

CHAPTER 606

REVIEW OF DECISIONS OF ADMINISTRATIVE BOARDS AND CERTIORARI

606.01 CERTIORARI, WITHIN WHAT TIME WRIT ISSUED.

1. **Generally**
2. **Relief granted**
3. **Relief not granted**
4. **Workmens compensation**
5. **Drainage proceedings**

1. Generally

Entry of a formal judgment of affirmance or reversed in certiorari proceedings is neither contemplated nor authorized under our statutes. The writ in this state is not the common law writ; nor is it similar to the New York writ. If the district court, in reviewing administrative proceedings on certiorari, determines that the administrative board has acted upon an erroneous theory of law, the court should remand the proceedings with directions to proceed under a correct theory, and should not itself attempt to decide the case on the merits. *State ex rel v Board*, 213 M 550, 7 NW(2d) 544.

The city council having performed its discretionary function without arbitrariness, mandamus would not lie to compel issuance of a building permit where petitioner, through application for a writ of certiorari within statutory period, had another proper, speedy and adequate remedy available to secure a full review of entire matter, including possible violation of petitioner's legal right at any stage of the proceeding. *Zion Church v City of Detroit Lakes*, 221 M 55, 21 NW(2d) 205.

2. Relief granted

Under the rule that the board of tax appeals, as the trier of fact, may exercise its independent judgment, aided by all the evidence adduced, in determining whether the assessed valuation of property for tax purposes is inadequate, held that evidence reasonably tends to sustain findings of board increasing valuation of mining properties here considered. *Village of Aurora v Commissioner*, 217 M 64, 14 NW(2d) 292.

That a judgment is erroneous because of judicial error is ground for appeal, writ of error, or certiorari, according to the case, but it is no ground for setting aside the judgment on motion after the time for review has expired. *State ex rel v Probate Court*, 221 M 333, 22 NW(2d) 448.

3. Relief not granted

An order removing a person from public office will not be reviewed by certiorari after the repeal of the statute under which such person claimed the right to hold such office. The repeal of L. 1941, c. 385, rendered most questions here presented for determination, and the appeals must be dismissed. *State ex rel v Brown*, 216 M 135, 12 NW(2d) 180.

The denial of the writ of certiorari by the supreme court of the United States imports no expression of opinion by it upon the merits of the decision of the circuit court of appeals. *State v Kelly*, 218 M 255, 15 NW(2d) 554.

On certiorari, the court is not justified in holding the commission acted arbitrarily and capriciously in refusing to approve the operation of a proposed airport, where there is evidence to sustain a finding by the commission that the opera-

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tion of the same would be attended with dangers to a public airport owned and operated by it. *State v Mpls.-St. P. Commission*, 223 M 175, 25 NW(2d) 721.

606.02 WHEN SERVED.

Any party who would be prejudiced by a reversal or modification of an order, award, or judgment, is an adverse party on whom a writ of certiorari or notice of appeal must be served. *Larson v LeMere*, 220 M 25, 18 NW(2d) 697.