GENERAL PROVISIONS

CHAPTER 465

GENERAL PROVISIONS

465.01 RIGHT OF EMINENT DOMAIN.

A village may properly, under some circumstances, pay a property owner for the opening of a street across his property. Vague allegations that the expenditure is an extravagant waste of funds, without any statement upon which the court can form a judgment, are not sufficient to warrant an injunction. Tiedt v Village of Argyle, 129 M 260, 152 NW 412.

In the award of damages and assessment of benefits where the improvement, when considered in connection with the property affected, is such that honest minds might differ, the apportionment thereof is a legislative function, and the courts will not interfere in the absence of clear abuse of discretion. Aullwold v City of St. Paul, 138 M 271, 164 NW 983.

A village under the right of eminent domain in acquiring a site for a hospital outside of village limits. OAG April 17, 1945 (1001-H).

Land may not be condemned for a private purpose. OAG May 1, 1945 (59-A-14).

Cities may condemn property owned by the county and not devoted to public use. A declaration or resolution by the county board that the land is not in public use is sufficient evidence. Persons having interest in the property sought to be condemned should be made parties, and if they are parties, they are bound by the final judgment. Whether persons not parties to the proceedings may collect for direct or consequential damages is determined from all the facts. OAG April 22, 1947 (59-a-4).

465.025 GIFTS OF LAND TO STATE.

HISTORY. 1947 c. 8 s. 1.

465.026 MUNICIPALITY MAY CONVEY LANDS TO PROMOTE INDUSTRY AND EMPLOYMENT.

HISTORY. 1947 c. 463 s. 1.

465.03 GIFTS TO MUNICIPALITIES.

Salary of a policeman may be paid by donations made by private individuals. OAG June 30, 1947 (785-S).

465.035 GIFT BY MUNICIPALITIES TO GOVERNMENTAL SUBDIVISION.

HISTORY. 1947 c. 34 s. 1.

465.09 DAMAGES; NOTICE OF CLAIM; LIMITATION.

1. **Constitutionality**
2. **When applicable**
3. **When not applicable**
4. **Effect on charter provisions**

5. *Notice of claim*
6. **Limitation**

2. When applicable

It is a general rule of law that a city is not liable for injuries which occur outside of the city limits. This rule, however, like others, has its exceptions under certain circumstances, such as in the instant case. The test is whether the excavation located outside the street area is in such close proximity as to constitute a pitfall or trap. The case should have gone to the jury. Mix v City of Minneapolis, 219 M 390, 18 NW(2d) 130.

Where plaintiff's injury resulted from the city's negligence in permitting melting snow to accumulate on one of its sidewalks so as to form a bumpy, icy, and dangerous condition, and in permitting that condition to remain all winter, under the facts in the instant case plaintiff was not guilty of contributory negligence as a matter of law in using the walk knowing the possible danger, there being no showing of a safer walk. Slindee v City of St. Paul, 219 M 428, 18 NW(2d) 128.

In determining the amount of damages to be awarded for personal discomfort and annoyance, there is no fixed measure thereof, and consequently the jury has a large discretion in assessing them. Krueger v City of Faribault, 220 M 89, 18 NW(2d) 777.

Where a municipality constructs a culvert for the passage of waters of a watercourse, it will be liable in damages for negligent construction which is a proximate cause of the flooding of lands appurtenant to the watercourse. Failure to remove obstructions therein to the damage of riparian owners is a nuisance, and damages caused thereby are recoverable. Greenwood v Evergreen Mines, 220 M 296, 19 NW(2d) 729.

The duty of keeping a sidewalk in a reasonably safe condition for travel is placed on the city and not on abutting owners or occupants; but abutting owners may be held liable for injuries caused by negligence in maintaining in a dangerous and defective condition certain facilities erected on the sidewalk for convenience of a building; and this latter rule applies where the defendant maintained a patch of cement on the sidewalk as a convenience for her building. Shepstedt v Hayes, 221 M 74, 21 NW(2d) 199.

Icy conditions on a village street caused by the state highway department in operating a snowplow did not relieve the village from liability for injuries caused by the formation of ice. Squillace v Village of Mountain Iron, 223 M 8, 26 NW(2d) 197.

A municipality's duty to keep its streets and sidewalks in safe condition for traveling is not limited to the elimination of structural defects but extends to dangerous accumulations of ice and snow. Squillace v Village of Mountain Iron, 223 M 8, 26 NW(2d) 197.

Plaintiff was guilty of contributory negligence as a matter of law, since he was thoroughly familiar with the physical location where the accident to him occurred, and, although having a safe route to walk, he chose the more dangerous one. Veaasen v Pillsbury, 223 M 396, 27 NW(2d) 414.

Liability of municipality and abutting owner for injuries resulting from ice and snow. 21 MLR 703; 39 Yale L.J. 550, 555.

5. Notice of claim

In jurisdictions where it is held that the governing body of the municipality may by its conduct waive statutory notice, the burden is upon the plaintiff to show acts and conditions constituting an estoppel. Johnson v City of Chisholm, 222 M 179, 24 NW(2d) 233.

Notice of claim required by section 465.09 is sufficient if the place of accident is so described therein that the proper municipal officers may, through the exercise of reasonable diligence, locate the place of accident even though the notice may contain some inaccuracies. In the instant case the notice was sufficient. Louko v Village of Hibbing, 222 M 463, 25 NW(2d) 234.

The notice required is mandatory. OAG July 15, 1946 (844-B-8).

6. Limitation

The Minnesota statute requiring, as a condition precedent to an action against a municipality based on municipality's negligence, that person claiming damages file a written notice with council stating time, place and circumstances of loss and amount of compensation demanded is not a statute creating right of action, but is a statute of limitation restricting the common law right of action against municipalities for their torts and, hence, cannot be enforced to defeat a tort action by the United States against a municipality. United States v City of Minneapolis, 68 F. Supp. 585.

A municipality may be liable in damages if on a factual basis the damages to stock stored in the merchant's basement was proximately caused by and the result of the flooding of the street by the employee of the city water department. OAG July 19, 1946 (844-B-8).

465.10 CLAIMS BASED ON RELATION OF MASTER AND SERVANT.

Laws 1897, c. 248, requiring thirty days notice to a municipality as a condition precedent to maintain an action against it for injuries caused by defects in its streets, sidewalks, or other public grounds, does not apply where the injury complained of was received by an employee of the municipality in the due performance of his duties, where the relation of master and servant exists. Kelly v City of Faribault, 95 M 293, 104 NW 231; Pesek v City of New Prague, 97 M 171, 106 NW 305.

While L. 1913, c. 391, supersedes section 103 of the Duluth home rule charter, it does not apply to a cause of action for damages to real property growing out of the reestablishment of a grade line of a street, and the filling up to such grade line, and in such case no written notice to the city is required. Johnson v City of Duluth, 133 M 405, 158 NW 616.

465.11 CLAIMS FOR DEATH; NOTICE.

In an action to recover from a municipality for death by wrongful act or omission, the action must be commenced within one year from the occurrence of the loss or injury. Kuhlman v City of Fergus Falls, 178 M 489, 227 NW 653.

465.12 TO WHAT CITIES AND VILLAGES APPLICABLE.

The language employed in section 465.09 as to the method and procedure of presenting claims against municipalities, clearly shows that the legislative purpose was to establish a uniform rule which should apply to all municipalities, thus avoiding confusion arising out of many dissimilar provisions contained in various city charters of the state. Notice of claim required under cited statute which fails to state amount of compensation demanded by claimant is insufficient, since the omission constitutes a failure to comply with an essential and mandatory provision of the act. Freeman v City of Mpls. 219 M 202, 17 NW(2d) 364.

465.15 CITIES MAY ACQUIRE EXEMPT PROPERTY.

Special laws held valid. State ex rel v District Court, 33 M 235, 22 NW 625; State ex rel v District Court, 33 M 252, 22 NW 632; State v Waddell, 49 M 500, 52 NW 213; State v Brill, 58 M 152, 59 NW 989; State v District Court, 83 M 170, 86 NW 15; State ex rel v Park Board, 100 M 150, 110 NW 1121; In re Lake of Isles, 152 M 29, 188 NW 54.

465.18 STATE'S OWNERSHIP OF BED OF NAVIGABLE RIVER.

Formerly the lake was of considerable depth, with well-defined banks and sandy beaches, and was a navigable lake. The outlet was damaged from natural causes, the waters receded, and vegetable growth appeared. After the commencement of the ditch proceedings, but before the hearing, the county board fixed the level

of the lake, a dam was built at the outlet, and the lake assumed proportions of a public or navigable lake. The order of the county board should have been held valid and the lake should not be drained. State ex rel v District Court, 146 M 150, 178 NW 595.

The right of the public to use a navigable river includes the right of moorage and extends to all parts of the stream within the limits defined by ordinary high water mark. The doctrine of res ipsa loquitur is applicable where a steamboat, moored by the owner above a dam across the Mississippi river, is wrecked as a consequence of the giving way of gates in a dam. Winans v Northern States Power, 158 M 62, 196 NW 811.

Where land is platted with a river as one of the boundaries of the plat, and only a dedicated street on such plat intervenes between the platted lots fronting on said street and the river, the conveyance by the proprietors, who platted the land, of the lots so fronting on the street carries the fee title to the entire street in front of the lots, and the riparian rights attach to the lots, subject to the public easement in the street. Lamprey v Amer. Hoist Co. 197 M 112, 266 NW 434.

Title to relicted land may be acquired by adverse possession. Schmidt v Marschel, 211 M 539, 2 NW(2d) 121.

A riparian owner's rights on a body of navigable water are qualified, restricted, and subordinate to the paramount rights of the public to public use of the waters for purposes of navigation, which include not only navigation by watercraft for commercial purposes but also use for the ordinary purposes of life, such as boating, fishing, fowling, skating, bathing, taking water for domestic and agricultural purposes, and cutting ice. Nelson v DeLong, 213 M 425, 7 NW(2d) 342.

Under the law of Minnesota, a riparian owner, under a government patent, of land bounding on a stream navigable in fact, takes title to the stream only, at furthest to low-water mark, but has the right of possession and use of the bed of the stream between low-water mark and navigable channel, including any island or other accretion formed on such bed, subject only to such use, control, or regulation as the state may make of it in the exercise of its sovereign power, for protecting or improving the public right of navigation; and where such owner served notice on a city of her claim to an island in front of her shoreline, she was not estopped to maintain an action for its recovery because the city, before suit, but after such notice, expended money in making improvements thereon. Hall v Hobart, 186 F. 426.

Shores and beds of navigable waters are reserved to the states; and, whether waters are navigable or not, title to the soil under the water is determined by the law of the state, subject only to the paramount right of the federal government to regulate navigation. U.S. v Holt State Bank, 294 F. 161.

Where a meandered lake in Minnesota is non-navigable in fact, a patentee of government land bordering on it takes to the middle of the lake, and where the lake is navigable in fact, its waters and the bed belong to the state in its sovereign capacity, and the patentee takes the fee only to the water's edge, but with all the rights incident to riparian ownership, including the right to accretions or relictions due to recession of the water. U.S. v Holt State Bank, 294 F. 161; 46 SC 197; 270 US 49.

Navigability in law depends upon navigability in fact. The common-law doctrine that ebb and flow of tide establishes navigability is inapplicable in the United States. "Navigability" depends on whether river is a natural highway for customary commerce; navigability in law not being destroyed by occasional or seasonal interruptions. Under "Thalweg" theory, middle of main channel of river constitutes boundary. Allegation that rights of Canadian citizen, whose pulpwood was seized by boom company, were based on the treaty with Great Britain, Aug. 22, 1842, art. 2. Clark v Pigeon River Co. 52 F(2d) 551.

Whether under local law the title to the bed of a navigable stream is retained by the state or the title of the riparian owner extends to the thread of the stream or to low water mark, the rights of the titleholder are subordinate to the dominent power of the federal government in respect of navigation. In the instant case a

railroad and a telegraph company were not entitled to compensation from the United States for injury to their embankment located between high and low water marks caused by raising of water level in the Mississippi river for the improvement of navigation, even though embankment did not obstruct navigation, since any structure in the bed of a navigable stream is placed there at the risk that it may be injured or destroyed without compensation by a federal improvement of navigable capacity. United States v Chicago, Milwaukee Ry. Co. 61 SC 772, 312 US 592.

Right of a state to prevent removal of sand from bed of lake or stream. 3 MLR 211.

Right of riparian owner to prevent trapping. 5 MLR 399.

What can a riparian proprietor do? 21 MLR 512.

465.56 CITIES, VILLAGES, AND BOROUGHS MAY LEVY TAXES FOR ADVERTISING PURPOSES.

When authorized by the electorate, the city of Owatonna may levy a tax of not to exceed one-half mill, and the proceeds may be used to advertise the city; but neither the city nor the public utilities commission may donate public funds to the chamber of commerce. OAG July 10, 1946 (59-A-3).

There is no law authorizing a city of the fourth class to expend public funds, or appropriate to others, public funds to be used in anniversary or patriotic celebrations. OAG June 13, 1947 (59-a-3).

A municipality may disburse funds and levy a tax for promotion and advertising purposes only under the provision of section 465.56. OAG June 30, 1947 (59-a-3).

465.58 CITIES, VILLAGES, OR BOROUGHS MAY PAY DUES TO LEAGUE OF MINNESOTA MUNICIPALITIES.

The court did not err in denying in a taxpayer's suit a temporary injunction restraining the payment of the expenses of certain officers in attendance upon meetings or conventions having to do with the city's interests. Tousley v Leach, 180 M 293, 230 NW 788.

465.59 CITY OF THIRD CLASS; CONVEYANCE TO VETERANS.

HISTORY. 1947 c. 303 s. 1.