

CHAPTER 6

STATE AUDITOR

6.01 DUTIES; SEAL.

The state of Minnesota existed as a de facto government from autumn 1857 until May 11, 1858, exercising all the functions of a state government by common consent of the people. The amendment to Minnesota Constitution, Article IX, Section 10, adopted April 15, 1858, under the authority of which the Minnesota State Railroad Bonds were issued was valid and operative as a part of the state constitution. Moreover an executive officer of the state is not subject to control or interference of the judiciary in the performance of duties belonging to him as an executive officer, even if the act is purely ministerial, and his official acts cannot be brought under control by mandamus or injunction. *Secombe v Kittleson*, 29 M 561, 12 NW 519.

6.03 AUDIT OF CLAIMS.

L. 1895, c. 205, as amended by L. 1899, c. 307, providing for payment of certain bounties to manufacturers of sugar from beets grown in this state, is unconstitutional, because in violation of Minnesota Constitution, Article IX, Sections 5 and 10. An unconstitutional statute is simply a statute in form, is not a law, and under all circumstances lacks the force of law. The writ of certiorari issued to review the action of the state auditor in refusing to issue a warrant is discharged. *Minn. Sugar Co. v Iverson*, 91 M 30, 97 NW 454.

The state auditor is a constitutional officer. He is charged by law with many important duties, in the performance of which he must exercise his judgment as to the legality of his acts. The highway commissioner through the facilities of the attorney general is in the process of acquiring property in a manner the state auditor considers illegal. There is a dispute between the two state agencies. It is the duty of the attorney general to appear for all state agencies; but in the instant case he cannot represent both. He may espouse the one he considers in the right. There is no reason why the state officer, at his own expense, cannot appear in opposition and employ counsel at his own expense. *State ex rel v King*, 196 M 44, 264 NW 227.

Under section 3.24 standing legislative appropriations are abolished. Under section 6.03 warrants are drawn by the state auditor on the state treasurer only in pursuance of an appropriation by the legislature. A claim transmitted to the state auditor by the clerk of the district court of Fillmore County for a horse stealing bounty under the provisions of section 348.06 cannot be honored by the state auditor. OAG May 1, 1947 (9-A).

6.04 APPROVAL OF CLAIMS.

Where a bank through which a forged state warrant is cleared, pays the amount of the same and presents it to the state treasurer for redemption, it guarantees that all previous endorsements are genuine. The state is not estopped from collecting from the bank by the fact that the forger is a trusted state employee, nor by any act or omission of any of its officers or agents. *State v Merchants Bank*, 145 M 322, 177 NW 135.

6.09 DUTIES.

The conservator of rural credit may adjust a controversy and settle a claim growing out of dealings in the past on the part of the department of rural credit and may settle such controversy by agreement, but no money may be paid in set-

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tlement of such claim unless appropriated by the legislature. OAG May 3, 1947 (770-F).

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HISTORY. Repealed by L. 1947, c. 416, s. 2.

6.136 REFUNDMENT OF MONEY.

HISTORY. L. 1947, c. 416, s. 1.

Regarding deposit of fees with the department of health and manner of refundment of unearned deposits. 1944 OAG 273, Jan. 15, 1944 (454-E).

Where a person pays the five dollar fee to the board of hairdressing and changes her mind and does not take the examination, there is no provision for refundment under L. 1943, c. 654. OAG May 29, 1946 (33-B-6).

6.22 OTHER DUTIES OF STATE AUDITOR.

The tokens and forms are not limited to the subject of liquor and fermented malt beverage stamps. Forms must be in the nature of stamps or tokens. OAG June 27, 1946 (24-a).