official duty before juvenile court, but county attorney shall assist when directed by juvenile court judge. Op. Atty. Gen. (59a-5), Nov. 2, 1943.

§15.
Vacancy in office of alderman may be filled by a majority of a quorum present at meeting, and appointment need not be by resolution. Op. Atty. Gen., (63a-1), Jan. 3, 1940.

C. 10.
§88.
City may charge commission a reasonable fee for use of city hall. Op. Atty. Gen. (59b-10), Oct. 31, 1941.

WASECA.
Charter.
C. II.
§1.
A voter who is not an attorney is eligible to position of city attorney of Waseca, though it is doubtful that he may personally represent city in any matter in court. Op. Atty. Gen. (59A-5), Mar. 27, 1942.

§3.
In view of amendment changing date of annual election from first Tuesday to first Monday in April, words "second Tuesday in April" should be construed as meaning "second Monday in April." Op. Atty. Gen. (64f), Mar. 24, 1941.

C. III.
§1.
In view of amendment changing date of annual election from first Tuesday to first Monday in April, words "second Tuesday in April" should be construed as meaning "second Monday in April." Op. Atty. Gen. (64f), Mar. 24, 1941.

§8.
In view of amendment changing date of annual election from first Tuesday to first Monday in April, words "second Tuesday in April" should be construed as meaning "second Monday in April." Op. Atty. Gen. (64f), Mar. 24, 1941.

C. IV, §1.
A resolution creating a civil service commission must be approved by the mayor. Op. Atty. Gen., (785E-1), Nov. 7, 1939.
Though duty of mayor in countersigning warrants drawn and authorized by council is perhaps more of a ministerial task than a discretionary one, he is justified in refusing to sign warrants if he has actual notice that ultimate recipients of a part of proceeds are indirectly interested in contract and are officers of the city. Id.
In absence of any provision requiring mayor to approve or affix his signature to a 3.2 non-intoxicating malt liquor license, it is duty of city clerk to issue license when granted by city council. Op. Atty. Gen. (217-B-4), July 18, 1940.

C. V, §19.
Though duty of mayor in countersigning warrants drawn and authorized by council is perhaps more of a ministerial task than a discretionary one, he is justified in refusing to sign warrants if he has actual notice that ultimate recipients of a part of proceeds are indirectly interested in contract and are officers of the city. Op Atty. Gen., (785E-1), Nov. 7, 1939.

C. VIII.
§1.
Section does not authorize construction of a sewage disposal plant. Op. Atty. Gen. (387b-1), Dec. 20, 1941.

C. XI.
§1.
Where term of office of commissioner expired Dec. 31, term of one appointed Feb. 1, was for 3 years commencing Jan. 1. Op. Atty. Gen. (63B-17), Mar. 3, 1941.

Ordinance.
City ordinance requiring hawkers and peddlers taking orders for future delivery to have a license and pay a tax imposed an unlawful burden upon interstate commerce, as applied to local agent with local business receiving goods from employer in another state. City of Waseca v. B., 206M154, 288NW229. See Dun. Dig. 4895.

Clause "for consumption off the premises," refers to particular place that applicant had leased on fair grounds as a concession and not the entire fair grounds. Op. Atty. Gen. (217-B-4), July 18, 1940.

An exclusive liquor store as defined by city ordinance could not sell non-intoxicating malt beverages without obtaining a non-intoxicating malt liquor license. Op. Atty. Gen. **(218g-13), Mar. 3, 1941.**

WATERVILLE.
Charter.
Police civil service act applies to chief of police as well as other officers and employees of police department. Op. Atty. Gen., (785E-1), May 25, 1940.

C. 2.
Elections in City of Waterville are regulated, at least in part, by portions of general election law, but removal of officers is regulated by organic act of city. Op. Atty. Gen. (64g), June 16, 1941.

WEST ST. PAUL.
Charter.
Soldiers' Preference Act is without application to position of city attorney. Op. Atty. Gen. (85a), Dec. 31, 1940.
Owing to peculiar features of charter, management of schools is vested in city council and school board members are not members of that council, and awarding of contract by council for publication of school proceedings to a newspaper in which a member of school board has a financial interest is not violation of statute prohibiting a member of a school board from entering into a contract with district. Op. Atty. Gen. (90E), Jan. 4, 1941.

Money and credits are included in total assessed valuation unless excluded from tax limitation act. Op. Atty. Gen. (519C), Aug. 8, 1941.

§31.
Penalty attaches only when installment remains unpaid on October 1 of each year. Op. Atty. Gen. (408c), June 18, 1940.

C. 2.
§2.
Power to appoint certain city officers, including city attorney, is in common council, consisting of 7 aldermen, and mayor has no authority to veto council's appointment of city attorney. Op. Atty. Gen. (61J), Jan. 14, 1941.

C. 3.
§32.
Section does not prohibit an "increase" in salary of city attorney at any time. Op. Atty. Gen. (59A-5), Feb. 26, 1942.

§33.
Provision that salary of city attorney be "fixed" at beginning of his term is not be to read as "fixed permanently for the continuance of his term". Op. Atty. Gen. (59A-5), Feb. 26, 1942.

C. 6.
§§23, 24.
Notices under §§23 and 24 may not be consolidated. Op. Atty. Gen. (59a-4), Nov. 18, 1941.
What notices should contain. Id.

C. 8.
§8.
Board of Education and not city council has control and governs use of all school property in the district. Op. Atty. Gen. (622a), Oct. 19, 1942.

C. 9.
Subd. 18.
A plat of irregularly shaped land made under direction of county auditor by county surveyor for taxation purposes does not have to be approved by city council of West St. Paul or by the city planning committee. Op. Atty. Gen. (18d), Jan. 18, 1943.

WHITE BEAR LAKE.
Charter.
A city councilman may be a candidate for office of mayor without resigning, but election and acceptance of later office would work an automatic vacation of first office. Op. Atty. Gen., (358e-1), Feb. 16, 1940.

§43.
Assessor for Ramsey county has authority to appoint an assessor for the city of White Bear subject to the approval of the city council of White Bear, and equalization thereafter is to be had under special act in addition to the general laws on the subject. Op. Atty. Gen. (12d), Apr. 2, 1943, Apr. 10, 1943.

WILLMAR.
Charter.
Names of candidates on primary ballot of a city should be alphabetically arranged, unless otherwise provided by city charter. **Op. Atty. Gen. (28B-2),** Mar. 15, 1941.

Charter does not authorize issuance of bonds for hospital purposes, and authority therefore must be found under other statutes. Op. Atty. Gen. (1001a), June 12, 1941.

C. 6.
§103.
Commission may make rule prohibiting owner of building to put in master meter and other meters and sell energy to tenants at a profit. Op. Atty. Gen. (624c-11), Dec. 20, 1941.

Ordinance.
Ordinance forbidding sale of liquor on "election day" refers to a regular election date set by statute, and not a special election in one ward of city only. Op. Atty. Gen. (218j-4), Sept. 15, 1943.

WINDOM.
Charter.
§71.
City council may not pass ordinance granting natural gas company a franchise for a longer period than 10 years. Op. Atty. Gen., (624B-1), Sept. 26, 1939.

WINONA.
Charter.
Board of Education of Winona may not use regular school funds for purpose of football equipment and supplies, but could probably purchase such supplies from recreational fund pursuant to a program of public recreation and playgrounds. Op. Atty. Gen., (159B-1), May 31, 1940.

In absence of any prohibition in city charter, city may lawfully expend public money for rental of quarters for relief agencies of federal government such as W.P.A. and N.Y.A., but cannot expend money for improvement of real estate owned by county. Op. Atty. Gen. (59a-3), Feb. 4, 1941.

Members of city board of equalization are not entitled to compensation over and above their yearly official salaries. Op. Atty. Gen. (406c), Aug. 24, 1942.

C. 4, §15.
City may lease for a reasonable time a building which is no longer needed for any public purpose. Op. Atty. Gen., (59a-40), Sept. 28, 1939.

WINTHROP.
Charter.
City has no authority to invest surplus money in its general revenue fund in defense bonds of the United States Government, but it is possible that it might transfer surplus funds to sinking fund and make such investment. Op. Atty. Gen. (551), July 13, 1942.

WORTHINGTON.
Charter.
Council may not refuse to recognize salary increases voted employees of Water & Light Commission by that commission. Op. Atty. Gen. (624a-3), June 22, 1942.

§§1, 10.
City may buy land adjoining "City Pasture," which adjoins city limits west of the city, for purposes of laying out and maintaining a road in accordance with a general plan of improvement of lake shore on Lake Okabena, without vote of people. Op. Atty. Gen. (59a-40), Mar. 13, 1943.

C. 12.
§156.
Provisions of charter with reference to eminent domain conform to the requirements of the statutes and constiutution. Op. Atty. Gen. (817f), Sept. 27, 1943.

Appendix No. 4
Court Rules

REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

RULE 12

Jurisdictional Statements

1. Upon the presentation of a petition for the allowance of an appeal to this court, from any court, to any judge or justice empowered by law to allow it, there shall be presented by the applicant a separate typewritten statement particularly disclosing the basis upon which it is contended that this court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, (b) to the statute of the state, or statute or treaty of the United States, the validity of which is involved (giving the volume and page where the statute or treaty may be found in the official edition), setting it out verbatim or appropriately summarizing its pertinent provisions; and (c) to the date of judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.

The statement shall show that the nature of the case and the rulings of the court were such as to bring the case within the jurisdictional provisions relied on and shall cite the cases believed to sustain jurisdiction. It shall also include a statement of the grounds upon which it is contended that the questions involved are substantial (McArthur v. United States, 315 U. S. 787, 62 S. Ct. 915, 86 L. Ed.—; Zucht v. King, 260 U. S. 174, 176, 177, 43 S. Ct. 24, 67 L. Ed. 194).

If the appeal is from a state court, the statements shall in addition specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court. The provisions of this paragraph, with appropriate record page references, must be complied with when review of a state court judgment is sought by petition for writ of certiorari. (See Rule 38, par. 2.)

The applicant shall append to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree.

If the appeal is from an interlocutory decree of a specially constituted district court of the United States, the statement must also include a showing of the matters in which it is claimed that the court has abused its discretion in granting or denying the interlocutory injunction (Alabama v. United States, 279 U. S. 229, 49 S. Ct. 266, 73 L. Ed. 675). (As amended Apr. 6, 1942.)

2. * * * * *

Appeal submitted on jurisdictional statement under this rule, from state supreme court's judgment sustaining privilege tax on insurance company measured by premiums on policies issued while company was doing business within state but upon which premiums were paid after its withdrawal from the state, held not to present substantial federal question. Continental Assurance Co. v. State, 311US5, 61SCR1, dism'g app. from 138 SW(2d)(Tenn)447, which denied rehearing of 137SW(2d) (Tenn)277.

RULE 32

Costs

1 to 6 * * * * * * *.

7. In pursuance of the Act of March 3, 1883 [28 U.S.C. §330), authorizing and empowering this court to prepare a table of fees to be charged by the clerk for this court the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, twenty-five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, including filing of preliminary certificate and statements, twenty-five dollars.

For preparing the record or a transcript thereof for the printer, in all cases, including records presented with petitions for certiorari, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio of each one hundred words; but where the necessary printed copies of the record as printed for use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision.

For making a manuscript copy of the record, when required under Rule 13, fifteen cents per folio of each one hundred words, but nothing in addition for supervising the printing.

For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions when required by the Rules, or at the request of counsel when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, five dollars for each such petition, brief, jurisdictional statement or motion. Neither the expense of printing nor

the clerk's supervising fee shall be allowed as costs in the case.

For a mandate or other process, ten dollars.

For an order on petition for writ of certiorari, five dollars.

For filing briefs, ten dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

IT IS FURTHER ORDERED that this order shall apply to all cases docketed on or after February 15, 1943, and to all admissions to the bar on or after March 2, 1943. (As amended, Supreme Court Order May 26, 1941 (effective July 1, 1941); Feb. 11, 1943.)

Suit against revenue collector to cover taxes paid is not a suit against the government, until certificate of probable cause has issued, and costs are taxable as in the case of an ordinary litigant. Mellon v. Heiner, (DC-Pa), 30FSupp948.

Cost of printing records on appeal was taxable. Id.

RULE 36

Appeals—By whom allowed—Supersedeas

1. An appeal will be out of time unless, within the period fixed by statute, application for allowance is presented to the judge or justice who allows it. A prior timely application to another judge or justice does not extend the statutory period. * * * *. See Matton Steamboat Co. v. Murphy, 319US412, 61-SCR1126, 87LEd—. (Note below.)

2. Supersedeas bonds must be taken, with good and sufficient security, that the appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal, unless, after notice and hearing and for good cause shown, the judge or justice allowing the appeal fixes a different amount or orders security other than the bond; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal. (As amended Supreme Court Order Oct. 21, 1940; June 7, 1943.)

Ryan v. Pennsylvania Public Utility Comm., (DC-Pa), 44FSupp912. Appeal dism'd 317US702, 63SCR162.

Application allowed by Justice of United States Supreme Court for allowance of appeal from decision of highest state court gave the United States Supreme Court no jurisdiction where application was not made until after the expiration of the three months' period permitted for making such application although timely application had been made within the three months' period to the chief judge of the state court who denied same shortly before the expiration of the three months' period. Matton Steamboat Co. v. Murphy, 319US412, 63SCR1126, dismissing appeal from 289NY119, 44NE(2d)391, which rev'd 263 AppDiv756, 30NYS(2d)930, and 263AppDiv774, 32NYS373.

There was nothing in the statute or rules to preclude application within three months being made to both state court judge and a Justice of the United States Supreme Court. Id.

RULE 41

Judgments of the Court of Claims—Petition for Review on Certiorari

1. A petition to this court for a writ of certiorari to review a judgment of the Court of Claims shall be accompanied by a certified transcript of the record in that court, consisting of the pleadings, findings of fact, conclusions of law, judgment and opinion of the court, and such other parts of the record as are material to the errors assigned. The petition shall contain a summary and short statement of the matter involved; the relevant parts of statutes involved (see Rule 27 (f), bd. vol. ante); the questions presented; and the reasons relied on for the allowance of the writ. Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27, bd. vol. ante.) The petition, brief and record shall be filed with the clerk and forty copies shall be printed under his supervision. The record shall be printed in the same way and upon the same terms that records on appeal are required to be printed. The estimated costs of printing shall be paid within five days after the estimate is furnished by the clerk and if payment is not so made the petition may be summarily dismissed. When the petition, brief and record are printed the petitioner shall forthwith serve copies thereof on the respondent, or his counsel of record, and shall file with the clerk due proof thereof.

2. Within twenty days after the petition, brief and record are served (unless enlarged by the court or a justice thereof when the court is not in session) the respondent may file with the clerk forty printed copies of an opposing brief, conforming to Rules 26 and 27. Upon the expiration of that period, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, briefs and record, shall be distributed by the clerk to the court for its consideration. (See Rule 38, par. 4 (a), bd. vol. ante.)

The provision of subdivision (a) of paragraph 3 of Rule 38 shall apply to briefs in opposition to petitions for writs of certiorari to review judgments of the Court of Claims.

3. The same general considerations will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims as are applied to applications for such writs to other courts. (See par. 5 of Rule 38, bd. vol. ante.) (As amended Mar. 25, 1940.)

It is further ordered that the regulations prescribed by this Court in reference to appeals from the Court of Claims, appearing in 210 U. S., appendix, 29 S. Ct. xxiv, be, and they hereby are, rescinded. (As amended Mar. 25, 1940.)

(See §3(b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939 [U.S.C. or Mason's U.S.C.A. 28:288(b)].)

RULES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

(Effective May 31, 1942)
(With 1943 Amendments)

TABLE OF RULES

These rules when adopted were believed to conform to all existing statutes and all controlling rules and orders of the Supreme Court. If a statute of the United States or any rule or order of the Supreme Court having the force of law, now or hereafter requires a different procedure than that required by any rule of this court, such rule of this court in so far as it is inconsistent therewith must be disregarded.

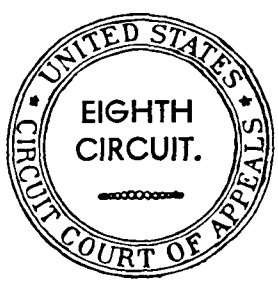
Rule 1.—Scope of Rules.

These rules shall govern the procedure in this court so far as they are applicable and are not inconsistent with any statute of the United States or any rule or order of the Supreme Court of the United States having the force of law. Procedure with respect to any matter not covered by statute or by a rule of this court or of the Supreme Court shall be such as has heretofore customarily prevailed in this court, or such as this court may direct.

Rule 2.—Name, Seal, and Process.

(a) Name. The name of this court is "United States Circuit Court of Appeals for the Eighth Circuit".

(b) Seal. The seal is as shown by the following facsimile:



(c) Process. Process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court of the United States.

Rule 3.—Terms of Court.

(a) Times and Places. This court will hold general terms each year at the following places and commencing at the following times:

St. Paul, Minnesota, First Tuesday in September.

St. Louis, Missouri, First Monday in November.

Omaha, Nebraska, First Monday in January.

Kansas City, Missouri, First Monday in March.

St. Paul, Minnesota, First Monday in May. Any of these terms may, by order of court, be adjourned to another time or place. Other terms may be held at such times and places as the court may designate. The court may sit in separate divisions at the same time and place, or at different places at the same time. If the first day of any term shall fall upon a holiday, the term shall commence on the following day.

(b) Calendar. All cases which are ready for hearing at any term shall, so far as practicable, be heard at that term. The clerk shall, not later than 20 days before the commencement of a term, issue a printed calendar showing all cases which will be heard at the term and the day upon which each case will be called for hearing. In listing cases upon the calendar, the clerk shall give appropriate effect to the order in which the cases were filed in this court, to any preferences accorded by statute or rule, and to any directions of the court

(c) Order of Business Unless otherwise ordered, the court will convene at ten o'clock A. M. on the opening day of a term and of each day thereafter upon which cases are set for argument. Before the call of the calendar for the day, the court will entertain motions to admit attorneys to the bar of this court, motions to advance, continue or dismiss cases on the calendar, motions for additional time for argument, and other appropriate motions relative to the cases set for argument. The calendar for the day will then be called, and the cases listed thereon which are ready for oral argument will be heard in the order in which they appear upon the calendar.

(d) Marshal and Bailiffs. The Marshal of the district in which a term of court is held shall attend upon the court when so directed by it. He shall furnish as many bailiffs as the court directs, who shall perform the duties required of them by the court.

Formation days, see Rule 18(d).

Rule 4.—The Court; Quorum.

(a) How Constituted. The court, for the purpose of hearing and deciding any matter coming before it, shall consist of three judges designated by the senior circuit judge or, in case of his inability to make such designation, by the judge next senior in point of service, or, if no designation shall have been made by either of them, by the judge presiding at the term or session of court at which a matter comes regularly on for hearing. Two judges shall constitute a quorum of the court.

(b) Absence of Quorum; Adjournment. If on the opening day or any other day of any term less than a quorum is present, any judge in attendance may adjourn the court until a later time, or, if no judge is present, the clerk, or if he is absent, a deputy clerk, may adjourn the court from day to day.

(c) Absence of Quorum; Interlocutory Orders. Any judge attending a term when less than a quorum is present may make any necessary interlocutory order relating to any case or proceeding pending in this court, preparatory to the hearing or decision theref.

(d) Orders Grantable Without Quorum. Motions and applications for orders, if consented to or if unopposed after due notice to all interested parties has been given or waived, or if the orders sought are formal and are such as are ordinarily granted as of course and without notice or hearing, need not be submitted to a quorum of the court. Such motions and applications may be considered and the orders applied for may be granted for the court by the senior circuit judge (within the Circuit) or by any judge of the court (within the Circuit) designated by the court to consider and grant such motions and applications. Orders which properly may be granted under this rule without being submitted to a quorum of the court shall include: An order permitting appeal or defense in forma pauperis; an order for the dismissal, continuance, advancement, or special setting of a case for hearing; an order relating to the printing of records or briefs or to the time within which they are to be filed; an order granting leave to file an enlarged brief; an order dispensing with the printing of exhibits which cannot without unreasonable difficulty or expense be reproduced; an order amending the record if the amendment is agreed to in writing; an order staying mandate pending application for certiorari; and an order to show cause returnable on or before the next regular motion day.

(e) Reconsideration of Non-Quorum Orders. Any interested party adversely affected by an order made for the court by a single judge, under the provisions of subdivision (d) of this rule, shall be entitled to a reconsideration thereof by the court if, within 10 days after the entry of the order, such party shall file with the clerk and serve upon the party who filed the motion or application for the order, a request in writing for the reconsideration, vacation or modification of the order, stating the grounds for such request. The clerk shall thereupon spbmit to the court the order complained of, the motion or application upon which it was entered, the request for its reconsideration, and any suggestions which may have been filed in support of or in opposition to the request. The court shall reconsider the order and shall take such action with respect thereto as it may deem proper.

Rule 5.—Clerk.

(a) Location of Office. The Clerk's office shall be at St. Louis, Missouri.

(b) Not to Act as Attorney. Neither the clerk nor any deputy clerk shall act as an attorney.

(c) Oaths and Bonds. The clerk, before entering upon the duties of his office, shall take such oaths and give such bonds as are required by law. A copy of his oaths and of his bonds, with the approval thereof by this court as to amount, form and sureties, shall be entered in the journal of this court. The bond and oaths shall be deposited as directed by the court for safekeeping.

(d) Release of Court Records. The clerk shall not permit any original record, paper or exhibit to be taken from his office or from the courtroom without an order from the court or a judge thereof.

(e) Preservation of Records and Briefs. The clerk shall cause to be bound in volumes and shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions and briefs filed therein.

(f) Court Personnel Record. In recording orders, judgments and decrees of this court, the clerk shall cause the record to show the names of the judges who constituted the court to which the case or matter was submitted and who ruled upon it.

Rule 6.—Admission of Attorneys.

(a) On Motion. Any attorney of good moral and professional character who is a citizen of the United States or of any territory or possession thereof and who has been admitted to practice in any United States Court or in the highest court of any State may, upon motion of a member of the bar of this court, be admitted as an attorney of this court upon taking the following oath:

"I do solemnly swear (or affirm) that I will demean myself as an attorney and councellor of the United States Circuit Court of Appeals for the Eighth Circuit, uprightly and according to law; and that I will support the Constitution of the United States. So help me, God;"

and subscribing the roll.

(b) On Application. An order of admission to the bar of this court may also be obtained upon a verified application in writing showing that the applicant has the qualifications required in the foregoing paragraph, accompanied by a certificate of a judge or the clerk of a court in which he is admitted to practice that he is a member in good standing of the bar of that court and is of good moral and professional character; and also accompanied by the oath of the applicant in the form prescribed above.

(c) Admission Fee. Before being enrolled as an attorney of this court, each applicant under either subdivision (a) or subdivision (b) of this rule shall pay to the Librarian of this court at St. Louis the sum of $5.00 for the use of the libraries of the court. The Librarian shall receive such monies, shall be the custodian thereof, and shall expend them under the direction of the court.

(d) Disbarment. Any member of the bar of this court who is disbarred or suspended from practice by any court of record shall thereby forfeit his membership in the bar of this court, and his name shall be stricken from the roll of attorneys unless within a time fixed by order of this court, and after notice of such order mailed by the clerk to the attorney at his address as shown upon the roll, he shall show that such disbarment or suspension is no longer in effect.

Rule 7.—Docketing Cases.

(a) Civil Cases. In civil cases the appellant or petitioner shall cause the case to be docketed in this court and shall file the record on appeal or review pursuant to Rule 73(g) of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B), 28 U.S.C. following section 723c.

(b) Criminal Cases. In criminal cases the appeal shall be docketed at the time the duplicate notice of appeal is received by the clerk of this court from the clerk of the trial court, provided the appellant has made the deposit hereinafter required to secure clerk's costs.

(c) Deposit. A deposit of $40.00 shall be made with the clerk of this court to secure his costs before any case is docketed, unless the appellant or petitioner is by law exempted from the payment of costs or clerk's fees. In civil cases this deposit shall be made at the time the record on appeal or review is delivered to the clerk of this court. In criminal cases the deposit shall be made when the duplicate notice of appeal required to be forwarded by the clerk of the trial court to the clerk of this court has been received and filed by the clerk of this court or within 15 days thereafter.

(d) Default. Failure of an appellant or petitioner to docket an appeal or petition for review or enforcement, or to file the record on appeal or review, or to make the required deposit with the clerk of this court, shall constitute a ground for an order that the appeal or petition be docketed and dismissed. Such an order may be entered upon the motion of the appellee or respondent, accompanied by a certificate of the clerk of the court or board which made the order, judgment or decree appealed from, stating the case and certifying that a notice of appeal or a petition for review was duly filed. After an appeal or petition for review or enforcement has been docketed and dismissed, it shall not be reinstated unless this court, for good cause shown and on such conditions as may be just, shall otherwise order.

See Rule IV, Rules of Practice and Procedure in Criminal Cases (Mason's U.S.C.A. Supp. 4B) 18 U.S.C. following section 688, promulgated by the Supreme Court of the United States.

Rule 8.—Record on Appeal.

(a) Civil Actions and Bankruptcy Proceedings. The procedure for the preparation of the record on appeal in civil actions is prescribed by Rules 75 and 76 of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B), 28 U.S.C. following sections 723c, which are adopted as rules of this court governing the preparation of the record on appeal from the district courts in all civil actions, including bankruptcy proceedings.

(b) Admiralty Cases. The procedure for the preparation of the record on appeal in admiralty cases is prescribed by Rule 49 of the Admiralty Rules (Mason's U.S.C.A. Supp. 4B), 28 U.S.C. following section 723, promulgated by the Supreme Court, which is adopted as a rule of this court governing the preparation of the record on appeal from the district courts in admiralty cases.

(c) Criminal Cases. The procedure for the preparation of the record on appeal in criminal cases is prescribed by Rules VII, VIII, and IX of the Rules of Practice and Procedure in Criminal Cases (Mason's U.S.C.A. Supp. 4B), 18 U.S.C. following section 688, promulgated by the Supreme Court of the United States.

Rule 9.—Physical Exhibits.

(a) Custody of Clerk. Models, diagrams and material exhibits in evidence in any case shall be placed in the custody of the clerk at least 10 days before the case is submitted.

(b) Removal by Party. All such exhibits must be removed from the custody of the clerk promptly and not later than one month after the case is finally decided. If this is not done, the clerk, after giving notice to counsel to forthwith remove such exhibits, may 15 days thereafter cause the exhibits to be destroyed or otherwise disposed of.

(c) Use by Court. Original paper exhibits, consisting of maps, plats, sketches, drawings, photographs, blue prints, and other like matters may be transmitted under order of the district court for inspection by this court, but copies thereof must be included in the printed record unless otherwise ordered by this court.

Rule 10.—Printing of Record.

(a) Entire Record Not to Be Printed. Unless ordered by this court, the entire record on appeal, or on petition to review or to enforce an order of an administrative board, agency or commission, shall not be printed. The appellant or petitioner shall serve and file with his brief a separate printed record, carefully indexed, which shall contain a clear, concise and condensed statement or abstract of so much of the entire record on appeal or review as may be essential to show jurisdiction and fully to present to the court the points relied upon in his brief.

See Rules 11(a) and 12.

(b) Contents of Printed Record. The printed record shall contain all of the essential pleadings, essential docket entries, the judgment or order appealed from or sought to be reviewed or enforced, and the opinion, findings and conclusions of the trial court or administrative agency, and, if the case was tried to a jury, the complete instructions of the trial court and the verdict. The printed record shall also contain so much of the evidence, either in narrative or question and answer form, as may be necessary to enable this court to determine the questions presented for decision. If the printed record contains any matter in a foreign language, it must be accompanied by a correct translation thereof. If the appellant or petitioner in his brief challenges rulings upon evidence, such evidence, the objections interposed thereto, and the rulings questioned shall be quoted in the printed record, and if the question of the sufficiency of the evidence to support a finding, ruling, order, verdict or judgment of the court or board is raised by the appellant or petitioner, he shall include in the printed record all evidence received upon the trial or hearing pertinent to that question.

(c) Supplement to Printed Record by Appellee. In case the appellee or respondent shall be of the opinion that the printed record submitted by the appellant or petitioner is inaccurate or omits essential portions of the entire record, he may file and serve

with his answering brief a separately printed supplement to the printed record, carefully indexed, containing such matter as he deems essential for consideration by the court in deciding the case, or he may move for an order requiring the appellant or petitioner to print such matter as a supplement to the printed record.

(d) Effect of Insufficient Printed Record. If, upon submission of a case, it shall appear that the record printed by the appellant or petitioner is insufficient to enable the court to decide questions presented or argued, the court may treat as waived any question which cannot properly be determined from the record as printed, or it may require that additional portions of the record be printed, or it may make any other appropriate order with respect to the case, including dismissal of the appeal or petition for review or enforcement.

(e) Effect of Unfair and Misleading Printed Record; Correction of Inadvertent Mistakes. In case the court is satisfied that an appellant or petitioner has knowingly presented a printed record which constitutes an unfair or incomplete statement of those portions of the entire record essential to a proper consideration of the questions presented by him for decision, the appeal or petition will be dismissed. Inadvertent omissions or misstatements in the record on appeal or in the printed record may be corrected by stipulation, or by direction of this court on application or of its own motion.

(f) Expense, When Not Taxable as Costs. If an appellant or petitioner shall print the entire record on appeal without an order of this court, the expense of printing it shall not be taxed as costs unless the court for good cause shall order otherwise. The expense of printing portions of the record which are clearly nonessential will not be allowed as costs, and any delay or expense caused by the failure of an appellant or petitioner to print, file and serve an adequate record will be taken into consideration in taxing costs.

(g) Agreed Statement. When the questions presented by an appeal to this court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by this court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the district court may consider necessary fully to present the questions raised by the appeal, shall be approved by that court and shall then be certified to this court as the record on appeal.

Note: The purpose of Rule 10 is to confine the printed record on appeal to essential matter and thus to reduce the cost of printing and to relieve the court of the burden of separating what is inconsequential from what is pertinent to the questions argued. While necessarily the burden of preparing the printed record is placed upon the appellant or petitioner, it is expected that all counsel interested in a case will cooperate to the end that the printed record will present only so much of the entire record as is essential, but will fairly and adequately present that.

Rule 11.—Briefs and Records.

(a) Filing and Serving. The appellant or petitioner shall, within 40 days from the time that the record on appeal or on review has been filed with the clerk, file 20 copies of his printed brief together with 30 copies of his printed record and shall furnish to each of opposing counsel a copy of the printed brief and printed record. The appellee or respondent, within 25 days from the date of the receipt of the appellant's or petitioner's printed brief and printed record, shall file 20 copies of his answering printed brief together with 30 copies of his printed supplement (if any) to the printed record and shall furnish a copy of each thereof to each of opposing counsel. Within 10 days thereafter, the appellant or petitioner may file 20 copies of a printed reply brief and shall serve a copy thereof upon each of opposing counsel.

(b) Contents of Brief. A brief shall contain, in the following order:

First.—A complete detailed index of the entire brief. (Sample index may be procured from the clerk.)

Second.—A complete list of all cases and statutes cited in the brief. The cases shall be first listed and arranged in alphabetical order, giving title, volume and page (citations of United States Supreme Court cases must be to the official reports; citations of State supreme court cases shall be both to the State official reports and to the Reporter System). Statutes shall be listed in chronological order, with date, volume, and page. Each case or statute shall be indexed as to each page in the argument where it is referred to.

Third.—A concise statement of the case in so far as is necessary for the court to understand and decide the points to be argued in the brief or orally.

Fourth.—A separate and particular statement of each assignment of error (in criminal cases), or of each point relied upon (in civil cases), intended to be urged, with the record page thereof. If an error assigned or point relied upon relates to the admission or exclusion of evidence, the statement shall quote the evidence referred to and the pertinent objections or exceptions taken, together with the rulings of the court thereon, giving the pages of the printed record on which the quotations appear. If an error assigned or point relied upon relates to the giving of instructions or the refusal to give instructions requested, the statement shall quote the portions of the instructions or of the requested instructions which are referred to, the exceptions taken to the giving of the instructions or the refusal to give requested instructions and the rulings of the court thereon, and shall give the pages of the printed record on which the quotations appear. When the error asserted is as to a ruling upon the report of a master or referee, the statement shall show the exception to the report and the ruling thereon, giving pages of the printed record where they occur.

Fifth.—A concise statement of each point to be argued, with a complete list of all cases and statutes referred to in the argument covering the point.

Sixth.—A printed argument which shall substantially follow the order of points stated under paragraph "Fifth". The court will disregard any statement in the argument as to what the record contains unless reference is made to the page of the printed record where the statement may be found or verified. When a State statute is cited in the argument, so much thereof as may be necessary to the decision shall be printed in full. Briefs of appellees need not contain the statement of errors or points (paragraph "Fourth"), nor need they contain a statement of the case (paragraph "Third") unless the statement presented in appellant's brief is controverted or deemed insufficient.

(c) Length of Briefs. The appellant's or petitioner's brief shall not exceed 85 pages, and the appellee's or respondent's brief shall not exceed 80 pages. The appellant's or petitioner's reply brief (if any) shall not exceed 15 pages and shall not reargue points covered in his main brief.

(d) Violation of Rule—Effect. A brief not in substantial conformity with this rule will not be accepted or filed by the clerk.

(e) Effect of Default. When according to this rule an appellant in a criminal case is in default, his appeal may be summarily dismissed, and in any case where the appellant or petitioner is in default according to this rule, his appeal may be dismissed on motion. An appellee who is in default for noncom-

pliance with the rule will not be heard in argument except with the consent of opposing counsel or by request of the court.

Rule 12.—Form of Printed Records and Briefs.

(a) **In Ordinary Case.** Records and briefs for the use of this court shall be printed on unglazed paper not less than 6⅛ inches in width by 9¼ inches in length, and type matter shall be 4 1/6 by 7 1/6 inches, as required by the rule of the Supreme Court of the United States, set out in the margin. The amount of matter contained on a page of the printed record of this court shall be at least equal to that contained on a page of a record printed under the supervision of the clerk of the Supreme Court of the United States. The paper shall equal a weight of 80 pounds per ream on basis of size of sheet 25 by 38 inches.

(b) **In Patent Case.** In patent cases the printing of records and brief shall comply with subdivision (a) of this rule as to size of type and type matter to a page, but the size of such records and briefs shall be not less than 7½ inches wide by 9½ inches long so that copies of letters patent as furnished by the patent office may be inserted therein without folding.

(c) **Covers of Records.** All covers for records shall be printed in a neat and workmanlike manner on substantial paper equal to a weight of 96 pounds per ream on the basis of a shoot 25 by 40 inches, and shall contain in conspicuous type the following matter, viz.:

First.—"ABSTRACT OF RECORD".

Second.—"UNITED STATES CIRCUIT COURT OF APPEALS EIGHTH CIRCUIT".

Third.—The abbreviation for number, "No.", followed by the number assigned to the case in this court.

Fourth.—The words "Civil", "Criminal", "In Bankruptcy", "Tax Review", or other appropriate designation, as the case may require, on a separate line.

Fifth.—The title of the cause as it will be docketed in this court, viz.: ————————, Appellant (or Petitioner, as the case may be), vs. ————————, Appellee (or Respondent).

Sixth.—The words "Appeal from" or "Petition to Review Decision of", or "Petition to Enforce Order of", as the nature of the case may require, followed by the correct title of the trial tribunal.

(d) **Body of Records.** Unless otherwise expressly directed by counsel, the full titles of the tribunal and cause once correctly shown in the printed record shall not be repeated when unchanged. There shall be placed at the head of each subsequent pleading, etc., a brief designation of its character.

Unless otherwise expressly directed by counsel, the indorsements on pleadings, etc., shall not be printed in full; it shall be sufficient to print: "Filed in the ———— on ————," given the name of the court or other tribunal and the correct date.

The date of all orders and decrees and the name of the judge or judges making them shall always appear.

In printing records, the pleadings, orders, testimony of witnesses, etc., shall be separated by a face rule 3 inches long.

When inserts are folded several times to conform to the size of the printed record, stubs should be inserted at the binding side of the record to equalize the space occupied by the folds. Unmounted photographs should be used when copies of them are required in printed records.

(e) **Effect of Improper Form.** Records and briefs not printed in substantial conformity with the provisions of this rule will not be accepted or filed.

As this rule is intended primarily for the guidance of the printer his attention should be directed thereto *before the record or brief is printed.* A sample copy of a printed record will be furnished by the clerk of this court on application therefor.

Rule 26 of the Rules of Supreme Court of the United States (Mason's U.S.C.A. Supp. 4B): "Form of Printed Records, Petitions, Briefs, etc. All records, petitions, motions and briefs, printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume, having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches, except that records in patent cases may be printed in such size as is necessary to utilize copies of patent documents. They and all quotations contained therein, and the matter appearing on the covers, must be printed in clear type (never smaller than small pica or 11-point type) adequately leaded; and the paper must be opaque and unglazed. The clerk shall refuse to receive any petition, motion or brief which has been printed otherwise than in substantial conformity to this rule."

Rule 13.—Oral Arguments.

(a) **Opening and Closing.** The appellant or petitioner in this court shall be entitled to open and conclude the argument of a case. When there are cross appeals, they shall be argued as one case, and the party who was the plaintiff below shall open and conclude the argument.

(b) **Number of Counsel.** Not more than two counsel for each party will be heard in argument, and only one will be heard when but one side is represented.

(c) **Time Allowed.** One hour for each side will be allowed for oral argument, except that in the folling cases each side will be limited to one-half hour: (1) Appeals from orders granting or refusing a preliminary injunction or the appointment of a receiver; (2) appeals involving solely questions of jurisdiction; (3) appeals in bankruptcy; (4) appeals in cases involving less than $500; and (5) appeals from orders granting or denying applications for habeas corpus.

(d) **Enlargement of Time.** No more time for oral argument than as above provided will be allowed without special leave of court granted before argument begins.

(e) **Non-Appearance of Appellant or Petitioner.** If there is no appearance for the appellant or petitioner when the case is called for argument, and no brief has been filed on his behalf, the appeal or petition may be dismissed on motion of the appellee or respondent. If a brief has been filed by the appellant or petitioner, the court will hear oral argument on behalf of the appellee or respondent.

(f) **Non-Appearance of Appellee or Respondent.** If the appellee or respondent fails to appear when the case is called for argument, the court will hear argument on behalf of the appellant or petitioner.

(g) **Non-Appearance of Parties.** Where there is no appearance by or on behalf of either side when a case is called for argument, the case will be taken on briefs if briefs have been filed; otherwise it may be dismissed at the cost of the appellant or petitioner.

(h) **When One Judge Disqualified.** When a case is reached upon a regular call of the calendar, and one of the judges sitting is disqualified, the case may be heard by the qualified judges at the request of the parties. If the two qualified judges are unable to agree, they may call in a third qualified judge, to whom the briefs and record may be submitted for examination and decision of the case.

Rule 14.—Opinions of the Court.

(a) **Filing, Printing, and Preserving.** Every opinion of this court, as soon as it is delivered, shall be filed with the clerk, who shall cause it to be printed under the supervision of the judge who prepared it. At the end of each term, the clerk shall cause the original or the printed opinions filed by the court during the term to be bound into one or more volumes and preserved as records of the court.

(b) **Basis for Judgment.** When an opinion has been filed with the clerk, he shall, unless otherwise directed by the court or by the judge who prepared the opinion, enter the judgment or decree required by the opinion, without submitting the form of the judgment or decree to the court or to a member thereof for approval, and such judgment or decree, when so entered in conformity with the opinion, shall be the judgment and decree of the court.

(c) **Clerk to Furnish Copies.** The clerk, upon the filing of an opinion, shall mail a copy thereof to counsel for each of the parties who appeared in the case, for which a charge of $1.00 shall be made, which charge shall be taxed as part of the costs of the appeal. For a certified or uncertified printed copy of an opinion, a charge of $2.00 shall be made by the clerk.

Rule 15.—Petitions for Rehearing.

(a) **Time for Filing.** A petition for rehearing may be filed within 15 days after the date of the judgment or decree, and jurisdiction to decide the questions presented is reserved, notwithstanding the lapse of the term within the 15 days. No response or opposition to such petition is permissible unless specifically requested by the court.

(b) **Form, Content, and Presentation.** The petition for rehearing must be printed and 20 copies thereof filed with the clerk and must briefly and distinctly state the grounds upon which a rehearing is sought and be supported by a certificate of counsel that the petition is filed in good faith and believed to be meritorious. The petition will not be granted nor may it be argued orally unless a majority of the court which heard the case so determines.

(c) **Purpose; Effect of Noncompliance.** The sole purpose of a petition for rehearing is to call attention to material matters of law or fact inadvertently overlooked by the court, as shown by its opinion. Mere reargument of issues determined by the opinion will be disregarded. If the petition be found to be wholly without merit, vexatious, and for delay, the court may assess a sum not exceeding $100 against the petitioner, or against any counsel signing or certifying to the petition, in favor of the adversary, to be collected with the costs in the case.

Rule 16.—Mandate.

(a) **When To Be Issued.** In all cases finally determined in this court, a mandate or other program process shall be issued by the clerk at the expiration of 15 days after the date of the judgment or decree, unless otherwise provided by this rule or ordered by this court.

(b) **Effect of Petition for Rehearing.** No mandate shall, without order of court, issue pending disposition of a timely petition for rehearing, but shall issue 10 days after the denial thereof.

(c) **Effect of Petition for Certiorari.** If a stay of mandate be granted pending application to the Supreme Court for certiorari, such stay shall not exceed 30 days: Provided, that if, within such stay, there is filed with the clerk of this court the certificate of the clerk of the Supreme Court that the petition for certiorari, record, and brief have been filed, such stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of that Court denying the writ, the mandate shall issue forthwith.

Rule 17.—Costs.

(a) **To Whom Allowed.** Costs shall be allowed, unless otherwise ordered, as follows: (1) Upon a dismissal, to the appellee, unless otherwise agreed by the parties; (2) upon an affirmance, to the appellee; (3) upon a reversal, to the appellant; (4) in all other cases, as the court may direct.

(b) **Expense of Record Included.** If the appellant has printed the record or an abstract thereof in this court, he shall, upon a reversal, unless otherwise ordered by the court, be entitled to have taxed as costs the actual expense of printing 30 copies thereof, not exceeding the schedule of prices for printing fixed by the court and on file with the clerk, but no allowance shall be made for the amount paid to the clerk of the court below for furnishing the typewritten record.

See also Rule 10(f).

(c) **Not Allowed For or Against United States.** The provisions of this rule are not applicable to cases in which the United States is a party, and no costs shall be allowed in this court, in such cases, for or against the United States.

(d) **Inserted in Mandate.** When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate sent to the court below, and to annex to the mandate the bill of items taxed in detail.

(e) **In Cases Taken to Supreme Court.** In all cases certified to the Supreme Court or removed thereto by certiorari or otherwise, the fees of the clerk of this court shall be paid before a record shall be transmitted to the Supreme Court.

See 1941 Revised Table of costs and fees in all circuit courts under the heading of this Division II.

Rule 18.—Motions; Motion Days.

(a) **Content and Filing.** Every motion shall be in writing and shall contain a brief statement of the factual basis for and the grounds and objects of the motion. The original motion papers, together with 3 copies thereof and 4 copies of any supporting briefs, shall be filed with the clerk.

(b) **Notice.** Motions (except such as are noncontroversial and require no hearing) will not be heard except upon reasonable notice (accompanied by a copy of the motion and all papers filed therewith) to the adverse party or his counsel.

(c) **Hearing or Submission.** Motions (except such as are consented to or those which require no hearing) will be heard only upon regular motion days unless the court or the senior judge or a judge designated by the court under Rule 4(d) shall, upon a written petition and for good cause shown, otherwise order. Motions which require no notice or hearing may be submitted to the court through the clerk at any time.

(d) **Motion Days.** Regular sessions for the hearing of motions will be held at ten o'clock A. M. on the second and fourth Mondays of each month from October to May, inclusive, and on the fourth Monday of each month during the months of June to September, inclusive. In case any session for the hearing of motions shall fall upon a legal holiday, the matters returnable at such session shall be heard the following day.

(e) **Entry of Orders.** When a motion has been ruled upon by the court, and the clerk has been advised in writing of the court's ruling by the judge presiding or by any member of the court to which the motion was submitted, the clerk shall, unless otherwise directed, enter the order required by the ruling, without submitting the form of order to the court or a member thereof for approval, and such order, when entered in conformity with the ruling, shall be the order of the court.

The word "motion" shall include an application, a petition, or a request for an order.

Rule 19.—Notice of Challenge of Federal Statute.

If the constitutionality of an Act or of a Resolution of Congress is questioned in any case or proceeding in this court to which the United States, any agency, officer or employee thereof, as such, is not a party, it shall be the duty of the party raising the question, or of his counsel, to give written notice thereof to the clerk of this court at the time such appeal or other proceeding is filed or when such question is first raised in this court. Upon receipt of such notice, the clerk shall forthwith send a copy thereof to the Attorney General of the United States with a statement that such question is present.

Rule 20.—Bonds on Appeal.

Bonds on appeal and supersedeas bonds shall conform to Rule 73(c), (d), (e) and (f) of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B), 28 U.S.C. following section 723c.

Rule 21.—Interest; Damages.

(a) **Interest Allowed on Money Judgment.** When a judgment for the payment of money is affirmed, and interest is properly allowable, it shall be computed

from the date of the judgment below until the same is paid, at the rate that similar judgments bear interest in the State where the judgment was rendered.

(b) Damages Allowed Where Appeal Taken for Delay. In any case where an appeal has delayed proceedings on a judgment appealed from and shall appear to have been taken merely for delay, damages, not exceeding 10 per cent of the amount of the judgment, in addition to interest, may be awarded and added to the judgment.

(c) Admiralty Cases. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

Rule 22.—Death or Incompetency of a Party.

Whenever, pending an appeal, a party shall die or become incompetent, the representative of the deceased or incompetent may voluntarily substitute himself as a party to the appeal; or any party to the appeal may suggest the death or incompetency in the record, and such proceedings shall thereupon be had as the court may direct.

Rule 23.—Habeas Corpus, Custody Pending Appeal.

(a) On Denial of Application. Pending an appeal from the final decision of any court or judge declining to grant a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

(b) After Discharge of Writ. Pending an appeal from the final decision of any court or judge discharging a writ of habeas corpus after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be enlarged upon recognizance, as hereinafter provided, or may be committed by order to other safe custody pending appeal.

(c) After Discharge of Prisoner. Pending an appeal from the final decision of any court or judge discharging the prisoner in a habeas corpus proceeding, he may be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

Rule 24.—Criminal Cases.

(a) Rules Promulgated by Supreme Court Applicable. The practice and procedure on appeals in criminal cases shall conform to the Rules of Practice and Procedure in Criminal Cases as now or hereafter promulgated by the Supreme Court of the United States. (See Mason's U.S.C.A. Supp. 4B.)

(b) Preference as to Hearing and Disposition. Preference shall be given the hearing and disposition of criminal cases. The court may at any time advance a criminal case for hearing in furtherance of justice or to avoid unnecessary delay, and may make such orders relative to the filing of briefs and the hearing of oral argument as may be appropriate.

(c) Court Rules Applicable. Except as otherwise provided in the Rules of Practice and Procedure in Criminal Cases as now or hereafter promulgated by the Supreme Court and in this rule, appeals in criminal cases shall be governed by the rules of this court relating to other appeals.

Rule 25.—Petitions for Allowance of Appeals in Bankruptcy.

(a) Requirements for Filing. A petition in this court for the allowance of an appeal from an order of a district court in a bankruptcy matter shall be docketed upon the petitioner's making the required deposit for costs with the clerk of this court and filing an original and 3 copies of the petition and of the statement of points to be relied upon, and 4 copies of the order complained of and of the brief, if any, in support of the petition, together with proof of service on the respondent of a copy of the petition and of the supporting brief and documents, and of a notice stating when the petition was filed and the date when it will be bronght on for hearing.

(b) Filing and Hearing. The petition for allowance of appeal, the statement of points to be relied upon, the brief in support, if any, the notice of filing, and the proof of service must be filed within the time allowed by statute for the taking of an appeal in such matters; and the hearing on the petition shall be had, if possible, on the next regular motion day of this court.

(c) Transcript Filed After Allowance of Appeal. Certified transcript of record from the district court shall be filed in this court within 40 days from date of allowance of appeal, unless the time be extended by this court or one of the judges thereof.

Rule 26.—Tax Reviews.

(a) Requisites for Review of Decision of Board of Tax Appeals. The requisites for the review of a decision of the Board of Tax Appeals are compliance with the following requirements:

(1) A timely petition for review, together with 2 copies thereof, shall be filed with the clerk of the Board.

(2) The petition for review must be addressed to this court and signed by the petitioner or his attorney of record, and shall show the parties seeking the review and the taxable period or periods involved, and shall contain a brief description of the controversy and a concise statement of the points, separately numbered, upon which the petitioner intends to rely.

(3) The time for docketing the review and filing the record in this court shall be the same as that prescribed by Rule 73(g) of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B, 28 U.S.C. following section 723c, for the docketing of an appeal and filing the record on appeal, but the time may be extended by a member of the Board or by this court or any judge thereof, with or without notice, by a written order filed with the clerk of the Board, a duplicate or certified copy of which shall be filed with the clerk of this court.

(4) The record on review shall be prepared in substantial compliance with the provisions of Rules 75 and 76 of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B) and Rules 10 and 12 of this court relating to records on appeal.

(b) Requisites for Review of Decision of United States Processing Tax Board of Review. The requisites for the review by this court of a decision of the United States Processing Tax Board of Review are compliance with subdivision (a) of this rule and with Section 906(g) of the Revenue Act of 1936, 7 U.S.C. (or Mason's U.S.C.A.) §648(g).

(c) Other Rules Applicable. The rules of this court relating to other appeals shall, so far as appropriate, apply to proceedings to review decisions and orders of the Board of Tax Appeals and of the United States Processing Tax Board of Review.

Rule 27.—Review or Enforcement of Orders of an Administrative Agency, Board or Commission (Other Than the Board of Tax Appeals and the Board of Processing Tax Review).

(a) Petition for Review or Enforcement. A petition for review or enforcement of an order of an administrative agency, board or commission other than the United States Board of Tax Appeals and the United States Processing Tax Board of Review shall be addressed to this court and shall contain a concise statement of (a) the nature of the proceedings as to which review or enforcement is sought; (b) the facts and statutes upon which venue is based; (c) the relief prayed; and (d) in the case of a petition for review, the points on which the petitioner intends to rely. The petition, together with a copy thereof for each respondent, shall be filed with the clerk of this court and, unless otherwise provided by statute, shall be served by the clerk in the manner prescribed by subdivision (b) of Rule 73 of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B), 28 U.S.C. following section 723c.

(b) Joint and Several Petitions and Consolidated Records. If the interests of any two or more persons entitled by the applicable statutes to petition this court for review of the same order of an administrative agency, board or commission, are of such a nature as to make joinder practicable, they may file a joint and several petition for review, following the procedure prescribed by the applicable statute and by this rule for a single petitioner. Where two or more persons petition for review of the same order, whether on a joint and several petition or not, a single record on review shall be prepared containing all the matter designated by the parties without duplication.

(c) Answer to Petition for Enforcement. When a petition for enforcement of an order of an administrative agency, board or commission is filed, the respondent shall, within 20 days after the service of the petition upon him, file with the clerk of this court his answer to the petition, together with a copy thereof for the petitioner. The answer shall be served by the clerk in the manner prescribed by subdivision (b) of Rule 73 of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B). If the respondent fails to file an answer within the time prescribed, the court may, by reason of the default, enter a decree granting the relief prayed.

(d) Cross-Petition for Enforcement. When a petition for the review of an order of an administrative agency, board or commission is filed, the agency, board or commission may, if this court has jurisdiction to enforce the order, file a cross-petition for its enforcement, together with a copy thereof for the petitioner for review, or may in its answer seek such enforcement. Any cross-petition shall be served by the clerk in the manner prescribed by subdivision (b) of Rule 73 of the Federal Rules of Civil Procedure (Mason's U.S.C.A. Supp. 4B). No answer need be filed thereto.

(e) Intervention. A person desiring to intervene in a case where the applicable statute does not provide for intervention shall file with the court and serve upon all parties a motion for leave to intervene. The motion shall contain a concise statement of the nature of the moving party's interest and the grounds upon which intervention is sought. An intervener will not be permitted to participate in the designation of the record unless he shall have filed his motion to intervene within 10 days after the filing of the petition for review or enforcement.

(f) Time for Filing Transcript. Where no definite time is prescribed by the applicable statute for filing the transcript of the record in a review proceeding, such transcript shall be filed within 40 days after service of the petition for review upon the agency, board or commission.

(g) Omissions from or Misstatements in Transcript. If anything material is omitted from the transcript by error or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation or this court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental transcript be certified or a supplemental record be prepared and filed.

(h) Order as to Original Papers or Exhibits. Upon the suggestion of any party that original papers or exhibits should be inspected by the court or filed with the court in lieu of copies, the court may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper.

(i) Extensions of Time. The time for taking any action under this rule (except where the time is fixed by statute) may be enlarged by this court upon motion and for good cause shown; and if any action is not taken within the time prescribed or as enlarged by order, the court on its own motion or that of a party may enter such order as shall to the court seem appropriate.

(j) Party Challenging Order to File Initial Brief. The initial brief or briefs shall be filed by the party or parties (whether petitioners or respondents) challenging the order the review or enforcement of which is sought. Unless otherwise ordered by the court, the form of briefs and the time within which they may be filed and served are governed by Rules 11 and 12.

(k) Preparation of Decrees Enforcing Orders—Settlement—Entry. When an opinion of this court is filed directing the entry of a decree enforcing the order of an administrative agency, board or commission, the agency, board or commission concerned shall within 10 days serve upon the adverse party and file with the clerk of this court a proposed decree in conformity with the opinion. If the adverse party objects to the proposed decree as not being in conformity with the opinion, he shall within 5 days after receiving a copy of the decree proposed, serve upon the agency, board or commission concerned and file with the clerk of this court a suggested decree deemed to be in conformity with the opinion. The court will thereupon settle and enter the decree without further hearing or argument.

(*l*) National Labor Relations Board Cases. Upon the filing of a petition for enforcement or review of an order of the National Labor Relations Board, the Board shall certify to this Court the entire record of the proceeding before the Board and the Clerk shall notify the parties of such filing. Within 15 days after date of such notice the party challenging the Board's order shall file and serve a statement of the portions of the record to be printed as an appendix to his brief, in a separate volume. The appendix shall contain only such portions of the record material to the questions presented as the party filing the brief desires the Court to read. Asterisks or other appropriate means shall be used to indicate omissions in the testimony of witnesses. Reference shall be made to the pages of the typewritten transcript and the names of witnesses shall be indexed.

Within 20 days after date of such notice of the filing of the certified record, the petitioner shall cause to be printed, in a separate volume, the pleadings in the case before the Board, together with the Board's Decision and Order. Such printing shall be by a printer who is upon the list of printers approved by this Court. Thirty copies shall be filed with the Clerk and five copies served upon each opposing party. Within 25 days after receipt thereof, the party challenging the Board's order shall file 20 copies of a brief and 30 copies of appendix and serve 5 copies upon the Board. Within 20 days after receipt thereof, the Board shall file 20 copies of its brief and 30 copies of appendix and serve five copies upon each of the other parties. The appendix shall contain such additional parts of the record as the Board desires the Court to read and as have not been previously printed.

Within 10 days after receipt of the Board's brief, the party challenging the Board's order may in a like manner file and serve a reply brief and may set forth in an appendix thereto (a separate volume) such parts of the record as he may wish the Court to read in view of the parts previously printed.

(m) Rules of Court Applicable. Except as otherwise provided by this rule, petitions for review or enforcement of orders of administrative agencies shall be governed by the rules of this court relating to other appeals. (As amended Jan 12, 1943; Nov. 10, 1943.)

Supreme Court Order of January 12, 1943, amends this rule by changing paragraph (*l*) to (m) and inserting a new paragraph (*l*) as set out above.

Rule 28.—Effective Date of Rules.

These rules shall become effective on May 31, 1942. They shall apply to all cases commenced in this court on and after that date and, so far as practicable, to further proceedings in cases then pending in this court. To the extent that the application of these rules to further proceedings in cases pending in this court on May 31, 1942, is not feasible or would be unjust, the former rules of this court shall apply.

RULES OF THE UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

(See U. S. District Court Rules of Civil Procedure set out below)

CIVIL PROCEDURE RULES

OF THE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

(Adopted Oct. 9, 1941, Effective Jan. 1, 1942)

TERMS AND PLACES OF HOLDING COURT

The State of Minnesota constitutes one judicial district, divided into six divisions. The Clerk maintains an office in each division and all papers and correspondence relative to cases should be mailed to the divisional office involved.

GENERAL TERMS OF COURT AND COUNTIES IN THE DIVISION

First Division—at Winona

Fourth Tuesday in January—Third Tuesday in June.

COUNTIES IN FIRST DIVISION: Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha and Winona.

Second Division—at Mankato

Third Tuesday in January—Second Tuesday in June.

COUNTIES IN SECOND DIVISION: Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

Third Division—at St. Paul

First Tuesday in April—First Tuesday in November.

COUNTIES IN THIRD DIVISION: Chisago, Dakota, Goodhue, Ramsey, Rice, Scott and Washington.

Fourth Division—at Minneapolis

First Tuesday in March—Fourth Tuesday in September.

COUNTIES IN FOURTH DIVISION: Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift and Wright.

Fifth Division—at Duluth

First Tuesday in May—First Tuesday in December.

COUNTIES IN FIFTH DIVISION: Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine and St. Louis.

Sixth Division—at Fergus Falls

First Tuesday in January—Fourth Tuesday in May.

COUNTIES IN SIXTH DIVISION: Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Roseau, Red Lake, Stearns, Stevens, Todd, Traverse, Wadena and Wilkin.

SPECIAL TERMS OF COURT

ST. PAUL (Third Division)—Fourth Monday of each month except August.

MINNEAPOLIS (Fourth Division)—Second Monday of each month except August.

DULUTH (Fifth Division)—First Tuesday in May; First Tuesday in December; First Saturday of each other month except July and August.

Special terms of court are held in the other divisions on the opening day of the general terms in such divisions.

Index to Rules

RULE 1

Admission and Disbarment of Attorneys

(a) Roll.—The bar of this Court consists of those heretofore and hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force when they were admitted, or that prescribed by this rule, and have signed the roll of attorneys of this district. No person, unless duly admitted to practice in this Court, shall be permitted to argue any question of law or fact, except in his own behalf or by special permission of the Court, or as provided in subdivision (d) of this rule.

(b) Eligibility.—Attorneys and counselors at law who have been admitted to practice in the Supreme Court of this State are eligible for admission to the bar of this Court; provided, however, that any attorney at law residing outside of this State and admitted to practice in the District Court of the United States in the district of his residence, without being admitted to practice in the Supreme Court of this State, may, upon motion of a member of the bar of this Court, be permitted by this Court to appear and participate as counselor or attorney in the trial of any action or the hearing on any motion, petition or other proceeding then pending before this Court.

(c) Procedure for Admission.—Each applicant for admission to the bar of this Court shall file with the Clerk of this Court a written petition setting forth his residence and office addresses, by what courts he has been admitted to practice, and his legal training and experience at the bar. The petition shall be accompanied by the certificates of two members of the bar of this Court, stating where and when they were admitted to practice in this Court, how long and under what circumstances they have known the petitioner, and what they know of petitioner's character and his experience at the bar. The Clerk will examine the petitions and certificates, and if in compliance with this rule, the petitions for admission will be presented to the Court at the next rule day, or the opening of the next general term in the division, whichever precedes. When a petition is called, one of the members of the bar of this district shall move the admission of the petitioner. If admitted, the petitioner shall in open court take an oath to support the Constitution and laws of the United States, to discharge faithfully the duties of a lawyer, and to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he shall, under the direction of the Clerk, sign the roll of attorneys and pay the fee required by law.

(d) Government Attorneys.—Attorneys and counselors at law admitted to practice in a District Court of the United States, but who are not qualified under this rule to practice in the District Court of Minnesota, may, nevertheless, if they are representing the United States of America or any officer or agency thereof, practice before this Court in any action or proceeding in this Court in which the United States or any officer or agency thereof is a party.

(e) Disbarment and Discipline.—Any member of the bar of this Court who has been disbarred from the bar of the State of Minnesota, shall ipso facto be disbarred from the bar of this Court and his name stricken from the roll, and any member of the bar of this Court who has been suspended for a period from practice in the state courts of Minnesota, shall ipso facto be suspended for a like period from practice in this Court.

Any member of the bar of this Court may be disbarred, suspended from practice for a definite time,

or reprimanded for good cause shown, after opportunity has been afforded such member to be heard.

All applications for the disbarment or discipline of members of the bar of this Court shall be made to or before the Senior Judge of this Court, unless otherwise ordered by him. At least two judges of this Court shall sit at the hearing of such applications.

Any person who, before his admission to the bar of this Court, or after his disbarment or suspension by this Court, exercises in this district in any action or proceeding pending in this Court any of the privileges of a member of the bar, or who pretends to be entitled so to do, is guilty of a contempt of court and subjects himself to appropriate punishment therefor.

(f) Reinstatement of Disbarred and Suspended Attorneys.—An attorney at law who has been suspended or permanently disbarred by the Supreme Court of the State of Minnesota and thereafter reinstated by that court to practice in the State courts, shall not, notwithstanding his reinstatement, be permitted to practice in this Court until the following terms and conditions are complied with, and an order of reinstatement duly made by this Court.

1. A certified copy of the order of reinstatement by the Supreme Court of the State of Minnesota and a petition in writing for reinstatement shall be filed by said petitioner with the Clerk of this Court in the division where the petitioner resides.
2. The petitioner shall set forth in brief the grounds of the suspension or disbarment, and the reason for reinstatement by the Supreme Court, and any other fact in substantiation of the petition for reinstatement to practice in this Court.
3. Upon the filing of such certified copy and said petition, the Court will make an order setting a date for the hearing on said petition. The petitioner shall cause a copy of said petition and order for hearing to be served forthwith on the United States District Attorney, who shall be in attendance on the date of said hearing. The District Attorney shall duly investigate the petition for reinstatement, and shall present to the Court in affidavit form any facts in support of, or against the granting of said petition.
4. Two judges of this Court shall sit during the hearing on said petition, and the order of reinstatement must be approved in writing by said judges.

RULE 2

Bonds

No attorney or counselor of this Court, no member of the bar, nor any other officer of this Court shall be accepted as surety on any bond or undertaking in any action or proceeding in this Court.

All bonds shall be duly proved or acknowledged in like manner as is prescribed by the State statutes for the execution and acknowledgment of deeds of real estate before the same shall be received or filed.

The qualification of sureties shall be as follows: Each surety must be a resident of and freeholder in this State and worth double the amount specified in the bond or undertaking over and above his debts and liabilities and exclusive of his property exempt from execution, except where the State or United States statutes or these rules otherwise provide. The sureties must justify by affidavit, and may be further required to answer under oath respecting their property and liabilities.

In any case in which the Court has entered its order on the minutes or otherwise, fixing the amount of bond, the Clerk of the Court is authorized and directed, for and on behalf of the Court, to take the bond and justify the sureties thereon and to administer the oaths necessary thereto.

Cost Bond.—The Court may, for cause shown, upon motion, require a non-resident plaintiff to give security for costs to an adverse party in such an amount as the Court shall direct, by bond to be approved by the Court.

RULE 3

Calendars

At least eight days prior to the opening day of any general term of court, a party desiring a cause to be placed on the calendar for trial, shall file with the Clerk a notice of trial, designating the term at which the cause is to be tried and containing the title of the action and the names of the attorneys, with proof of service thereof upon the opposing counsel; and no cause (except such as have been continued) shall be placed on the calendar unless such notice of trial is filed as aforesaid. No note of issue is necessary.

The Clerk shall, as early as practicable before each general term, prepare a calendar of all cases proper to be placed upon the calendar for that term, and, before the commencement thereof, he shall mail a notice to counsel in each case that such case will be upon the calendar.

In preparing the trial calendar, the cases shall be placed thereon according to the priority of the time when the notices of trial are filed in the Clerk's office, except that cases in which the United States is plaintiff shall be first: provided, however, that precedence shall be given to actions entitled thereto by any statute of the United States.

All cases which have been at issue for one year or more, or in which no advancement has been made in the pleadings for a period of one year, shall be placed upon the calendar by the Clerk, upon 30 days' notice to all counsel of record, and such cases shall be either tried or dismissed, unless the Court, for good cause shown, shall order some other disposition.

On the first day of the term, there shall be a preliminary call of the cases on the calendar. All cases shall be either set for trial, continued or dismissed.

Continuances.—Motions for continuances, or to strike from or add cases to the calendar shall be made at the time the calendar is called, and will be granted only for good cause shown, either by affidavit or otherwise, and must be made by counsel being personally present and not by letter or other means of communication. Stipulations for continuance will not be recognized except for good cause shown.

Pre-Trial Calendar.—The Court of its own initiative, or on motion of any party to an action, or by consent of the parties thereto, will in its discretion direct the parties to appear before it for pre-trial conference, to consider the subjects specified in Rule 16 of the Rules of Civil Procedure, at a time and place specified in an order therefor. Upon the filing of this order with the Clerk, he will place such cause on a special calendar for the day on which such pre-trial conference is ordered to be had.

Any party interested in a pre-trial conference shall, as a preliminary step, move for the fixing of a date for such conference, and notice of hearing on such motion shall be served not later than five days before the time specified for hearing. Unless the Court has authorized such hearing on an earlier date, such hearing should be noticed for the next available rule day. At this preliminary hearing, the Court will then and there fix a date for such conference and will file an order accordingly, upon which order the Clerk will place said action on his special calendar as provided in the foregoing paragraph.

Where parties to an action agree that a pre-trial conference is desirable, a stipulation to this effect should be filed with the Clerk, with direction to the Clerk to place such cause on his calendar for the next available rule day, unless the Court has authorized an earlier date as provided in the preceding paragraph of this rule, which authority should be cited in the stipulation.

RULE 4

Conduct

The regular convening hours of the Court shall be 10 o'clock A. M. and 2 o'clock P. M. The Court will recess at 12:30 P. M. each day and adjourn for the day at 5 o'clock P. M. Regular convening, recessing and adjourning hours may be varied by special directions of the Court.

The court crier, bailiffs, and the Clerk, or one of his deputies, shall be in their places in the court room promptly at the time for convening of court.

When the Court is about to convene, the crier will by a stroke of the gavel command attention and announce the approach of the judge. Thereupon, the members of the bar present and spectators will promptly and quietly arise and remain standing until the crier shall have, by appropriate proclamation, convened the court, and the judge shall have taken his seat.

At the close of each session as announced by the presiding judge, the crier will by a stroke of the gavel command attention and announce the recess or adjournment, and all persons in the court room will remain seated until the crier shall have completed his announcement.

All persons entering the court room while court is in session shall immediately be seated and shall conduct themselves in a quiet and orderly manner. The reading of newspapers, books, or magazines in the court room shall not be permitted while court is in session.

No person shall be allowed to enter or leave the court room while the Court is charging a jury, except in an emergency.

Counsel, when addressing the Court, shall arise, and all statements and communications by counsel to the Court shall be clearly and audibly made from the counsel's table, and counsel shall not approach the judge's desk, while court is in session, for inaudible communications, unless requested so to do by the judge.

The examination of witnesses shall be conducted from the counsel's table, except when necessary to approach the witness or the reporter's table for the purpose of presenting or examining exhibits. When examining witnesses, counsel shall remain seated in the chairs provided for them at the counsel's table, or, if they prefer, may stand immediately in front of their chairs during such examination.

Counsel shall observe the assignment of cases and keep advised of the progress of business in court and be ready when cases are reached. No arrangement as to time or order of trial will be recognized unless approved by the Court.

Use of Cameras Prohibited.—No camera or other picture-taking device or voice-recording instrument shall be brought into any Federal Court Building in this District for use during the trial or hearing of any case, or proceeding incident to any case, or in connection with any session of the United States Grand Jury.

RULE 5

Contempt Procedure

A proceeding to adjudicate a person in civil contempt of court must be initiated by the filing of an affidavit with the Clerk of Court, which shall set out with particularity the misconduct complained of and a concise statement of the claim setting out the items of damage, if any, occasioned thereby. Upon the filing of such affidavit, the same shall be presented to a judge of this Court, and if said affidavit is sufficient, an order to show cause shall be issued and signed by the judge, and, together with a copy of the affidavit upon which said contempt proceeding is predicated, shall be served upon the alleged contemnor personally (and not by substituted service).

The order to show cause may, upon necessity shown therefor, embody a direction to the United States Marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor shall hold himself thereafter amenable to all orders of the Court for his surrender.

The alleged contemnor may answer the said affidavit and place in issue all matters going to his alleged misconduct, and/or the damages occasioned thereby, and thereupon said issues shall be determined by trial, as the same may be provided for in the statutes applicable in contempt proceedings.

In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered adjudicating that fact, and shall embody the findings of fact upon which said adjudication is based and the amount of damages that the complainant may be entitled to, and shall fix the fine, if any, imposed by the court, which fine shall include damages, if any, and name the person to whom such fine is payable. It shall state the other conditions, if any, the performance whereof shall operate to purge the contempt. It may direct the arrest of the contemnor by the United States Marshal and his confinement until the performance of the conditions fixed in the order and the payment of the fine, or until the contemnor is otherwise discharged pursuant to law. No party shall be required to pay, or to advance to the Marshal, any expenses for the upkeep of the prisoner. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement.

The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

In the event the alleged contemnor shall be found not guilty of the charges made against him, he shall be discharged from the proceeding and shall be entitled to judgment against the complainant for his costs and disbursements, including a reasonable attorney's fee.

RULE 6

Court Costs

All moneys paid into this Court to secure the payment of costs in suits pending, or to be brought therein, will be deposited by the Clerk in his Trust Fund Account.

Upon the docketing of any civil action the party so docketing shall deposit with the Clerk the sum of $10.00 to secure the payment of his costs in such suit, and upon the joinder of issue, any party who has not already appeared in the suit shall also deposit with the Clerk the sum of $10.00 to secure the payment of his costs in such suit.

When a case is finally closed, the Clerk will refund to the parties entitled thereto any unearned balances of deposits made to cover costs.

The Clerk shall, at the close of business on June 30th and December 31st of each year, report to the Court the balances then remaining of deposits made to secure payment of the Clerk's costs in each case.

In any suit or proceeding in this Court in which costs and fees are due to the Clerk or Marshal, and which remain unpaid after demand therefor, the Clerk or Marshal shall immediately report the situation to the Court, upon which the Court will issue its citation directed to counsel for the party involved, or to the party, in the absence of counsel, to show cause why such costs or fees should not then and there be paid.

The Clerk shall be authorized to refuse to docket or file any suit or proceeding, writ or other process, or any paper or papers in any suit or proceeding until his costs are paid.

When the Marshal or any other officer of this Court has, or may have, in his possession any writ or other process, or other paper or papers upon or in relation to which he has made a service, or done any service for a party in any suit or proceeding, he shall be authorized to retain possession of such writ, process, paper or papers until his fees are paid.

RULE 7

Depositions

Upon the return of depositions to the Clerk's office, they shall be opened, and the depositions and container in which they are received shall be filed by the Clerk.

RULE 8

Exhibits

All exhibits which have been received in evidence shall be left with the Clerk and retained in his custody, unless the Court orders otherwise.

RULE 9

Files and Filing

Flat Filing.—In order that the files in the Clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the Clerk or Judge for filing shall be flat and unfolded.

Filing of Papers for Service.—If any party to an action fails to file within 5 days after service, any of the papers required by Rule 5(d) of the Federal Rules of Civil Procedure to be filed, the Court, on motion of any party to the action or on its own motion, may order the papers to be filed forthwith and if the order is not obeyed, the Court may order them to be regarded as stricken and their service to be of no effect.

Withdrawal of Original Records and Papers.—No person other than an officer of this Court, pursuant to an appropriate order, shall withdraw any original pleading, paper, record, model or exhibit from the custody of the Clerk or other officer of this Court having custody thereof, except: (1) upon order of a judge of this Court, or by the Clerk in his absence, and (2) upon leaving a proper receipt with the Clerk or officer.

RULE 10

Jury Trials

Selection of Jurors.—The names of prospective jurors shall be secured by the Clerk and jury commissioner only from sources which are known to be reliable. The names of relatives, friends, or dependents of the Clerk, jury commissioner, or any other officer or employee of the government shall not be placed on rosters of prospective jurors, nor shall the name of any person who asks to serve as a juror be placed on such rosters.

All jurors, whether grand or petit, shall be drawn and returned in strict accordance with Secs. 412 and 413, Title 28 of the Judicial Code, and in substantial compliance with the order of this Court dated April 30, 1932, except as modified herein.

Petit jurors shall be selected from the particular division in which they are to serve, unless otherwise ordered by the Court.

Access to Jury Venires.—Access to jury venires before trial will not be allowed unless specially authorized by the Court.

Impaneling of Jurors.—A full panel of eighteen jurors shall be called in the first instance, and challenges exercised as provided in these rules. Where each side has three peremptory challenges, they shall be exercised by the defendant first striking one, the plaintiff then striking one, and so on, until each side has exhausted or waived its right.

Arguments to Jury.—Not more than one counsel on the same side shall be allowed to argue any question to the Court or jury, except by special permission of the Court; and only one counsel shall be allowed to examine or cross-examine the same witness, unless by leave of the Court. In all cases, counsel shall be allowed one hour on each side to address the jury. The Court may, however, in his discretion grant such additional time as the circumstances may justify. The defendant shall open and the plaintiff close the argument to the jury; provided, that if the defendant have the affirmative of the issue to be tried the foregoing order of trial shall be reversed.

Impaneling of Jurors under Third Party Procedure.—Where a third party is brought in under the provisions of Rule 14 of the Rules of Civil Procedure, a full panel of 21 jurors shall be called in the first instance, and each party shall be entitled to three peremptory challenges, to be exercised by the original defendant first striking one, the third party defendant striking one, and the original plaintiff striking one; and so on, until each party has exhausted or waived its right.

RULE 11

Letters Rogatory

Upon receipt from a court in a foreign country of letters rogatory to take testimony within this district, the Court shall, by order, appoint the officer or commissioner named in such letters rogatory to execute the same. In case no officer or commissioner is named in said letters rogatory, the Court shall, by order, appoint a commissioner to execute the same; and the Court shall, by order, direct the Clerk to issue a "Commission under Letters Rogatory" accordingly. The officer or commissioner so appointed shall execute the letters and file them in the Clerk's office within 20 days after his appointment.

The Clerk shall keep a record of all such orders, and shall notify the officer or commissioner of his default, if he fails to file the letters promptly executed as above provided.

If an officer or commissioner, named in the letters rogatory and appointed as aforesaid, shall fail to file them so executed within 10 days after such notice, the Clerk shall in turn notify the Court, who shall sign an order to show cause why the order made should not be vacated, and the letters rogatory returned to the Court of the foreign country.

If a commissioner not named in the letters rogatory, but selected by the Court as aforesaid, shall fail to report within 10 days after the notice above mentioned, the Clerk shall in turn notify the Court, who shall sign an order to show cause why the commissioner should not be removed and another appointed to execute the letters. Such letters, when executed, shall be delivered by the Clerk to the office or person from whom they were received by the Court.

RULE 12

Mandates

On the coming down of a mandate from an appellate court, the Clerk shall immediately indicate thereon the time of the receipt thereof, and shall forthwith transmit such mandate to the Clerk in charge of the division of the district involved, who shall present the same to the appropriate judge, who will thereupon make an order thereon to the effect that such mandate shall be filed and recorded, and judgment or decree entered accordingly, which order shall be dated as of the time indicated thereon by the Clerk in the first instance.

Upon such order being made by the judge, the Clerk shall immediately file and record such mandate as of said date, enter such judgment or decree of affirmance or reversal pursuant thereto as may be necessary, and forthwith notify counsel for the respective parties to the cause of the receipt of such mandate and the action taken by him thereon.

RULE 13

Money Paid Into Court

All moneys coming into the registry of this Court shall be deposited by the Clerk in the depository designated by this Court in its name and to its credit, and the Clerk shall present to the Court on the first day of the April and November terms thereof at St. Paul an account of such moneys.

RULE 14

Motions

All notices of motion and orders to show cause together with proof of service thereof shall be filed with the Clerk before the day of hearing so as to insure their being placed on the appropriate court calendar.

RULE 15

Offices of Clerk and Probation Officer

The offices of the Clerk and of the United States Probation Officer shall be open during regular business hours each day with the following exceptions, to wit: New Year's Day; Lincoln's Birthday; Washington's Birthday; Good Friday; Memorial Day; Independence Day; Labor Day; Armistice Day; Thanksgiving Day; and Christmas Day; on which days said offices shall not be opened for public business.

Provided: That as to any of said designated days that shall fall on a Sunday, the propriety of their observance on the day following shall be the subject of a special order of the Court.

Business hours of the Clerk of Court are hereby fixed as from 9 o'clock A. M. to 5 o'clock P. M., Mondays to Fridays inclusive, and 9 o'clock A. M. to 1 o'clock P. M. on Saturdays; except that during the period from approximately June 15th to September 15th of each year, such business hours shall be from 9 o'clock A. M. to 4 o'clock P. M. Mondays to Fridays inclusive, and 9 o'clock A. M. to 1 o'clock P. M. on Saturdays, unless otherwise directed by the Court.

Business hours of the Probation Office shall be the same, except said office shall be kept open such additional hours as may be necessary or desirable in receiving reports or visits from probationers and parolees.

RULE 16

Official Stenographers

The Court by appropriate order shall designate the official stenographers of this Court who shall provide a competent reporter to attend all trials or hearings in civil actions where a record of the proceeding is to be made.

For such attendance, the official reporter shall be entitled to receive compensation at the rate of $15.00 a day, payable in the first instance by the plaintiff or by the defendant or by both parties, pro rata, as may be agreed upon between such party or parties and the reporter, except that where the plaintiff or the defendant is the United States or any agency or official thereof, the compensation of the reporter shall be governed in so far as the United States is concerned, by the contract, if any, then existing between said official stenographers and the United States.

The reporter must furnish a transcript or transcripts of the evidence to all parties to the cause applying for the same. If a litigant has not assumed or paid his share of the reporter's fee, he shall not be entitled to a transcript in that proceeding without first paying his proportionate share of the reporter's per diem. For the delivery of such transcript or transcripts, the reporter shall be entitled to charge for a page of 250 words fifty cents for the original and fifteen cents for each carbon copy.

If the United States or any official or agency thereof is a party to the cause, the charge for transcript delivered to the United States or such official or agency shall be in accordance with the contract, if any, then existing between the United States and the said official stenographers.

Where parties require transcripts to be delivered during the course of a trial or hearing, the reporter's fees for reporting and transcript shall be such as are agreed upon.

The expense of any party for attendance or for furnishing a transcript thus directed, or for obtaining a transcript for the purpose of a new trial, for amended findings or for appeal, shall be taxable in the cause at the normal rate above specified unless the Court in its discretion shall otherwise direct.

The reporter shall not be required to attend or to undertake the making of a typed transcript without the deposit of an adequate indemnity nor to furnish such transcript prior to the full payment therefor.

RULE 17

Oral Opinions

When an oral instead of a written opinion is delivered by the Court and is taken down in shorthand at the instance of the Court, the reporter shall transcribe the same and submit it to the Court for revision, and such revised opinion shall thereupon be filed in the case.

RULE 18

Orders and Judgments

To assist the Clerk in the keeping of his civil order book, provided for under Rule 79(b) of the Rules of Civil Procedure, counsel when preparing such documents as are required to be inserted in such civil order book, shall make an extra copy thereof on paper not more than 11 inches in length nor more than 8½ inches in width, and furnish the Clerk with such extra copy at the time of filing the original, which extra copy shall be inserted by the Clerk in his civil order book as required by the rule.

RULE 19

Receiverships

1. Receivers, trustees, and others appointed by the Court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest and shall be selected by the Court with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that it is for the best interests of all parties, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the Court, but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a receiver, such appointment may be made ex parte.

2. Compensation of receivers and of their attorneys shall be allowed only upon special order of this Court.

3. When in any receivership, bankruptcy, or debtor proceeding, an application is made for the final allowance of the fees of counsel, the Receiver, Trustees, or Committees, such application shall be heard by at least two judges if the allowance requested by the applicants shall, in the aggregate, amount to more than ten thousand dollars. Partial allowances on account of services rendered by a receiver, trustee, or his counsel during a receivership may be made by the judge in charge of the receivership, but allowances shall not ordinarily exceed fifty per cent of the estimated reasonable value of services rendered.

4. Receivers heretofore appointed and now acting, and receivers who may hereafter be appointed by this Court, for the administration of estates, shall, at the end of each quarter year, submit to the judge having direct charge of the estate involved a brief report on the then general condition of such estate and prospect for termination of its administration; provided, that as to receivers now acting, the first of such quarterly reports shall be submitted as at the close of business on March 31, 1942.

5. As soon as practicable after the appointment of a receiver or similar officer, and not later than 30 days after he has taken possession of the estate, the receiver or other officer shall file with the Clerk an inventory of all the property and assets in his posses-

sion or in the possession of others who hold possession as his agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by him but claimed and held by others.

RULE 20

Service of Papers

All attorneys and counselors who practice in this Court and reside outside of the district shall, by writing filed with the Clerk, appoint an agent who shall be an attorney of this Court and reside within the district, and all papers which can properly be served on such attorney and counselor may be served on such agent, and such service shall have the same force and effect as if personally made upon the attorney himself. In case of failure to appoint such agent, such papers may be served upon the Clerk of this Court with the same effect.

RULE 21

Stipulations

No agreement or consent between the parties or their attorneys in respect to proceedings in this Court shall be binding unless reduced to writing and signed by the parties or made in open court and recorded on the minutes.

RULE 22

Transfer of Causes

No civil cause shall be transferred from one division to another division in the district under the provisions of Section 119, Title 28 of the Code, unless good cause therefor be shown.

MINNESOTA BANKRUPTCY RULES

(Adopted December 3, 1943, Effective January 1, 1944)

TABLE OF RULES

ORDERED: That the following Rules in Bankrutcy, numbered 1 to 22, inclusive, shall be in effect on and after the 1st day of January, 1944, and shall supersede all prior Rules in Bankruptcy of this Court. (Dated December 3, 1943.)

REFEREE'S OFFICES AND DISTRICTS

The State of Minnesota constitutes one judicial district, divided into six divisions. A Referee's office is maintained in each division, and each Referee's district is co-extensive with the division in which his office is maintained; his jurisdiction, however, is co-extensive with the judicial district.

The Referees' headquarters and counties in their respective districts are as follows:

Winona: Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha and Winona.

Mankato: Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan and Yellow Medicine.

St. Paul: Chisago, Dakota, Goodhue, Ramsey, Rice, Scott and Washington.

Minneapolis: Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift and Wright.

Duluth: Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec. Koochiching, Lake, Mille Lacs, Morrison, Pine and St. Louis.

Fergus Falls: Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Roseau, Red Lake, Stearns, Todd, Traverse, Wadena and Wilkin.

FOREWORD

These Rules are strictly local to the District of Minnesota, and are intended to be supplemental of, and not inconsistent with, the Bankruptcy Act, and the General Orders in Bankruptcy and Rules of Civil Procedure.

Attention is directed to Section 1 (9) of the Bankruptcy Act, which defines the word "Court" as used in the Act to mean the Judge or the referee of the court of bankruptcy in which the proceedings are pending. The word "Court" has the same meaning where it is used in these rules.

PROCEEDINGS UNDER CHAPTERS I TO VII, INCLUSIVE

(GENERAL)

RULE 1—Petitions

Where filed

(a) All voluntary and involuntary petitions shall be filed with the clerk at his office in the division of this District wherein the bankrupt has had his principal place of business or has resided or been domiciled for the longer portion of the previous six months than in any other division.

If a petition is filed in the wrong division of the District, the judge may transfer the proceeding to the proper division upon such terms as he may order.

Number of Copies

(b) Voluntary petitions shall be filed in triplicate; and involuntary petitions in duplicate, together with a copy for service on the bankrupt. In case an involuntary petition shall be filed against more than one alleged bankrupt, there shall also be delivered to the clerk a copy for service on each additional bankrupt named therein.

Contents

(c) In addition to the other requirements, the petition shall contain a statement of the debtor's present post office address, including street number or rural route, if any; and the address, including street and number of his principal place of business, if any, during the preceding six months or the longer portion thereof. If the bankrupt is an individual or a partnership composed of individuals, the first name of the bankrupt or bankrupts must be stated and signed in full. Other given names may be indicated by initials. The name or names under which the bankrupt has usually conducted his business, with a statement to that effect, must clearly appear in the petition and in all subsequent proceedings and notices.

RULE 2—Filing Fees

Individual and Partnership Cases

(a) In the bankruptcy of a single individual or of a corporation there shall be paid to the clerk at the time the petition is filed thirty dollars, representing the fees of the clerk, referee and trustee provided by the Bankruptcy Act. In partnership cases there shall be paid to the clerk a sum which will provide a fifteen dollar fee for the referee, and for each separate estate administered thereunder, a fee of five dollars for the trustee and a fee of ten dollars for the clerk.

Pauper Petitions

(b) A petition offered for filing in forma pauperis shall not be accepted or filed by the clerk until such filing has been approved by a judge or referee who may require the bankrupt to appear before him for examination concerning his ability to pay the fees.

Refunds

(c) In case the petition is dismissed where no reference has been made to the referee, it shall be the duty of the clerk, if there has been no adjudication, upon the order of the judge, to return forthwith to the petitioner or petitioners, or their counsel, the amount deposited for the fees of the referee and trustee.

Indemnity for Expenses

(d) Whenever a bankrupt shall fail to pay for a period of 30 days indemnity for expenses required by order of the referee the proceeding may be dismissed by the referee.

(e) In any case in which no deposit has been made for the fees of the officers, but sufficient funds have come into the hands of the trustee, the trustee, upon the order of the referee, shall remit to the clerk the required deposit.

(f) Each referee shall provide a suitable office, and heating, lighting, telephone and other service in connection therewith, and the actual expenses incurred by the referee shall be paid out of his expense indemnity fund.

(g) Each referee is authorized and empowered to employ necessary assistants for the conduct of his office and to fix their compensation to be paid out of his expense indemnity fund.

RULE 3—Place of Meetings

All meetings of creditors shall be held in the office of the referee to whom the proceeding is referred or at such other place as he may designate as a matter of convenience to parties interested. The office of the referee shall be deemed the most convenient for parties in interest as the place for holding the first meeting of creditors unless the referee shall designate otherwise.

RULE 4—Decisions—Notice of

On the entry of orders in contested matters reserved for decision, the referee shall forthwith forward to the parties in interest or to the attorneys of record appearing for such parties, respectively, copies of such orders or written notice of the entry thereof.

RULE 5—Files and Docket

It shall be the duty of the referee to maintain a separate file for each case referred to him and all papers belonging to each case shall be placed in such file.

A register or docket shall be kept which shall record, in chronological order, the entry of all such papers and all other proceedings in the case. All claims in each case shall be numbered in the order in which filed, or may be arranged alphabetically, and a list thereof shall be kept showing the date of filing, the number, name and address of the claimant, the amount of the claim, the name and address of the attorney or attorneys filing the same, and a notation showing priority if claimed.

RULE 6—Custody of Records

Except as herein otherwise provided, the referee shall retain in his possession all papers and records in each case until finally closed, and shall not permit the taking from his office of any of such papers or records except for good cause, and upon the filing of a receipt therefor.

Provided: That the referee shall retain in his possession for a period of three years after a case is closed any and all correspondence which may relate to a particular case, and which, in his discretion, should not be filed with the clerk when the case is finally closed; at the end of the three year period he may, in his discretion destroy such correspondence or retain it indefinitely.

RULE 7—Information

Information relative to pending matters before a referee shall be furnished to a reasonable extent, by correspondence or otherwise, to such interested persons as make inquiry of the referee. The referee shall acknowledge the receipt of proofs of claims forwarded by mail, and shall notify creditors if any such claims be found materially defective. He shall make reports to creditors in estates having assets, transmitting information contained in the reports of trustees relative to the progress of the administration of estates. All communications by mail with the referee shall be sent to him with sufficient postage affixed and the referee shall refuse to accept any mail with insufficient postage.

RULE 8—Receivers

Application for Appointment

(a) Applications for the appointment of receivers shall in all cases be by petition, whether before or subsequent to adjudication.

Notice—Service

(b) Notice of an application for the appointment of a receiver in bankruptcy prior to adjudication shall be given by the applicant to the alleged bankrupt and to intervening petitioners, if any, or their attorneys, unless it be made to appear to the court, by the petition or an affidavit showing the facts, that the service of such notice is impracticable or would result in financial loss to the creditors. The notice shall state the name of the applicant and the day, hour and place of hearing.

Notice to Petitioning Creditors by Intervening Creditors

(c) No application for the appointment of a receiver on behalf of intervening creditors shall be heard until notice of the application has been given to the petitioning creditors or their attorney.

Notice—Length of Time

(d) The notices required by (b) and (c) shall be given at least eight days prior to the hearing of the application unless the court, by order, shall fix a shorter time. At the hearing it shall be made to appear that notice has been duly given.

Powers of Receiver

(e) A receiver appointed to take charge of the property of a bankrupt shall, as provided in General Order 40, be deemed to be a mere custodian of such property, unless an order shall be entered by the judge or by the referee enlarging his duties. Such order may provide that the receiver shall do all things necessary for the preservation of the assets belonging to any estate, for the insuring thereof against loss by fire or theft, for the immediate collection and marshalling of such assets when scattered, for the removal and storage of assets when necessary to conserve the estate and save expenses, for the supervision of the taking of immediate inventories and appraisals, for the preparation of assets for prompt sales, for the supervision of such sales until a trustee is elected and has qualified, and, when especially authorized, for the conducting of the business of the bankrupt.

Qualification

(f) The receiver, immediately upon his appointment, shall qualify by filing his bond in the amount named in the order appointing him. If the appointment is made by the judge, the bond shall be filed with the clerk of the court, but if the appointment is made by the referee, it shall be filed with the referee, who shall make a record of such filing and forward the bond and the order approving the same to the clerk forthwith.

Taking Possession of Assets

(g) The receiver shall immediately take charge of and safeguard the assets of the bankrupt, secure insurance, if necessary, and, unless otherwise ordered, shall remove all books and records from the place of business of the bankrupt and preserve them for future reference.

Conducting Business of Bankrupt

(h) In cases where it may appear to the best interest of the estate to sell the business of the bankrupt as a "going concern" or for any other good reason, the receiver, upon proper showing and upon presentation to the referee of a petition and proposed order, may be authorized to conduct such business, making report to the referee from time to time as shall be required.

Deposits

(i) All funds coming into the possession of the receiver shall be deposited by him immediately in one of the official depositories.

Disbursements

(j) Disbursements by the receiver shall be made only with the approval of the court and in accordance with the provisions of Rule 12.

Reports

(k) The receiver shall prepare and file with the referee at the first meeting of creditors, and at such other times as the court may direct, detailed reports of his acts as such receiver, together with an itemized list of all receipts and disbursements, if any, and the balance remaining on hand in the official depository shall be turned over to the trustee. In case the business has been operated by the receiver, moneys expended for the purpose of carrying on the business shall be shown separately from those expended for purely administrative purposes. The receiver's final report and account shall be duly verified and shall be filed within ten days after the qualification of the trustee, unless the time shall be extended by order of the court.

Surrender of Assets to Trustee

(l) Immediately upon the appointment and qualification of a trustee, the receiver shall deliver to such trustee all the money and property and all books of account, records and papers of the bankrupt in the receiver's possession, taking the trustee's receipt therefor.

Discharge

(m) The duties of the receiver shall cease, and he shall be discharged, upon the surrender of all assets of the bankrupt estate in his possession and the approval of his final report and account, and the court shall make an order accordingly.

Accountability for Unwarranted Delays or Expense

(n) The receiver shall be held accountable for any unwarranted delays in the administration of an estate under his receivership due to causes within his control, and for any unwarranted expense incurred, and for any loss and for any damage to property sustained through such delay; and, in the discretion of the court, the fees of a receiver may be disallowed in whole or in part on account of such delay, loss or damage.

Removal from Office

(o) If any receiver neglects to make reports to the court, improperly conducts the receivership, or is guilty of unreasonable delay in the performance of his duties, he may be removed by the court. The procedure for such removal shall be by order to show cause and hearing duly had thereon.

Certain Agreements Prohibited

(p) Agreements between receivers and any other persons, including their attorneys, by which receivers are to share their fees with any other person are prohibited. The making of such agreements, or the sharing of such fees, shall be deemed sufficient ground for the removal of a receiver, and sufficient ground for the forfeiture of all fees which might be paid to any person knowingly involved in such agreement or transaction; and shall also be deemed contempt of court, and all persons knowingly involved shall be subject to punishment for such contempt.

RULE 9—Trustees

Qualification

(a) The trustee, immediately upon his appointment, shall qualify by notifying the referee of his acceptance of the trust and filing his bond in the amount named in the order appointing him. A bond with at least two individual sureties will be accepted in amounts up to one thousand dollars if approved by the referee. Any bond in excess of one thousand dollars shall have a qualified surety company as surety. In case a receiver has been appointed and a surety company bond has been furnished, the trustee shall obtain his bond from the same surety company which furnished the receiver's bond, if allowed proper rebate on the premium for the receiver's bond to be applied on the premium of the bond of the trustee.

Making Inventory and Appraisal

(b) The trustee shall proceed immediately to have an inventory and appraisal made of all of the property of the bankrupt coming into his possession, as required by General Order 17, unless such inventory and appraisal have already been made by a receiver, in which event the trustee may examine such inventory, make any changes therein that may be necessary and adopt it as the inventory required by said General Order. He shall file a report with the referee showing whether there are any modifications of the inventory already on file, and, if so, set forth such modifications in detail, and a summary showing the total value of the assets as increased or decreased. Where assets are of small value and creditors are otherwise protected by a notice, appraisal may be dispensed with by order of the referee.

Liquidation of Assets

(c) The trustee shall reduce to cash as rapidly as possible all property of the bankrupt, both real and personal, including all intangible assets, such as accounts and bills receivable, choses in action, unpaid stock subscriptions, stocks, bonds, surrender value of life insurance policies, etc., passing to the trustee, and may be authorized by the referee, upon the presentation of a petition reciting the facts and reasons for such action and a proposed order thereon, to institute proceedings in other courts for this purpose.

Deposits

(d) All funds coming into the possession of the trustee shall be deposited by him immediately in one of the official depositories of bankruptcy funds. When the first deposit is made, the trustee shall procure from the depository a duplicate deposit slip which he shall forthwith file with the referee.

Dividends

(e) When in the opinion of the trustee or the referee the amount of money in the estate is sufficient to pay a dividend, the trustee shall file a report and account, showing the total amount received, the disbursements already made, the charges and expenses then due and unpaid, as well as those incurred and to be incurred, and the balance on hand in the official depository, together with a suggestion as to the size of the dividend that in his opinion should be paid.

Upon the declaration thereof by the referee the trustee shall issue his checks in payment within ten days after the receipt by him of the dividend sheet furnished to him by the referee, and shall forward such checks to the referee for countersignature.

Claims

(f) Prior to the payment of any dividend, it shall be the duty of the trustee to examine carefully all claims filed against the estate and to file objections to any claims, or parts thereof, which do not appear to be valid, serving a copy of such objections with a notice thereof upon the claimant or claimant's attorney. The payment of dividends on any claims so objected to shall be withheld pending the hearing and determination of such objections.

Concealed Assets and Preferences

(g) It shall be the duty of the trustee to examine, or cause to be examined, the books and records of the bankrupt to determine the correctness of the schedules filed by the bankrupt, and also to determine whether or not the bankrupt has concealed assets from his creditors or has made preferential payments. He may bring the bankrupt and other witnesses before the referee, as provided by the Bankruptcy Act, for such examinations as he or his attorneys may desire, and may make such other investigation as may be necessary; provided, however, that before incurring any unusual expense in connection with such investigation, he shall first secure the approval of the referee.

Current Reports

(h) All accounts filed by trustees shall show the source from which and on what account each item of money was received, and to whom and on what account each item has been paid.

Final Report

(i) The trustee, prior to the final meeting of creditors, shall file with the referee a final report duly verified, stating whether the assets have been entirely liquidated, and if not, containing a description of any assets not reduced to cash, with his recommendation for their disposition, whether by sale at the final meeting of creditors, abandonment, or otherwise. Such report shall also set forth a summary of the history of the administration and shall include a financial statement showing—

(1) The gross amount of money received by the trustee from all sources;
(2) The amount of all disbursements made to date;
(3) The balance on hand in the official depository, with name of depository;
(4) A list of unpaid administration expenses.

Attendance at Final Meeting of Creditors

(j) The trustee, unless excused by the referee, shall attend before the referee at the time and place fixed for the final meeting of creditors, and, if called upon to do so, shall offer any evidence or explanation required of him regarding his conduct of the administration of the estate. At the time and place fixed for such final meeting, the referee shall audit the final report of the trustee, and, if it appears that the

trustee has fairly and honestly administered such estate and duly accounted for all property or money coming into his hands, in accordance with law, shall approve such report.

Final Distribution and Discharge of Trustee

(k) The trustee shall, without delay, issue his checks disbursing the funds remaining in the estate in accordance with the final order of distribution and shall file the cancelled checks, when paid and returned, with the referee, and thereupon shall be entitled to his discharge.

Accountability for Unwarranted Delays or Expenses

(*l*) The trustee shall be held accountable for any unusual delay in the administration of an estate under his trusteeship, due to causes within his control, and for any unwarranted expense incurred, and for any loss to the bankrupt estate and any damage to property sustained through such delay, and, in the discretion of the referee, the fees of a trustee may be disallowed in whole or in part on account of such delay and unwarranted loss or expense.

Certain Agreements Prohibited

(m) Agreements between trustees and any other persons, including their attorneys, by which trustees are to share their fees with any other person are prohibited. The making of such agreements, or the sharing of such fees, shall be deemed sufficient ground for the removal of a trustee, and sufficient ground for the forfeiture of all fees which might be paid to any person knowingly involved in such agreement or transaction; and shall also be deemed contempt of court, and all persons knowingly involved shall be subject to punishment for such contempt.

RULE 10—Attorneys

Amount of Compensation

(a) The following factors shall be taken into consideration in determining the allowance of fees of attorneys:

(1) The amount of work done,
(2) The length of time employed,
(3) The difficulties or intricacies of the problems presented,
(4) The results accomplished,
(5) The amount involved in connection with the services rendered, and
(6) The size of the estate.

In the average estate normally administered the compensation allowed shall be approximately as follows:

To the attorney for the bankrupt, from fifty to seventy-five dollars for preparing and filing the petition and schedules and for attending the first meeting of creditors;

To the attorney for the petitioning creditors in uncontested cases, from fifty to one hundred and fifty dollars for filing the petition and incidental services, and for attending the first meeting of creditors;

To the attorney for the receiver, if any, from twenty-five to fifty dollars; and

To the attorney for the trustee, from fifty to one hundred and fifty dollars.

The referee, in making allowances to attorneys, shall take into consideration any exceptional circumstances or conditions, the purpose of this rule being to furnish a guide to practitioners and to the court in determining proper allowances to attorneys, keeping in mind at all times the interests of creditors.

Hearing on Allowances—Allowances on Account

(b) Attorneys seeking allowance from estates shall keep themselves informed as to the progress of administration and the time of expected closing thereof and shall have a petition for fees, in proper form, on file so that notice of it may be included in the notice of final meeting. The referee shall not recall or adjourn any final meeting simply to enable an attorney to have a belated petition for fees considered.

Creditors, or attorneys for creditors, or creditors' committees, or other interests, who, after the qualification of the receiver or trustee, perform services beneficial to the bankrupt estate, shall be allowed no compensation therefor out of the estate unless before the performance of such services the same shall be specially authorized by order of the referee upon a showing of the necessity therefor.

Solicitation of Bankruptcies

(c) No member of the Bar of this Court shall, directly or indirectly, in any manner or by any means whatsoever, solicit or procure any person, firm or corporation to file, or induce another to file, any voluntary petition to be adjudged a bankrupt. It is not intended by this rule to restrict the right or duty of an attorney to advise his client with respect to bankruptcy when consulted concerning the client's affairs.

No member of the Bar of this Court shall, directly or indirectly, in any manner or by any means whatsoever, employ another person, firm or corporation to solicit or obtain, or remunerate another for soliciting or obtaining, professional employment for him to file a voluntary petition for any person to be adjudged a bankrupt, nor shall he, directly or indirectly, share with any one not a lawyer, compensaton arising out of or incidental to such professional employment, nor shall he share any remuneration received by him in any bankruptcy matter with the attorney for the receiver, the trustee, or the bankrupt.

A member of the Bar of this Court shall not knowingly accept professional employment from a bankrupt who has been induced or procured to file a voluntary petition to be adjudicated bankrupt by a person or firm engaged in the business of promoting the filing of such petitions.

Appearances of Attorneys not Admitted to Practice in this Court

(d) Appearances of attorneys in bankruptcy cases, including their filing of powers of attorney, shall be limited to attorneys admitted to practice in the District Court of the United States for the District of Minnesota; provided, however, that any attorney at law residing outside of Minnesota and admitted to practice in the District Court of the United States in the District of his residence, without being admitted to practice in the Supreme Court of this State, may, upon motion of a member of the Bar of this Court, be permitted by this court to appear and participate as counselor or attorney in the trial of any action or the hearing on any motion, petition or other proceeding then pending before this court.

RULE 11—Auditors and Investigators

Employment

(a) Auditors and investigators may be employed by receivers or trustees for the purpose of securing and furnishing information in the administration of estates in bankruptcy, but no expense for the purpose shall be incurred without leave of the judge or referee.

Order for Appointment

(b) In the event a receiver or trustee desires to employ an auditor or investigator, he shall secure an order from the court therefor. The order shall fix the total amount authorized thereunder, and no expense in excess thereof shall be incurred without further authorization by the court. In cases where the entry of an order might tend to defeat the purposes of the investigation, it may be issued but its entry of record may, in the discretion of the court, be deferred, but not later than the final meeting of creditors.

Compensation and Allowances

(c) The rate of compensation of auditors and investigators shall be fixed by the court in the order appointing them, as provided in General Order 45, and, together with their actual and necessary ex-

penses, shall be paid out of the funds belonging to the estate. When requesting allowances, they shall file detailed statements, under oath, showing separately the amounts claimed as compensation and the items of expense incurred, and no payments shall be made to them until such statements are filed.

RULE 12—Depositories

Withdrawals

(a) The money of bankrupt estates on deposit in designated depositories shall be drawn out only by check or warrant serially numbered, signed by the receiver or trustee of said estate and countersigned by the referee, who is hereby designated for that purpose (General Order 29). There shall be written or printed on the face of each check issued, the title of the cause and a brief statement of the general purpose for which the disbursement is made, and if for a dividend, the per cent thereof and whether final or otherwise. The referees shall furnish to the depositories a copy of said General Order and a copy of these rules.

Books and Records

(b) Each depository shall keep a separate account with receivers and trustees of estates in bankruptcy, containing a complete record of bankruptcy funds, including the title of each estate, the name and address of the receiver or trustee, the amounts deposited, the withdrawals made from time to time, and the balance remaining on hand to the credit of each and all of such estates: Provided, however, that with the written approval of the referee, trustees may be permitted to carry in one bank account, in the name of the trustee as trustee of bankrupt estates, the monies of two or more estates.

Monthly Statements and Paid Vouchers

(c) Each official depository shall prepare, at the end of each month, a statement in the usual form used by the depositories which shall contain the following information:

1. The name of the bankrupt and the name and address of the receiver or trustee;
2. The balance on the last day of the preceding month or the date and amount of the initial deposit;
3. The date of each check paid, and its amount;
4. The balance remaining on hand as of the date of the statement.

The statements shall be mailed or delivered to the referee, together with all paid vouchers, on or before the fifth day of each month.

RULE 13—Expenses of Referees

(a) Before incurring any expense the referee may in any matter require the person in whose behalf the duty is to be performed to deposit, from time to time in accordance with the following rules, sufficient funds to cover all necessary expenses of the referee in such matter. Monies so advanced may be taxed as costs against the parties or may be repaid out of the estate as part of the costs of administration, as the court may direct.

(b) There shall be deposited with the referee as indemnity for actual and necessary expenses incurred by him in each estate in ordinary bankruptcy an original deposit not in excess of the sum of $15. The original deposit in proceedings under Chapters X, XI and XII shall be not less than $25, and in proceedings under Chapter XIII not in excess of $15. Such indemnity deposits shall be deposited in the referee's official account and accounted for by him in his semi-annual report.

The original deposit in ordinary bankruptcy proceedings shall cover the following items:

1. The actual cost of publication of notice of first meeting of creditors.
2. All clerical aid in preparing notices to creditors of first meeting not exceeding 20, mailing the same, making proof thereof, keeping register, files and records, preparing typewritten memoranda of proceedings prior to first meeting of creditors, including stationery, envelopes, printing, letters, messages and all petty expenses, and for clerical aid in taking and keeping notes and records of the first session of the first meeting of creditors. The phrase, "clerical aid through first meeting," may be employed to cover all the foregoing items.
3. Similar clerical aid and other expenses as above stated, subsequent to the first session of the first meeting of creditors, including notices to creditors not exceeding 20, in proceedings for discharge.
   The phrase, "Clerical aid subsequent to first meeting", may be employed to cover items of this paragraph.
4. Clerical aid in closing estate and preparing record of proceedings, not exceeding 10 folios of 100 words each.
5. Rent, where offices are not provided by the United States Government for the referee.

(c) Additional charges not in excess of the following may be made by the referee as additional deposits for indemnity for actual and necessary expenses incurred by him.

1. For each published notice other than the notice of first meeting of creditors, the actual expense of the publication.
2. For all notices of first meeting of creditors and of discharge proceedings, in excess of 20 notices, 5c each.
3. For all other notices not exceeding 20 notices, 10c each and 5c per notice in excess of 20.
4. For each objection filed by anyone to a discharge or to the confirmation of an arrangement or plan, regardless of the number of specifications in such objections, $10.
5. For office accommodation and clerical aid in taking and keeping notes and records of all meetings other than the first session of the first meeting of creditors and of hearings arising in the general administration of the estate within the ordinary duties of the referee at which any business is transacted, including reclamation and discharge hearing, for each meeting or hearing, $2.50.
6. For travel expenses, the amount actually incurred in the discharge of the referee's duties. The charge for subsistence shall not exceed $6.00 per day. The charge for transportation by private automobile shall not exceed 5c per mile.
7. The actual cost of reporting and transcribing testimony.
8. For clerical aid in closing estate and preparing record of proceedings in excess of ten folios, 20c per folio for one hundred words.
9. For clerical aid on all claims filed in excess of ten, for filing, recording, computing and distributing dividends, 20c each.
10. For a copy of any record, entry or other paper and the comparison thereof, 15c for each folio of 10 words. For comparing any copy of record or other paper not made by the referee, with the original thereof, 5c for each folio of 100 words. For a certificate, 50c.
11. For certifying questions for review with necessary records, 50c per folio, with a minimum charge of $10, to be paid by the party seeking the review.
12. For the filing and hearing of any reclamation petition, $5.00.

Each referee shall establish, and may from time to time revise, a schedule of charges within the foregoing maximums of charges wihch will maintain his official account in an amount sufficient but not more than is reasonably necessary to defray the actual expenses of his office. All deposits of indemnity shall

be in accordance with such schedules but within the maximum, each referee may make such refunds or adjustments of the charges in individual cases as in his judgment may be necessary or advisable.

(d) Whenever practicable, all notices or orders shall be combined and mailed under one cover, one charge only to be taxed by the referee for mailing each such combined notice.

(e) All receipts of monies as indemnity or charges for expenses shall be entered in a cash book substantially in the form and manner required by General Order 26 and all monies so received shall be deposited forthwith to the credit of the referee in his official account in a designated depository and shall be disbursed only by checks signed by the referee in his official capacity.

The monies received under this Rule as indemnity shall constitute a revolving fund for the payment of the necessary and actual expenses of the referee. To these monies the referee shall have no claim of ownership of any kind as compensation for his services as referee. This fund shall at all times be under the jurisdiction and control of this Court.

(f) Referees whose offices are exclusively devoted to the conduct of the business of the court are authorized to make disbursements from their official account to pay the actual and necessary costs and expenses of maintaining their offices, expenses necessarily incurred in the performance of their duties under the Act, and the actual and necessary costs and expenses incidental to the prosecuting of proceedings and the administration of estates pending before them. Necessary furniture, equipment, law books and similar property paid for out of the official account shall belong to the United States for the use of and shall be under the control of the Court.

(g) Referees who devote part time to their duties as referees are authorized to make disbursements from their official account for the actual and necessary expenses incurred in the performance of their duties under the Act and incidental to the prosecution of proceedings in estates pending before them, and also for such actual and necessary expenses of maintaining their offices as are reasonably and fairly apportioned to the administration of estates in bankruptcy pending before them.

(h) With his final report closing an estate, a referee shall file an account showing the amount received for indemnity and the amounts in detail charged against the same in accordance with this Rule. The Clerk shall examine such account and report to the Judge at the time in charge of bankruptcy proceedings any mistakes or irregularities appearing therein.

RULE 14—Sales

ORDER

It Is Hereby Ordered: That during the present emergency, or until further order of this Court, all sales pursuant to order or decree of court in bankruptcy, equity, or other proceedings, shall be held in conformance with applicable rules, regulations and orders of the War Production Board and Office of Price Administration.

Dated this 9th day of October, 1942.

RULE 15—Reclamation Proceedings

Petition

(a) In all proceedings in bankruptcy where claim is made to property in the possession of the bankrupt, receiver or trustee, the claimant shall file in the court a petition duly verified containing an itemized description of the property and setting forth in detail the facts in the case and the reasons for his claim. A copy of such petition shall be served by the claimant forthwith upon the receiver or trustee, who shall file with the referee an immediate answer thereto.

Bond

(b) Pending the hearing and determination of any such claim the property may be delivered to the claimant by order of the court, upon the giving of a bond by the claimant with sufficient sureties, to be approved by the court, and upon such terms and conditions as the court shall prescribe.

RULE 16—Claims

Notice of Expiration of Time for Proving

(a) The referee, in all cases where dividends are likely to be paid, may give to all scheduled creditors who have not filed their claims timely notice of the expiration of the period for proving claims.

Withdrawal of Proofs of Claims

(b) Proofs of claims may be withdrawn at any time upon written notice to and order of the referee unless the trustee asserts that the claimant has received a preference. In case of the withdrawal of a claim, the proof shall remain on file, the notice of withdrawal shall be attached to it, and the claim shall be plainly marked "withdrawn". The list of claims required to be kept by the referee shall contain an entry showing the withdrawal and referring to such notice.

RULE 17—Discharges

Notice of Dismissal or Withdrawal of Specifications of Objection

No specification of objection to a discharge shall be dismissed or withdrawn for any reason without giving ten days' written notice to all creditors.

RULE 18—Review of Orders of Referees

Referee's Certificate

(a) The referee shall mail a copy of his certificate of review to all interested parties or their attorneys of record.

Certifying Testimony

(b) Any party to such review shall be entitled to have the testimony or such portions thereof as are deemed material certified and returned with the record thereon, upon making due application to the referee therefor and paying the cost of transcribing such testimony.

Hearing on Referee's Certificate

(c) After a review has been thus certified by the referee the papers shall be filed with the clerk and the hearing thereon shall be had at a general or special term of the court. The clerk shall notify the parties of the time and place of hearing at least ten days in advance thereof.

RULE 19—Involuntary Cases—Trials—References

In case a jury trial is demanded, as provided by Section 19 of the Bankruptcy Act, the clerk shall place the case on the next jury trial calendar in the division in which the case is pending, unless otherwise ordered by the judge.

In case a jury trial is not demanded, or is waived, the clerk, by an order as of course, shall refer the matter generally to the referee for determination of the issues and for all other purposes, including the making of an adjudication, administration of the estate, accordingly, or dismissal of the creditors' petition.

RULE 20—Semi-Annual Statements By Referees

The semi-annual statements called for by General Order No. 26 shall be forwarded by the referee to the

clerk for filing, checking and submission to the judge; and the duplicates of such statements shall be forwarded by the clerk to the Administrative Director of the Courts.

RULE 21—Disposition of Dormant Involuntary Cases

Involuntary cases which, for lack of service, have remained dormant for a period of one year or more shall be subject to treatment under the provisions of paragraph 4 of Civil Rule 3 of the District Court.

PROCEEDINGS UNDER CHAPTERS VIII TO XV, INCLUSIVE (SPECIAL)

RULE 22

Application should be made to the Clerk for rules governing proceedings under Sections 75 (Agricultural Compositions and Extensions) and 75-S (Frazier Lemke Farm Relief Act. [U. S. Code 11:203(s)]).

As to all other proceedings under Chapters VIII to XV, inclusive, the Bankruptcy Act, the General Orders in Bankruptcy, and the Rules of Civil Procedure should be consulted. (See Mason's U. S. Code Title 11 and Federal Rules of Civil Procedure.)

REVISED RULES OF THE SUPREME COURT OF MINNESOTA

(Effective July 1, 1942)
(With 1943 Amendments)

RULE I

Clerk—Duties of. 1. The clerk shall keep a general docket or register in which he shall enter the title of all actions and proceedings including the names of the parties and the attorneys by whom they prosecute or defend, brief notes of all papers filed and all proceedings had therein, the issuing of writs and other process and the return thereof, and all orders and judgments.

2. He shall also keep a judgment book in which he shall enter all judgments, the names of the parties thereto, the date of the judgment, its number, the amount thereof if the recovery of money or damages is included therein, and the amount of costs and disbursements, which record shall be properly indexed.

3. He shall keep a court journal in which he shall enter from day to day brief minutes of all proceedings in court.

4. He shall file all papers presented to him; endorse thereon the style of the action, its number, the character of the paper and date of filing; and after filing no paper shall be taken from his office unless by order of the court or a judge thereof.

RULE II

Certiorari—Mandamus—Title. In this court the title of all cases under review shall be as in the court below. Writs shall issue in the name of the state upon the relation of the petitioner and the title shall be in the form indicated by the following example:

John Jones,
Plaintiff and Relator,
vs. Writ
Johnson Canning Co.,
Defendant and Respondent.

State upon the relation of John Jones to the .....Court of .....County, Minnesota, and to the Honorable....., one of the judges thereof:

The petition shall definitely and briefly state the judgment, order, or proceeding which is sought to be reviewed and the errors which the relator claims and the writ shall direct a return of the proceedings. Upon receipt of a $10 filing fee the clerk shall file the original petition and order for the writ. The original writ, together with copies of the petition and order shall be served upon the court or judge to whom it is directed and upon the adverse party in interest. The court or judge shall make return thereto. The attendance of counsel on return day is unnecessary.

In certiorari records and briefs shall be printed and served as prescribed by Rule VIII unless the order directing the writ or a subsequent order otherwise provides.

In mandamus Rule VIII shall not apply and only three typewritten copies of the petition and briefs shall be required to be filed on or before the return day, and no oral argument shall be permitted.

Costs and disbursements may be taxed for or against the adversary parties but not for or against any court or judge thereof.

Trial of all cases under review shall be as in court below, including cases brought up on alternative writs of mandamus. Sworski v. S., 208M580, 295NW62. See Dun. Dig. 401.

Defective title of petition and alternative writ of mandamus was of no consequence where body of pleadings disclosed clearly who was relator and who was respondent. Stenzel's Estate, 210M509, 299NW2. See Dun. Dig. 5776.

This rule was called to attention of counsel in proceeding in mandamus to compel change of venue. Scaife Co. v. Dornack, 211M349, 1NW(2d)356. See Dun. Dig. 310.

RULE III

Certiorari to Industrial Commission—Forms—Settled Case. In applying to this court for a writ of certiorari to review a decision of the Industrial Commission the petitioner may use forms substantially as follows:

STATE OF MINNESOTA
IN SUPREME COURT

John Jones,
Respondent,
vs. Petition for Writ of Certiorari
Johnson Canning Co., et al,
Relators.

The following rule shall also apply to CERTIORARI TO THE DIVISION OF UNEMPLOYMENT AND SECURITY. The proposed settled case or the stipulation for settled case shall be approved by the Director or an Assistant Director of the Division or Unemployment and Security.

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The relators above named hereby petition the Supreme Court for a writ of certiorari to review a decision of the Industrial Commission filed ..... (date) ..... upon the grounds that it is not in conformity with the terms of the Workmens Compensation Act and is unwarranted by the evidence.

Dated .....
(signed) .....
Attorneys for relators.
(Address)

ORDER FOR WRIT OF CERTIORARI

Upon the filing of the foregoing petition, let a writ of certiorari issue as therein prayed for, returnable within 30 days of the issuance thereof.

Dated .....

(signed) .....
Chief Justice Supreme Court

(Put the writ of certiorari under a separate cover)

TITLE

WRIT OF CERTIORARI

To the Industrial Commission of Minnesota:

You are hereby ordered to return to this court within 30 days from date hereof the record, exhibits and proceedings in the above entitled matter to the end that the decision of the Industrial Commission filed ..... (date) ..... may be reviewed by this court.

Let service of this writ and of the petition herein be made by delivering the original writ and copy of the petition to the secretary of the Industrial Commission and by delivering copies of the writ and petition herein to ..... (names and addresses) ....., attorneys for respondents.

Witness the Honorable Henry M. Gallagher, Chief Justice of the Supreme Court of the State of Minnesota, and the seal thereof, this ..... (date) .....

(signed) .....
Clerk of Supreme Court.

Upon the issuance of a writ the relator, unless otherwise ordered by this court, shall prepare and submit to the adverse parties a proposed settled case for their approval. If approved, a stipulation to that effect shall be entered into by all interested parties. A case, so stipulated to, when approved by the commission shall constitute a settled case. If the parties are unable to agree the relator shall, on not less than 5 days notice, apply to the commission for an order settling the case. The party served may in like manner propose amendments thereto within 3 days thereafter. In either event, the stipulation with the commission's approval or the order of the commission settling the case shall be contained in the printed record. Such record shall be delivered to the commission within the time provided by Sec. 4320, Mason Minn. St. 1927; Sec. 176.61, Minn. St. 1941, and such printed record, settled in the manner aforesaid, shall constitute the return to this court. All proceedings for the procurement and approval of a settled case shall be as nearly as may be, similar to proceedings on appeal from the district court.

Printed records and briefs shall in all respects conform to Rule VIII of this court except that the printed record shall be served and filed within 30 days from the issuance of the writ. (As amended Aug. 13, 1943.)

RULE IV

Motions—Eight Days Notice. Motions for special relief will be heard only upon eight days notice given the adverse party, and when not based upon the records and files shall be accompanied by the papers upon which they are founded. No oral argument shall be permitted. The original and three typewritten copies of motion papers and briefs in support of or in opposition to the motion shall be filed on or before the return day. All papers, including briefs, which the moving party intends to submit to the court in support of the motion shall be served on opposing counsel at the time of service of the motion papers. All papers, including briefs, in opposition to the motion shall be served on counsel for the moving party within 5 days thereafter; and if counsel for the moving party wishes he may serve a reply thereto within 2 days thereafter.

Orders to Show Cause. A $10 filing fee is required for an order to show cause except when issued in a pending case where the statutory fee has been paid. The order to show cause shall fix a return day and shall specify the time for the service and filing of affidavits, counter affidavits and briefs. The original and three copies of the petition, affidavits and briefs shall be filed. The order to show cause shall be filed immediately after issued and before it is taken out for service. The title of the case shall be as in the court below. No oral argument shall be permitted. The attendance of counsel on the return day is unnecessary.

RULE V

Appellant to File Essential Parts of Original Record Ten Days Before Argument—Plats—Exhibits—Clerks to Furnish Lists of Papers and Exhibits—Defective Return—Procuring Additional Papers. Appellant shall designate in writing to the clerk of the lower court what part of the original record he deems essential to the consideration of questions presented on the appeal, and cause return thereof to be made as required by Sec. 9493, Mason Minn. St. 1927; Sec. 605.04 Minn. St. 1941, 10 days before the day set for the argument of the cause in this court. When original papers have been prematurely sent to this court they will be returned to the lower court upon the written request of either party.

In cases involving accidents or tracts of land and other cases where a plat of the locus will facilitate an understanding of the facts or of the issues involved, counsel should assume personal responsibility for having in this court for the purpose of clarifying the oral argument a plat or diagram of sufficient size and distinctness to be visible to all members of this court when placed upon the court's easel.

Counsel will also see that photographic exhibits shall be in court for the oral argument.

All exhibits sent to the clerk of this court shall have endorsed thereon the title of the case to which they belong. All exhibits will be returned to the clerk of the court below with the remittur. All models will be so returned when necessary on a new trial, but where the decision of this court is final and no new trial is to be had, such models will be destroyed by the clerk of this court unless called for by the parties within 30 days after final decision is rendered.

Whenever a clerk of a lower court shall transmit to this court any original papers, files or exhibits as required by Sec. 9493 Mason Minn. St. 1927; Sec. 605.04 Minn. St. 1941, he shall include therewith full and complete detailed lists in duplicate of such papers, files and exhibits. The clerk of this court shall, upon receipt of such papers, files and exhibits, receipt to the transmitting clerk therefor. And when they are returned to the lower court the clerk of said court shall receipt to the clerk of this court for the same.

If the return made by the clerk of the court below is defective and all papers, exhibits, orders or records necessary to an understanding and decision of the case are not transmitted, either party may, on an affidavit specifying the defect or omission, apply to a justice of this court for an order requiring the clerk of the lower court to make further return and supply the defect or omission without delay.

(**Note:**—Lower court does not lose jurisdiction to settle case when appeal has been perfected. See State ex rel Kelly v. Childress, 172 Minn. 533, 149 N. W. 550.)

Where defendant's attorneys appealing from an order continuing in effect a temporary restraining order did not cause affidavit of plaintiff to be transmitted to supreme court because of belief that it was not filed, supreme court will consider the affidavit where trial judge endorsed thereupon a certificate that it was considered by him on hearing but that clerk had failed to file it. McFadden Lambert Co. v. W., 209M242, 296NW18. See Dun. Dig. 339.

Burden is upon appellant to cause clerk of court below to transmit files to supreme court prior to date set for hearing of an appeal, and court is entitled to all files deemed needful pending appeal, and is not restricted to that part which appellant has requested clerk below to transmit. Id. See Dun. Dig. 341.

RULE VI

Endorsement of Return by Clerk of the Court Below. The clerk of the court below shall endorse upon each return to this court the name and post office address of the judge presiding in the lower court and of the attorneys for the respective parties.

RULE VII

Attorneys—Guardians Ad Litem—Continue Such on Appeal. The attorneys and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties, respectively, in this court, until others are retained or appointed and notice thereof served on the adverse party.

RULE VIII

Printing, Service and Filing Records and Briefs—Penalty. 1. The appellant or party removing a cause to this court (including the defendant in a criminal case where the trial court certifies a question to this court under the provisions of Sec. 10756, Mason Minn. St. 1927; Sec. 632.10 Minn. St. 1941 shall, within 60 days from the date of service of the notice of appeal upon opposing counsel, serve upon the opposite party the printed record and his assignments of error and brief, and file with the clerk of this court 13 copies of each thereof; and within 30 days from such service upon him the respondent shall serve his brief and file with the clerk 13 copies thereof; except that in all appeals from municipal courts the appellant or party removing a cause to this court shall have only 30 days from the date of the service of the notice of appeal upon opposing counsel within which to serve upon the opposite party and file the printed record and assignments of error and brief, and the respondent shall have only 20 days from such service upon him within which to serve and file his brief. Appellant may reply in typewritten or printed form within 10 days thereafter. The reply shall be limited strictly to a concise answer to new points made by respondents. As to form and size typewritten records and briefs shall comply with these rules. The failure of appellant to comply with this rule in respect to printing and serving the record and his brief and filing the same with the clerk of this court within the time stated—which time cannot be extended by stipulation—will be deemed an abandonment of the appeal, and the order or judgment appealed from will be affirmed or the appeal dismissed, as the court may deem proper.

2. The record and briefs must be printed and the folios of the record numbered in the margin. The record shall consist of the pleadings, the findings or verdict, the order or judgment appealed from, the reasons of the trial court for the decision, if any, the notice of appeal and in cases where the sufficiency of the evidence is not involved, such abridgment of the settled case as will clearly and fully present the questions arising on the appeal. Even in cases where the sufficiency of the evidence is involved, only that pertinent to the issues to be presented need be printed. (For example, in personal injury cases where the amount of the recovery, if any, is not questioned, the medical and other testimony going only to the nature and extent of the injury should be omitted.) All matters in the return not necessary to a full presentation of the questions raised by the appeal shall be excluded from the printed record, and to that end the material testimony may be printed in narrative form, immaterial parts thereof omitted, and documentary evidence condensed. If the respondent deems the record so printed not sufficiently full to present properly the merits of the appeal, he may print a supplemental record, or instead in his brief refer to the folios or pages in the settled case, the original of which will be on file in this court, which he deems necessary and important.

3. The brief of appellant shall contain:

(a) A subject index of the contents of the brief, with page references; and a table of the cases (alphabetically arranged), text books, and statutes cited, with references to the pages where they are cited, all of which may be omitted if the brief contains no more than 15 pages.

(b) A summary of the nature and procedural history of the case stating the relief sought, the date of commencement of the action or proceeding, date of trial or hearing, the date and form of the order or judgment sought to be reviewed, the date of service of the notice of appeal, and in cases of appeal, that the order sought to be reviewed is appealable.

(b-1) A concise general statement of the question or questions involved omitting unnecessary details. Each question shall be followed by a concise statement as to how the court below answered it, or modified the answer asserted by appellant to be the correct answer.

The questions and statements shall not ordinarily exceed twenty lines, must never exceed one page, and must be printed in type as large as Point 10, without other matter appearing on the page.

(c) A concise statement of facts shown by the record so far as relevant to the grounds urged for reversal, modification or other relief. Where it is claimed that a verdict, finding or decision is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference, to sustain such verdict, finding or decision, shall be summarized. All references to the evidence shall indicate the folio and page of the printed record or settled case where same may be found.

(d) Assignments of error each shall be separately and concisely stated and numbered, without repetition. Where a finding of fact is attacked as not sustained by the evidence, it shall be particularly specified.

(e) In appellant's brief, the points urged for reversal, modification or relief, shall be separately stated and numbered, and each point so stated and numbered shall be followed by the argument thereon. The law and facts presented on each point shall be clearly stated, with citation of the authorities and statutes relied upon. Quotations must be confined to what is presently relevant. Useless repetition is to be avoided. For example, if, on a given point, one authority is quoted, the others in accord should ordinarily be cited only, without further quotation.

4. It is the duty of counsel for appellant or moving party, in both brief and oral argument, to state the case and facts fairly, with complete candor, and as fully as necessary for consideration of the issues to be presented. In the oral argument of causes it will be well if the appellant preceded his statement of facts with a summary of the questions to be raised so that as the facts are stated their relation to the questions presented may at once be obvious. Normally, no restatement of facts by respondent should be needed. In both written and oral argument such statement for respondent should be limited to such correction or supplement of appellant's statement as the case may require, and clearly indicate wherein it differs from the statement by appellant, and why. Subject to the foregoing, the arrangement of the brief for respondent, and of the reply and supplemental briefs, if any, should so far as possible conform to that prescribed hereby for the brief of the appellant.

5. Whenever the brief of the prevailing party or the record or supplemental record contains any unnecessary, irrelevant or immaterial matter, he shall not be allowed any disbursements for preparing or printing such unnecessary matter.

The party entitled to object to the taxation of disbursements in such case shall point out—specifying the pages or folios—the particular portions of the record, supplemental record or brief for which he claims the opponent is not entitled to tax disburse-

ments. (As amended Supreme Court Order of Mar. 1, 1943.)

On Oct. 30, 1942, court ordered that this Rule be amended so as to require thirteen (13) instead of twelve (12) copies of printed records and briefs to be filed with the clerk of this court. (This amendment shall apply to all appeals taken after Jan. 1, 1943).

Argument should be in body of brief rather than in portion relating to assignment of errors. Ness v. F., 207 M558, 292NW196. See Dun. Dig. 353.

Where there has been a general appearance by defendant below, it is improper to include summons in printed record on appeal. Rigby v. N., 208M88, 292NW751. See Dun. Dig. 353.

Statutory costs were denied for excessive length of brief, due to lengthy and repetitious quotations from, rather than brief summary of, testimony and authority, and temptation to further deny otherwise taxable expense of printing respondent's brief was resisted because fault may have been invited by similar dereliction on part of counsel for appellant. Bergquist's Estate, 211 M380, 1NW(2d)418. See Dun. Dig. 2238, 2239.

No statutory costs were allowed plaintiff appellants in an automobile accident case because of their failure to comply with admonition of supreme court in printed calendar in the matter of including in the record a plat or diagram of the scene of the accident. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 2238.

Requirement of specification of error in assignments of error. 27 MinnLawRev 89.

(1).

Out of consideration for other business, attorneys must not heedlessly impose upon liberality of court in allowing extensions of time to complete and file records and briefs. Schnedler v. Warren, 209M605, 297NW35. See Dun. Dig. 355.

An application for a second extension of time to serve and file record and brief was denied and appeal dismissed. Anderson v. High, 210M613, 297NW321. See Dun. Dig. 355.

Motion for additional time within which to comply with rule requiring timeliness in filing record and brief was denied where there was inexcusable delay amounting to conscious contempt for orderly procedure. Schnedler v. Warren, 211M618, 1NW(2d)418. See Dun. Dig. 355.

(2).

Abridgment of printed record is desirable wherever possible, but where it omits portions of settled case fact of such omission should be indicated by brief explanation indicating omission and reason therefor. Palm's Estate, 210M87, 297NW765 (2nd case). See Dun. Dig. 353.

In an appeal based on alleged errors of trial court in admitting or excluding certain testimony, a bill of exceptions which sets forth in detail questions involved, objections interposed thereto, rulings of trial court thereon, evidence in controversy if admitted, or offers of proof thereon if excluded, in sufficient number to enable appellate court to determine if substantial error has resulted, is sufficient. Larson v. Dahlstrom, 214M304, 8NW(2d)48, 146ALR245. See Dun. Dig. 1374.

Case is not properly before supreme court where record on appeal does not comply with rule with respect in matters to be included therein, and though inclusion in the reply brief of a certified copy of docket record or register from municipal court so as to complete the record is in substantial compliance with the rules, it is not approved. State v. McBride, 215M123, 9NW(2d)476. See Dun. Dig. 342.

(3)(d).

An omnibus assignment of error against findings of fact consisting of several separately numbered paragraphs is not good. Holzgraver v. S., 207M88, 289NW881. See Dun. Dig. 361.

Where findings of fact consist of distinct numbered paragraphs, appellant, if desiring to challenge any finding as not supported by the evidence, should designate the paragraph or parts of paragraph so challenged by an assignment of error. Id. See Dun. Dig. 361.

Errors not properly assigned under this rule were considered where appellant was represented by nonresident counsel unfamiliar with our practice. Bishop v. L., 207M 330, 291NW297. See Dun. Dig. 358.

Omission of assignments of error was waived where only point raised by defendant on appeal was that trial court erred in granting plaintiff's motion for judgment on pleadings. Fitzke v. Fitzke, 210M430, 298NW712. See Dun. Dig. 358.

Though sufficiency of evidence to support findings of fact may be challenged upon appeal from judgment appellant must comply with rule requiring specification of each finding of fact charged to be lacking in evidentiary support. High v. Supreme Lodge of World, Loyal Order of Moose, 210M471, 298NW723. See Dun. Dig. 388.

An assignment of error—"the judgment appealed from is not sustained by the evidence and that it is contrary to law" presents nothing for review. Delinquent Real Estate Taxes, 212M562, 4NW(2d)783. See Dun. Dig. 361(5).

Though appellants failed separately to state and number their assignments of error, supreme court reviewed case where there was only one question involved and respondent was not misled. State v. Pohl, 214M221, 8NW (2d)227. See Dun. Dig. 357.

An assignment that "the findings are not supported by the evidence", with no particular assignment of error, presented nothing for review. Estrada v. Hanson 215M 353, 10NW(2d)223. See Dun. Dig. 361.

(3)(e).

Where appellant's brief made subdivisions of arguments, but did not precede each subdivision with a separate statement of proposition urged in what followed, statutory costs were denied, though judgment was reversed. Liptak v. K., 208M168, 293NW612. See Dun. Dig. 5964.

Assignments of error not argued or simply reiterated without discussion are considered waived. Service & Security v. St. Paul Federal Sav. & Loan Ass'n, 211M199, 300 NW811. See Dun. Dig. 366.

Presumption that a complaint states a cause of action until otherwise decided cannot operate upon an appeal from an order sustaining a demurrer, without memorandum, and appellant must sustain burden of demonstrating existence of error, and may not merely assign error and require respondent to first give reasons why demurrer should have been sustained. Bacich v. Homeland Ins. Co., 212M375, 2NW(2d)125. See Dun. Dig. 379, 7726.

RULE IX

Setting of Cases and Notice—Resetting. Upon the filing of the printed record and appellant's brief each case will be placed on the calendar for argument or submission on briefs, as the case may be, and the clerk will give prompt notice of the date thereof to the respective attorneys. A case may be reset by the court upon a showing of good reasons therefor.

RULE X

Record—Printing. Records, assignments of error and briefs shall be neatly and legibly printed in leaded small pica or long primer type with black ink on white or cream, opaque, unglazed paper, properly paged at the top and properly folioed at the side, with a margin on the outer edge of the printed page of 1½ inches. The printed page shall be 7 inches long and 3½ inches wide, and the paper page shall be 9 inches long and 7 inches wide. Each brief shall be over the name of the counsel preparing it. Each copy of such brief or record shall be stitched together and there shall be printed on the outside thereof its proper designation, the title of the cause, and on the record the names and addresses of the attorney for all of the parties and on the brief only the name and addresses of attorneys preparing the same. Every record shall be accompanied by an adequate index of its contents, with particular reference to exhibits, which shall be so designated as to facilitate quick reference thereto.

One-half inch from the top of the cover page of each brief and printed record shall be printed the file number of the case in this court, in black-faced 18 point figures.

The prevailing party shall be allowed as a disbursement the reasonable amount which he has actually paid for printing record or brief.

RULE XI

Default of Appellant—Affirmance or Dismissal—Certifying to Court Below. Respondent may apply to the court for judgment of affirmance or dismissal if the appellant shall fail or neglect to serve and file the printed record and his brief as required by these rules. But no reversal will be ordered for the failure of the respondent to appear, unless the record presents reversible error. If appellant is in default for 30 days and respondent does not move for dismissal or affirmance this court will dismiss the appeal lwithout notice and without the allowance of costs and disbursements. In all cases of dismissal of any appeal in this court the clerk shall issue a certified copy of the order of dismissal to the court below.

Out of consideration for other business, attorneys must not heedlessly impose upon liberality of court in allowing extensions of time to complete and file records and briefs. Schnedler v. Warren, 209M605, 297NW35. See Dun. Dig. 355.

RULE XII

Certifying Record—Temporary Injunction in "Labor Dispute." Upon the certification of a record to this court for review under the provisions of Sec. 9,

c. 416, Laws 1933; Sec. 185.15 Minn. St. 1941, the case shall be set for hearing in this court on the first available date and the proceedings in the case shall be given precedence over all other matters except older matters of the same character; and the rules of this court requiring the printing of record and briefs shall not apply to such cases, but typewritten records and briefs of a like number and size as required for printed records may be filed in lieu thereof.

RULE XIII

Oral Argument—When Allowed. On oral argument the appellant shall open and be entitled to reply. In actions for the recovery of money only, or of specific personal property, where the amount or the value of the property involved in the appeal shall not exceed $500; in appeals from orders involving only questions of practice, or forms or rules of pleading; in appeals from the clerk's taxation of costs; and in appeals from municipal courts, no oral argument will be allowed.

In actions for the recovery of money only, or for specific personal property, where the amount or value of the property involved in the appeal is more than $500 but does not exceed $1000, and in cases reviewing decisions of the Industrial Commission and in cases to determine settlement for poor purposes, appellant shall be entitled to 30 minutes in all and respondent to 20 minutes.

In all other cases appellant shall be entitled to one hour in all and respondent to 45 minutes.

Application for leave to argue a case orally when oral argument is not otherwise permitted, or for an extension of the time allowed for oral argument as prescribed by this rule, may be made in writing at the time of filing the briefs.

Either party may submit a case on his part on his brief, and when no appearance is made on the day of argument, the printed record and briefs being on file, the case will be ordered so submitted.

Whenever any member of the court is not present at the oral argument of a case, such case shall be deemed submitted to such member of the court on the record and briefs therein and when during the consideration of a case there is a change in the personnel of the court the case shall be deemed submitted to the new member or members on the record and briefs.

RULE XIV

Remittitur as Matter of Course—Mailing Copy of Decision or Order—Entry of Judgment—Transmitting Remittitur. Upon the reversal, affirmance, or modification of any order or judgment of a lower court by this court, there will be a remittitur to the lower court unless otherwise ordered. A remittitur shall contain a certified copy of the judgment of this court, sealed with the seal thereof, and signed by the clerk.

When a decision is filed or an order entered determining the cause, the clerk shall mail a copy thereof to the attorneys of the parties, and no judgment shall be entered until the expiration of 10 days thereafter, except that in criminal cases judgment may be entered immediately. The mailing of such copy shall constitute notice of the filing of the decision.

The remittitur shall be transmitted to the clerk of the court below when judgment is entered, unless written objection under Sec. 9487, Mason Minn. St. 1927; Sec. 607.02 Minn. St. 1941, is made by the prevailing party and filed with the clerk of this court on or before the day set for the taxation of costs and disbursements.

RULE XV

Costs and Disbursements—Prevailing Party. Unless otherwise ordered the prevailing party shall recover costs as follows: 1. Upon a judgment in his favor on the merits, $25; 2. Upon dismissal, $10. (Who is prevailing party. See Sanborn v. Webster, 2 Minn. 277 (323); Allen v. Jones, 8 Minn. 172 (202).)

Costs and disbursements in all cases shall be taxed in the first instance by the clerk upon 2 days' notice, subject to review by the court, and inserted in the judgment. Costs and disbursements shall be taxed within 15 days after the filing of the decision.

Objections to taxation of costs and disbursements must be made in writing and filed. Appeals from the clerk's taxation of costs and disbursements must be served on opposing counsel and filed within 6 days from the date of the taxation by the clerk.

Where woman obtaining divorce was awarded $650.00 as expense money to procure transcript and pay for necessary printing in presentation of her case on appeal, and there was much needless printing in record that easily could have been avoided in view of narrow issues properly brought up, no statutory costs or disbursements were allowed on appeal. Burke v. B., 208M1, 292NW426. See Dun. Dig. 2238.

RULE XVI

Judgment—Entry by Losing Party or the Clerk. In case the prevailing party shall neglect to have judgment entered within 15 days after notice of the filing of the opinion or order of the court, the adverse party, or the clerk of this court, may without notice, cause the same to be entered without inserting therein any allowance for costs and disbursements.

RULE XVII

Judgment Roll—Papers Constituting. In all cases the clerk shall attach together the bond and notice of appeal certified and returned by the clerk of the court below and a certified copy of the judgment of this court, signed by him; and these papers shall constitute the judgment roll.

RULE XVIII

Executions—Issuance and Satisfaction. Executions to enforce any judgment of this court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed. Such executions shall be returnable within 60 days from the receipt thereof by the officer. On the return of an execution satisfied in due form of law the clerk shall make an entry thereof upon the record.

RULE XIX

Process and Writs Other Than Executions. All other writs and process issuing out of this court shall be signed by the clerk, sealed with the seal of the court, tested of the day when the same issued, and made returnable in accordance with the order of the court.

RULE XX

Rehearing—Filing Application. Applications for rehearing shall be made on petition setting forth the grounds on which they are made, and filed within 10 days after the filing of the decision. They shall be served on the opposing party, who may answer within 5 days thereafter. A fee of $5 shall accompany all petitions for rehearing.

Nine copies shall be filed. They may be either typewritten or printed, and whether typewritten or printed shall comply with the rules for printed briefs as to size.

The filing of a petition for rehearing stays the entry of judgment in civil cases until the filing of the order of the court thereon. It does not stay the taxation of costs.

RULE XXI

Discipline of Attorneys — Accusation — Service—Answer—Default—Referee—Settled Case. When a member of the bar of this state is charged with misconduct and a verified accusation and petition praying that he be disciplined is submitted to this court and an order is filed directing respondent to answer, such order and accusation shall be served on respondent by delivering copies thereof to him per-

sonally, and if he have a resident guardian appointed for such purpose, to him also; or to a person of suitable age and discretion residing at the house of the usual abode of respondent, whether within or without this state. Such service may be made by the sheriff of the county in which respondent is found; or by any person not a party to, or a complaining witness in such disciplinary proceeding. When respondent is served without the state he shall have twenty days exclusive of the day of service to comply with the order of this court.

When respondent cannot be found, and his place of residence is unknown, and the sheriff of the county in which respondent last resided or practiced law makes a return to that effect, a member of the State Board of Law Examiners shall file in this court an affidavit setting forth such facts. After the lapse of thirty days the board may apply to this court for an order suspending respondent from the practice of law. A copy of such order when made and filed shall be mailed to every district judge in this state. Within a reasonable time thereafter respondent may petition this court for vacation of such order and show cause why he should be allowed to answer the accusation.

After service of the accusation and order is made on respondent he shall file in duplicate in this court a plea of not guilty or an answer. The answer may contain:

1. A denial of each allegation of the accusation controverted by respondent, or an averment that he has not knowledge or information thereof sufficient to form a belief.
2. A brief statement of any new matter constituting a defense, or any matter in mitigation of discipline.

If the respondent fails to plead or file an answer, upon proof of such facts, he shall be found in default, and an order of discipline will be entered upon the assumption that he is guilty as charged.

When this court appoints a district judge as referee with directions to hear and report the evidence, the referee shall have his official court reporter (appointed pursuant to Sec. 201 Mason Minn. St. 1927; Sec. 486.01 Minn. St. 1941) make a stenographic report of all testimony given and all proceedings had before him as in civil cases. The reporter shall be paid his necessary expense, but no compensation except as hereinafter provided. Upon request of any person interested and payment or tender of his fees therefor, the reporter shall furnish a transcript of such record as in civil cases, pursuant to Sec. 203 Mason Minn. St. 1927; Sec. 486.03 Minn. St. 1941, and shall be paid therefor the fee provided for in Sec. 206 Mason Minn. St. 1927; Sec. 486.06 Minn. St. 1941. The transcript of testimony shall be made upon paper 9 inches long and 7 inches wide to conform to the size of printed records and briefs in this court. It shall be the duty of the person ordering the transcript to see that the court reporter complies with this rule.

The referee shall make findings of fact which shall be conclusive, unless a case shall be settled in accordance with and within the time limited in Secs. 9328 and 9329 Mason Minn. St. 1927; Secs. 547.04 and 547.05 Minn. St. 1941. The party proposing such settled case shall first obtain and pay for a transcript of the testimony or the relevant portions thereof, and deliver the original to the referee and a copy to the adverse party.

All petitions for reinstatement to practice law of attorneys suspended or disbarred shall be served upon the Secretary of the State Board of Law Examiners, the President of the District Bar Association of the district in which respondent resides, and the President of the State Bar Association. The original petition with proof of service and one copy shall then be filed with the clerk of this court. Objections to the petition, if any, shall be served upon the respondent and filed in duplicate within 20 days after service of the petition. (As amended Supreme Court Order Nov. 16, 1942.)

RULE XXII

Modification and Suspension of Rules. Any of these rules may be relaxed or suspended by the court in term or a judge thereof in vacation, in particular cases, as justice may require.

Memo. 1. Rules do not apply in habeas corpus appeals. See Sec. 9768, Mason Minn. St. 1927; Sec. 589.30 Minn. St. 1941.

2. The use of the supreme court file number of the case on all papers, and when communicating with the court or clerk, will aid greatly in giving prompt service.

3. Rules governing applications for admission to bail when application to trial court is denied, see State v. Russell, 159 Minn. 290, 199 N. W. 750.

When personal service has been made upon accused and he defaults, an order of discipline will be entered upon assumption that he is guilty as charged. Turnquist, 206M104, 287NW795. See Dun. Dig. 679a.

Supreme court will decide matter on findings of referee where no settled case has been provided. Gennow, 206M 389, 289NW887. See Dun. Dig. 343.

Where charges are made against attorney and he interposes an answer but withdraws it, case stands for determination as upon default as if allegations were admitted. McCabe, 209M166, 295NW906. See Dun. Dig. 679a.

In proceeding for disbarment, when personal service has been made upon accused attorney and he defaults, an order of discipline will be entered upon assumption that he is guilty as charged. Petri, 209M247, 296NW10. See Dun. Dig. 679a.

ADMISSIONS TO THE BAR

Supreme Court Order

IT IS ORDERED, That the orders of February 5, 1942, and March 10, 1942, relating to admissions to the bar, be hereby revoked, and in lieu of said orders the court announces that its policy in lifting the rule requiring examinations for admission to the bar insofar as it relates to seniors and graduates of approved law schools who are entering the armed services of the United States or the Federal Bureau of Investigation will be as follows:

(a) A senior in an approved law school who has completed all of the work of previous years and not less than one-half of the work of the senior year and who is entering the armed services of the United States or the Federal Bureau of Investigation may be admitted to the bar of this state without examination upon a certificate of the law school that he has maintained an average in his studies which places him in the highest eighty per cent of those to be graduated in his class, and which, if maintained to the end of the school year, would entitle him to a diploma in the degree of Bachelor of Laws, and a statement by such law school that in its opinion the candidate is of good moral character and otherwise in every respect qualified for admission to the bar.

(b) A graduate of an approved law school who is entering the armed services of the United States or the Federal Bureau of Investigation and who has maintained an average in his studies which places him in the highest eighty per cent of those who were graduated in his class may be admitted without examination upon a statement by such law school that he has been graduated from the school and the date of graduation and that in its opinion the applicant is of good moral character and otherwise in every respect qualified for admission to the bar; provided, however, that it will not be the policy of the court to admit such a graduate who has failed the bar examination more than twice or who in such bar examinations has attained an average of less than sixty per cent or who has not taken the bar examination within a year, or who has unreasonably neglected an opportunity to take the bar examination.

Application for admission will be made directly to the State Board of Law Examiners on the usual form.

The general requirements now in force as to prelegal education and affidavits from two practicing attorneys shall apply. No application fee will be required.

This court is informed that applicants who are entering the Federal Bureau of Investigation are taken into that bureau on three months' probation and they will not be admitted to the bar by this court until their probationary period has passed and evidence is presented that they have been permanently employed by that bureau.

This is an announcement of policy and not a general order or rule. Each application will be considered by the court upon its own merits and the applicant admitted or rejected at the court's discretion.

Dated April 18, 1942.

BY THE COURT:

Henry M. Gallagher,

Chief Justice.

DISTRICT COURTS OF MINNESOTA

PART I.—GENERAL RULES

RULE 2

Actions for Death by Wrongful Act—Distribution

Applications by representatives for the distribution of funds * * * * * * * * * * * * * * * * * *.

Applications for determining kinship and for distribution of funds recovered on account of wrongful death shall be heard in open court, and no order of distribution shall be made except as it is supported by evidence produced on such hearing. (Adopted at annual meeting of district court judges held in Minneapolis on July 9, 10, 1940.)

The above text was added to the end of Rule 2 as an additional paragraph July 10, 1940.

RULE 5

Defective Return—Procuring Additional Papers

Trustees of non-liquid assets of a bank in process or reorganization must submit all sales of real property to court for approval. Propp v. Johnson, 211M159, 300 NW615. See Dun. Dig. 824e.

RULE 9

Divorce Actions

(a). [Repealed.]
(b) * * * * * * * * *.
(c). * * * * * * * * * *.

Subdivision (a) of this rule was repealed at annual meeting of district court judges in Duluth on July 11, 12, 1938.

RULE 13

Form of Papers

(d).
This subdivision was omitted from 1941 Minn. Statutes.

Where defendant does not claim to have been misled by the improper arrangement of papers served, fact that the summons did not appear as "the first paper seen upon opening and inspecting the face of the papers served" does not require opening of default judgment. Whipple v. Mahler, 215M578, 10NW(2d)771. See Dun. Dig. 7806.

RULE 23.

Receivers

(a).
Venue of a proceeding for involuntary dissolution of a corporation is in county of its principal place of business, and not in some other county where it has an agent or property. Radabaugh v. H. D. Hudson Mfg. Co., 212M189, 2NW(2d)828. See Dun. Dig. 10110.

RULE 28

Trustees—Annual Account

Every trustee subject to the jurisdiction of the district court * * * * * * * * * * *.

Upon the filing of a final account the Court shall fix a time and place for the hearing and auditing thereof, and notice of such hearing shall be given to all interested parties in conformity with Sec. 8100-13, Mason's 1940 Supplement. Like notice shall be given of hearings on annual or interim accounts. (Adopted at annual meeting of district court judges held in Minneapolis on July 9, 10, 1940.)

This Rule 28 was amended by inserting in lieu of the last paragraph the above text July 9, 10, 1940.

RULE 29.

Venue—Change

Where a change of venue will result in continuing a case over a regular term of the district court and there is no explanation of a delay of 2 months in making motion it is not an abuse of discretion to deny it. Sworski v. S., 208M580, 295NW62. See Dun. Dig. 10126.

A motion for change of venue on ground that a fair and impartial jury could not be secured in the community was not made in time. Roper v. Interstate Power Co., 213M597, 6NW(2d)625. See Dun. Dig. 10120, 10129.

PART II.—REGISTRATION OF LAND TITLES

Judge Cameron of the 7th Judicial District expresses the opinion, in a letter to the publisher, that the rules of the 7th District relating to the registration of land titles adopted April 20th, 1911, have been superseded by the general rules adopted by the District Judges of the State on July 10th, 1928, and amended July 5th and 6th, 1932, pg. 1758 of 1940 Supp. and that the general rules thus adopted have been followed in all of the counties of the 7th District except Stearns County, which follows the 1911 rules.

SPECIAL RULES APPLICABLE TO PARTICULAR DISTRICTS

SECOND JUDICIAL DISTRICT

(Ramsey County)

RULE 8

Special terms. A special term of this court shall be held each Friday that is not a legal holiday, at two o'clock in the afternoon, except during the time the court is in recess or vacation. (Effective Oct. 8, 1943).

Rule 8 was revoked on October 8, 1943 and the above new Rule 8 adopted on the same date.

FOURTH JUDICIAL DISTRICT

RULE 18A.

Bail bonds, criminal cases. In all criminal cases where bonds with personal sureties are presented for approval the judge in charge of the criminal calendar shall require that said sureties personally appear before him and justify before approval of any such bond. (Passed Dec. 11, 1942).

SEVENTH JUDICIAL DISTRICT

Judge Cameron of the 7th Judicial District expresses the opinion, in a letter to the publisher, that the rules of the 7th District relating to the registration of land titles adopted April 20th, 1911, have been superseded by the general rules adopted by District Judges of the State on July 10th, 1928, and amended July 5th and 6th, 1932, pg. 1758 of 1940 Supp., and that the general rules thus adopted have been followed in all of the counties of the 7th District except Stearns County, which follows the 1911 rules.

EIGHTH JUDICIAL DISTRICT

(Carver, Le Sueur, McLeod, Scott and Sibley counties.)

The following rules were adopted and approved Dec. 27, 1939.

TERMS OF COURT

GENERAL TERMS

LE SUEUR COUNTY—
3rd Monday in April
3rd Monday in September

CARVER COUNTY—
1st Monday in March
2nd Monday in October

SCOTT COUNTY—
4th Monday in March
4th Monday in October

McLEOD COUNTY—
2nd Monday in May
2nd Monday in November

SIBLEY COUNTY—
1st Monday in June
1st Monday in December

SPECIAL TERMS

SCOTT COUNTY at SHAKOPEE—
2nd Monday in January
3rd Monday in June

McLEOD COUNTY at GLENCOE—
3rd Monday in January
4th Monday in June

LE SUEUR COUNTY at LE CENTER—
4th Monday in January
1st Monday in July

CARVER COUNTY at CHASKA—
1st Monday in February
2nd Monday in July

SIBLEY COUNTY at GAYLORD—
2nd Monday in February
3rd Monday in July

EXTRA SPECIAL TERMS FOR THE HEARING OF ALL MATTERS EXCEPT ISSUES OF FACT

CARVER COUNTY at CHASKA—
1st Saturday of each month

McLEOD COUNTY at GLENCOE—
2nd Saturday of each month

LE SUEUR COUNTY at LE CENTER—
3rd Saturday of each month

SIBLEY COUNTY at GAYLORD—
4th Saturday of each month

SCOTT COUNTY at SHAKOPEE—
5th Saturday of each month, if any

RULE 1.

Trial of cases. All Court and jury cases are set for trial on the first day of the General Term. The trial of all Jury cases shall begin on the third day of a General Term of Court, and the trial of Court cases shall immediately follow the completion of the trial of all Jury cases. Trial of all cases begins at 10:00 o'clock A.M.

RULE 2.

Call of calendar. The call of the Calendar shall be had at the hour of ten o'clock A.M. on the opening day of each General and Special Term. There shall be a preliminary and a final call of the cases. On the preliminary call, counsel shall announce the nature of the disposition to be made of the case including motions to dismiss, strike, change the order on the calendar or such other motions as are proper to be noticed at said time. On the final call of the Calendar all motions and requests shall be disposed of by the Court in the order made on the preliminary call. All calendars shall be printed.

RULE 3.

Filing of pleadings. This Court deems the timely filing of pleadings an essential factor to the prompt and proper trial of cases. And mindful of the provision of Section 9244 of Mason's Minnesota Statutes for 1927, this Court directs that at least seven days before the term all pleadings shall be filed with the Clerk.

RULE 4.

Out of term trials. No action will be tried out of term unless in extraordinary situations. This rule may be relaxed in favor of attorneys from without the District.

RULE 5.

1. All exhibits introduced in evidence upon the trial of a cause shall, after being marked for identification by the court reporter, be delivered to the clerk, who shall file the same.

2. Models, diagrams, and exhibits of material forming a part of the evidence in any case pending or tried in this court shall, after being marked for identification, be placed in the custody of the clerk.

3. All models, diagrams, and exhibits of material placed in the custody of the clerk shall be taken away by the parties within seven months after the case is decided, unless an appeal is taken. In all cases in which an appeal is taken they shall be taken away within 30 days after the filing and recording of the mandate of the appellate court.

4. When models, diagrams, and exhibits of materials placed in the custody of the clerk and not taken away within the time specified in paragraph 3 of this rule, it shall be the duty of the clerk to notify counsel in the case, by mail or otherwise, of the requirements of this rule, and, if the articles are not removed within 30 days after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

RULE 6.

Stay of proceedings. Upon the filing of a verdict or a decision, the Court or Referee may order a stay of all proceedings for a period not to exceed 40 days, provided that within 20 days the moving party shall order from the reporter a transcript of the evidence, unless a motion is made on the minutes of the Court.

The Court Reporter shall, upon receiving an order for such transcript, immediately notify the Clerk of the receipt of such order and upon such notice to the Clerk a further stay of all proceedings shall be in effect until 30 days after said Reporter notifies the Clerk and requesting party in writing that such transcript has been completed and is ready for delivery. It shall be the duty of said Reporter to transcribe and prepare transcripts of evidence, taken in all trials and proceedings, in the order requested and with reasonable dispatch.

Within said 30 days said requesting party shall bring on for hearing before the Court such motion or proceedings as it deems advisable and necessary preparatory to an appeal to the Supreme Court. Provided, however, in extraordinary cases, said 30-day period may be extended by application of either party to the Court. Upon submission of such motion or proceeding to the Court all proceedings shall be stayed up to and including the filing of the decision by the Court. The foregoing provisions apply to civil proceedings only.

NOTE. Neither the District or Supreme Court can give a party the right to appeal after the time for appeal, prescribed by the Statute, has expired. 53-431.

RULE 7.

Special term calendar. In each county in the district, the Clerk of Court shall keep a special term calendar on which he shall enter all actions or proceedings noticed for such special term according to the date of issue or service of motion. Notes of issue of all matters to be heard at a special term shall be filed with the Clerk one (1) day before the term. This rule shall not apply to cases noticed for a general term or continued for trial to a special term which shall be placed on the special term calendar without further notice.

RULE 8.

Sureties on bond. Recognizance or undertaking—affidavits of—Every personal bond or undertaking required by the statute in any Court proceedings of this Court, before same is submitted for approval to either the Judge, Clerk of the District Court, Sheriff or any Court Commissioner, shall be accompanied by an affidavit to be attached to such bond stating the full name, residence, and post office address of each surety; also setting forth the legal description of all real property owned by such surety and specifying as to each parcel thereof its fair market value, what liens or encumbrances, if any, exist thereon, and whether or not the same is his homestead or is otherwise exempt from execution and whether he is a surety upon other bond, recognizance or undertaking and the extent of the stated obligation under such bond, recognizance or undertaking.

RULE 9.

Filing papers. (a) All affidavits, notices and other papers designed to be used in any cause, shall be filed with the clerk prior to the hearing of the cause unless otherwise directed by the Court.

(b) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed may be vacated.

(c) All orders and findings, whether prepared by the judge or by counsel by direction of the judge, shall be typewritten in manifold and when the original is filed a copy shall be furnished to each attorney or firm of attorneys appearing in the case. The observance of this rule shall not be deemed a substitute for statutory notice of the filing of a decision or order.

(d) No papers on file in any case in the office of the Clerk of Court shall be taken from the custody of the Clerk, except by the District Judge for his own use, or by a Referee appointed to try the action, or by attorneys appearing of record in the case for the purpose of delivering to the Court at the time of trial. Before the Referee or attorney shall take any files in said action the Clerk shall require a receipt therefor filed by the Referee or attorney specifying each paper so taken.

(e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of section 9256, Mason's Statutes 1927, such promissory note, draft or bill of exchange shall be filed with the clerk and made a part of the files of the action.

RULE 10.

Service of briefs. In all cases tried to the Court without a Jury, if submitted on briefs, the party having the burden of proof shall have fifteen (15) days within which to serve his brief after the submission of the case, and the other party shall have fifteen (15) days within which to serve his brief from and after the service of the brief on him, and the party serving the first brief shall have ten (10) days in which to reply to the answer brief on him. At the expiration of forty (40) days the case will be considered as submitted to the Court for its decision whether briefs have been served or not, provided that where a transcript of the evidence is to be furnished, the time for serving briefs shall commence to run from the date of delivery of the transcript by the Court Reporter.

RULE 11.

Reports of trustee and receivers. The following dates are hereby set, in the respective Counties, for hearing on the accounts of all trustees, receivers and other persons in the court charged with the administration of any trust: Shakopee, the second Monday in January; Glencoe, the third Monday in January; Le Center, the fourth Monday in January; Chaska, the first Monday in February; and Gaylord, the second Monday in February; each being the County seat of the respective counties of Scott, McLeod, Le Sueur, Carver, and Sibley.

It will be the duty of the Clerk to notify, in each county, all trustees and receivers as soon as possible after receiving this notice and failure of a trustee or a receiver or other fiduciary to report on said day and annually thereafter will be sufficient justification for removal by this Court.

1. Receivers, trustees, and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest and shall be selected by the court with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that it is for the best interests of all parties, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court, but if it shall be clearly shown that an emergency exists requiring immediate appointment of a receiver, such appointment may be made ex parte.

2. Compensation of receivers and of their attorneys shall be allowed only upon special order of this court.

RULE 12.

Clerks fees to be paid. No case will be placed upon the calendar by the clerk of this court unless the deposit fee of three dollars is first paid, and no case will be finally disposed of by this court until the court is first satisfied that the clerk's fees are paid in full.

RULE 13.

The conferring of citizenship is deemed by this Court to be one of its most solemn powers, and it is hereby made the duty of the clerk of this court to arrange suitable and proper patriotic ceremony to accompany the conferring of such citizenship.

RULE 14.

Special rule in Torrens Titles. Pursuant to Chapter 160, Session Laws of Minnesota for the year 1933, the following rule is promulgated in relation to registration of land titles in the County of Scott, in addition to the General Rules of District Court as published in 175 Minnesota Reports, page XLIX, to-wit:

Where a certificate of title is outstanding in favor of two or more joint tenants and when there is filed for registration a certified copy of a certificate of death showing death of one of said joint tenants survived by the other or others, together with an affidavit identifying the party named in the said death certificate with one of the joint tenants as named in the certificate of title, the Registrar of Titles may without an order of court, other than this rule, cancel the outstanding certificate of title, and enter a new cer-

tificate for the land therein described in favor of the joint tenants surviving, or in favor of the sole survivor, as the case may be. However, "when said certificate of death and affdavit shall show that the decedent died on or after the 29th day of April, 1935, the Registrar shall refrain from taking the foregoing action, until there is also filed with him a certificate from the Attorney General of the State of Minnesota, showing either that the inheritance tax due under the provisions of the Laws of 1935, chapter 334, has been paid or that there is no tax due."

RULE 15.

Conduct. 1. The regular convening hours of the court shall be 10 o'clock a.m. and 1:30 o'clock p.m. The court will recess at 12:00 noon each day, and adjourn for the day at 5 o'clock p. m. Regular convening, recessing, and adjourning hours may be varied by special directions of the court.

2. The court crier, bailiffs, and the clerk, or one of his deputies, shall be in their places in the court room promptly at the time for convening of court.

3. When the court is about to convene, the crier will by a stroke of the gavel command attention and announce the approach of the judge. Thereupon the members of the bar present and spectators will promptly and quietly arise and remain standing until the crier shall have, by appropriate proclamation, convened the court, and the judge shall have taken his seat.

4. At the close of each session as announced by the presiding judge, the crier will by a stroke of the gavel command attention and announce the recess or adjournment, and all persons in the court room will remain seated until the crier shall have completed his announcement.

5. All persons entering the court room while court is in session shall immediately be seated and shall conduct themselves in a quiet and orderly manner. The reading of newspapers, books, or magazines in the court room shall not be permitted while court is in session.

6. Counsel, when addressing the court, shall arise, and all statements and communications by counsel to the court shall be clearly and audibly made from the counsel's table, and counsel shall not approach the judge's desk, while court is in session, for inaudible communications, unless requested so to do by the judge.

7. The examination of witnesses shall be conducted from the counsel's table, except when necessary to approach the witness or the reporter's table for the purpose of presenting or examining exhibits. When examining witnesses counsel shall remain seated in the chairs provided for them at the counsel's table, or, if they prefer, may stand immediately in front of their chairs during such examination. But one counsel on each side shall be permitted to examine witnesses unless by permission of the Court.

8. Counsel will observe the assignment of cases and keep advised of the progress of business in court and be ready when cases are reached. No arrangement as to time or order of trial will be recognized unless approved by the court.

RULE 16.

Right reserved. The Court shall reserve the right to relax the provisions of any of the foregoing rules in the interest of Justice.

It is hereby ordered, That the foregoing sixteen Special Rules are hereby adopted and approved this 27th day of December, 1939, as the Special Rules of this Court in addition to the rules which are applicable generally to District Courts throughout this State. All Special Rules heretofore made in said District are hereby annulled.

Dated the 27th day of December, 1939.

JOS. J. MORIARTY,
Judge of the District Court
Eighth Judicial District.

Naturalization Proceedings and Petitions

ORDER of Sept. 11, 1941

IT IS HEREBY ORDERED, That until the further order of this Court all Naturalization proceedings and petitions to become citizens of the United States of America will be held and heard in the District Court of the Eighth Judicial District at the times and places as follows:

In the County of Scott, on the fourth Monday in March and the fourth Monday in October of each year.

In the County of Carver, on the first Monday in March and the second Monday in October of each year.

In the County of McLeod, on the second Monday in May and the second Monday in November of each year.

In the County of Sibley, on the first Monday in June and the first Monday in December of each year.

In the County of LeSueur, on the third Monday in April and the third monday in September of each year.

Said dates being the opening day of the Regular General Terms of court held in and for each of said counties at the Court House at the County Seat of each of said counties.

EXTRA SPECIAL TERMS FOR THE HEARING OF ALL MATTERS EXCEPT ISSUES OF FACT

At Chaska in Carver County—
Every Saturday at 9:00 A. M.

At Shakopee in Scott County—
Fourth Tuesday of Each Month.

NINTH JUDICIAL DISTRICT

IT IS ORDERED, That hereafter and until the further order of this Court, the Petit Jury be summoned to appear at 10:00 o'clock in the forenoon of the third day of each general term.

That the call of the calendar be had as heretofore on the first day of the term.

That all motions made on the call of the calendar be heard on the first day of the term, and that motions made upon notice for hearing at the term be set for the first day when reasonably possible; all motions shall be heard in the order in which they appear.

After hearing of motions, default cases shall immediately be taken up and disposed of in their order.

IT IS FURTHER ORDERED, That, hereafter and until the further order of this Court, at all regular jury terms held in this district, court shall open at 9:30 o'clock in the forenoon and close at 5:00 o'clock in the afternoon with an intermission of one hour and thirty minutes at noon and a ten minute recess in the forenoon and afternoon of each day, subject, however, to the right of the presiding judge to change the time of opening and closing as conditions may require or as such judge may deem feasible under the circumstances.

No court shall be held on Saturdays unless the presiding judge deem it necessary or expedient. Dated this 30th day of September, 1941.

ALBERT H. ENERSEN
A. B. GISLASON
District Judges.

RULES OF PRACTICE OF THE PROBATE COURTS OF THE STATE OF MINNESOTA

(Formulated and adopted January 9, 1924, and as amended in 1937, 1938, 1940 and 1944 under and pursuant to Chapter 400, Laws 1923)

At a meeting of the Probate Judges of the State of Minnesota held on January 13th and 14th, 1937, pursuant to Chapter 400, Laws 1923 and acts amendatory thereto, rules heretofore formulated and adopted were amended and as amended were adopted as the Probate Court Rules:

RULE I—PAPERS

Every paper used in any proceeding shall be legible, properly entitled, and so endorsed as to show the character of the paper.

RULE II—FOREIGN INSTRUMENTS

Authenticated copies of foreign instruments filed in Probate Court shall be in accordance with the provisions of the acts of Congress made and provided therefor. (Adopted Jan. 12, 13, 1944.)

Old Probate Rule 2 was amended Jan. 10, 1940. Similar provisions are now under Rule 23.

RULE III—CUSTODY OF FILES

No file nor any part thereof shall be taken from the custody of the court.

RULE IV—WITHDRAWAL OF PAPERS

No part of any file shall be withdrawn except upon petition and order.

RULE V—ATTORNEYS

No person not duly admitted to practice law shall appear as attorney or counsel in any action or proceeding in this court except in his own behalf when a party thereto; provided that only a person beneficially interested as an heir, devisee, legatee, or as a creditor in relation to his own claim, shall be considered such party.

Upon a showing of necessity therefor, the judge may appoint an attorney for any party. Attorneys so appointed shall serve without compensation, unless it be thereafter other wise ordered by the court.

No attorney shall appear for, or represent, conflicting interests. No attorney shall become a surety upon a bond in any proceeding.

Attorney for personal representative may also be attorney in fact authorized by surety company to execute a bond. Op. Atty. Gen. (779m), June 16, 1943.

RULE VI—PETITIONS

Every petition for administration or for probate of a will shall contain the exact names, ages, residences and post office addresses, so far as can be ascertained, of the heirs, devisees and legatees, and the citizenship of the decedent.

Every petition by a creditor for administration or for probate of a will shall be accompanied by an itemized and verified statement of his claim or account.

RULE VII—MAILED NOTICE IN ESTATES OF DECEDENT

In every case where published notice of hearing is required by law, a copy of such notice shall be mailed by the petitioner, his agent or attorney, at least fourteen days before the day of hearing, to each of the heirs, legatees and devisees of the decedent, whose names and addresses are known or appear from the files of the court.

Proof of such mailing shall be made by affidavit, filed before the time of hearing.

RULE VIII—HEARINGS

In every case where a hearing is required by law upon a petition, the petitioner shall first introduce evidence; the adverse party, if any, shall then introduce evidence in opposition; and the petitioners may then introduce evidence in rebuttal or avoidance of new matter offered by the adverse party. The petitioner shall have the opening and closing of the argument.

RULE IX—INVENTORY AND APPRAISAL

All property shall be described in detail and with such certainty that it can be identified and so that only the interest of the estate therein shall be appraised. The description of any note or other obligation, the property of the state, shall include names and addresses of parties thereto, the amount, date of maturity, rate and time of payment of interest, accrued interest to date of death of the decedent, endorsements and credits, if any. The description of any mortgage, in addition to the foregoing, shall include date and place of record, if any, and description of property covered. The description of any bond, share of stock, or other evidence of interest, shall include numbers and other marks of identification. Property specifically bequeathed or devised shall be listed and appraised separately. Whenever household goods shall have a value of more than five hundred dollars ($500), the items thereof shall be separately listed and appraised. Encumbrances against the property of the decedent shall be set forth in detail. Upon the return of the inventory, the court may, on its own motion, or at the request of any interested person, examine the representative on oath in regard to the property of the estate.

Every representative shall file an inventory and appraisal within the time provided by law.

RULE X—SALES

No property of an estate shall be sold until after an inventory is filed.

RULE XI—CLAIMS

No claim objected to in writing by the representative or by an interested party shall be allowed against an estate except upon competent evidence adduced at the hearing. Claims of the representative against the estate shall be allowed only upon such evidence.

When a hearing on claims is continued and objections have been filed thereto the representative or the attorney for the estate shall, unless said claimants are in court on the day of such continuance, give notice to the claimants of the date of such continuance.

RULE XII—EX PARTE ORDERS

Any party applying to the court for an order to be granted without notice, except an order to show cause, shall state in his petition whether he has made any previous application for such order.

Every order presented to the court shall contain all of the essential facts contained in the petition for said order.

RULE XIII—MONEY RECOVERED FOR DEATH BY WRONGFUL ACT

Money recovered in any action for death by wrongful act shall be inventoried by the representative, with the notation that such funds are not a part of the estate.

No representative shall be discharged until a certified copy of the order of distribution is filed in the Probate Court, together with proper proof of compliance therewith.

RULE XIV—CONFIRMATION OF SALE

In case of private sale of any interest in real property under license, the representative shall, before confirmation thereof, give to all persons interested in the estate such notice as the court shall direct; provided, however, that the court may, in its discretion, proceed without such notice.

RULE XV—REPORT OF MORTGAGING OF LAND

Upon mortgaging land, the representative shall make a verified report, setting forth the description of the land mortgaged, the name of the mortgagee, the date, amount, terms, and conditions of the mortgage.

RULE XVI—RETURN ON APPEAL

On appeal to the District Court, or upon certiorari, before the return is made the moving party shall pay for the return required by statute at the same rate as is provided by law for other certified copies.

RULE XVII—FINAL SETTLEMENT

Every petition for final settlement shall recite the performance by the representative of all acts required by law. The petition and account shall show the amount of property of the decedent which has come into the hands of the representative and the disposal thereof. The petition shall also show, with the same detail as is required for the description of property in the inventory under RULE IX, the kind and nature, of the property remaining in his hands for distribution.

Vouchers for all disbursements charged except amounts not actually paid shall be filed with the final account, each voucher shall be numbered and the numbers of the vouchers placed opposite each disbursement as listed in the account.

RULE XVIII—BONDS

Bonds with personal sureties thereon where one or more of the bondsmen reside in a county other than the county having jurisdiction shall first be approved as to the sureties, by the Probate Judge of the county of residence of such surety, or shall have attached to said bond justifications showing the real and personal property of said surety.

RULE XIX—FORMS

That forms used by the Probate Courts of the State shall be those adopted by the duly appointed Forms Committee of the Probate Judges Association and approved by the Probate Judges Association. (As adopted Jan. 12, 1938.)

RULE XX—NON-RESIDENTS

No non-resident of the State of Minnesota shall be appointed representative of the estate of a deceased person or guardian of the estate or person of any ward. (As adopted Jan. 10, 1940.)

RULE XXI—BEQUESTS TO OUT-OF-STATE CHARITABLE INSTITUTIONS

The Inheritance Tax Division of the Department of Taxation shall, upon receipt of a will of a decedent showing bequests to a charitable institution or institutions outside of the State or upon request of a Probate Court, furnish to the Probate Court concerned information as to whether or not such state or states have reciprocity with Minnesota and exempt local charitable institutions. (As added Jan. 12, 13, 1944.)

RULE XXII—DUTIES OF INHERITANCE TAX DIVISION

The Inheritance Tax Division of the Department of Taxation shall admit service of and return original notice of orders of determination of inheritance tax within ten days after receipt of said order. (As added Jan. 12, 13, 1944.)

RULE XXIII—INHERITANCE TAX PAPERS

In every estate subject to an inheritance tax, the petitioner or representative shall, in addition to filing the originals, furnish the court with one copy of the initial petition, of the will if there be one, of the inventory, of the inheritance tax return and of the final account. (As added Jan. 12, 13, 1944.)

Similar provisions were formerly contained in old Probate Rule 2.

JUVENILE COURT RULES

RULE 1

All petitions filed in Juvenile Court shall be prepared by the County Attorney and shall be presented by said County Attorney.

MUNICIPAL COURT RULES

RULES OF PRACTICE OF THE MUNICIPAL COURT OF THE CITY OF MINNEAPOLIS

A.—CIVIL DIVISION

RULE 3

Continuances—(a) In all civil actions, after one continuance shall have been granted, all continuances thereafter, at the request of either party, or by stipulation, shall be to the foot of the calendar, except in the case of illness of counsel or of a material witness, or because counsel is engaged in the trial of another case. Applications for continuances upon the ground of illness of a material witness shall be accompanied by an affidavit or certificate of attending physician or other person familiar with the facts.

(b) After a case has been stricken, and is thereafter reinstated, it shall be set for trial at the foot of the calendar, unless for good cause it is set at an earlier date.

(c) Attorneys engaged in the trial of cases in other courts shall give the clerk notice thereof, showing the name of the court and judge before whom the attorney is engaged, and when they expect to be free; and they shall report to the court immediately after being through in the other court.

(d) At the first call of the calendar both plaintiff's and defendant's attorneys shall be present, or represented.

(e) After both parties have responded as ready and the case has been marked for trial it shall not be necessary for attorneys to appear again until notified by the clerk that the case is assigned for trial.

(f) After being marked for trial if a case is settled, or to be stricken, or dismissed, the clerk shall be immediately notified.

(g) In addition to the case on trial there shall be assigned to each judge one or more waiting cases. After a case has been so assigned as a waiting case the attorney shall be ready for trial on one-half hour's notice from the clerk. (As amended Jan. 15, 1942.)

RULE 18

General Terms.—(a) A General Term of the civil division * * * * * * * * *

(b) Notices of Setting Cases. The Clerk will mail to the attorneys a notice, 15 days in advance of the date on which the case is set for trial. If the clerk does not receive within five days after the mailing of said notice, written information from one or both of the attorneys that the case will be tried on said day, it will be deemed that said case has been settled or abandoned, and said Notice of Trial will be cancelled.

(c) In order to eliminate the necessity of attorneys waiting in the court rooms for their cases to be reached, and allowing them to be excused to their offices, that the Judge in charge of the civil calendar shall, so far as is practicable, assign two cases to each Judge trying civil cases; the first case for immediate trial and the second case to be held in readiness to follow, and the attorneys, through the cooperation of the Clerk, shall keep in touch with the progress of the preceding case and be in readiness to proceed with their cases without delay. (As amended Jan. 9, 1941.)

RULE 24

Jury Service.—(a) * * * * *

(b) Where it appears that any petit juror has been summoned for jury service after having served as a petit juror within the previous two years, in any court in Hennepin county, he or she shall be forthwith excused. (As amended Jan. 15, 1942.)

(c) * * * * *

RULE 25

Affidavit of Prejudice.—Any party, or his attorney, to a cause pending in the Municipal Court, either civil or criminal, or at a hearing of a motion, order to show cause or demurrer, may make and file with the Clerk of Court and serve on the opposing party, or his or its attorney, an affidavit stating that on account of prejudice or bias on the part of a said Judge he has good reason to believe and does believe that he cannot have a fair trial or hearing thereof. Thereupon such Judge shall forthwith, without any further act or proof, secure some other Judge of the Municipal Court to preside at the trial of said cause or hearing, or motion, or demurrer, or order to show cause, and shall continue the case on the calendar until such Judge can conduct the trial or hearing.

In civil actions and unlawful detainer proceedings such affidavit shall be made and filed after such Judge has been ascertained and before the case is reached for trial.

In criminal cases such affidavit shall be made or filed not later than two o'clock of the day that the case is first called for trial.

Not more than one such affidavit shall be filed by any party to an action. (Added Feb. 7, 1941.)

RULES OF PRACTICE BEFORE INDUSTRIAL COMMISSION

In Workmen's Compensation Cases

Commencement of Proceedings

1. All proceedings before the Industrial Commission shall be by petition addressed to the commission. The commission shall make service of the petition, **but not of the answer or reply.** The original petition, together with sufficient copies to make service on all parties to the proceeding, including insurer, must be forwarded direct to the Industrial Commission of Minnesota at its offices in St. Paul, Minnesota.

Appearances

2. The parties to any proceeding before the commission may appear either in person or by attorney.

Written notice of the appointment of an attorney and his address, signed by the party or the attorney, shall be filed with the Industrial Commission before the proceeding is heard, unless the pleadings indicate representation by an attorney, and thereafter all notices shall be served on the attorney.

When appearance is in person, without attorney, the record shall show, before proceeding with the hearing, by interrogations by the referee or a commissioner, that the party had knowledge of his right to representation by an attorney and his wish to present his case personally. In such case the referee or commissioner before whom the hearing is had shall assist in the interrogation of witnesses in an endeavor to bring out all the material facts.

Appearance in person, without attorney, shall be discouraged as detrimental to orderly procedure and the conservation of justice.

Compensation Attorneys

3. In signing papers in compensation proceedings, employes of the commission who have been designated as attorneys for a party shall use the title "Compensation Attorney, Industrial Commission, Representing ....." In writing letters on printed stationery of the commission, before assignment as attorney for a party, the title used should be "Compensation Attorney."

Pleadings, Form of

4. Pleadings, depositions, briefs and other papers of importance shall be printed or typewritten, and when not printed only one side of the paper shall be used. Where a printed form prescribed by the commission is used, it may be either filled out in typewriting or with pen and ink. All pleadings shall be verified.

Answers

5. Answers must be served on adverse parties within ten days and forthwith filed with the commission with proof of service.

Answer, Special, When Necessary

6. If the employer or insurer rely upon a defense in the nature of confession and avoidance, such defense must be specially pleaded.

Extension of Time Within Which to Answer

7. No order extending the time in which to answer a claim shall be granted unless the party applying therefor shall within the ten-day period provided by law for answering file written application to the commission for an extension of time, and therein state the reason he is unable to answer within the statutory time. No extension shall be granted for more than ten days after the receipt by the commission of the application, and not more than one extension shall be granted.

Reply

8. A reply, when one is necessary, must be served on adverse party within five days and forthwith filed with the commission with proof of service.

Order for Hearings

9. In all cases where an issue arises by answer or otherwise on a claim petition, notice of discontinuance or other petition, a hearing shall be had thereon by the commission, a commissioner or a referee, as may be specified in an order of reference or re-reference, to be signed by the secretary or a member of the commission.

Original hearings on all claims for compensation, except as herein otherwise provided, shall be held before a referee.

Notice of Hearing

10. When an answer and reply have been filed, or the time for reply has passed, the commission shall order the case set for hearing at some designated time and place, preferably in the county seat of the county in which the accident occurred, and the secretary shall issue a notice to the claimant, employer and insurance carrier, giving at least five days' notice of such hearing and the time and place where it will be held.

Hearings, Conduct of

11. Every hearing upon a claim for compensation held before a referee shall be conducted in an orderly manner, all witnesses testifying under oath (or by affirmation), and a record of the proceedings shall be made and kept by a stenographic reporter in the employ of the commission. Such hearings shall be conducted in such manner as to ascertain the substantial rights of the parties, and the referees or the commission shall not be bound by common-law or statutory rules of evidence or by technical or formal rules of procedure or pleading.

Limitation of Medical Witnesses

12. (a) Each party to a hearing before a referee shall be limited to not to exceed three medical witnesses, and at no hearing shall respondents be permitted to call a greater number of medical witnesses than were called by the party instituting the hearing.

(b) When a hearing before a referee is instituted by an employe or by dependents on a claim petition, the petitioner shall notify the adverse parties and the referee in writing at least ten days before the date of the hearing of the number of medical witnesses the petitioner intends to call, and the adverse parties shall be limited to the same number of medical witnesses.

(c) When a hearing before a referee is instituted by an employer or insurer on a notice of discontinuance of compensation payments or other method, the parties instituting the hearing shall notify the employe or dependents and the referee in writing at least ten days before the date of the hearing of the number of medical witnesses they propose to call, and the adverse parties shall be limited to the same number of medical witnesses.

(d) Such notices to adverse parties shall be deemed sufficient if served on their attorney and the referee by ordinary mail.

(e) Upon proper showing, the commission may order referees to permit the parties to produce additional medical testimony.

Neutral Physicians

13. Whenever at any hearing, after the parties have rested, it appears to be necessary or advisable that a neutral physician be appointed to examine the injured employe, the referee or commission hearing the case shall so inform the attorneys of the parties and request them to agree upon such neutral physician within three days. If the attorneys agree upon a physician and inform the referee or commission of their agreement within said time, the physician so agreed upon shall be appointed. An extension of time, not exceeding another three days, may be granted by the referee or commission upon the request of the attorney of either party made within said three days. If the attorneys do not agree, or if no extension of time is requested, or if the attorneys fail to inform the referee or commission of an agreement within the allotted time, the selection and appointment will be made by the Industrial Commission, commissioner or referee hearing the case. Agreements reached at a hearing may be conveyed to the referee or commission orally at the hearing; but, if reached after the adjournment of any hearing, notice of the agreement must be given in writing, signed by the attorneys of all the parties.

All orders appointing neutral physicians shall be made upon forms furnished by the commission, and the referee or commissioner appointing a neutral physician shall file the order appointing such neutral physician with the secretary. The secretary's office shall serve copies of this order upon the parties, as well as upon the neutral physician. This order shall require the report of the neutral physician to be mailed in triplicate to the Industrial Commission, 137 State Office Building, St. Paul, Minn. When the report is received by the commission, copies shall be served upon the interested parties, with proof of such service in the usual manner. The neutral physician's report shall become a part of the record and shall constitute competent evidence in the case. Either party may, within the five days provided by law, demand cross-examination of the neutral physician. After the designation of a neutral physician, no evidence or testimony other than his report and cross-examination shall be admissible before the referee, who shall, upon the conclusion of the cross-examination, enter his findings and decision. No further testimony shall be taken in said matter except as provided by subdivision (a) of Rule No. 26.

When such neutral physician is appointed by the commission or one of its referees, and pursuant thereto he examines the employe and files his report with the Industrial Commission, neither party shall be permitted to thereafter call such neutral physician as their witness to testify in any subsequent proceeding involving the same accident, unless a showing is made that no other medical witness can be produced to testify as to the condition of the injured employe and the probable cause thereof at the time of the examination by the neutral physician.

Depositions

14. Depositions of witnesses in compensation matters, under the provisions of Sec. 4314, G. S. 1923, shall be taken as now provided for in civil cases, unless otherwise ordered by the Industrial Commission, a commissioner or a referee.

Adjournment for Non-appearance of Claimants

15. In all cases where a claimant or his representative fails to appear at the first hearing, the referee shall at the hearing compare the address used in the commission's notice of hearing with the employer's or carrier's address of the claimant, and, if necessary, a corrected notice shall be prepared and the case again set for hearing. If no error appears, the intentions of the claimants shall be ascertained before an order of dismissal is issued. Dismissal in such instances shall be without prejudice.

Postponements and Continuances of Hearings

16. To conform to the economical and expeditious method of determining the rights of injured workmen contemplated by the workmen's compensation law, which is hampered by postponements and continuances of hearings, the following rules shall apply:

(a) Requests for the postponement of a hearing before a referee shall be made in writing and filed

with the commission not less than five days prior to the date set for the hearing. The party requesting the postponement shall apprise opposing counsel of the request, and, if the latter consents thereto, the application shall so show. Whenever a request for a postponement is granted the attorneys shall immediately notify the parties concerned. Not more than two requests for postponements of any hearing shall be granted to any one of the parties, except for most cogent reasons.

(b) The commission will set a time and place for hearings of appeals from decisions of referees, petitions to vacate awards, petitions to take additional testimony, or any other petition or motion requiring a fixed date for a hearing. At such hearing the respective counsel may appear personally and argue the merits of the appeal, petition or motion, or may file a brief at or before the time so set. If counsel for either party does not appear at the appointed time or has not filed a brief, the commission will hear the arguments of any counsel present and/or consider the case on the transcript of the testimony taken befor the referee and all other proper evidence in the case. Requests for postponement will not be granted except upon written showing of necessity.

(c) Requests for continuances of scheduled hearings before the commission or any of its referees will not be granted except in cases of emergency.

Dismissals

17. Not more than one dismissal of an action based on the same statement of facts shall be granted to an injured employe. All such dismissals shall be without prejudice.

Findings of Referees

18. In determining cases, referees shall make findings of facts on all material issues, whether compensation is allowed or disallowed, and obviate, as far as possible, the necessity of the commission making original findings.

When no dependency is found to have been created by a fatal accident arising out of and in course of the employment, the referee's findings shall contain an order for the payment of $300 into the Special Compensation Fund, proper burial benefit, incurred medical and hospital expenses, and such accrued compensation as the facts disclose.

Further Proceedings by Referees

19. When a referee has filed his findings and award or disallowance his jurisdiction over the case shall end, except for taxation of disbursements, unless the matter is re-referred to him by the commission for supplemental findings, taking additional testimony, rehearing, the correction of a clerical error, or other procedure.

Stipulations for Settlements

20. (a) Referees shall not make findings and awards in cases settled by stipulation involving prospective medical expenses, but shall report such cases back to the commission with the stipulation for action by the commission.

(b) The same procedure shall obtain in cases coming before referees in which the parties stipulate for settlement on a lump-sum basis for the payment of compensation to become due at a future date.

(c) No stipulation of settlement or compromise of a claim for permanent total or partial loss or loss of use of a member or members, the liability for which in whole or in part is in question, shall be approved by the Industrial Commission or any of its referees unless the agreement sets forth (1) the full extent of the actual loss or loss of use existing in such member or members; (2) the percentage of loss or loss of use or the lump sum upon which the compromise is based; (3) the wage and compensation rates of the employe; (4) the sums which have been previously paid for medical and hospital treatment, healing-period compensation, and on the permanent disability; (5) and shall also contain a provision that the employer and/or his insurer shall pay to the Industrial Commission, for the benefit of the Special Compensation Fund, in one lump sum, the percentage of the amount payable for the full actual loss or loss of use existing in the member or members involved as is required by Chapter 311, Laws of 1935, and Chapter 43, Special Session Laws of 1935-1936, regardless of any agreement between the parties to settle for a percentage of disability or sum of money which would produce less for said fund.

(d) Stipulations for settlement of cases in which the employe has justifiably engaged the services of one or more physicians shall be accompanied by a copy of the physicians' findings and conclusions, and such stipulations shall contain a provision for the payment of a reasonable fee for such examinations, treatment and reports, to be made to the employe if he has paid for the same, otherwise to be paid directly to the physician or physicians who rendered the service. If the employe has not expended or contracted medical expense as herein set forth, or if no medical bills are outstanding, the stipulation shall so state.

(e) Stipulations for the settlement of cases in which the employe or his dependents have engaged the services of an attorney shall set forth the full fee agreed upon by the parties to be paid the attorney, the amount of such fee which has been paid, and the balance remaining unpaid. Awards on settlements shall order the payment of any unpaid balance of such fee directly to the attorney.

Permanent Disability and Fatal Non-Dependency Cases

21. All awards of the Industrial Commission or any of its referees, made after hearing, which involve permanent total or partial loss or loss of use of a member or members, or fatal compensable cases where there are no persons entitled to compensation, shall contain an order directing the employer and/or his insurer to pay to the Industrial Commission, for the benefit of the Special Compensation Fund, in one lump sum, one per cent of the total amount required to be paid by Chapter 311, Laws of 1935, for the permanent loss or loss of use of such member or members by accidents occurring on and between the dates of April 30, 1935, and January 18, 1936, and two per cent under Chapter 43, Special Session Laws of 1935-1936, where the accident occurred on or after January 19, 1936, or three hundred dollars ($300.00) in cases of compensable fatal accidents where there are no persons entitled to compensation.

Taxation of Disbursements

22. When no appeal has been taken from the decision of a referee, hearings on taxation of disbursements must be before the referee who heard the case. Such hearings should be set for a Monday forenoon, as the referees are quite certain to then be in their offices.

When an appeal has been determined by the commission and no appeal has been taken to the Supreme Court, or the decision of the Supreme Court still leaves the commission with jurisdiction to tax disbursements, hearings on taxation of disbursements will be before the commission, which will then also pass upon disbursements of the hearing before the referee. In such case all items of disbursements incurred at the hearings before the referee and commission must be included in the bill of disbursements, so divided as to show at which hearing they were incurred.

Service must be made on the adverse parties by the applicant at least five days before the date of the hearing, and the original application must be sent to the Industrial Commission with admission or proof of service.

APPEALS

Quorum for Acts of Commission

23. Not less than two commissioners shall sit at hearings on appeals, petitions for rehearings, petitions to vacate awards, stipulations for settlement, requests for lump-sum payments, or other matters requiring determination by the commission.

Notice of Appeal

24. Notices of appeal to the commission and Supreme Court, also answers to claim petitions, shall be served by the party preparing same, and the original shall show proof of service when filed with the commission.

Hearings on Appeal

25. In hearings on appeal before the commission the arguments shall be limited to the transcript of testimony taken before the referee, the exhibits and the law, and may be oral or submitted on written briefs.

Partial transcripts of the testimony adduced at a hearing before a referee may be used on appeals to the commission only when the parties to the hearing stipulate as to what portions are necessary for determining the rights of the parties. Such stipulation shall be made a part of the judgment roll in said case. In all such cases the reporter shall note on the certification page that such transcript contains only a portion of the testimony adduced at the hearing before the referee, and on the index page of said transcript he shall indicate the names of the witnesses whose testimony is transcribed and of those whose testimony has been omitted.

Additional Evidence

26. (a) Applications to take additional evidence, made on appeal to the commission, shall be accompanied by a sworn statement, giving the names of the witnesses and the matters to which they will testify, or, if such evidence is of a documentary nature, the original document or a verified copy thereof shall be attached to such application. The applicant shall, at least ten days prior to the hearing, furnish to the secretary of the commission sufficient copies for service on the adverse parties. Hearings on such applications shall be set simultaneously with the hearing on appeal and as a part thereof. If the application for additional evidence is granted, and consists of testimony of witnesses, such testimony shall be taken before a referee, after due notice of the time and place of hearing to all parties or their attorneys, and thereafter be transcribed for the use of the commission. The fee for such transcript shall be paid by the party making the application, unless otherwise ordered by the commission.

(b) Application to take additional evidence, made to referees after the parties have rested and before decision has been rendered, shall be made in the same manner as to the commission on appeal. If the application is granted, the referee shall designate the time and place for taking the evidence, and due notice thereof shall be given to the parties or their attorneys by the secretary of the commission.

Reargument on Appeals

27. (a) No petition for reargument on appeal before the commission shall be allowed unless filed before an appeal to the Supreme Court has been taken or a writ of certiorari issued.

(b) In case of petition for reargument on appeal before the Industrial Commission, showing for such reargument shall be confined to and contained in the petition therefor.

MISCELLANEOUS

Dilatory Prosecutions of Appeals

28. In cases where litigants fail to prosecute with reasonable diligence appeals from the decisions of the referees, the commission may of its own motion or on motion of either party, on proper showing, order the matter stricken from the calendar of cases pending before it on appeal.

Said motion and order shall be served upon the parties and their attorneys at their last known places of address, as disclosed by the files of the Industrial Commission, and at least ten (10) days shall intervene between the service of the motion and the granting of the order.

The commission may thereafter reinstate said matter on the active calendar for hearing upon proper showing.

Petitions to Vacate Awards and for Rehearings

29. Petitions to vacate awards and for rehearings shall be verified and accompanied by supporting affidavits. Sufficient copies shall be filed with the commission for service on the other parties.

Such petitions shall set forth in detail the grounds upon which they are based, and shall show: (a) That certain material evidence not available at the time of the hearing before the referee is now available; or (b) proof of a change in condition material to the issue involved; or (c) any other showing that a rehearing is in the interest of justice.

A transcript of the testimony taken before the referee, or so much thereof as may be necessary to present the question involved in such petition, shall accompany the petition.

Counter affidavits to be presented shall be served upon opposing counsel at least two days before the date of the hearing on the petition. Rebuttal affidavits may be filed at any time before the hearing.

Oral testimony shall not be permissible at hearings on such petitions.

The commission may, in its discretion, deny such petitions without hearing thereon, or may require the petitioner to submit further proof before acting upon them.

If the petition is granted, the commission shall refer the case to the referee who originally heard it or to some other referee for the purpose of taking the additional testimony and evidence sought to be introduced, and for further consideration and determination in the light of the new testimony and evidence in connection with that previously introduced.

Appeals from such decisions of referees, if taken, shall be governed by the laws and rules relating to appeals from original decisions.

Petitions to vacate awards and for rehearings must be filed with the commission within a reasonable time after the petitioner has obtained knowledge of the facts constituting the grounds upon which they are based.

Discontinuance of Compensation Payments

30. Compensation payments shall not be suspended by an employer or insurer in any case arising under section 4283, subsection 3, or section 4295, G. S. 1923, except and until the employer or insurer has filed with the Industrial Commission a notice of proposed discontinuance of compensation on a form prescribed by the commission; and, if the discontinuance is predicated upon the ground that the injured employe has recovered or that his right to compensation has terminated, then such notice shall be accompanied by a report (or copy thereof) of the medical examination upon which such discontinuance is based, and such notice shall not become operative until such medical report is so filed. No medical reports shall be required when payments cease on full compliance with an award.

In all cases where compensation payments are discontinued without complying with the foregoing rule the liability for making such payments shall continue until the foregoing requirements are complied with.

Whenever an employe or dependent is forced to file a claim petition because the employer or insurer has discontinued compensation payments without complying with the foregoing requirements, and a hearing is held thereon, the burden of establishing the right to discontinue payments on the date of the last payment shall be on the party discontinuing, and proof shall be offered in the usual order by the one charged with sustaining the burden of proof.

Hearings on Notice of Discontinuance

31. (a) In a case where a final award has been paid and a notice of discontinuance is filed in lieu of the final receipt, in order to bring the matter on for further hearing, it will be necessary for the employe to petition the commission to vacate in accordance with Rule 29, and, in the event the petition is granted, the matter will be reset before a referee and testimony taken in the customary manner.

(b) In open awards where a notice of discontinuance is filed in lieu of a final receipt, the matter shall be set for hearing by filing written protest against said discontinuance within 25 days thereafter, as provided by section 4295, said protest to be accompanied by a medical report.

Medical Reports to Be Filed With the Commission

32. Employers or their insurers shall promptly file with the commission copies of all reports received by them from physicians attending or examining injured employes, in order to facilitate the obligation of the commission under section 4293, G. S. 1923, "to keep itself fully informed as to the nature and extent of any injury to any employe" and to procure reports from physicians having knowledge of injuries.

Docket Procedure

33. All petitions in compensation matters and subsequent proceedings and every instrument which is required to be served therein shall be promptly stamped to show the date of receipt, and shall be filed and docketed, together with any notice or order and proof of service thereof, with record or docket number thereon in addition to the regular file number. All papers relating to the case shall be kept in the file jacket with the docketed papers, and all docketed papers shall be securely bound together with the report of injury, consecutively arranged, according to the subject-matter or date of docketing.

Notices of hearings, postponements, continuances and other proceedings before the commission, a commissioner or a referee shall be served by the secretary.

Copies of Certain Orders to Be Certified

34. Whenever any findings or orders of a referee or the commission involving the payment of money to or for the benefit of an employe or his dependents by the state or any county, township, city, village, or any subdivision of either, is transmitted to such political division of the government as the employer, it shall be accompanied by a certification of the secretary, under the seal of the commission, that it is a true and correct copy of the original.

Standard Forms to Be Used

35. Employers and insurers shall use blank forms which conform in wording, size, design and color to those prescribed by the Industrial Commission for all purposes for which the commission has designated blank forms. Such blanks must be fully filled out, and all details required thereon must be furnished.

Examination of Files by Attorneys

36. (a) Attorneys desiring to examine a file to determine the status of an employe's or a dependent's claim for workmen's compensation, or for the purpose of assisting in procuring the payment of compensation, shall present written authorization to the chief of the Division of Workmen's Compensation, signed by the employe or a dependent, as the case may be. This applies to attorneys in the employ of the commission, as well as to other attorneys.

(b) Attorneys desiring to examine a file to assist in the defense of any proceeding before the commission shall present written authorization to the chief of the Division of Workmen's Compensation, signed by the employer or insurer.

(c) Upon presentation of the authorization indicated in the foregoing paragraphs (a) and (b), the chief of the Division of Workmen's Compensation shall produce the desired file for examination by counsel. However, in no event shall the contents of any file be disclosed for any purpose other than an endeavor to effect the settlement of a claim or the institution or defense of proceedings before the Industrial Commission or the Supreme Court. All such authorizations shall be placed in and become a part of the commission's file of the case.

Removal From Files of Documents or Exhibits

37. All applications for permission to remove any exhibit or document from the compensation files of the Industrial Commission must be made to the Chief of the Compensation Division, or in his absence to the person delegated to assume his duties.

No person, other than a regular employe of the Industrial Commission engaged in the performance of his duties, shall, under any circumstances, be permitted to remove from the office of the Industrial Commission, or from the possession of a referee or other person in charge thereof, any exhibit or other document without first filing with the commission a written consent by the adverse parties to the removal or taking thereof, and then only after a receipt has been given to the commission therefor.

Amendments of Rules

38. The rules of the Industrial Commission of Minnesota shall be subject to amendment at any time, and the commission may adopt additional rules whenever in its judgment the same are advisable.

Appendix No. 5
Curative Acts

(Continuing Stalland's Minnesota Curative Acts)

1. Acknowledgments.
Certain foreign acknowledgements Act Apr. 21, 1941, c. 340.
Laws 1943, c. 211, legalizes acknowledgments by notary after expiration of his commission.

1½. Actions.
Proceedings in Municipal Court in city of St. Cloud, established by Extra Session Laws 1935, c. 88 legalized, Act Apr. 14, 1941, c. 223, §10.

9. Cities and villages.
Payment of salaries of certain village officers, §1163-1 (N).
Village waterworks proceedings, §§1235-3 to 1235-7.
Contracts of fourth class cities, or their water, light, power and building commissions, or both jointly, §1828-105(N).
Act Jan. 31, 1941, c. 5, validates street improvement proceedings by fourth class city operating under home rule charter, and issuance and sale of certificates of indebtedness.
Act Feb. 13, 1941, c. 6, legalizes bonds voted upon in villages for street improvements. For text see §§1968-32, 1968-33.
Act Feb. 25, 1941, c. 23 validating proceedings for issuance and sale of sewer district bonds in cities of fourth class.
Proceedings involving sewage disposal in villages and contracts relating thereto, validated. Act Mar. 5, 1941, c. 41, §3.
Proceedings of fourth class cities in connection with construction of water-mains and sewers, and bonds, not exceeding $15,000, validated. Act Mar. 6, 1941, c. 50.
Act Mar. 28, 1941, c. 100, validates certificates of indebtedness and sewer warrants in certain cities of fourth class having home rule charters.
Act Apr. 4, 1941, c. 119, validates proceedings and revenue certificates given in connection with purchase of electric and water utilities by villages.
Cities and villages, proceedings for construction of sewage systems and sewage disposal plants validated. Act Apr. 10, 1941, c. 181, §1.
Proceedings and bonds of certain villages for improvements to municipal waterworks system. Act Apr. 18, 1941, c. 312.
Proceedings by villages in certain cases for construction of sanitary sewers and treatment plant. Act Apr. 19, 1941, c. 319.
Laws 1943, c. 19, validates proceedings of governing body for issuance of bonds for purchase of airport.

10. Corporations and corporate conveyances.
Act Feb. 25, 1941, c. 20, §2, validates certain proceedings for renewal of periods of corporate existence of co-operative associations.
Act Apr. 9, 1941, c. 127, legalizes proceedings to renew corporate existence of private corporations.
Corporate transfers after termination of corporate existence. Act Apr. 9, 1941, c. 128, §3.
Act Apr. 9, 1941, c. 147, §2, validates certain corporate acts and contracts of agricultural societies taking steps to renew their corporate existence.
Act Apr. 10, 1941, c. 166, §2, validates acts and contracts of certain co-operative corporations taking steps to renew their corporate existence.
Act Apr. 10, 1941, c. 167, validates certain corporate acts and contracts of corporations taking steps to renew their corporate existence.
Corporations and Corporate Conveyances, incorporations of religious societies where records of meeting were not kept nor certificates filed validated. Act Apr. 10, 1941, c. 174, §1.
Corporate acts of certain social and charitable corporations. Act Apr. 19, 1941, c. 314.
Certain religious corporations, Laws 1943, c. 400.

11. County commissioners proceedings.
Participation in federal commodity stamp plans. Act Mar. 28, 1941, c. 99, §1.
Laws 1943, c. 14, provides in any county of this state which contains not more than fifty full and fractional congressional townships, a population of not more than 22,000, an assessed value of all taxable property not exceeding $9,000,000, and a bonded debt in excess of $500,000, all proceedings heretofore taken by the board of county commissioners of such county, to authorize and direct the refunding of the outstanding bonded indebtedness of the county, or any part thereof, are hereby legalized and validated, and the county board is authorized to complete such proceedings and issue and deliver the bonds as authorized, and said bonds shall be valid and binding obligations of the county according to their terms.

12. Decrees.
Act Apr. 28, 1941, c. 540, §1, validates final decrees of adoption heretofore entered pursuant to sections 8624 to 8634, inclusive.

15. Drainage proceedings.
Drainage proceedings, assessments, or liens to pay deficit in drainage system, validated. Act Apr. 10, 1941, c. 174, §1.

21. Mortgages and mortgage foreclosure sales.
Act Apr. 18, 1941, c. 305, reads as follows:
Section 1. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections, viz:
Subdivision 1. That the power of attorney, recorded or filed in the proper office prior to the passage of this act, to foreclose the mortgage, provided for by Mason's Minnesota Statutes of 1927, Section 9606:
(a) Did not definitely describe and identify the mortgage.
(b) Was not sufficiently witnessed or acknowledged, or was witnessed, and/or the acknowledgment of the execution of the same was taken, by the person to whom such power was granted, or if executed by a corporation that the corporate seal was not affixed thereto.
(c) Had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after, such sale.
(d) Was executed before there was default, or was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice.
(e) Did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties.
Subdivision 2. That the notice of sale:
(a) Was published only five times, or that it was published six times but not for six weeks prior to the date of sale.
(b) Properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises.
(c) Was published for six full weeks and the mortgage sale was postponed and the original notice, together with notice of postponement, was regularly published in at least one issue of the same newspaper intervening between the last publication of the original notice, and the date to which the sale was postponed.
(d) Correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, and/or failed to state or state correctly the year of such sale.
(e) Correctly described the real estate but omitted the county and state in which said real estate is located.
(f) Did not state the amount due or failed to state the correct amount due or claimed to be due.
(g) Described the place where the sale was to take place as a city instead of a village; or village instead of city.
(h) In one or more of the publications thereof, designated either a place or a time of sale other than that stated in the certificate of sale.
(i) Failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee.
(j) Failed to state or incorrectly stated the name of the mortgagor, the mortgagee or assignee of mortgagee.
(k) Was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that

at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied.

(l) Was not served upon all of the parties in possession of the mortgaged premises provided it was served upon one or more of such parties.

(m) Was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale.

(n) Gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa.

(o) Where the notice of mortgage foreclosure sale of the premises described in the notice was served personally upon the occupants of the premises as such but said service was less than four weeks prior to the appointed time of sale.

Subdivision 3. That distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel.

Subdivision 4. That no authenticated copy of the order appointing, or letters issued to a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded, provided such order or letters have been filed or recorded in the proper office prior to the passage of this act.

Subdivision 5. That said mortgage was assigned by a decree of a probate court in which decree the mortgage was not specifically or sufficiently described.

(a) That the mortgage foreclosed had been assigned by the final decree of the probate court to the heirs, devisees or legatees of the deceased mortgagee, or his assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the probate court, the representative had assigned the mortgage to one of the heirs, devisees or legatees named in such final decree, and such assignment placed of record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees or legatees named in such final decree; and the mortgaged premises bid in at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits, recorded in the office of the register of deeds of the proper county.

Subdivision 6. That the sheriff's certificate of sale and/or any of the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale but have been executed and filed or recorded prior to the passage of this act.

Subdivision 7. That the sheriff's certificate of sale described the sale as being held in the city of Hennepin whereas the sale was actually conducted in a city of the county of Hennepin.

Subdivision 8. That the hour of sale was omitted from the notice of sale, or from the sheriff's certificate of sale.

Subdivision 9. That prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to the passage of this act.

Subdivision 10. That an insufficient registration tax had been paid on the mortgage.

Subdivision 11. That the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the register of deeds or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments.

Subdivision 12. That the mortgage foreclosure sale was held upon a legal holiday.

Subdivision 13. That no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in Mason's Minnesota Statutes of 1927, Section 8303, was filed with the registrar of titles and a memorial thereof entered on the register at the time of or prior to the commencement of such proceeding.

Subdivision 14. That the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state his representative capacity.

Subdivision 15. That the mortgage deed contained the word "Minn." immediately following the true and correct name of the corporate mortgagee, and the power of attorney to foreclose such mortgage, and the notice of mortgage foreclosure sale were executed by the corporate mortgagee in its true and correct name, omitting therefrom the word "Minn." as recited and contained in the mortgage immediately following the name of the corporate mortgagee.

Subdivision 16. That the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale.

Subdivision 17. That the seal of the notary was omitted from the certificate of acknowledgment of the sheriff or deputy sheriff, or the affidavit of costs and disbursements attached to the mortgage foreclosure record, the said affidavit of costs and disbursements being otherwise properly executed.

Subdivision 18. That the year of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale attached to said sheriff's certificate of mortgage foreclosure, sale in which printed notice the mortgage and its recording was properly described.

Subdivision 19. That prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage, or the recovery of the debt secured thereby and such action or proceeding had not been discontinued.

Subdivision 20. Every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes as against the objection that at the time and place of sale the sheriff considered and accepted a bid submitted to him prior to the date of sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale.

Subdivision 21. Every mortgage foreclosure sale by advertisement, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that such sale was postponed by the sheriff to a date subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement.

Subdivision 22. That in all mortgage foreclosure sales by advertisement by a representative appointed by a court of competent jurisdiction in another state or county and an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county such foreclosure sale and the record thereof are hereby legalized and confirmed as against any objection that there was not recorded with such letters or other record of authority the further certificate that said letters or other record of authority were still in force and effect.

Subdivision 23. That the sheriff's affidavit of sale correctly stated in words the sum for which said premises were bid in and purchased by the mortgagee, but incorrectly stated the same in figures immediately following the correct amount in words.

Subdivision 24. That prior to the year 1913, the mortgagee failed to execute and cause to be filed a power of attorney.

Section 2. Subdivision 1. In all mortgage foreclosure sale by action wherein heretofore the report of sale has been confirmed by order filed in the action and a certificate of sale was thereafter executed in proper form but not recorded or filed within 20 days thereafter such certificate and the later record thereof are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded or filed within such 20 days.

Subdivision 2. In all mortgage foreclosure sales by action wherein heretofore the report of sale was made and presented to the court and the sale confirmed by an order filed in the action, but the report was not filed with the clerk until after the filing therein of the order of confirmation, and in which the certificate of sale was executed in proper form but recorded more than 20 days after such confirmation, but within one year from the date of sale, such certificate and the record thereof and the subsequently filed report of sale are hereby legalized with the same effect as if such certificate had been executed, acknowledged, and recorded within such 20 days and as if such report of sale had been filed in the action at the time of filing the order of confirmation.

Section 3. In any mortgage foreclosure sale of real estate subsequent to the enactment of Laws 1933, Chapter 339, where before the expiration of the period of redemption, the purchaser at foreclosure sale without court order, entered into an agreement with the mortgagor, extending the period of redemption, such foreclosure proceedings, sale, and sheriff's certificate, issued therein, are hereby validated to the same extent as they would have been if such extension had been granted by court order, as against the objection or claim that such agreement waived or annulled the sale.

Section 4. All acknowledgements of the execution of any power of attorney, and the witnessing of the execution thereof, in which power of attorney the attorney authorized to foreclose said mortgage, acted as one of the witnesses on said power of attorney and as a notary public, under which power of attorney, said attorney so acting as a witness and notary public also acted as the attorney in charge of said foreclosure proceedings, are hereby legalized and declared in all respects valid as against the claim that said attorney had no legal right to act as a witness on the execution of said power of attorney, or to act as a notary public in taking the acknowledgment of the execution of said power of attorney.

Section 5. That every mortgage foreclosure sale by advertisement by a representative appointed by a court of competent jurisdiction in another state or county in

which before sale an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of his authority were still in force, is hereby legalized and made valid and effective to all intents and purposes notwithstanding such omission.

Section 6. That every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized, made valid, and effective to all intents or purposes as against the objection that the notice of mortgage foreclosure sale correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located.

Section 7. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections that the date of the recording or filing of the mortgage in the office of the register of deeds or registrar of titles is incorrectly noted on the mortgage by the officer recording or filing the same and is likewise incorrectly stated in the notice of sale or in the certificate of sale or both, or in any of the foreclosure papers, affidavits or instruments pertaining thereto.

Section 8. Every real estate mortgage foreclosure sale by advertisement made in this state prior to January 1, 1933, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county in this state, together with the record of such foreclosure, is hereby legalized and made valid as against the objection that no power of attorney to foreclosure, said mortgage, as provided in Section 9606 of Mason's 1927 Minnesota Statutes, was ever given or recorded or registered.

Section 9. Every mortgage foreclosure sale by advertisement heretofore made in this state, prior to the year, 1880, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections, that no notice was served upon the occupant of the premises, if occupied, and that no affidavit of vacancy was filed if the premises were unoccupied.

Section 9½. Every mortgage foreclosure sale made in this state by advertisement prior to January 1, 1938, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that the mortgage and the foreclosure thereof was barred by the statute of limitations at the time of the foreclosure proceedings and sale.

Section 10. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of title of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections that the foreclosure was made by an assignee of the mortgage and there was not at the time of the foreclosure a valid record of an assignment of the mortgage, although there was of record in the office of the register of deeds or registrar of titles an assignment of record which was not properly attested and acknowledged to entitle the same to record.

Section 11. The provisions of this act shall not affect any action or proceeding now pending or which shall be commenced within six months after the passage thereof, in any of the courts of this state involving the validity of such foreclosure, nor shall the validity of any provision of this act be questioned in any action or proceeding hereafter brought unless such action or proceeding be commenced within six months after the passage of this act.

Section 12. The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act.

Act Mar. 16, 1943, c. 142, reads as follows:

"Section 1. **Mortgage foreclosure sales legalized and validated.**—Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the register of titles of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections, viz:

Subdivision 1. **Power of attorney.**—That the power of attorney, recorded or filed in the proper office prior to the passage of this act, to foreclose the mortgage, provided for by Mason's Minnesota Statutes of 1927, Section 9606:

(a) Did not definitely describe and identify the mortgage.

(b) Was not sufficiently witnessed or acknowledged, or was witnessed, and/or the acknowledgment of the execution of the same was taken, by the person to whom such power was granted, or if executed by a corporation that the corporate seal was not affixed thereto.

(c) Had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after, such sale.

(d) Was executed before there was default, or was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice.

(e) Did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties.

Subdivision 2. **Notice of sale.**—That the notice of sale:

(a) Was published only five times, or that it was published six times but not for six weeks prior to the date of sale.

(b) Properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises.

(c) Was published for six full weeks and the mortgage sale was postponed and the original notice, together with notice of postponement, was regularly published in at least one issue of the same newspaper intervening between the last publication of the original notice, and the date to which the sale was postponed.

(d) Correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, and/or failed to state or state correctly the year of such sale.

(e) Correctly described the real estate but omitted the county and state in which said real estate is located.

(f) Did not state the amount due or failed to state the correct amount due or claimed to be due.

(g) Described the place where the sale was to take place as a city instead of a village; or village instead of city.

(h) In one or more of the publications thereof, designated either a place or a time of sale other than that stated in the certificate of sale.

(i) Failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee.

(j) Failed to state or incorrectly stated the name of the mortgagor, the mortgagee or assignee of mortgagee.

(k) Was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied.

(*l*) Was not served upon all of the parties in possession of the mortgaged premises provided it was served upon one or more of such parties.

(m) Was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale.

(n) Gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa.

(*o*) Where the notice of mortgage foreclosure sale of the premises described in the notice was served personally upon the occupants of the premises as such, but said service was less than four weeks prior to the appointed time of sale.

Subdivision 3. **Parcels.**—That distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel.

Subdivision 4. **Copies of order.**—That no authenticated copy of the order appointing, or letters issued to a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded, provided such order or letters have been filed or recorded in the proper office prior to the passage of this act.

Subdivision 5. **Assignments.**—That said mortgage was assigned by a decree of a probate court in which decree the mortgage was not specifically or sufficiently described.

(a) That the mortgage foreclosed had been assigned by the final decree of the probate court to the heirs, devisees or legatees of the deceased mortgagee, or his assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the probate court, the representative had assigned the mortgage to one of the heirs, devisees or legatees named in such final decree, and such assignment placed of record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees or legatees named in such final decree, and the mortgaged premises bid in

at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits, recorded in the office of the register of deeds of the proper county.

Subdivision 6. **Sheriff's certificate.**—That the sheriff's certificate of sale and/or any of the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale but have been executed and filed or recorded prior to the passage of this act.

Subdivision 7. **Sheriff's certificate.**—That the sheriff's certificate of sale described the sale as being held in the city of Hennepin whereas the sale was actually conducted in a city of the county of Hennepin.

Subdivision 8. **Hour of sale.**—That the hour of sale was omitted from the notice of sale, or from the sheriff's certificate of sale.

Subdivision 9. **Payment of mortgage registry tax.**—That prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to the passage of this act.

Subdivision 10. **Insufficient registration tax.**—That an insufficient registration tax had been paid on the mortgage.

Subdivision 11. **Dates.**—That the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the register of deeds or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments.

Subdivision 12. **Mortgage foreclosure on legal holiday.**—That the mortgage foreclosure sale was held upon a legal holiday.

Subdivision 13. **Lis pendens.**—That no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in Mason's Minnesota Statutes of 1927, Section 8303, was filed with the registrar of titles and a memorial thereof entered on the register at the time of or prior to the commencement of such proceeding.

Subdivision 14. **Power of attorney.**—That the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state his representative capacity.

Subdivision 15. **Omitted words.**—That the mortgage deed contained the word "Minn." immediately following the true and correct name of the corporate mortgagee, and the power of attorney to foreclose such mortgage, and the notice of mortgage foreclosure sale were executed by the corporate mortgagee in its true and correct name, omitting therefrom the word "Minn." as recited and contained in the mortgage immediately following the name of the corporate mortgagee.

Subdivision 16. **Description.**—That the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale.

Subdivision 17. **Notarial seal.**—That the seal of the notary was omitted from the certificate of acknowledgment of the sheriff or deputy sheriff, or the affidavit of costs and disbursements attached to the mortgage foreclosure record, the said affidavit of costs and disbursements being otherwise properly executed.

Subdivision 18. **Year of recording.**—That the year of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale attached to said sheriff's certificate of mortgage foreclosure, sale in which printed notice the mortgage and its recording was properly described.

Subdivision 19. **Actions to foreclose.**—That prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage, or the recovery of the debt secured thereby and such action or proceeding had not been discontinued.

Subdivision 20. **Bids made prior to date of sale.**—Every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes as against the objection that at the time and place of sale the sheriff considered and accepted a bid submitted to him prior to the date of sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale.

Subdivision 21. **Postponement of sale.**—Every mortgage foreclosure sale by advertisement, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that such sale was postponed by the sheriff to a date subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement.

Subdivision 22. **Certificates of appointment.**—That in all mortgage foreclosure sales by advertisement by a representative appointed by a court of competent jurisdiction in another state or county and an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county such foreclosure sale and the record thereof are hereby legalized and confirmed as against any objection that there was not recorded with such letters or other record of authority the further certificate that said letters or other record of authority were still in force and effect.

Subdivision 23. **Sheriff's affidavit.**—That the sheriff's affidavit of sale correctly stated in words the sum for which said promises were bid in and purchased by the mortgagee, but incorrectly stated the same in figures immediately following the correct amount in words.

Subdivision 24. **Power of attorney.**—That prior to the year of 1913, the mortgagee failed to execute and cause to be filed a power of attorney.

Sec. 2. Subdivision 1. **Recording.**—In all mortgage foreclosure sale by action wherein heretofore the report of sale has been connfirmed by order filed in the action and a certificate of sale was thereafter executed in proper form but not recorded or filed within 20 days thereafter such certificate and the later record thereof are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded or filed within such 20 days.

Subdivision 2. **Recording.**—In all mortgage foreclosure sales by action wherein heretofore the report of sale was made and presented to the court and the sale confirmed by an order filed in the action, but the report was not filed with the clerk until after the filing therein of the order of confirmation, and in which the certificate of sale was executed in proper form but recorded more than 20 days after such confirmation, but within one year from the date of sale, such certificate and the record thereof and the subsequently filed report of sale are hereby legalized with the same effect as if such certificate had been executed, acknowledged, and recorded within such 20 days and as if such report of sale had been filed in the action at the time of filing the order of confirmation.

Sec. 3. **Extentions validated.**—In any mortgage foreclosure sale of real estate subsequent to the enactment of Laws 1933, Chapter 339, where before the expiration of the period of redemption, the purchaser at foreclosure sale without court order, entered into an agreement with the mortgagor, extending the period of redemption, such foreclosure proceedings, sale, and sheriff's certificate, issued therein, are hereby validated to the same extent as they would have been if such extension had been granted by court order, as against the objection or claim that such agreement waived or annulled the sale.

Sec. 4. **Acknowledgments validated.**—All acknowledgments of the execution of any power of attorney, and the witnessing of the execution thereof, in which power of attorney the attorney authorized to foreclose said mortgage, acted as one of the witnesses on said power of attorney and as a notary public, under which power of attorney, said attorney so acting as a witness and notary public also acted as the attorney in charge of said foreclosure proceedings, are hereby legalized and declared in all respects valid as against the claim that said attorney had no legal right to act as a witness on the execution of said power of attorney, or to act as a notary public in taking the acknowledgment of the execution of said power of attorney.

Sec. 5. **Recording of certificate.**—That every mortgage foreclosure sale by advertisement by a representative appointed by a court of competent jurisdiction in another state or county in which before sale an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of his authority were still in force, is hereby legalized and made valid and effective to all intents and purposes notwithstanding such omission.

Sec. 6. **Location of property.**—That every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized, made valid, and effective to all intents or purposes as against the objection that the notice of mortgage foreclosure sale correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located.

Sec. 7. **Date of recording and filing.**—Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes,

as against objections that the date of the recording or filing of the mortgage in the office of the register of deeds or registrar of titles is incorrectly noted on the mortgage by the officer recording or filing the same and is likewise incorrectly stated in the notice of sale or in the certificate of sale or both, or in any of the foreclosure papers, affidavits or instruments pertaining thereto.

Sec. 8. **Power of attorney.**—Every real estate mortgage foreclosure sale by advertisement made in this state prior to January 1, 1933, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county in this state, together with the record of such foreclosure, is hereby legalized and made valid as against the objection that no power of attorney to foreclose said mortgage, as provided in Section 9606 of Mason's 1927 Minnesota Statutes, was ever given or recorded or registered.

Sec. 9. **Affidavit of vacancy.**—Every mortgage foreclosure sale by advertisement heretofore made in this state, prior to the year, 1880, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections, that no notice was served upon the occupant of the premises, if occupied, and that no affidavit of vacancy was filed if the premises were unoccupied.

Sec. 9½. **Statutes of Limitations.**—Every mortgage foreclosure sale made in this state by advertisement prior to January 1, 1938, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that the mortgage and the foreclosure thereof was barred by the statute of limitations at the time of the foreclosure proceedings and sale.

Sec. 10. **Assignee of mortgagee.**—Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of title of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections that the foreclosure was made by an assignee of the mortgage and there was not at the time of the foreclosure a valid record of an assignment of the mortgage, although there was of record in the office of the register of deeds, or registrar of titles an assignment of record which was not properly attested and acknowledged to entitle the same to record.

Sec. 11. **Not to affect pending action.**—The provisions of this act shall not affect any action or proceeding now pending or which shall be commenced within six months after the passage thereof, in any of the courts of this state involving the validity of such foreclosure, nor shall the validity of any provision of this act be questioned in any action or proceeding hereafter brought unless such action or proceeding be commenced within six months after the passage of this act.

Sec. 12. **Provisions severable.**—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act."

Assignments of mortgages legalized. Laws 1943, c. 444.

21½. Municipal bonds.

Refunding bonds, and proceedings of certain villages and cities, §1946-12a.

Laws 1941, c. 3, legalizes proceedings for funding bonds for liquidating outstanding warrant of indebtedness in certain counties having population of not less than 15,000 nor more than 17,000.

Act Apr. 10, 1941, c. 207, validates bond issues made for purpose of constructing sewers, pursuant to agreement with Works Progress Administration, in villages of 1000 to 2000 population.

Proceedings for authorization and issuance of bridge bonds by certain county. Act Apr. 14, 1941, c. 224, §1.

Outstanding bonds of certain independent school districts. Act Apr. 16, 1941, c. 263, §5.

23. Notices.

Probate proceedings prior to June 1, 1939. Act Mar. 28, 1941, c. 79.

24. Plats.

Vacation of streets or alleys in any plat. Act Mar. 6, 1941, c. 46.

28. State lands.

Laws 1943, c. 332, §1. Conveyance by state auditor, validated, §2139-27kk.

Act Apr. 9, 1943, c. 353, §1, conveyance by normal school president at Winona.

31. Townships and school districts.

Town expenditures and contracts, §1108-15f.

Act Apr. 1, 1941, c. 113, validates floating indebtedness of certain school districts comprising more than 60 congressional townships, with an assessed valuation of less than $3,000,000.

Town expenditures and contracts. Act Apr. 25, 1941, c. 446, §3.

32. Vacation proceedings.

Vacation of streets or alleys in any plat. Act Mar. 6, 1941, c. 46.

40. Conveyances between husband and wife.

Act Apr. 21, 1941, c. 343. Legalizes conveyances made prior to December 29, 1926.

Laws 1943, c. 26, made prior to date of act validated. See §8229-4a.

Laws 1943, c. 418, §1.

43. Tax sale.

Laws 1943, c. 239, §1, legalizing holding more than one forfeiture tax sale during year. §2139-15g.

43½. Taxation.

Laws 1943, c. 239, §§2, 3, legalizing payments to county treasurer and auditor of delinquent repurchase installment, or confession of judgment. §§2176-16hh, 2176-30aa.

Real estate judgments for delinquent taxes. Laws 1943, c. 467.