

Forestry

CHAPTER 88

DIVISION OF FORESTRY.

88.01 DEFINITIONS.

HISTORY. 1925 c. 263 s. 22; 1925 c. 407 ss. 1, 2; 1927 c. 247 s. 13; M.S. 1927 ss. 4031-1, 4031-2, 4031-35½, 4031-57; 1929 c. 219 s. 1; 1933 c. 331 s. 12; 1933 c. 402 s. 2; M. Supp. s. 4031-72, 4031-76; 5887-42.

Subd. 5. **TIMBER.** The definition given is not limited to cover only green growing timber, 1934 OAG 165.

Subd. 6. **FOREST AREAS.**

CONSTITUTIONALITY; CLASSIFICATION. This classification is not arbitrary or unreasonable. It would be bad only if the court could say that no reasonable grounds existed for applying a different rule to those areas within the act than to those excluded from it. *State v Phillips*, 176 M 472, 223 NW 912.

Case discussed from the viewpoint of special legislation by Dawley, *Special Legislation and Municipal Home Rule in Minnesota; Recent Developments*, 16 MLR 659 (662).

88.02 CITATION.

HISTORY. 1925 c. 407 s. 1; M.S. 1927 s. 4031-1.

88.03 CODIFICATION OF FORESTRY ACT.

HISTORY. 1925 c. 407 s. 1; M.S. 1927 s. 4031-1.

88.04 FIRE-BREAKS; TOWNS, CITIES, VILLAGES; POWERS; TAX LEVIES; FIRE FUND.

HISTORY. 1925 c. 407 s. 11; M.S. 1927 s. 4031-11.

DUTY OF MUNICIPAL OFFICIALS. It is the duty of town supervisors to protect property from forest and prairie fires. *State v Danculovic*, 168 M 359, 209 NW 941.

INDEPENDENT ACTION BY MUNICIPALITIES. Local municipalities may take action independently or under the jurisdiction of the forest service. 1934 OAG 162.

The statute says ALL towns, villages, and cities: Towns, villages, and cities in the southern part of the state are expected to use their funds for fire-fighting. 1934 OAG 162.

SEPARATE LEVY FOR FIRE FUND. A levy must be made for the fire fund authorized by this section separate and apart from the levy under Section 365.15 et seq., which authorize a fund for general fire protection. 1940 OAG 125.

MAXIMUM ASSESSMENT. Maximum assessment of taxes for fire fund. 1922 OAG 542, 1922 OAG 86.

EXTENDING TAX LEVIES. Auditor's duty of extending tax levies. 1922 OAG 561.

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SPECIAL TAX. A village has no power to levy a special tax to be used to purchase fire equipment except as authorized by this section. 1936 OAG 63.

NECESSARY AND INCIDENTAL EXPENSES. The construction for general use of a township telephone line as a precaution against fires is not a necessary or incidental expense incurred in the enforcing of the statutory provisions, hence money from the fire fund cannot be appropriated for that purpose. 1918 OAG 536 (construing a similar provision in Laws 1911, Chapter 125, Section 24.)

EMPLOYING FIRE FIGHTERS; COMPENSATION. The town board has authority to employ men to fight fires in the town and order compensation paid therefor. 1918 OAG 527.

A town is liable for the compensation of men whom it employs to fight a fire wholly in another town. 1920 OAG 876.

It is discretionary with the town board whether they pay their fire wardens by the month or for the actual time they spend in fighting fires. 1934 OAG 874.

Towns are not liable for the compensation of persons appointed wardens pursuant to section 88.18; such appointees are state officers. *State v Danculovic*, 168 M 359, 209 NW 941.

FIRE FUND; TRANSFERRING MONEYS. When there is no township fire fund money can be transferred from its general or road and bridge fund where such fund has a surplus by unanimous vote of the town board. 1918 OAG 527, 1934 OAG 162.

If a town has no fire fund and its orders against the general fund are not being paid for lack of money, the town may issue orders on a fire fund to be provided out of next year's taxes. 1912 OAG 343.

88.05 DIRECTOR MAY CLEAR UP ROADSIDES.

HISTORY. 1933 c. 320 s. 1; 1937 c. 113 s. 1; M. Supp. c. 4031-11½.

Laws 1933, Chapter 320, declares highways within the forest area to be fire breaks and authorizes the division of forestry to clean up all dead and down timber, underbrush, rotting logs, stumps and other inflammable refuse for 200 feet on each side of the road. 1934 OAG 463, May 24, 1933 (154).

88.06 REMOVAL OF DEAD OR DOWN TIMBER; PERMIT.

HISTORY. 1933 c. 320 s. 1; 1937 c. 113 s. 2; M. Supp. s. 40-31-11½a.

CONFORMING TO REGULATIONS OF RELIEF AGENCIES. The department of conservation has authority to conform to all reasonable and necessary rules and regulations promulgated by any federal or state relief agency which is may become engaged in the improvement of state trust fund lands within the boundaries of any state forest. 1938 OAG 101.

CIVILIAN CONSERVATION CORPS; TIMBER CUTTINGS; SALES. The civilian conservation corps need not be placed in the position of a technical trespasser within the timber sales act. It is not a sale resulting from an act of trespass when the cutting was reasonable and necessary for the purpose of furthering a conservation project, the whole forest benefiting. 1938 OAG 101.

88.063 FOREST FIRE PROTECTION.

HISTORY. 1945 c. 522 ss. 1, 2.

88.065 COMMISSIONER TO FURNISH EQUIPMENT.

HISTORY. 1945 c. 521 s. 1.

88.07 FIRE CONTROL; SALARIES, EXPENSES, AUDIT.

HISTORY. 1925 c. 407 s. 13; M.S. s. 4031-13.

88.08 PATROL DISTRICTS.

HISTORY. 1925 c. 407 s. 14; M.S. 1927 s. 4031-14.

88.09 MAY ACQUIRE LANDS FOR FIRE PROTECTION.

HISTORY. 1927 c. 329 ss. 1, 2; M.S. 1937 ss. 4031-14a, 4031-14b; 1929 c. 220 ss. 1, 2; 1933 c. 302 ss. 1,2; 1935 c. 332.

88.10 DISTRICT RANGERS AND PATROLMEN.

HISTORY. 1925 c. 407 s. 15; M.S. 1927 s. 4031-15.

88.11 FIRE PATROLMEN; AID FOR FIGHTING FIRES; REFUSAL; COMMANDERING PROPERTY.

HISTORY. 1925 c. 407 s. 16; M.S. 1927 s. 4031-16.

Fires include meadow fires. A slow-burning meadow fire comes under the same law as forest and prairie fires. 1912 OAG 343.

88.12 COMPENSATION OF FIGHTERS OF FOREST FIRES; EMERGENCY EXPENSES.

HISTORY. 1925 c. 407 s. 17; 1927 c. 280 s. 1; M.S. 1927 ss. 4031-17, 4031-17a.

Subd. 2. **CONTRACTS FOR SERVICES FOR FORESTRY OR FIRE PREVENTION WORK; COMMISSIONS TO PERSONS EMPLOYED.**

FIRE WARDENS; COMPENSATION. Fire wardens appointed under section 88.18 are state officers and must look to section 88.12 for compensation. *State v Danculovic*, 168 M 359, 209 NW 941.

Fire fighters are within the state labor service and not subject to the wage limitations stated in section 88.12. OAG March 27, 1944 (202g).

88.13 NOTICES OF CUTTING OF TIMBER; POSTING; FAILURE TO POST.

HISTORY. 1925 c. 407 s. 18; M.S. 1927 s. 4031-18.

88.14 DIRECTOR MAY REQUIRE DISPOSAL OF SLASHINGS AND DEBRIS.

HISTORY. 1925 c. 407 s. 19; M.S. 1927 s. 4031-19; 1929 c. 360.

DISPOSAL OF SLASHINGS; LIABILITY FOR. Where the defendant is ordered to dispose of the slashings he must stand the cost of such work. *Owen v J. Neils Lbr. Co.* 125 M 15, 145 NW 402.

DISPOSAL; DUTY IN ABSENCE OF ORDERS. In the absence of a notice to dispose given by the forester, there is no duty to do so. *Owen v J. Neils Lbr. Co.* 125 M 15, 145 NW 402 (decided under Laws 1911, Chapter 125).

88.15 CAMP FIRES.

HISTORY. 1925 c. 407 ss. 20, 21; M.S. 1927 ss. 4031-20, 4031-21; 1929 c. 261 s. 1.

88.16 STARTING FIRES; WHERE UNLAWFUL WITHOUT PERMISSION; FIREBREAKS; REPORTS OF UNAUTHORIZED FIRES.

HISTORY. 1925 c. 407 s. 22; M.S. 1927 s. 4031-22.

REPORTS REQUIRED OF OCCUPANTS; CONSTITUTIONALITY OF STATUTE. In *State v Phillips*, 176 M 472, 223 NW 912, it was argued that this section discriminated against occupants of land. The court held otherwise, saying the leg-

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islature may impose upon those occupying and in control of land duties and liabilities which it does not impose on others.

CONSTRUCTION OF STATUTE. If necessary to sustain the validity of this section the requirement would be construed as applying only to those who had knowledge. *State v Phillips*, 176 M 472, 223 NW 912.

"Fires for domestic purposes" relate to house or homes and exclude vocation, business, or means of obtaining a living. It would not include fires for the purpose of burning grass, hay meadows, brush or slash, even though in connection with operation of a farm. 1942 OAG 288, May 13, 1942 (203h-2).

88.17 PERMISSION TO START FIRES; PROSECUTION FOR UNLAWFULLY STARTING FIRES; EVIDENCE; BURDEN OF PROOF.

HISTORY. 1925 c. 407 s. 23; M.S. 1927 s. 4031-23.

BURNING PERMITS; CHARGE FOR. A local warden may not charge for issuing burning permits. 1934 OAG 163.

BURDEN OF PROOF; DISCRIMINATION AGAINST OCCUPANTS. See annotations to section 88.16.

88.18 FIRE WARDENS.

HISTORY. 1925 c. 407 s. 24; M.S. 1927 s. 4031-24.

APPOINTMENTS; NO FULL-TIME DUTY CONTEMPLATED. The service contemplated by this section is incidental duty in fire prevention and emergency duty in fire extinguishment. *State v Danculovic*, 168 M 359, 209 NW 941.

APPOINTEES STATE OFFICERS; LIABILITY FOR COMPENSATION. Such appointees are state not town officers and must not look to the town for compensation. *State v Danculovic*, 168 M 359, 209 NW 941.

SUPERVISOR MAY NOT BE COMPENSATED AS WARDEN BY TOWN. Section 88.18 does not create an exception to section 619.36, which forbids supervisors or members of the town board from becoming parties to or interested in contracts made or payments voted by the town board. *State v Danculovic*, 168 M 359, 209 NW 941. See also, 1934 OAG 163.

But the offices of town supervisor and fire warden are not incompatible. 1916 OAG 376.

APPOINTMENT; OFFICE OF ANOTHER MUNICIPALITY. Where the village and the township are separate municipal entities the policeman of the village cannot hold the office of fire warden for the township. 1920 OAG 85.

88.19 NEGLECT OR REFUSAL TO PERFORM DUTY.

HISTORY. 1925 c. 407 s. 25; M.S. 1927 s. 4031-25; 1929 c. 261 s. 2.

88.20 RAILROAD COMPANIES TO PROVIDE PATROLMEN.

HISTORY. 1925 c. 407 s. 26; M.S. 1927 s. 4031-26; 1939 c. 427 s. 1.

TRIALS; EVIDENCE OF FAILURE TO PATROL; WHERE INADMISSIBLE. In *Mathwig v Mpls. St. P. & S. S. M.* 145 M 429, 177 NW 643, the action against the defendant railroad was predicated on the road's absolute liability under statute for damages from fires caused by it. It was held that since that statute eliminated the question of negligence from the case, evidence of defendant's failure to perform its statutory duty of patrolling the right of way was properly excluded.

NEGLIGENCE ACTIONS AGAINST RAILROADS. See annotations to section 88.75, subd. 1.

88.21 REPORTS BY RAILROAD COMPANIES.

HISTORY. 1925 c. 407 s. 27; M.S. 1927 s. 4031-27; 1939 c. 427 s. 2.

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Subd. 1. COPIES. (8) to (13). SPARK-ARRESTERS.

CIVIL ACTIONS, EVIDENCE ON SPARK-ARRESTERS. Evidence of spark-arresting equipment is properly admissible on the question of the cause of the fire. *Dumbeck v C.G.W.* 177 M 261, 225 NW 111.

An instruction to consider the manner of equipping defendant's engine with arresters in determining whether it caused the fire, held proper. *Mathwig v Mpls. St.P. & S.S.M.* 145 M 429, 177 NW 643.

Earlier cases discussing the use of arresting appliances; *Hoye v C.M. & St.P.* 46 M 269, 48 NW 1117; *Burud v Great Northern*, 62 M 243, 64 NW 562; *Riley v C.M. & St.P.* 71 M 425, 74 NW 171.

Subd. 3. RESPONSIBILITY.

RESPONSIBILITY OF SERVANTS. Servants must comply with the law not only for the benefit of their employer, but they are also personally required to perform those duties for the benefit of the public. *Patry v N.P.* 114 M 375, 131 NW 462.

88.22 DIRECTOR MAY CLOSE ROADS AND TRAILS IN FOREST AREAS.

HISTORY. 1937 c. 114 s. 1; M. Supp. s. 4031-34a.

88.23 CERTAIN DISEASES DECLARED PESTS.

HISTORY. 1929 c. 218 s. 2; M. Supp. s. 4031-35½a.

88.24 DISEASED PLANTS MAY BE DESTROYED.

HISTORY. 1929 c. 218 s. 3; M. Supp. s. 4031-35½b.

88.25 DIRECTOR TO PROMULGATE INFORMATION.

HISTORY. 1929 c. 218 ss. 4, 5, 6; M. Supp. ss. 4031-35½c, 4031-35½d, 4031-35½e.

88.26 DIRECTOR, STATE INSPECTOR OF NURSERIES.

HISTORY. 1929 c. 218 ss. 7, 8, 9; M. Supp. ss. 4031-35½f, 4031-35½g, 4031-35½h.

88.27 FISHING RESTRICTIONS; BROOK TROUT.

HISTORY. 1931 c. 372 ss. 1, 2; M. Supp. ss. 4031-35½j, 4031-35½k.

The purpose of this section was to reduce the fire hazard occasioned by fishermen going into these timbered areas under certain conditions. 1942 OAG 4, April 29, 1942 (211c-13).

88.28 LAW DIVIDED INTO PARTS.

HISTORY. 1925 c. 263 s. 1; M.S. 1927 s. 4031-36.

88.29 COUNTY BOARDS; JURISDICTION, POWERS.

HISTORY. 1925 c. 263 s. 2; M.S. 1927 s. 4031-37.

88.30 CLEARING AND IMPROVEMENT OF LANDS.

HISTORY. 1925 c. 263 s. 3; M.S. 1927 s. 4031-38.

88.31 SURVEYS AND PLATS.

HISTORY. 1925 c. 263 s. 4; M.S. 1927 s. 4031-39.

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88.32 APPRAISERS; ASSESSMENTS OF BENEFITS AND DAMAGES; STATEMENTS AND REPORTS.

HISTORY. 1925 c. 263 s. 5; M.S. 1927 s. 4031-40.

88.33 HEARING; NOTICE; SERVICE; DATE; ADJOURNMENTS.

HISTORY. 1925 c. 263 s. 6; M.S. 1927 s. 4031-41.

88.34 HEARING ON PETITION; ELIMINATION OF LANDS.

HISTORY. 1925 c. 263 s. 7; M.S. 1927 s. 4031-42.

88.35 RE-REFERENCE OF PETITION.

HISTORY. 1925 c. 263 s. 8; M.S. 1927 s. 4031-43.

88.36 ORDER FOR IMPROVEMENTS.

HISTORY. 1925 c. 263 s. 9; M.S. 1927 s. 4031-44.

88.37 APPEALS FROM ORDERS FOR IMPROVEMENTS.

HISTORY. 1925 c. 263 s. 10; M.S. 1927 s. 4031-45.

88.38 CONTRACTS FOR IMPROVEMENTS; DUTIES OF COUNTY AUDITOR; SEEDING OF CLEARED LANDS.

HISTORY. 1925 c. 263 s. 11; M.S. 1927 s. 4031-46.

88.39 WORK OF IMPROVEMENT; DUTIES OF ENGINEER; PAYMENTS TO CONTRACTORS.

HISTORY. 1925 c. 263 s. 12; M.S. 1927 s. 4031-47.

88.40 BOND ISSUES TO PAY FOR IMPROVEMENTS.

HISTORY. 1925 c. 263 s. 13; M.S. 1927 s. 4031-48.

88.41 COUNTY AUDITORS; TABULAR STATEMENTS; POWERS AND DUTIES.

HISTORY. 1925 c. 263 s. 14; M.S. 1927 s. 4031-49.

88.42 IMPROVEMENTS BY TOWNS, CITIES, AND VILLAGES; LIMITATION OF INDEBTEDNESS.

HISTORY. 1925 c. 263 s. 15; M.S. 1927 s. 4031-50.

88.43 FIRE-BREAKS; CLEARING LANDS.

HISTORY. 1925 c. 263 ss. 16, 17; M.S. 1927 ss. 4031-51, 4031-52.

88.44 ACQUISITION OF PROPERTY.

HISTORY. 1925 c. 263 ss. 18, 19; M.S. 1927 ss. 4031-53, 4031-54.

88.45 MUNICIPALITIES TO COOPERATE.

HISTORY. 1925 c. 263 s. 20; M.S. 1927 s. 4031-55.

88.46 LAWS APPLICABLE.

HISTORY. 1925 c. 263 s. 21; M.S. 1927 s. 4031-56.

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88.47 AUXILIARY FORESTS; APPLICATION BY OWNER TO COUNTY BOARD; TAXATION.

HISTORY. 1927 c. 247 ss. 1, 2; M.S. 1927 ss. 4031-60, 4031-61.

88.48 APPLICATION.

HISTORY. 1927 c. 247 s. 3; M.S. 1927 s. 4031-62.

88.49 CONTRACTS WITH OWNERS OF LAND ACCEPTED AS AUXILIARY FORESTS.

HISTORY. 1927 c. 247 s. 4; M.S. 1927 s. 4031-63.

88.50 TAXATION.

HISTORY. 1927 c. 247 s. 5; M.S. 1927 s. 4031-64.

88.51 TAX RATE AND SPECIAL TAXES RELATING TO AUXILIARY FORESTS.

HISTORY. 1927 c. 247 s. 6; M.S. 1927 s. 4031-65; 1929 c. 245 s. 1.

88.52 CUTTING TIMBER; TAXATION.

HISTORY. 1927 c. 247 s. 7; M.S. 1927 s. 4031-66.

88.53 LAND HELD AS AUXILIARY FOREST; AMOUNT, DISPOSAL AFTER CEASING TO BE AUXILIARY FOREST.

HISTORY. 1927 c. 247 ss. 8, 9, 10; M.S. 1927 ss. 4031-67, 4031-68, 4031-69.

88.64 SHIPPING OF EVERGREENS OR CONIFEROUS TREES PROHIBITED; EXCEPTIONS.

HISTORY. 1935 c. 331 s. 1; M. Supp. s. 5887-31; 1937 c. 470 s. 2.

88.65 TREES.

HISTORY. 1935 c. 331 s. 2; M. Supp. s. 5887-32; 1937 c. 470 s. 3.

88.66 TAGS.

HISTORY. 1935 c. 331 ss. 3, 4; M. Supp. ss. 5887-33, 5887-34; 1937 c. 470 s. 4.

88.67 OWNER TO AFFIX TAGS.

HISTORY. 1935 c. 331 s. 5; M. Supp. s. 5887-35; 1937 c. 470 s. 5.

TREES IN TRANSIT. Trees actually in transit in interstate commerce need not be tagged where merely taken off one railroad in the state for the purpose of transferring to another and thereon by the same owner into another state. 1936 OAG 72.

88.68 DIRECTOR, FOREST RANGERS; POWERS, DUTIES.

HISTORY. 1935 c. 331 s. 6; M. Supp. s. 5887-36; 1937 c. 470 s. 6.

(3) **SEARCHES AND SEIZURES.** Reasonable grounds for belief is the general test of authority for searching and seizing without warrant. It is unreasonable searches and seizures that the constitution forbids. 1940 OAG 22.

88.69 SEARCH WARRANTS.

HISTORY. 1935 c. 331 ss. 7, 8; M. Supp. ss. 5887-37, 5887-38; 1937 c. 470 s. 7.

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88.70 RECORDS.

HISTORY. 1935 c. 331 s. 9; M. Supp. s. 5887-39.

88.71 FEES PAID INTO STATE TREASURY.

HISTORY. 1935 c. 331 s. 10; M. Supp. s. 5887-40; 1937 c. 470 s. 8.

88.72 APPLICATION.

HISTORY. 1935 c. 331 s. 13; M. Supp. s. 5887-43.

88.73 ADMINISTRATION; DELEGATED POWERS AND DUTIES.

HISTORY. 1925 c. 407 ss. 32, 33; M.S. 1927 ss. 4031-32, 4031-33.

88.74 CERTAIN RECORDS MAY BE DESTROYED.

HISTORY. 1939 c. 41; M. Supp. s. 53-23½v.

88.75 VIOLATIONS; PENALTIES.

HISTORY. 1919 c. 32 s. 3; 1925 c. 407 s. 28; 1927 c. 247 s. 11; M.S. 1927 ss. 4031-28, 4031-70, 4031-87; 1929 c. 218 s. 10; 1933 c. 402 s. 13; 1935 c. 331 s. 11; M. Supp. ss. 4031-35½i; 5887-41.

Subd. 1. CONSTITUTIONALITY; EQUALITY. This subdivision is not invalid as being discriminatory against occupants. *State v Phillips*, 176 M 472, 223 NW 912.

CONSTITUTIONALITY; PENALTY PROVISION. The provision making the occupant from whose premises the fire escapes liable for the damage caused and the expense of fighting does not impose a penalty. *State v Phillips*, 176 M 472, 223 NW 912.

LIABILITY OF LESSEE RAILROADS. Liability of the defendant for its own negligence was not affected by the fact that it was operating its trains over the road of another company under a lease or contract. *Cantlon v Eastern Ry. Co.* 45 M 481, 49 NW 250.

LIABILITY OF LESSOR RAILROADS. Where there has been no breach of its own public duties a lessor railroad is exonerated from liability for the negligence of the lessee railroad in operating the road where the lease is authorized, even though the statute authorizing it does not specifically relieve it from liability. *Heron v St.P. M. & M. Ry Co.* 68 M 542, 71 NW 706.

LIABILITY OF THE SERVANTS OF THE RAILROAD. In *Patry v N.P. Ry. Co.* 114 M 375, 131 NW 462, the railroad company, certain of its engineers, and a section foreman were joined as defendants in an action to recover damages to timber caused by the defendants' alleged negligence in dereliction of their statutory duties of inspection, patrolling, etc. Held, that all of the defendants contributed to the result and the negligence of each was concurrent with that of the others. The court said that the individual defendants were personally required to perform those duties for the benefit of the public.

88.76 REWARDS.

HISTORY. 1925 c. 407 s. 31; M.S. 1927 s. 4031-31.

88.77 DISPOSAL OF FINES AND PENALTIES.

HISTORY. 1913 c. 159 s. 7; G.S. 1913 s. 3807; 1925 c. 407 s. 29; M.S. 1927 s. 4031-29.

88.78 APPEALS.

HISTORY. 1913 c. 159 s. 6; G.S. 1913 s. 3805; 1925 c. 407 s. 30; M.S. 1927 s. 4031-30.

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(Annotations not limited to offenses under this chapter of Conservation.)

JUSTICE COURTS; TRIALS ON SUNDAY. Legality of trials on Sundays, holidays, and during the evening for offenses under the forestry laws. See 1926 OAG 107.

CRIMINAL JURISDICTION OF JUSTICE COURTS; CHANGES OF VENUE. See 1940 OAG 14.

RIGHT TO COUNSEL. See 1930 OAG 177.

PLEA OF GUILTY AS WAIVING RIGHT TO APPEAL; WITHDRAWING PLEAS. See 1930 OAG 177; 1940 OAG 13.

COMPLIANCE WITH JUDGMENT BY PAYMENT OF FINE OR COSTS AS WAIVING RIGHT TO APPEAL. See OAG, Feb. 27, 1942, 208-G, citing State ex rel v City of Red Wing, 175 M 222, 220 NW 611.