

## CHAPTER 126

## ACTIONS AND PENALTIES

**126.01 ACTIONS BY DISTRICTS.**

**HISTORY.** R.S. 1851 c. 79 s. 13; P.S. 1858 c. 69 s. 13; G.S. 1866 c. 36 s. 77; 1873 c. 1 s. 118; 1877 c. 74 subc 8 s. 1; G.S. 1878 c. 36 s. 116; G.S. 1894 s. 3817; R.L. 1905 s. 1457; G.S. 1913 s. 2995; G.S. 1923 s. 3097; M.S. 1927 s. 3097; 1941 c. 169 art. 7 s. 1.

**126.02 ACTIONS AGAINST DISTRICTS.**

**HISTORY.** R.S. 1851 c. 79 s. 15; P.S. 1858 c. 69 s. 13; G.S. 1866 c. 36 s. 78; 1873 c. 1 s. 119; 1877 c. 74 subc. 8 s. 2; G.S. 1878 c. 36 s. 117; G.S. 1894 s. 3818; R.L. 1905 s. 1458; G.S. 1913 s. 2996; G.S. 1923 s. 3098; M.S. 1927 s. 3098; 1941 c. 169 art. 7 s. 2.

An order on the treasury of the district having been duly issued to the plaintiff for the amount due her as teacher, and the same having been duly presented, and payment demanded and refused, an action may be maintained against the district, even though a writ of mandamus might lie against the treasurer to compel him to pay the order. *Martin v Elwood*, 35 M 309, 29 NW 135. See *Brown v Fitcher*, 91 M 41, 97 NW 416; *O'Neill v City of St. Paul*, 104 M 491, 116 NW 114.

This section, which authorizes actions to be brought against trustees in their official capacity, does not change the rule that school districts are not liable to individuals for mere neglect or nonfeasance in failing to make repairs. *Bank v Brainerd School District*, 49 M 106, 51 NW 814. See 7 MLR 597; See also 1940 OAG 59, March 27, 1939.

Where officers of a school district, without lawful authority, borrow and expend money for the completion of a school house, no liability attaches to the district therefor, notwithstanding the benefit received from such expenditure. *Young v Board of Education*, 54 M 385, 55 NW 1112.

Evidence sustains a judgment rendered by a justice of the peace against a school district for services in hauling a load of lumber to aid in the construction of a school house. *Martin v School District*, 93 M 409, 101 NW 952.

The fact that previous statutes relating to school districts provide only for actions on contracts or for acts or omissions in the nature of tort, is not important. Laws 1911, Chapter 82, creates an obligation, and a right to its enforcement arises by necessary implication. *Associated Schools v School District*, 122 M 254, 142 NW 325.

A school district is not liable at common law for injuries to a pupil resulting from its negligent operation of a bus used in transporting pupils at public expense. *Allen v Ind. School District*, 173 M 5, 216 NW 533; *Olsen v Ind. and Cons. School District*, 175 M 201, 220 NW 606.

A failure by a school district to perform a governmental function, or negligence in the performance thereof, is not actionable, whether it be termed a nuisance or mere negligence. *Mokovich v Ind. School District*, 177 M 446, 225 NW 292.

Section 126.02, making school districts liable "for an injury to the rights of the plaintiff arising from some act or omission of such board," does not apply to the exercise of governmental functions. *Bang v Ind. School District*, 177 M 454, 225 NW 449.

Governmental responsibility for torts. 26 MLR 336, 724.

**126.03 JUDGMENT PAID BY TREASURER.**

**HISTORY.** R.S. 1851 c. 79 ss. 17, 19, 20; P.S. 1858 c. 69 ss. 17, 19, 20; G.S. 1866 c. 36 s. 80; 1873 c. 1 s. 121; 1877 c. 74 subc. 8 s. 4; G.S. 1878 c. 36 s. 119; G.S. 1894 s. 3820; R.L. 1905 s. 1459; G.S. 1913 s. 2997; G.S. 1923 s. 3099; M.S. 1927 s. 3099; 1941 c. 169 art. 7 s. 3.

A public school house is not subject to a mechanic's lien under Laws 1887, Chapter 170. *Jordan v Board of Education*, 39 M 298, 39 NW 801.

This section authorizes the treasurer of a school district to pay a judgment against the trustees of the district only out of moneys not otherwise appropriated. He has no authority to do so out of moneys of the district applicable only to other specific purposes. *School District v Roach*, 43 M 495, 45 NW 1097.

Under the Duluth charter the only remedy provided for the enforcement of payment of an assessment for local city improvements is one not applicable to public property. No other remedy can be implied. This fact is strongly indicative of an intent that such property shall not be subject to the assessment, and under the charter public school property is not subject to such assessment. *State v Board of Education*, 133 M 386, 158 NW 635.

**126.04 TAX LEVY FOR UNPAID JUDGMENT.**

**HISTORY.** R.S. 1851 c. 79 ss. 17, 18, 19; P.S. 1858 c. 69 ss. 17, 18, 19; G.S. 1866 c. 36 ss. 81, 82; 1873 c. 1 ss. 122, 123; 1877 c. 74 subc. 8 s. 5; G.S. 1878 c. 36 ss. 120, 121; G.S. 1894 ss. 3821, 3822; R.L. 1905 s. 1460; G.S. 1913 s. 2998; G.S. 1923 s. 3100; M.S. 1927 s. 3100; 1941 c. 169 art. 7 s. 4.

**126.05 ISSUANCE OF EXECUTION.**

**HISTORY.** R.S. 1851 c. 79 s. 20; P.S. 1858 c. 69 s. 20; G.S. 1866 c. 36 s. 83; 1873 c. 1 s. 124; 1877 c. 74 subc. 8 s. 7; G.S. 1878 c. 36 s. 122; G.S. 1894 s. 3823; R.L. 1905 s. 1461; G.S. 1913 s. 2999; G.S. 1923 s. 3101; M.S. 1927 s. 3101; 1941 c. 169 art. 7 s. 5.

**126.06 ACTION WHEN TRUSTEES RESIGN.**

**HISTORY.** 1878 c. 96 ss. 1 to 6; G.S. 1878 c. 36 ss. 123 to 128; G.S. 1894 ss. 3824 to 3829; R.L. 1905 ss. 1462, 1463; G.S. 1913 ss. 3000, 3001; G.S. 1923 ss. 3102, 3103; M.S. 1927 ss. 3102, 3103; 1941 c. 169 art. 7 s. 6.

There is no statute forbidding a school board from placing its insurance business through an agent who is an alderman of the city. 1940 OAG 116, Aug. 25, 1940 (90c-5).

**126.07 EXCLUSION OR EXPULSION OF PUPILS.**

**HISTORY.** 1864 c. 4 s. 1; G.S. 1866 c. 36 s. 34; 1873 c. 1 s. 47; 1877 c. 74 subc. 6 s. 1; G.S. 1878 c. 36 s. 85; G.S. 1894 s. 3777; R.L. 1905 s. 1402; G.S. 1913 s. 2900; G.S. 1923 s. 2998; M.S. 1927 s. 2998; 1941 c. 169 art. 7 s. 7.

School authorities, including members of boards of education, have authority to temporarily exclude from school attendance pupils who have been exposed to contagious and infectious diseases, and that the danger of contracting and spreading the disease to which such pupils have been exposed is sufficient cause for voting to so exclude them. *Bright v Beard*, 132 M 375, 157 NW 501.

The language of the home rule charter of Minneapolis, by fair implication, confers upon the board of education of that city the power to make and enforce administration rules which exclude children from school who are a menace to their associates. *State ex rel v Probst*, 165 M 361, 206 NW 642.

Section 132.01 uses the word "resides" in the broad sense of being an inhabitant as distinguished from the more restricted sense of domicile, and children of proper age inhabiting an orphan home in a school district are entitled to free education therein. The school board, having refused resident children of proper age admission to its school, is a proper party to mandamus proceedings to en-

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force the rights of such children to free education. State ex rel v School Board of Cons. District, 206 M 63, 287 NW 625.

The school board, having refused resident children of proper age admission to its school, is a proper party to mandamus proceedings to enforce the rights of such children to free education. The board, having acted in behalf of the district in discharge of governmental functions, is not liable for costs or disbursements. State ex rel v School Board, 206 M 63, 287 NW 625.

### 126.08 IMPROPER CLASSIFICATION OF PUPILS.

HISTORY. G.S. 1866 c. 36 s. 34; 1873 c. 1 s. 47; 1877 c. 74 subc. 6 s. 1; G.S. 1878 c. 36 s. 85; G.S. 1894 s. 3777; R.L. 1905 s. 1403; G.S. 1913 s. 2901; G.S. 1923 s. 2999; M.S. 1927 s. 2999; 1941 c. 169 art. 7 s. 8.

### 126.09 REFUSING TO SERVE ON SCHOOL BOARD.

HISTORY. 1873 c. 1 s. 48; 1877 c. 74 subc. 6 s. 2; G.S. 1878 s. 36 s. 86; 1879 c. 41 s. 1; G.S. 1894 s. 3782; R.L. 1905 s. 1404; G.S. 1913 s. 2902; G.S. 1923 s. 3000; M.S. 1927 s. 3000; 1941 c. 169 art. 7 s. 9.

Where, at a regular meeting of a school district, it is voted to have a school kept for a specified time, and sufficient funds are provided, the trustees render themselves liable to the penalty imposed by this section, by neglecting, without excuse, to provide the school the specified time. Soule v Thelander, 31 M 227, 17 NW 373.

### 126.10 FAILURE OF CLERK TO REPORT.

HISTORY. 1873 c. 1 s. 49; 1877 c. 74 subc. 6 s. 3; G.S. 1878 c. 36 s. 87; G.S. 1894 s. 3783; R.L. 1905 s. 1405; G.S. 1913 s. 2903; G.S. 1923 s. 3001; M.S. 1927 s. 3001; 1941 c. 169 art. 7 s. 10.

### 126.11 DRAWING ILLEGAL ORDER.

HISTORY. 1873 c. 1 s. 50; 1877 c. 74 subc. 6 s. 4; G.S. 1878 c. 36 s. 88; G.S. 1894 s. 3784; R.L. 1905 s. 1406; G.S. 1913 s. 2904; G.S. 1923 s. 3002; M.S. 1927 s. 3002; 1941 c. 169 art. 7 s. 11.

Under this section, the issuance of an order by a school district clerk, drawn by him upon the treasurer, for the payment of the wages of a teacher known to him not to have been licensed to teach, and paid out of the funds appropriated for teachers' wages, is an unlawful diversion of the public school funds from their legitimate channel, and subjects him to the penalty prescribed in this section. School District v Thelander, 31 M 333, 17 NW 866.

This section is applicable to the board of education of Duluth. OAG Dec. 3, 1934 (161b-10).

### 126.12 NEGLECTING TO KEEP OR DELIVER RECORDS.

HISTORY. 1873 c. 1 s. 51; 1877 c. 74 subc. 6 s. 5; G.S. 1878 c. 36 s. 89; G.S. 1894 s. 3785; R.L. 1905 s. 1407; G.S. 1913 s. 2905; G.S. 1923 s. 3003; M.S. 1927 s. 3003; 1941 c. 169 art. 7 s. 12.

### 126.13 FAILURE OF AUDITOR TO REPORT.

HISTORY. 1877 c. 74 subc. 6 s. 7; G.S. 1878 c. 36 s. 91; G.S. 1894 s. 3787; R.L. 1905 s. 1408; G.S. 1913 s. 2906; G.S. 1923 s. 3004; M.S. 1927 c. 3004; 1941 c. 169 art. 7 s. 13.

### 126.14 FAILURE OF COUNTY SUPERINTENDENT TO REPORT.

HISTORY. 1873 c. 1 s. 52; 1877 c. 74 subc. 6 s. 6; G.S. 1878 c. 36 s. 90; G.S. 1894 s. 3786; R.L. 1905 s. 1409; G.S. 1913 s. 2907; G.S. 1923 s. 3005; M.S. 1927 s. 3005; 1941 c. 169 art. 7 s. 14.

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### 126.15 DEALING IN SCHOOL SUPPLIES.

HISTORY. 1877 c. 74 subc. 6 s. 8; G.S. 1878 c. 36 s. 92; G.S. 1894 s. 3788; R.L. 1905 s. 1410; G.S. 1913 s. 2908; G.S. 1923 s. 3006; M.S. 1927 s. 3006; 1941 c. 169 art. 7 s. 15.

A criminal prosecution does not lie against a teacher selling merchandise to pupils, as any liability under this section could only be enforced by a civil action. OAG Nov. 27, 1935 (494a).

### 126.16 DUTY OF OFFICERS TO REPORT VIOLATIONS OF LAW.

HISTORY. 1877 c. 74 subc. 6 s. 9; G.S. 1878 c. 36 s. 93; G.S. 1894 s. 3789; R.L. 1905 s. 1411; G.S. 1913 s. 2911; G.S. 1923 s. 3007; M.S. 1927 s. 3007; 1941 c. 169 art. 7 s. 16.

The cause of action for the penalty under section 126.09 is in the district, and the action for it may be brought by a director or a freeholder in his own name. *Soule v Thelander*, 31 M 227, 17 NW 373.