

## CHAPTER 73

## STATE FIRE MARSHAL

**73.01 FIRE MARSHAL, APPOINTMENT.**

HISTORY. 1925 c. 426 Art. 8 s. 4; M.S. 1927 s. 53-31.

**73.02 SPECIAL ATTORNEY.**

HISTORY. 1913 c. 564 s. 4; G.S. 1913 s. 5132; G.S. 1923 s. 5953; M.S. 1927 s. 5953.

**73.03 ORIGIN OF FIRES INVESTIGATED.**

HISTORY. 1913 c. 564 s. 6; G.S. 1913 s. 5134; G.S. 1923 s. 5955; M.S. 1927 s. 5955.

**INCOMPATIBILITY OF OFFICES.** The offices of justice of peace and chief of the fire department are incompatible since under this section the chief might be called as a witness at the preliminary examination held before the justice of peace. 1928 OAG 235.

**73.04 EVIDENCE, TAKING OF.**

HISTORY. 1913 c. 564 s. 7; G.S. 1913 s. 5135; G.S. 1923 s. 5956; M.S. 1927 s. 5956.

**STATEMENT CANNOT BE BASIS OF INDICTMENT.** When the state fire marshal compels the defendant by subpoena to appear before him and answer questions accusing him of arson and a transcript of this testimony is given the grand jury which returned an indictment for arson, this is the equivalent of compelling the defendant to be a witness against himself in violation of the Minnesota Constitution, Article 1, Section 7. *State v Rixon*, 180 M 573, 231 NW 217, 68 ALR 1501.

While the deputy fire marshal participated in taking the statement, the record shows that it was not taken pursuant to the provisions of the statute. The witness was not under subpoena by the fire marshal as provided by the statute. It does not appear that the statements were made under oath. There was no error in the court's refusal to require the deputy fire marshal to produce the original notes taken by him prior to execution of the statement. *State v Poelaert*, 200 M 40, 273 NW 641.

**73.05 TESTIMONIAL POWERS.**

HISTORY. 1913 c. 564 s. 8; G.S. 1913 s. 5136; G.S. 1923 s. 5957; M.S. 1927 s. 5957.

**CANNOT INSPECT.** The defendant is not entitled to inspect the testimony taken by the fire marshal and furnished the county attorney under this section for the purpose of a motion to quash the indictment. *State ex rel v Steele*, 117 M 384, 135 NW 1128.

See *State v Poelaert*, 200 M 40, 273 NW 641.

Where plaintiff, a member of the St. Paul bureau of fire prevention, whose duties were fixed by ordinance, entered upon defendant's premises in his official capacity and not in the discharge of any private duty due from him to defendant but only that which he owed the public, defendant, as the occupant of the premises, was not liable for an injury sustained by plaintiff as the result of an obviously

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 73.06 STATE FIRE MARSHAL

484

defective condition in an inside stairway not used or maintained for the public. *Mulcrone v Wagner*, 212 M 480, 4 NW(2d) 97.

### 73.06 DISOBEDIENCE, HOW PUNISHED.

HISTORY. 1913 c. 564 s. 9; G.S. 1913 s. 5137; G.S. 1923 s. 5958; M.S. 1927 s. 5958.

### 73.07 PREMISES, WHEN ENTERED.

HISTORY. 1913 c. 564 s. 10; G.S. 1913 s. 5138; G.S. 1923 s. 5959; M.S. 1927 s. 5959.

### 73.08 BUILDINGS, ENTERED WITHIN REASONABLE HOURS.

HISTORY. 1913 c. 564 s. 11; G.S. 1913 s. 5139; G.S. 1923 s. 5960; M.S. 1927 s. 5960.

There is a clear line of distinction drawn between the ordinary or business invitees and policemen and firemen who come upon an owner's property in the discharge of official duty. As to them, the owner or occupant is under no duty except to refrain from injuring them wilfully or wantonly or to exercise ordinary care to avoid imperiling them by any active conduct. *Mulcrone v Wagner*, 212 M 478; 4 NW (2d), 97.

### 73.09 BUILDINGS REPAIRED OR TORN DOWN, ENTRANCE TO.

HISTORY. 1913 c. 564 s. 12; G.S. 1913 s. 5140; 1917 c. 469 s. 1; G.S. 1923 s. 5961; M.S. 1927 s. 5961.

CONSTITUTIONALITY. The section is a valid exercise of the police power so far as it relates to condemning buildings found in the condition there prescribed. The public takes nothing but simply compels one who maintains upon his land that which unduly endangers life to remove it. Therefore no compensation need be paid. *York v Hargadine*, 142 M 219, 171 NW 773.

Destruction of property is the last resort unless it is of such nature that its use cannot be other than for evil. Where repairs or alterations can be made to put the building in a safe condition, they should be ordered rather than a tearing down of the building. *York v Hargadine*, 142 M 219, 171 NW 773; *State Fire Marshal v Fitzpatrick*, 149 M 203, 183 NW 141.

The ruling of the above cases does not apply where there is an ordinance forbidding repair or alteration of the building in question. *Zalk & Josephs Realty Co. v Stuyvesant Ins. Co.* 191 M 60, 253 NW 8.

Where the trial court found that the assignees of the lease had allowed the building to come into and remain in an unsafe condition contrary to state laws and city ordinances and had suffered waste to be committed, and that the cost of remedying the waste was \$806.56, a decree in equity form that assignee restore the property and remedy the waste and expend at last \$806.56, afforded complete remedy and relief to lessor. *McKnight v Central Hanover*, 120 F(2d) 324.

The statute authorizing the condemnation of buildings, and the statute prohibiting removal of structures from tax delinquent property must be interpreted together. The proceeds of sale of such building should be turned over to the county auditor to apply on the tax delinquency. 1942 OAG 294, Oct. 29, 1941 (197-c).

### 73.10 STRUCTURES REPAIRED OR DEMOLISHED.

HISTORY. 1929 c. 200; M. Supp. s. 5961-1; 1941 c. 123.

### 73.11 EXITS OPENED, ORDER.

HISTORY. 1913 c. 564 s. 12; 1917 c. 469 s. 1; G.S. 1923 s. 5962; M.S. 1927 s. 5962.

# MINNESOTA STATUTES 1945 ANNOTATIONS

485

STATE FIRE MARSHAL 73.22

## **73.12 ORDER TO BE IN WRITING.**

HISTORY. 1913 c. 564 s. 13; G.S. 1913 s. 5141; 1917 c. 469 s. 1; G.S. 1923 s. 5963; M.S. 1927 s. 5963.

## **73.13 NOTICE, SERVICE ON OWNER.**

HISTORY. 1913 c. 564 s. 14; G.S. 1913 s. 5142; 1917 c. 469 s. 1; G.S. 1923 s. 5964; M.S. 1927 s. 5964.

## **73.14 WRITTEN OBJECTIONS FILED BY OWNER.**

HISTORY. 1913 c. 564 s. 15; G.S. 1913 s. 5143; 1917 c. 469 s. 1; G.S. 1923 s. 5965; M.S. 1927 s. 5965.

## **73.15 HEARING.**

HISTORY. 1913 c. 564 s. 16; G.S. 1913 s. 5144; 1917 c. 469 s. 1; G.S. 1923 s. 5966; M.S. 1927 s. 5966.

PRIMA FACIE CASE which this section purports to create simply means that the burden of going forward with the evidence shifts. The validity of such a statutory enactment is well established. *State Fire Marshal v Sherman*, 201 M 594, 277 NW 249.

## **73.16 FAILURE TO COMPLY WITH ORDER.**

HISTORY. 1913 c. 564 s. 17; G.S. 1913 s. 5145; 1917 c. 469 s. 1; G.S. 1923 s. 5967; M.S. 1927 s. 5967.

## **73.17 COMBUSTIBLE MATERIAL REMOVED.**

HISTORY. 1913 c. 564 s. 18; G.S. 1913 s. 5146; 1917 c. 469 s. 1; G.S. 1923 s. 5968; M.S. 1927 s. 5968.

## **73.18 FIRE INSURANCE COMPANIES TO REPORT FIRE LOSSES.**

HISTORY. 1913 c. 564 s. 19; G.S. 1913 s. 5147; G.S. 1923 s. 5969; M.S. 1927 s. 5969.

## **73.19 FAILURE TO COMPLY, PUNISHMENT.**

HISTORY. 1913 c. 564 s. 20; G.S. 1913 s. 5148; G.S. 1923 s. 5970; M. S. 1927 s. 5970.

## **73.20 FIRE INSURANCE COMPANIES TO PAY COST OF MAINTENANCE.**

HISTORY. 1913 c. 564 s. 23; G.S. 1913 s. 5151; 1915 c. 341 s. 1; G.S. 1923 s. 5973; M.S. 1927 s. 5973; 1937 c. 77 s. 1.

A township mutual is liable for the premium tax on fire insurance policies written in any municipality maintaining an organized fire department, but not in townships not maintaining such organized department. 1938 OAG 286, March 10, 1937 (249b-13).

## **73.21 ITEMIZED STATEMENT KEPT.**

HISTORY. 1913 c. 564 s. 24; G.S. 1913 s. 5152; G.S. 1923 s. 5974; M.S. 1927 s. 5974.

## **73.22 RECORDS TO BE PUBLIC, EXCEPT IN CERTAIN CASES.**

HISTORY. 1913 c. 564 s. 26; G.S. 1913 s. 5154; G.S. 1923 s. 5976; M.S. 1927 s. 5976.

See *State v Poelaert*, 200 M 40, 273 NW 641, section 73.04.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 73.23 STATE FIRE MARSHAL

486

Section 326.26 construed and found to give a right of action on the bond to a person injured by the defective work of a master electrician licensed under bond written by defendant. *Graybar v St. Paul Mercury*, 208 M 478, 294 NW 654.

## 73.23 COUNTY ATTORNEYS TO ASSIST.

HISTORY. 1913 c. 564 s. 27; G.S. 1913 s. 5155; G.S. 1923 s. 5977; M.S. 1927 s. 5977.

## 73.24 FIRE DRILLS IN SCHOOLS.

HISTORY. 1913 c. 564 s. 28; G.S. 1913 s. 5156; G.S. 1923 s. 5978; M.S. 1927 s. 5978.

## 73.25 PENALTIES PAID INTO STATE TREASURY.

HISTORY. 1913 c. 564 s. 29; G.S. 1913 s. 5157; G.S. 1923 s. 5979; M.S. 1927 s. 5979.

## 73.26 DECLARATION FOR PUBLIC SAFETY.

HISTORY. 1913 c. 564 s. 30; G.S. 1913 s. 5158; G.S. 1923 s. 5980; M.S. 1927 s. 5980.

## 73.27 ANNUAL REPORT.

HISTORY. 1913 c. 564 s. 31; G.S. 1913 s. 5159; G.S. 1923 s. 5981; M.S. 1927 s. 5981.

## 73.28 COMPENSATION FOR FIRES REPORTED.

HISTORY. 1913 c. 564 s. 32; G.S. 1913 s. 5160; G.S. 1923 s. 5982; M.S. 1927 s. 5982.

## 73.29 STATEMENT NOT USED IN CIVIL ACTION, WHEN.

HISTORY. 1913 c. 564 s. 33; G.S. 1913 s. 5161; G.S. 1923 s. 5983; M.S. 1927 s. 5983.