

CHAPTER 612

CRIMES AGAINST THE SOVEREIGNTY OF THE STATE

612.01 TREASON.

HISTORY. Penal Code s. 35; G.S. 1894 s. 6319; R.L. 1905 s. 4793; G.S. 1913 s. 8517; G.S. 1923 s. 9967; M.S. 1927 s. 9967.

The plea of benefit of clergy, and the crime of petit treason, do not exist in Minnesota. *Kent v Bown*, 3 M 347 (246).

612.02 MISPRISION OF TREASON.

HISTORY. Penal Code s. 36; G.S. 1894 s. 6320; R.L. 1905 s. 4794; G.S. 1913 s. 8518; G.S. 1923 s. 9968; M.S. 1927 s. 9968.

612.03 LEVYING WAR.

HISTORY. Penal Code ss. 38, 39; G.S. 1894 ss. 6322, 6323; R.L. 1905 s. 4795; G.S. 1913 s. 8519; G.S. 1923 s. 9969; M.S. 1927 s. 9969.

612.04 WILFUL NEGLIGENCE OF OFFICIAL DUTY.

HISTORY. R.S. 1851 c. 109 s. 15; P.S. 1858 c. 98 s. 15; G.S. 1866 c. 91 s. 8; G.S. 1878 c. 91 s. 8; G.S. 1894 s. 6266; R.L. 1905 s. 4796; G.S. 1913 s. 8520; G.S. 1923 s. 9970; M.S. 1927 s. 9970.

Defendant, a police officer, was properly convicted of malfeasance in office for collaborating with gamblers in evading the law. *State v Roasch*, 201 M 158, 275 NW 620.

The mayor of Waseca was accused of wilful neglect of his duties in refusing to sign certain warrants. The accusation rests on sections 612.01 and 613.51. These sections do not apply to duty of such character that defendant must scrutinize prior proceedings to determine their legality in order to determine whether his duty has in fact arisen. *State v Brattrud*, 210 M 214, 297 NW 713.

Defendant, a police officer, in charge of the "morals squad" was properly convicted of neglect of duty in relation to houses of immoral character. *State v Palmersten*, 210 M 477, 299 NW 669.

In case of misconduct of a justice of the peace, the county attorney should be advised, and it would be his duty to inquire. OAG Jan. 24, 1933.

It would be a gross misdemeanor for a public officer to wilfully neglect his duties as imposed by sections 612.04 and 620.02. 1934 OAG 665, Aug. 7, 1934 (3390-5).

Under this section, a mayor who refuses to sign orders audited and allowed by the city council, may be charged. OAG Jan. 2, 1936 (361f).

The school board clearly violated the laws of the state in employing a teacher who had no certificate, and is subject to the provisions of section 612.04. 1938 OAG 227, Oct. 6, 1937 (8b).

Relating to the removal of a clerk of a school district. 1940 OAG 288, June 22, 1940 (213g).

612.05 ACTING IN PUBLIC OFFICE WITHOUT HAVING QUALIFIED.

HISTORY. Penal Code s. 41; G.S. 1894 s. 6325; R.L. 1905 s. 4797; G.S. 1913 s. 8521; G.S. 1923 s. 9971; M.S. 1927 s. 9971.

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Lane was elected justice of the peace and received his certificate of election, assumed office on April 7, 1917, and all records were turned over to him by his predecessor on April 17, from which time on he actively served as justice. His official bond procured by the city of Albert Lea was not filed until April 26, 1917. He was a defacto justice when he served at the drawing of the grand and petit jury panels on April 24, 1917. State v Van Vleet, 139 M 146, 165 NW 962.

612.06 FALSE REPORTS DECLARED UNLAWFUL.

HISTORY. 1919 c. 93 s. 1; G.S. 1923 s. 9972; M.S. 1927 s. 9972.

Under Laws 1917, Chapter 463, circulating a pamphlet which impugns the motives of the president and congress in entering the war, and seeks by unfounded assertions to incite antagonism to the war, is a violation and punishable. State v Holm, 139 M 267, 166 NW 181.

When a criminal statute specifies several ways in which an offense thereunder may be committed, an indictment which merely alleges that defendant violated the statute is demurrable. State v Spartz, 140 M 203, 167 NW 547; United States v Schutte, 252 F 216.

The defendant was accused of discouraging enlistment. The indictment properly states facts to constitute a public offense under Laws 1917, Chapter 463, Section 3. State v Freerks, 140 M 350, 168 NW 23.

The indictment under Laws 1917, Chapter 463, did not constitute a violation of the statute. State v Townley, 140 M 413, 168 NW 591.

Intent is not an ingredient of the offense created by Laws 1917, Chapter 463. The statements which the indictment charges defendant with making, if believed, would deter enlistment and is a violation of the statute. State v Gilbert, 141 M 263, 169 NW 790; State v Luker, 141 M 494, 169 NW 700; State v Townley, 142 M 328, 171 NW 930.

The indictment is insufficient under Laws 1917, Chapter 463, known as the sedition act. State v Dieke, 143 M 24, 172 NW 777; State v Rempel. 143 M 52, 172 NW 919; State v Randall, 143 M 204, 173 NW 425; State v Hartung, 147 M 128, 179 NW 646.

Laws 1919, Chapter 93, Section 5, provides that it shall supersede the provisions of Laws 1917, Chapter 463, as to offenses committed after March 26, 1919, but Laws 1917, Chapter 463, controls as to offenses prior to that date. A combination for an unlawful purpose is the foundation of the offense and an overt act in furtherance completes the offense, and all parties to the combination incur guilt when one does the act. State v Townley, 149 M 5, 182 NW 713.

Freedom of speech and of the press. 2 MLR 251.

612.07 INSUBORDINATION DECLARED UNLAWFUL.

HISTORY. 1919 c. 93 s. 2; G.S. 1923 s. 9973; M.S. 1927 s. 9973.

Courts should be astute to examine the effect of challenged legislation where it affects the exercise of individual rights expressly protected by the constitution. Th statute making advocacy of overthrow of the government by force; advocacy of insubordination in the armed forces; and conspiracy to effect overthrow or insubordination a crime, does not abridge "freedom of speech." Dunne v United States, 138 F(2d) 137.

612.08 OTHER ACTS DECLARED UNLAWFUL.

HISTORY. 1919 c. 93 s. 3; G.S. 1923 s. 9974; M.S. 1927 s. 9974.

612.09 PUNISHMENT.

HISTORY. 1919 c. 93 s. 4; G.S. 1923 s. 9975; M.S. 1927 s. 9975.

Laws 1917, Chapter 463, making it a criminal offense to advocate that men should not enlist in the military forces or aid in prosecuting the war, does not infringe the constitutional provision conferring upon congress the power to raise armies, nor the constitutional provision preserving freedom of speech and of the

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press, and is not abrogated or superseded by the act of congress, June 15, 1917 (espionage act). (Laws 1917, Chapter 463, has been superseded by a broader act, Laws 1919, Chapter 93.) State v Holm, 139 M 267, 166 NW 181; State v Gilbert, 141 M 263, 169 NW 790; State v Randall, 143 M 203, 173 NW 425; Gilbert v Minnesota, 254 US 326.

Explosives, basis for Laws 1941, Chapter 474. 26 MLR 240.

612.10 UNLAWFUL FOR NON-CITIZEN OF UNITED STATES TO CARRY FIREARMS OR EXPLOSIVES.

HISTORY. 1917 c. 435 s. 1; G.S. 1923 s. 9976; M.S. 1927 s. 9976.

612.11 VIOLATION A GROSS MISDEMEANOR.

HISTORY. 1917 c. 435 s. 2; G.S. 1923 s. 9977; M.S. 1927 s. 9977.

612.12 POLICE OFFICERS AUTHORIZED TO MAKE ARRESTS.

HISTORY. 1917 c. 435 s. 3; G.S. 1923 s. 9978; M.S. 1927 s. 9978.