

## CHAPTER 606

## REVIEW OF DECISIONS OF ADMINISTRATIVE BOARDS AND CERTIORARI

**606.01 CERTIORARI, WITHIN WHAT TIME WRIT ISSUED.**

HISTORY. 1909 c. 410 s. 1; G.S. 1913 s. 8313; G.S. 1923 s. 9769; M.S. 1927 s. 9769.

1. Generally
2. Relief granted
3. Relief not granted
4. Workmen's compensation
5. Drainage proceedings

**1. Generally**

Where the time has expired, a stipulation of the parties does not give the court jurisdiction. *State ex rel v Bashko*, 127 M 519, 148 NW 1082.

A writ directed to a judge of a certain judicial district, naming him and specifying the district, is sufficient without being directed to the "district court" of that district. *State ex rel v Nelson*, 137 M 265, 161 NW 714, 163 NW 510.

After the period allowed for an appeal from an order or judgment of the probate court, there can be no review on the merits by certiorari. *First Trust v United States Fidelity*, 161 M 88, 200 NW 848.

In the instant case refusal of writ does not prevent application to trial court for order vacating order granting new trial. *Cox v Selover*, 165 M 50, 205 NW 691.

In certiorari proceedings, the record certified by the tribunal whose proceedings are under review is conclusive. *State ex rel v City of Red Wing*, 175 M 222, 220 NW 611.

In our practice the writ of certiorari is used as a substitute for a writ of error. *Mark v Keller*, 188 M 1, 246 NW 472; *State ex rel v Probate Court*, 199 M 297, 271 NW 879.

The commitment for criminal contempt, which embodies the judgment of conviction, affirmed on certiorari to the supreme court, complies with section 589.14, and authorizes the respondent sheriff to the custody of petitioner. *State ex rel v Syck*, 202 M 252, 277 NW 926.

In reviewing the determination of administrative boards such as the optometry board this court will inquire no further than to determine whether the board kept within its jurisdiction, whether it proceeded upon a proper theory of law, whether its action was arbitrary or oppressive and unreasonable, and whether the evidence affords a reasonable and substantial basis for the order sought to be reviewed. *State ex rel v Jensen*, 205 M 410, 286 NW 305.

**2. Relief granted**

An order of the probate court directing an executor to turn over to decedent's aunt certain funds which he claimed to hold as an individual was a final order and reviewable by writ of certiorari. *In re Martin*, 182 M 576, 235 NW 279.

Extension of time to redeem from a mortgage foreclosure sale under Laws 1933, Chapter 339, is granted by an order and not by judgment, and review of such order is by certiorari. *Swanson v Cross Lake*, 192 M 81, 255 NW 812; *Hjeltness v Johnson*, 195 M 175, 262 NW 158; *Sjodin v Olson*, 195 M 507, 263 NW 543.

In certiorari to review relator's conviction of contempt in violating a temporary injunction, the latter is under collateral attack which must fail unless the injunc-

tion is shown to be a nullity. *Reid v Independent Union*, 200 M 599, 275 NW 300; *Spannaus v Lueck*, 202 M 497, 279 NW 216.

### 3. Relief not granted

An order of the district court denying a motion to dismiss certiorari proceedings instituted to review the action of the board of county commissioners in apportioning school funds is not appealable. *State ex rel v County of Lincoln*, 129 M 300, 152 NW 541.

The order being appealable under section 605.09, certiorari will not lie. *State ex rel v District Court*, 136 M 461, 161 NW 1055; *O'Connell v Canfield*, 166 M 414, 208 NW 181.

The findings of fact of the soldier's bonus board are conclusive in certiorari, unless it is made to appear that a wrong principle of law was applied or there has been a demonstrable mistake of fact. *Williamson v Soldier's Board*, 158 M 532, 197 NW 257.

A writ of certiorari will not lie to a special tribunal no longer in existence. *State ex rel v Soldier's Bonus Board*, 162 M 251, 202 NW 444.

Writ dismissed for failure to serve adverse party within statutory time. *Consolidation of Co. Ditches*, 165 M 493, 206 NW 718.

The action of a city council in annexing territory to the municipality, being legislative and not judicial in character, cannot be reviewed by writ of certiorari. *State ex rel v City Council*, 167 M 307, 209 NW 3.

Writ of certiorari to review order of probate court quashed because obtained too late. *State ex rel v Himsl*, 170 M 101, 212 NW 29.

In certiorari to review a holding of the department of commerce the supreme court makes but a limited review and disturbs its holdings only in the event that it is beyond its jurisdiction, or arbitrary and oppressive, or without foundation in the evidence. *State ex rel v Department of Commerce*, 174 M 200, 219 NW 81.

In an action to prevent the city authorities from pulling plaintiff's taxicabs off the street, injunction and not certiorari is the proper remedy. *National Cab v Kunze*, 182 M 152, 233 NW 838.

Certiorari will not lie to review an intermediate order of the lower court. *Salters v Uhlir*, 196 M 541, 265 NW 333.

It is claimed that the court acted capriciously and arbitrarily in revoking the suspension of execution of the sentence. The return here made to the writ of certiorari does not show such abuse. The writ is discharged and the case remanded. *State ex rel v Municipal Court*, 197 M 143, 266 NW 433.

Where the city police civil service commission classified all police employees of the city and the classifications made are alleged to be erroneous, the proper remedy is certiorari to review the classification made, and not mandamus to compel a reclassification. *State ex rel v Ernest*, 197 M 599, 268 NW 208.

This being an appealable judgment it is not subject to review on certiorari. *Flakne v Metropolitan Life*, 198 M 471, 270 NW 866.

Motions to bring in as parties defendant denied, and the surety company seeks review by certiorari. Writs were quashed. A defendant who has not by answer alleged a counter-claim for affirmative relief against the plaintiff is not entitled to an order bringing in additional parties under the statute. *Levstek v National Surety*, 203 M 324, 281 NW 260.

An order for inspection of books and papers is an intermediate order and not reviewable by certiorari. *Asplund v Brown*, 203 M 571, 282 NW 473.

The Opsahl Co. and its insurers moved to discharge a writ of certiorari on the ground the writ was not served within the time limited for the issuance of the writ. Motion granted. *Haimila v Opsahl*, 208 M 605, 293 NW 599.

The services of two teachers were discontinued by the school board. On certiorari the district court found judgment in favor of the teachers. The board appealed. The decision of the trial court was reversed. *Ging v Board*, 213 M 550, 7 NW(2d) 544.

An order removing a person from public office will not be reviewed by certiorari after the repeal of the statute under which such person claimed the right to hold office. *State ex rel v Brown*, 216 M 135, 12 NW(2d) 180.

An order of reference to a medical board under Laws 1943, Chapter 633, relating to occupational diseases, is neither a final order nor one involving the merits so as to be reviewable on certiorari. *Anderson v Pyramid Co.* 218 M 194, 15 NW(2d) 523.

#### 4. Workmen's compensation

Upon sufficient showing of newly discovered evidence, a judgment awarding compensation may be opened under the statute relative to granting relief in certain cases within a year applies. *State ex rel v District Court*, 134 M 189, 158 NW 825.

The judgment in a compensation case cannot be amended by the district court because of judicial error in it after the time for review in the supreme court has passed; nor because of judicial error in determining the amount of the award. *Connelly v Carnegie*, 148 M 333, 181 NW 857.

The only questions presented are questions of fact, not within the province of the court to determine. *Kostelec v Guthrie*, 161 M 153, 201 NW 141.

Service within 60 days on adverse party of writ of certiorari to review decision of industrial commission should be made on counsel who has appeared for adverse party. Motion to quash is granted. *Perkovich v Oliver Iron Co.* 171 M 519, 214 NW 795.

The jurisdiction of the industrial commission to vacate a decision rendered pursuant to section 176.34 was adequately raised so as to be reviewed on certiorari. *Hawkinson v Mirau*, 196 M 120, 264 NW 438, 265 NW 346.

#### 5. Drainage proceedings

In the absence of a full and complete record, certified on certiorari in review of drainage proceedings, the supreme court will act upon the certificate of the trial court as to the facts therein stated and which are not otherwise shown by the record. *State ex rel v Nelson*, 137 M 265, 161 NW 714, 163 NW 510.

In the first hearing in drainage proceedings the court or county board must determine all questions in the following order: questions of propriety, practicability, and public utility or benefit of the proposed improvement, and the order made is final on such questions reviewable only by certiorari directed to the above particular order. The final order confirming proceedings had in laying out the ditch in compliance with the first order, cannot be reviewed in certiorari. *In re Judicial Ditch*, 156 M 98, 194 NW 402.

The drainage law does not give the petitioners the right to appeal from an order of the district court dismissing proceedings to establish a ditch. The order may be reviewed by certiorari. *Jensen v County Board*, 159 M 140, 198 NW 455.

An order of the district court merging several public and private tile drains, is such a final order as may be reviewed by certiorari. *State ex rel v District Court*, 159 M 428, 199 NW 883.

Actual notice does not take the place of written notice. *In re Judicial Ditch*, 163 M 383, 202 NW 52, 204 NW 318.

#### 606.02 WHEN SERVED.

HISTORY. 1909 c. 410 s. 2; G.S. 1913 s. 8314; G.S. 1923 s. 9770; M.S. 1927 s. 9770.

Service of the writ was made upon respondents and upon the attorney of the petitioners in the ditch proceeding. It was not necessary to name all the petitioners as respondents, and service on their attorney was sufficient notice to them. *State ex rel v Nelson*, 137 M 265, 161 NW 714, 163 NW 510.

Where writ was issued June 30, served on the judge July 11, and on adverse party October 9, that service was too late, and motion to vacate the writ was properly granted. *Re Consolidation of Ditches*, 165 M 493, 206 NW 718.

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## 606.03 SUPREME COURT; COSTS AND DISBURSEMENTS

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Informal service of the writ of certiorari on the adverse party was made within 60 days from notice of the decision. The conduct of the respondents thereafter was such as to lead relator to believe that no advantage would be sought by them because of lack of service. *Eichholz v Shaft*, 166 M 339, 208 NW 18.

Writ of certiorari properly quashed because not issued within 60 days after applicant therefor had admitted due service of notice of order sought to be reviewed. *State ex rel v Hims*, 170 M 101, 212 NW 29.

Service within 60 days on adverse party of writ of certiorari to review decision of industrial commission should be made on counsel who has appeared for adverse party; motion to quash writ granted. *Perkovich v Oliver Iron Mining Co.* 171 M 519, 214 NW 795.

When a party to a workmen's compensation proceeding obtains additional time within which to apply for certiorari, the writ must be obtained and served upon both the commission and the respondents within the time so limited. Writ is discharged. *Haimila v Opsahl*, 208 M 605, 293 NW 599.

## 606.03 SURETY FOR COSTS IN CIVIL CASE.

HISTORY. 1909 c. 410 s. 3; G.S. 1913 s. 8315; G.S. 1923 s. 9771; M.S. 1927 s. 9771.

In proceedings under workmen's compensation act an injured workman recovered a judgment. A writ of certiorari was issued to review, and to obtain the writ, defendant executed an undertaking conditioned as a supersedeas bond. That undertaking obligated the surety for defendant to pay the judgment and not merely the costs and damages. *Carlson v American Fidelity*, 149 M 116, 182 NW 985.

## 606.04 COSTS.

HISTORY. 1909 c. 410 s. 4; G.S. 1913 s. 8316; G.S. 1923 s. 9772; M.S. 1927 s. 9772.

## 606.05 WHEN DISMISSED; COSTS.

HISTORY. 1909 c. 410 s. 5; G.S. 1913 s. 8317; G.S. 1923 s. 9773; M.S. 1927 s. 9773.

An order of the district court denying a motion to dismiss certiorari proceedings instituted to review the action of the board of county commissioners in apportioning school funds is not appealable. Such order does not involve the merits of the proceeding, nor prevent a hearing or judgment upon the merits. *State ex rel v County of Lincoln*, 129 M 300, 152 NW 541.