

## CHAPTER 109

## TOWN

**109.01 DEFINITIONS.**

**HISTORY.** 1909 c. 127 s. 1; G.S. 1913 s. 5634; 1917 c. 293 s. 1; G.S. 1923 s. 6841; M.S. 1927 s. 6841.

Laws 1909, Chapter 127, providing for the construction of town ditches requires the petitioners to bear the entire expense and no liability is imposed upon the town. The town officers act as agents of the law and not as representatives of the town. *Fairfax v Vlaar*, 124 M 78, 144 NW 58.

Private property cannot be taken for ditch purposes unless the ditch will serve a public purpose. The owner has the right to present to and have determined by the courts the question of the taking of his property. If aggrieved, his remedy is review by certiorari and not injunction. *Webb v Lucas*, 125 M 403, 147 NW 273.

A town ditch may be established by adjoining towns even though a county line divides them. Defendant cannot complain of the construction of two laterals not in the original plan by at least one of which his land is benefited, the cost of the two not increasing by more than two per cent the cost of the entire project. *State v Radke*, 161 M 416, 201 NW 613.

The rule laid down in *Sheehan v Flynn*, 59 M 436, 61 NW 462, that by a reasonable drainage project on his own premises a landowner may dispose of surface water as best he can so long as he does not unreasonably injure his neighbor, applies only to private rights. It has no application to public drainage proceedings wherein the statute requires compensation to all who suffer damage. *Larson v Busse*, 208 M 566, 295 NW 47.

**109.02 PETITION.**

**HISTORY.** 1909 c. 127 s. 2; G.S. 1913 s. 5635; 1919 c. 471 s. 14; G.S. 1923 s. 6842; M.S. 1927 s. 6842.

In the construction of town ditches, the town is in no way liable and the entire expense rests upon the petitioners. *Fairfax v Vlaar*, 124 M 78, 144 NW 458.

It is sufficient for the petition to designate the lower terminus of the ditch as the "deepest point" in a specified lake. *State v Radke*, 161 M 416, 201 NW 613.

A public drainage proceeding requires compensation to all who suffer damage. 208 M 566, 295 NW 47.

**109.03 PROCEEDINGS.**

**HISTORY.** 1909 c. 127 s. 3; G.S. 1913 s. 5636; 1917 c. 380 s. 1; 1919 c. 471 s. 14½; G.S. 1923 s. 6843; M.S. 1927 s. 6843.

**109.04 NOTICE OF HEARING.**

**HISTORY.** 1909 c. 127 s. 4; G.S. 1913 s. 5637; G.S. 1923 s. 6844; M.S. 1927 s. 6844.

**109.05 HEARING.**

**HISTORY.** 1909 c. 127 s. 5; G.S. 1913 s. 5638; G.S. 1923 s. 6845; M.S. 1927 s. 6845.

**109.06 ENGINEER'S REPORT; VIEWERS.**

**HISTORY.** 1909 c. 127 s. 6; G.S. 1913 s. 5639; 1917 c. 380 s. 2; G.S. 1923 s. 6846; M.S. 1927 s. 6846.

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## 109.07 ATTORNEY AT LAW.

HISTORY. 1909 c. 127 s. 7; G.S. 1913 s. 5640; G.S. 1923 s. 6847; M.S. 1927 s. 6847.

## 109.08 ESTABLISHING DITCH.

HISTORY. 1909 c. 127 s. 8; G.S. 1913 s. 5641; 1917 c. 380 s. 3; G.S. 1923 s. 6848; M.S. 1927 s. 6848.

Parties to a ditch proceeding after completion of the proceedings and construction of the ditch cannot be held to attack the validity of the action. *State v Chas. A. Lindberg*, 120 M 147, 139 NW 286.

A party aggrieved cannot maintain an action to enjoin the construction of a ditch. His only remedy is review by certiorari. *Webb v Lucas*, 125 M 403, 147 NW 273.

No abatement of principal and interest on bonds may be obtained and the board has no power to relieve the property owners, nor spread the tax as a general tax collectible from the entire county. See *Kasper v Minn. Tax Comm.*, 137 M 37, as to a possible remedy. OAG Nov. 10, 1936 (901a).

## 109.09 ASCERTAINING BENEFITS AND DAMAGES.

HISTORY. 1909 c. 127 s. 9; G.S. 1913 s. 5642; G.S. 1923 s. 6849; M.S. 1927 s. 6849.

## 109.10 COSTS AND EXPENSES.

HISTORY. 1909 c. 127 s. 10; G.S. 1913 s. 5643; G.S. 1923 s. 6850; M.S. 1927 s. 6850.

## 109.11 SECURITIES REQUIRED.

HISTORY. 1909 c. 127 s. 11; G.S. 1913 s. 5644; G.S. 1923 s. 6851; M.S. 1927 s. 6851.

## 109.12 AUTHORITY TO ENTER LANDS.

HISTORY. 1909 c. 127 s. 12; G.S. 1913 s. 5645; G.S. 1923 s. 6852; M.S. 1927 s. 6852.

## 109.13 APPEAL TO DISTRICT COURT; JURY.

HISTORY. 1909 c. 127 s. 13; G.S. 1913 s. 5646; G.S. 1923 s. 6853; M.S. 1927 s. 6853.

Trial by jury is a matter of right under the code. 11 MLR 452.

## 109.14 APPEAL FROM ORDER REFUSING TO ESTABLISH.

HISTORY. 1909 c. 127 s. 14; G.S. 1913 s. 5647; G.S. 1923 s. 6854; M.S. 1927 s. 6854.

## 109.15 APPEAL TO SUPREME COURT.

HISTORY. 1909 c. 127 s. 15; G.S. 1913 s. 5648; G.S. 1923 s. 6855; M.S. 1927 s. 6855.

## 109.16 EXTENSION OF TIME FOR CONSTRUCTION.

HISTORY. 1909 c. 127 s. 16; G.S. 1913 s. 5649; G.S. 1923 s. 6856; M.S. 1927 s. 6856.

## 109.17 JOB, HOW SOLD; CONTRACT; BOND.

HISTORY. 1909 c. 127 s. 17; G.S. 1913 s. 5650; G.S. 1923 s. 6857; M.S. 1927 s. 6857.

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## 109.18 DRAINAGE; TOWN

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### 109.18 BOND AND CONTRACT.

HISTORY. 1909 c. 127 s. 18; G.S. 1913 s. 5651; G.S. 1923 s. 6858; M.S. 1927 s. 6858.

Work in dismantling a ditch dredge and reassembling the parts and putting the dredge in condition to perform a drainage contract is a necessary part of the work incident to the performance of the contract and a proper liability against the surety on the contractor's bond. The statutes, by declaring the contractor a public officer, place the contractor's bond in respect to action thereon in the same position as other bonds of public officers. *Rosman v Bankers*, 126 M 435, 148 NW 454.

### 109.19 MODIFICATION OF PLANS.

HISTORY. 1909 c. 127 s. 19; G.S. 1913 s. 5652; G.S. 1923 s. 6859; M.S. 1927 s. 6859.

The modification of the contract by the construction of two laterals one of which benefited the complainant, but the total cost of the two did not increase by more than two per cent the expense of the entire project, is not such modification that the petitioner had a right to complain. *State v Radke*, 161 M 416, 201 NW 613.

### 109.20 FAILURE OF CONTRACTORS.

HISTORY. 1909 c. 127 s. 20; G.S. 1913 s. 5653; G.S. 1923 s. 6860; M.S. 1927 s. 6860.

### 109.21 DAMAGES, HOW PAID.

HISTORY. 1909 c. 127 s. 21; G.S. 1913 s. 5654; G.S. 1923 s. 6861; M.S. 1927 s. 6861.

### 109.22 SUPERVISION; COMPLETION, CERTIFICATE OF.

HISTORY. 1909 c. 127 s. 22; G.S. 1913 s. 5655; G.S. 1923 s. 6862; M.S. 1927 s. 6862.

A complaint which does not show that a certificate was made nor that the facts were such that the inspectors ought to have made it and refused to do so, fails to state a cause of action. *Fairfax v Vlaar*, 124 M 78, 144 NW 458.

### 109.23 TABULAR STATEMENT AND SUMMARY.

HISTORY. 1909 c. 127 s. 23; G.S. 1913 s. 5656; G.S. 1923 s. 6863; M.S. 1927 s. 6863.

### 109.24 TABULAR STATEMENT, HOW EXECUTED; RECORD; LIENS.

HISTORY. 1909 c. 1927 s. 24; G.S. 1913 s. 5657; G.S. 1923 s. 6864; M.S. 1927 s. 6864.

### 109.25 COLLECTION OF ASSESSMENTS; INTEREST; DISCHARGE OF LIEN.

HISTORY. 1909 c. 127 s. 25; G.S. 1913 s. 5658; G.S. 1923 s. 6865; M.S. 1927 s. 6865.

### 109.26 ROADS BENEFITED; LIABILITY OF MUNICIPALITIES; ASSESSMENTS, HOW COLLECTED.

HISTORY. 1909 c. 127 s. 26; G.S. 1913 s. 5659; G.S. 1923 s. 6866; M.S. 1927 s. 6866.

Creation of the assessment district; apportionment of the burden. 10 MLR 428.

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## 109.27 ASSESSMENTS, HOW DISPOSED OF.

HISTORY. 1909 c. 127 s. 27; G.S. 1913 s. 5660; G.S. 1923 s. 6867; M.S. 1927 s. 6867.

## 109.28 DOCUMENTS, WHERE FILED.

HISTORY. 1909 c. 127 s. 28; G.S. 1913 s. 5661; G.S. 1923 s. 6868; M.S. 1927 s. 6868.

## 109.29 MEETINGS OF BOARD, HOW CALLED.

HISTORY. 1909 c. 127 s. 29; G.S. 1913 s. 5662; G.S. 1923 s. 6869; M.S. 1927 s. 6869.

## 109.30 APPOINTMENT OF OTHER ENGINEERS.

HISTORY. 1909 c. 127 s. 30; G.S. 1913 s. 5663; G.S. 1923 s. 6870; M.S. 1927 s. 6870.

## 109.31 DUTY OF RAILROADS; PENALTY.

HISTORY. 1909 c. 127 s. 31; G.S. 1913 s. 5664; G.S. 1923 s. 6871; M.S. 1927 s. 6871.

## 109.32 REPAIRING TOWNSHIP DITCHES.

HISTORY. 1939 c. 384 s. 2; M. Supp. s. 6872-1.

## 109.33 OBSTRUCTING OR INJURING WORK; FAILURE OF OFFICERS; PENALTIES; TREBLE DAMAGES.

HISTORY. 1909 c. 127 s. 33; G.S. 1913 s. 5666; G.S. 1923 s. 6873; M.S. 1927 s. 6873.

In an action brought by a contractor constructing a town ditch for damages for interference with such construction, wilful or negligent interference must be proven and also the amount the contractor has been damaged. *Phillips v Webb*, 125 M 300, 146 NW 1100.

## 109.34 COMPENSATION OF ENGINEER AND VIEWERS.

HISTORY. 1909 c. 127 s. 34; G.S. 1913 s. 5667; 1917 c. 380 s. 4; G.S. 1923 s. 6874; M.S. 1927 s. 6874.

## 109.35 PARTIES NOT AFFECTED CANNOT QUESTION PROCEEDINGS.

HISTORY. 1909 c. 127 s. 35; G.S. 1913 s. 5668; G.S. 1923 s. 6875; M.S. 1927 s. 6875.

## 109.36 RECORD OF EVIDENCE.

HISTORY. 1909 c. 127 s. 37; G.S. 1913 s. 5670; G.S. 1923 s. 6877; M.S. 1927 s. 6877.

## 109.37 ORDERS AND NOTICES, HOW SERVED.

HISTORY. 1909 c. 127 s. 38; G.S. 1913 s. 5671; G.S. 1923 s. 6878; M.S. 1927 s. 6878.