PART VI

CONSTRUCTION AND PUBLICATION OF STATUTES, CURATIVE ACTS, EXPRESS REPEALS

CHAPTER 645

INTERPRETATION OF STATUTES

GENERAL PROVISIONS

645.01 WORDS AND PHRASES.

Minnesota Constitution, Article 4, Section 13, which provides that the style of all the laws of this state shall be: "Be it enacted by the legislature of the state of Minnesota," is mandatory, and a statute without any enacting clause is void; and it is not competent, for the purpose of sustaining the validity of the statute which had no enacting clause when it was sent to and was approved by the governor, to show that it contained an enacting clause when it passed the legislature. Sjoberg v Security Savings Bank, 73 M 203, 75 NW 1116.

Legislative action is unnecessary to affirm the existence of the common law, but statutory enactment is essential to repeal, abrogate, or change the rules, or doctrines of the common law. It is the province of the legislature, and not of the courts, to modify the rules of common law. Congdon v Congdon, 160 M 342, 200 NW 76.

A litigant may be heard to question the constitutionality of a statute only when and so far as it is about to be applied to his disadvantage. Public officials who have no personal pecuniary interest in the matter involved will not be permitted to raise the question of the constitutionality of a statute to avoid the performance of a ministerial duty which it clearly imposes upon them. State v County of Steele, 181 M 427, 232 NW 737.

Canons of construction are not the masters of the courts, but merely their servants, to aid them in ascertaining legislative intent; and when such intent is ascertained the statute must be so construed as to give it effect. A broad but fair construction is to be given statutes having for their end the promotion of important and beneficial objects. In construing a statute, courts should be careful not to apply such a rigid and literal reading as would in many cases defeat its very object. A statute is valid even though it is imperfectly drawn, if it contains a competent and official expression of the legislative will. State ex rel v Probate Court, 205 M 545, 287 NW 207; Judd v Landin, 211 M 465, 1 NW(2d) 861.

Whether the governor of the state through veto power shall have a part in making state laws is a matter of state policy. Legislative enactment redistricting the state for election for congressional representatives vetoed by the governor, and not repassed as required by law, is a nullity. Smiley v Holm, 52 SC 397, 285 US 355.

Construction of tax laws. 23 MLR 107.

Administrative construction; weight given by the courts. 24 MLR 129.

Ambiguity of ambiguous statutes. 24 MLR 509.

The legislative process in Minnesota. 30 MLR 653.

Legislative bill-drafting. 31 MLR 103.

645.02 EFFECTIVE DATE AND TIME OF LAWS.

Under the provisions of Mason's Statutes, Section 10928, prior to the passage of the present section 645.02, it was held that since the amendment in question did

not specifically provide when it was to take effect, it went into effect from and after its approval on January 24, 1936. Settlement of Venteicher, 202 M 333, 278 NW 581.

Rule against retroactive legislation. 20 MLR 775.

645.03 SESSION LAWS NOT AFFECTED.

Section 645.03 is G.S. 1923, s. 10918, as rewritten.

The act adopting the Minnesota Revised Statutes, approved March 8, 1945, and filed with the secretary of state March 9, 1945, reads as follows: (1) A revision of an existing statute is presumed not to change its meaning, even if there be alterations in the phraseology, unless such intention to change the law clearly appears from the language of the revised statute; (2) in reenacting a statute, however, intention to change the meaning may as clearly appear from the omission of old as by adding new language; (3) enactment of statutes lies wholly within the legislative field, and what the legislature has authority to enact it has like authority to amend or even repeal; (4) when in 1945 the legislature adopted and enacted the compilation and revision of the general statutes of this state as the "Minnesota Revised Statutes," it thereby recognized and declared the same to be an official compilation, revision, and code. As such, the language chosen and used in the revised statutes must be given effect as the latest expression of the legislative will; (5) where the statutory language is clear and unambiguous, there is no room for construction or interpretation. State ex rel v Washburn, 224 M 269, 28 NW(2d) 652.

The revision of 1905 (s. 3659) dropped the words requiring signing a will "at the end." In reenacting a statute, intention to change meaning may as clearly appear from the omission of old as by adding new language. Estate of Cravens, 177 M 437, 225 NW 398; State ex rel v Washburn, 224 M 269, 28 NW(2d) 652.

It is a generally accepted rule of statutory construction that a revision of an existing statute is presumed not to have changed the meaning, even if there be phraseological alterations, unless an intention to change clearly appears from the language of the revised statute when considered in connection with the subject matter of the act and its legislative history. Where the meaning of the revised statute is free from ambiguity, the prior law cannot be resorted to for the purpose of creating ambiguity. A change in the prior law, when clear and unambiguous, must be given effect. Champ v Brown, 197 M 49, 266 NW 94.

In a revision a change in phraseology or punctuation is presumed to be intended to simplify the language of the prior act, not to change its meaning. Bauman v Metzger, 145 M 139, 176 NW 497; Sexton v Baehr, 212 M 207, 3 NW(2d) 1.

L. 1864, c. 16, s. 2, provided that if at the time of marriage the husband is unsettled and the wife is settled, the wife retains her maiden settlement until such time as the husband acquires a settlement which can devolve upon her by derivation. This provision found in G. S. 1894, s. 1954, was omitted from R. S. 1905, s. 1488, by the revisors, and not having since been reenacted evidences an intention of the legislature to follow the common-law rule. City of Willmar v Village of Spicer, 129 M 395, 152 NW 767; City of Mpls. v Township of Whitefield, 215 M 361, 10 NW(2d) 365.

Where the legislature has provided expressly a method for the suspension and removal of two classes of county employees and has made no provision as to a third class, the court will not supply the omitted legislation, since it is not the function of courts to supply that which the legislature purposely omits or inadvertently overlooks. State ex rel v County of St. Louis, 216 M 140, 12 NW(2d) 193.

As applied to L. 1925, c. 161, s. 2, it is a general rule of construction that the legislature intended to make some change in the law by an amendment. State ex rel v District Court, 134 M 131, 158 NW 798; Fitzpatrick v City of St. Paul, 217 M 62, 13 NW(2d) 737.

The consolidation of G. S. 1894, ss. 5406 and 5407, into R. L. 1905, s. 4197, rewording them, and changing the headline did not indicate an intention on the part of the legislature in adopting the revision to change the law, since the headlines are not a part of the act, and the presumption is that no change is intended

in existing laws by a revision unless the contrary appears from its language. Wangensteen v Northern Pacific, 218 M 321, 16 NW(2d) 50.

Other Minnesota decisions construing Minnesota statutes and cited in the cases herein annotated: Hugo v Miller, 50 M 105, 52 NW 381; Becklin v Becklin, 99 M 307, 109 NW 243; United States Land Co. v Sullivan, 113 M 27, 128 NW 1112; Austro-Hungarian Consul v Westphal, 120 M 122, 139 NW 300; Williams v State Board, 120 M 313, 139 NW 500; Thompson v Peterson, 122 M 228, 142 NW 307; Telford v McGillis, 130 M 397, 153 NW 758; Spear v Newman, 131 M 332, 155 NW 107; Wipperman v Jacobson, 133 M 326, 158 NW 606; State ex rel v Board, 139 M 94, 165 NW 880; Hill v Village of Aurora, 157 M 469, 196 NW 465; Ebeling v Independent Co. 187 M 604, 246 NW 373; State ex rel v Montague, 195 M 278, 262 NW 684.

645.04 FORMER LAWS NOT REVIVED.

This section modifies the language found in G.S. 1923, s. 10919.

645.05 CONTINUATION OF FORMER LAWS.

This section is G. S. 1923, s. 10922, with necessary changes.

See annotations under section 645.03.

In addition to notes relating to decided cases found under this section in Volume 2 of Annotations to Minnesota Statutes, and under section 645.03, the following cases bear a certain relation to the interpretation of this section: Rundlett v City of St. Paul, 64 M 223, 66 NW 967; State v Stroschein, 99 M 248, 109 NW 235; State v Barnes, 108 M 230, 122 NW 11; State v Ledbetter, 111 M 110, 126 NW 477; Lockey v Lockey, 112 M 512, 128 NW 833; State ex rel v Schmahl, 118 M 319, 136 NW 870; Bond v Pennsylvania Ry. 124 M 195, 144 NW 942; Swenson v Lewison, 135 M 145, 160 NW 253; Manson v Village of Chisholm, 142 M 94, 170 NW 924; Simmon v Northern Pacific, 147 M 313, 180 NW 114; Olson v Oneida Mines, 153 M 80, 189 NW 455; Firehammer v Interstate Securities, 170 M 475, 212 NW 911.

645.06 PUBLISHED LAWS AS EVIDENCE.

G.S. 1878 of Minnesota, the preparation and publication of which were authorized by the legislature, but without expense to the state, and which was made competent evidence of the laws of the state by a subsequent act, is merely a private compilation, and not a legislative revision, and when the verity of any part thereof is questioned the court looks to the orginal enactments. Clagett v Duluth Tp. 143 F. 824.

645.07 UNIFORM STANDARD TIME.

This section is a modification of Mason's Statutes, s. 10933-1.

In the instant case an amendatory act is construed as referring to "standard time," as established at the time of its passage and still in use. State v Johnson, 74 M 381, 77 NW 293.

On and after July 8, 1945, central standard time controls. This applies to the state or any of its governmental subdivisions as to laws fixing the hours between which an act may or may not be done. Off-sale liquor stores are so controlled as to time to open and close. OAG June 9, 1945 (83-f); OAG June 29, 1945; OAG July 12, 1945 (225-h); OAG July 24, 1945 (83-f); OAG July 26, 1945 (104-A-10).

Legal aspects of standard time. 2 MLR 517.

CONSTRUCTION OF WORDS AND PHRASES

645.08 CANONS OF CONSTRUCTION.

Clause (1)

Clause (2)

Clause (1)

This is Mason's Statutes, s. 19032, as amended. The language is used in 18 states. In California, Idaho, and Kansas the word "context" is used instead of "common."

The word "resided" as used in section 261.07, relating to relief of the poor, is construed as meaning where the person has lived or existed the longest within the one year immediately preceding the commencement of the proceedings and does not have reference to his technical legal residence. A particular word may be used to express a different meaning according to the subject matter. Town of Smiley v Village of St. Hilaire, 183 M 533, 237 NW 416.

Although a statute be remedial in its terms and purposes and as such to be liberally construed, the court is without power or authority to change the plain language thereof by construing it so as to mean something different from what is clearly stated therein. A statute is to be enforced literally as it reads if its language embodies a definite meaning which involves no absurdity or contradiction. In such a case the statute is its own best expositor. Peterson v Halvorson, 200 M 253, 273 NW 812.

Where the purpose of a statute is remedial the legislative intention will always prevail over the literal sense of its terms; therefore when the expression is special or particular, but the reason is general, the expression should also be deemed general. Minnesota Farmers' Mutual v Smart, 204 M 101, 282 NW 658.

Under section 176.11(f) the term "accrued compensation" is sufficiently comprehensive to cover expenditures by employee for medical, hospital, and nursing care. There is no room for construction of a statute free from uncertainty. Fehland v City of St. Paul, 215 M 94, 9 NW(2d) 349; Fitzpatrick v City of St. Paul, 217 M 59, 13 NW(2d) 737.

By construing the two statutes to be in pari materia, the rule of ejusdem generis, as invoked, is inapplicable. Section 614.09, being remedial, should be liberally construed. Playing a slot machine is a gambling game. Foley v Whelan, 219 M 216, 17 NW(2d) 367.

Construction of the words, "actually," "held," "owned," "really," and the phrases, "in fact," and "an actual or existing fact" in connection with a claim by defendant to hold land exempt as a cemetery, although the land was not used as such. State v Ritschel, 220 M 587, 20 NW(2d) 673.

The words "retroactive" and "retrospective" are synonymous in their application. State v Industrial Tool Co. 220 M 607, 21 NW(2d) 39.

The word "native" as used in a statute ordinarily relates to the state of the statute's enactment. In the instant case "native frogs" are frogs produced and caught within the state and do not include frogs caught and brought in from another state. State v Prickett, 221 M 179, 21 NW(2d) 474.

Where, in addition to the absence of tokens of a different meaning, a legislative intention is evinced that the words are used with their approved and recognized meaning, no departure from such meaning is permissible. State v Bolsinger, 221 M 154, 21 NW(2d) 486.

The language of the statute is clear and conveys a definite meaning. The conclusion cannot be escaped that the court, by virtue thereof, was authorized to stay enforcement of the rate order made here by the commission pending appeal. Under such circumstances, there is no occasion to resort to rules of statutory interpretation or construction with reference to said provision, and it would be improper to give the language used another or different meaning than it plainly demands. State ex rel v Northern Pacific, 221 M 400, 22 NW (2d) 569.

There is nothing in section 308.05 to indicate that the legislature intended that the word "otherwise" should be ignored or given any other meaning than the usual one. Construction lies wholly in the domain of ambiguity. If the language of the statute is plain and unambiguous, there is no room for construction. A statute is to be enforced literally as it reads if its language embodies a definite meaning which involves no absurdity or contradition. Clinton Co-operative v Farmers Union Grain Terminal, 223 M 257, 26 NW 117.

Construction of "calendar" month, "work" month, "regular base salary," "minimum base salary," "base," "low," "low in price," and "low in place," as applied to war salary adjustment under the civil service administration. 1944 OAG 268, Feb. 25, 1944 (644-F).

Conflict of laws as to contracts. 10 MLR 498.

Clause (2)

This is Mason's Statutes, s. 10932, as modified. Similar provisions may be found in 17 states.

Unless such construction is contrary to the obvious intent of the legislature, the language of the statute is to be construed in accordance with rules of grammar whenever possible. State v Scoffer, 95 M 311, 104 NW 139; State v Mpls. Milk Co. 124 M 34, 144 NW 417; Mattson v Flynn, 216 M 354, 13 NW(2d) 11.

It is to be presumed that the legislature in enacting a statute with the words in the singular did so in recognition of the fact that section 645.08(2) specifically provides that "The singular includes the plural; and the plural, the singular." State v Industrial Tool Works, 220 M 592, 21 NW(2d) 31.

Under the canon of construction, unless such a construction is inconsistent with the manifest intent of the legislature, it is recognized that the singular includes the plural, so L. 1947, c. 169, providing that a veteran may have "a certified copy" of his discharge furnished him free permits a plural number of requests. OAG May 20, 1947 (310).

Clause (3)

This clause is based upon rulings of the Minnesota supreme court.

Injury to an employe's heart muscles caused by exertion and excitement greater than is usual and customary in the performance of his duties is an accidental injury within the meaning of the workmen's compensation act. Where there is factual basis for a medical expert's opinion that an employe sustained injury to his heart muscles as the result of attacks of angina pectoris and the expert states that his opinion is "speculative," the opinion affords evidentiary basis for a finding of such injury, where it appears from the expert's testimony as a whole that he based his opinion upon the factual basis and regarded it as speculative only in the sense that it was incapable of demonstration. Hiber v City of St. Paul, 219 M 87, 16 NW(2d) 878.

L. 1943, c. 621, is not applicable to frogs caught and bought in another state and possessed within the state while in interstate transportation from the state where caught and bought in another state. The word "native" as used in a statute ordinarily relates to the state of the statute's enactment. State v Prickett, 221 M 179, 21 NW(2d) 474.

A sister-in-law of insured was not a "relative" within automobile indemnity policy excluding injuries to any relative. Ordinarily the words "relative" and "relation," when used in contracts, statutes and wills, include only relations by blood and not by marriage. Preferred Accident Co. v Onali, 125 F(2d) 580.

General words are construed to be restricted in their meaning by preceding particular words. OAG June 27, 1946 (24-a).

Clause (4)

This clause follows Mason's Statutes, s. 10932, and follows the language found in 22 states.

Clause (5)

This provision is found in the interpretive laws of Arizona and Texas.

A board of county commissioners was composed of five members, each representing a district within the county. A representative of one district failed to qaulify. No steps had been taken to fill the vacancy thus arising. The power of filling such vacancy was not vested in the board. The four members may exercise the legislative powers of the board. Swedback v Olson, 107 M 420, 120 NW 753.

Where the municipal court act provides that jurors be selected by two judges of the municipal court and the president of the common council, after the city charter was amended so that there was no longer an official similar to "president of the common council," a jury list made by two judges of the municipal court is valid. State v Weingarth, 124 M 309, 159 NW 789.

(6) Generally

Where there is no uncertainty or ambiguity in the language, the statute speaks for itself and there is no room for judicial construction. Rules of statutory construction are merely to aid in ascertaining the legislative intent, and statutes must be so construed as to give effect to the obvious legislative intent, though the construction is contrary to such rules. Words of a statute are to be given their ordinary, popular usage, according to common and approved usage of the language unless obviously used in a different sense. Arlandson v Humphrey, 224 M 49, 27 NW(2d) 819.

The plain, obvious, and rational meaning of a statute should always be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute intellect would discover. Lynch v Alworth-Stephens Co. 294 F. 190; Red Wing Malting Co. v Willcutts, 15 F(2d) 626; Montgomery Ward v Snuggins, 103 F(2d) 458; State of Minnesota v Ristine, 36 F. Supp. 3.

Validity of charter reported by less than all the members of a charter commission. 10 MLR 250.

Rule of ejusdem generis. 23 MLR 545.

Effect of reenactment of statute after judicial construction. 31 MLR 625.

645.09 NUMERALS.

The states of Iowa, Kansas, Missouri, and Pennsylvania have adopted this rule.

645.10 BONDS.

New York and Pennsylvania alone have this provision. Alabama and Georgia have provisions somewhat similar.

645.11 PUBLISHED NOTICE.

Where the notice is served by publication, it must be shown that the newspaper in which it was published possessed the qualifications required by statute to entitle it to publish such notices; and the requirement that it must "be circulated in or near its place of publication to the extent of at least 240 copies" is not satisfied by showing that 240 copies are published without showing where they are circulated. The affidavit required to be filed with the county auditor, is prima facie evidence of the qualification of a newspaper only in case it states "the required facts"; and showing that such an affidavit has been filed without showing the facts stated therein does not establish such qualification. Lovine v Goodridge-Call Lumber Co. 130 M 202, 153 NW 517.

In an action to quiet title, publication of a summons may properly be made in a newspaper published in a village in which land is located even though the news-

paper office is located in that part of the village which lies in a different county than that in which particular description of land is located. OAG May 19, 1942 (83-F).

Where it was the practice to designate one newspaper as official paper of the city and official matter would also appear in another paper and the two papers would divide the fees, publication of official matter in official paper only was sufficient. OAG May 22, 1945 (707-A.4).

645.12 POSTED NOTICE.

See, Mason's Statutes, s. 10933(14).

645.13 TIME; PUBLICATION FOR SUCCESSIVE WEEKS.

Adopted from Pennsylvania. There are similar provisions in Mississippi and North Dakota.

See under former Statutes.

645.14 TIME; COMPUTATION OF MONTHS.

Taken from the construction statute of New York.

645.15 COMPUTATION OF TIME.

This is Mason's Statutes, s. 10933(21). Eighteen states have similar provisions.

Thanksgiving day is not a legal holiday, and where the time for perfecting an appeal expired on that day and appeal perfected on the following day it was properly dismissed. Lucke v Gas Traction Co. 129 M 522, 151 NW 273.

In computing period of limitations, the statute expressly provides that the first day is excluded and the last day included. Haack v Pollei, 134 M 78, 158 NW 908; Oleson v Retzloff, 184 M 624, 238 NW 12; Nebola v Minnesota Co. 192 M 89, 112 NW 880; Jasperson v Jacobson, 224 M 76, 27 NW(2d) 790.

When the last day within which a deed is to be performed falls on Sunday, that day is excluded, and the act may be done on the succeeding day. Pressed Steel Car v Eastern Railway, 121 F. 609.

Where licenses expired on Sunday, December 31, and Monday, January 1, was a holiday, license fees may be accepted on January 2 without penalty. OAG Feb. 7, 1940 (276-G).

If an election is to be held on the first Monday following the first Wednesday in November, and such Monday falls on Armistice day, the election should be held on Tuesday, November 12. OAG Aug. 13, 1940 (276).

Performance of contracts; computation of time; doctrine of de minimis. 7 MLR 356.

CONSTRUCTION OF LAWS

645.16 LEGISLATIVE INTENT CONTROLS.

1. **Generally**
2. **Particular statutory provisions**

1. Generally

In interpreting the statutes the German jurist thinks over again the thought the legislator was trying to express; while the Roman jurist thought out the thought which the legislator was trying to think. "We do not inquire" says M. Ballot-Beaupre "what the French legislator willed a century ago, but what he would have willed if he had known what our present conditions would be."

Liberality of interpretation is in close ratio to the difficulty of securing formal amendment.

The rigidity of our written constitutions has constrained our courts to push the interpreting power to its furtherest limits. Our courts not only think out the thoughts of the lawmakers, but undertake to determine what they would have thought if they could have foreseen the changed conditions and novel problems of the present day.

See, as an illustration, American Federation of Labor v Bain, 165 Oregon 183, 106 Pac. (2d) 544, and cases cited, holding: "The freedom of speech and of the press, secured by the first amendment of the federal constitution against abridgment by the United States, is similarly secured to all persons by the Fourteenth Amendment against abridgment by a state. "Picketing" as an incident to a labor dispute is, at least in some of its phases, an exercise of the right of "freedom of speech."

The rule that penal provisions, retroactive provisions, provisions imposing taxes, provisions conferring the power of eminent domain, provisions exempting persons and property from taxation, provisions exempting property from the power of eminent domain, and laws in derogation of the common law, are to be strictly construed, has no application to the laws of this state, but every such provision is construed according to the fair import of its terms, to promote justice and effect the purpose of the law. All other provisions of any law should be liberally construed to effect their objects and to promote justice. Teders v Rothermel, 205 M 470, 286 NW 353; Wangensteen v Northern Pacific, 218 M 318, 16 NW(2d) 50.

The intention of the lawmaker is the law and must govern where it may be deduced reasonably from the language employed; and the appellate court cannot assume a legislative intent in plain contradiction to words used by the legislature. State ex rel v Erickson, 190 M 216, 251 NW 519; Dennison v State, 215 M 609, 11 NW(2d) 151; Raynolds' Estate, 219 M 449, 18 NW(2d) 238; Loew v Hagerly, 222 M 258, 24 NW(2d) 278; Piper v Willcuts, 64 F(2d) 813.

The construction of a statute should be sensible. It must be construed as it reads and effect given to the clear meaning of its language. Rules of construction are mere aids in ascertaining the meaning of writings of all kinds and, in case of statutes, ascertaining the legislative intent. Rules of construction are neither ironclad nor inflexible; and they have force only as suggestions to the judicial mind. All rules yield when an intention contrary to the inference ordinarily suggested by them is ascertained. State v Flaries, 197 M 590, 268 NW 194; Olson v Schultz, 200 M 365, 274 NW 401; Livingston v Mpls. Fire Relief Assn. 205 M 204, 285 NW 479; Bull v King, 205 M 427, 286 NW 311; Romanchuk v Plotkin, 215 M 156, 9 NW(2d) 421.

In construing a statute the court will not allow judicial interpretation to usurp the place of legislative enactment; and canons of construction are not the masters of courts but merely their servants to aid them in ascertaining legislative intent. The canons have force only as suggestions to the judicial mind; but the judicial construction of a statute is as large a part thereof as if it had been written into it originally. Where there is no uncertainty or ambiguity in the language, the statute speaks for itself and there is no room for judicial construction. Zochrison v Redemption Gold Corp. 200 M 383, 274 NW 536.

Although a statute be remedial and as such entitled to a liberal construction, it cannot be construed to change the plain langauge or modify the intent of the legislature; but the legislative intent may prevail over the literal sense of the terms of the statute; and where mischief is to be remedied, the statute should, if possible, be construed to remedy the evil. Remedial statutes must be liberally construed to accomplish the object of the act. Minn. Farmers Mutual v Smart, 204 M 101, 282 NW 658; State v Hofacre, 206 M 167, 288 NW 113; Wheeler Lbr. Co. v Seaboard Surety, 218 M 443, 16 NW(2d) 519; State v Industrial Tool Co. 220 M 591, 21 NW(2d) 31; Blankholm v Fearing, 222 M 51, 22 NW(2d) 853.

By strict construction is meant that every provision of the law is to be construed according to the fair import of its terms to promote justice and effect the purpose of the law. Teders v Rothermel, 205 M 470, 286 NW 353; Judd v Landin, 211 M 465, 1 NW(2d) 861; Evans v City of St. Paul, 211 M 558, 2 NW(2d) 35; State ex rel v St. Louis County, 216 M 140, 12 NW(2d) 193; Wangensteen v Northern Pacific, 218

M 318, 16 NW(2d) 50; Maust v Maust, 222 M 135, 23 NW(2d) 537; Badger-Dome Oil Co. v Hallam, 99 F(2d) 293.

Courts look to the substance and the effect of the language of the statute in ascertaining legislative intent. The statute must be construed as a whole and the particular meaning to be attached to any word or phrase is ascertained from the context, the language of the subject treated, and the purpose or intention of the legislature. The constitutionality of the statute must be upheld if the language so warrants. Downing v Ind. School Dist. 207 M 292, 291 NW 613; Graybar v St. Paul Mercury, 208 M 478, 294 NW 654; Judd v Landin, 211 M 465, 1 NW(2d) 861; Evans v City of St. Paul, 211 M 558, 2 NW(2d) 35; Gleason v Geary, 214 M 499, 8 NW(2d) 808; Merritt v Stuve, 215 M 44, 9 NW(2d) 329; Tankar v Lumberman's Cas. Co. 215 M 265, 9 NW(2d) 754; Cashman v Hedberg, 215 M 463, 10 NW(2d) 388; Warren v Marsh, 215 M 615, 11 NW(2d) 528; State v Minnesota Federal, 218 M 229, 15 NW(2d) 568; Lyons v Spaeth, 220 M 563, 20 NW(2d) 481.

The clearly expressed intent of the legislature must be given effect, there being no room for construction; and where the language or meaning is doubtful, the court should if practicable, construe the statute to give effect to every part thereof. Rice v City of St. Paul, 208 M 509, 295 NW 529; Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378; Martinka v Hoffman, 214 M 346, 9 NW(2d) 13; Gleason v Geary, 214 M 499, 8 NW(2d) 808; Christensen v Hennepin Transp. Co. 215 M 394, 10 NW(2d) 406; Mattson v Flynn, 216 M 354, 13 NW(2d) 11; State ex rel v Oehler, 218 M 290, 16 NW(2d) 765; Travis v Collett, 218 M 592, 17 NW(2d) 68; Kuenzli's Estate, 219 M 176, 17 NW(2d) 309; Sandy v Walter Butler Co. 221 M 215, 21 NW(2d) 612. State v Northern Pacific, 221 M 400, 22 NW(2d) 569; Hickock v Margolis, 221 M 480, 22 NW(2d) 850; City of Mpls. v Village of Brooklyn, 223 M 498, 27 NW(2d) 563; State of Minnesota v Ristine, 36 F. Supp. 3; Montgomery Ward v Snuggins, 103 F(2d) 458.

While statutes imposing liabilities and penal and criminal statutes are presumed to be strictly construed, such statutes must be interpreted in the light of section 610.03, reading as follows: "The rule that a penal statute is to be strictly construed shall not apply to any provision of Part 5 of the Minnesota Statutes, but every such provision shall be construed according to the fair import of its terms, to promote justice and effect the purpose of the law." Anderson v Burnquist, 216 M 49, 11 NW(2d) 776; U. S. v Gellman, 44 F. Supp. 360; Speeter v U. S. 42 F(2d) 947.

Effect given to practical construction. 20 MLR 56.

Ambiguity of unambiguous statutes. 24 MLR 509.

Use of preambles or recitals. 25 MLR 924.

2. Particular statutory provisions

(1) The court, in construing the intent of the legislature, approves of the action of the tax commission in eliminating the effect of the words "organized under the laws of this state," any other meaning being unreasonable. State v Minnesota Federal, 218 M 230, 15 NW(2d) 568.

To give effect to the legislative purpose, the conjunctive "and" must, through construction, be replaced by the disjunctive "or." Maytag v Commissioner, 218 M 460, 17 NW(2d) 37.

In determining legislative intent the purpose of such legislation should be kept in mind. State v Ritschel, 220 M 583, 20 NW(2d) 675.

If the court keeps in mind "the occasion and necessity for the law," "the circumstances under which it was enacted," the contemplated "mischief to be remedied," "the object to be attained," and "the consequences of a particular interpretation" it is clear that it was not the intent of the legislature to limit the application of the term "normal payroll" to include only the payroll of an immediate predecessor. State v Industrial Tool Co. 220 M 603, 21 NW(2d) 38.

In seeking to resolve the intention of the legislature, consider the mischief to be remedied, the object to be obtained, as it affects the former law. OAG Oct. 25, 1946 (377-a-15).

Relating to preference of widow of deceased veteran or spouse of a disabled veteran. Construction under section 645.16.

(2) Rules that govern the construction of statutes apply to ordinances. It is the duty of the courts to construe statutes and ordinances to avoid absurd restrictions or results. The statute must be construed as a whole so as to harmonize and give effect to all its parts. Smith v Barry, 219 M 187, 17 NW(2d) 324.

A statute should be construed in the light of its obvious purpose in order to ascertain and give effect to the intention of the legislature. Construing section 291.06 in the light of its purpose, it is held, that the legislature intended to allow the exemption where property in a decedent's estate can be traced to property transferred in a prior estate, provided other requirements of the estate are met. Commissioner v Bennett, 219 M 449, 18 NW(2d) 238.

Statutes governing motions are to be given a liberal construction. Gelin v Hollister, 222 M 339, 24 NW(2d) 497.

(3) Section 645.16 used in construing right, in an emergency, for two counties to cooperate in operating a ferry where bridge over the river boundary had been wrecked. 1944 OAG 176, May 10, 1943 (370-D).

Construed in the light of section 645.16, the purchaser of a dry cleaning plant has less protection for his business than had the vendor, in that when the purchaser applies for a permit the fire marshal has the right to determine whether or not the building complies with statutory requirements. 1944 OAG 275, Feb. 29, 1944 (197-B).

When in L. 1941, c. 466, s. 2, par. (b), the legislature amended the old age assistance law, it meant to change it. In interpreting a law the occasion and necessity for the law, the circumstances under which it was enacted, the object to be attained, and the consequences of a particular interpretation must be considered. 1944 OAG 297, Oct. 7, 1944 (521-R).

(4) In construing a statute, legislative intent is to be determined in the light of the object to be attained, mischief to be remedied, the occasion and necessity for the law, as well as circumstances under which it was enacted. Judd v Landin, 211 M 465, 1 NW(2d) 861; State ex rel v Pohl, 214 M 221, 8 NW(2d) 227; Gleason v Geary, 214 M 499, 8 NW(2d) 808; Tankar v Lumberman's Mutual, 215 M 265, 9 NW(2d) 754; Cashman v Hedberg, 215 M 463, 10 NW(2d) 388; Mattson v Flynn, 216 M 354, 13 NW(2d) 11; Raynold's Estate, 219 M 449, 18 NW(2d) 238; State v Ritschel, 220 M 578, 20 NW(2d) 673; State v Industrial Tool Works, 220 M 591, 21 NW(2d) 31; U. S. v 99 Diamonds, 139 F. 961.

Although it is a general rule that constitutional provisions exempting property from taxation are to be strictly construed, such provisions, though not subject to extension by construction or implication, are to be given a reasonable, natural, and practical interpretation to effectuate the purpose for which the exemption is granted. State v Board, 221 M 536, 22 NW(2d) 642.

Where possible, a statute must be interpreted with a view to advancing the purpose and effect of the remedy intended. Badger-Dome Oil Co. v Hallam, 99 F(2d) 293; Mlenek v Fleming, 224 M 38, 27 NW(2d) 800.

Section 645.16 used in construing section 447.05 relating to a contract by which a hospital furnishes service to a city. 1944 OAG 205, March 22, 1944 (1001-A).

(5) The letter of the law shall not be disregarded under the pretext of pursuing the spirit. OAG June 25, 1946 (425-6-1).

(6) Capricious distinctions are not to be imputed to the legislature and unjust and indefensible results are to be avoided, if possible. Pomeroy v National City Co. 209 M 155, 296 NW 513.

While the court must take into consideration the consequences of a particular interpretation and the effect of the law, it is not permissible to deviate from the plain language of the statute to escape an undesirable result, or relief from an inequitable result. First Trust Co. v Reynolds, 46 F. Supp. 497, 130 F(2d) 518.

Administrative construction of an act (section 645.16) is an aid in determining that vitamins in pure or concentrated form are drugs under the state pharmacy act. 1944 OAG 256, April 17, 1944 (337-c-3).

(7) Practical or contemporaneous aids to the court in construing an ambiguous statute for the purpose of arriving at the intent of the legislature may be found in administrative or executive construction, operation and use over a period of time, in opinions of the attorneys general, and extended, practical, satisfactory experience. Such administrative, executive or practical aids are not binding upon the courts and are useful only to assist in proper understanding of the legislative intent. State ex rel v Crookston Trust, 203 M 512, 282 NW 138; Evans v City of St. Paul, 211 M 558, 2 NW(2d) 35; Abbott's Estate, 213 M 289, 6 NW(2d) 466; Raynold's Estate, 219 M 449, 18 NW(2d) 238; Westling v U. S. 60 F(2d) 398; Piper v Willcuts, 64 F(2d) 813; Badger v Hoidale, 88 F(2d) 208; State ex rel v Holm, 52 SC 397, 285 US 355.

Where there is ambiguity or a question whether the statutory provision is directory or mandatory, or where it is necessary to resolve, construe, or discover the legislative intent, the legislative history of the act may be resorted to. Proceedings before legislative committees, reports of interim committees, and findings of revision commissions, may be resorted to. Rice v City of St. Paul, 208 M 509, 295 NW 529; State ex rel v Pohl, 214 M 221, 8 NW(2d) 227; Barlau v Mpls.-Moline, 214 M 564, 9 NW(2d) 6; Mattson v Flynn, 216 M 354, 13 NW(2d) 11; Wangensteen v Northern Pacific, 218 M 318, 16 NW(2d) 50; United States v Great Northern, 53 SC 28, 28 US 144; McDonald v United States, 889 F(2d) 128, 301 US 697.

To apply the doctrine of contemporaneous or practical construction the statute must be sufficiently ambiguous as to compel the court to seize upon extraneous circumstances to aid it in reaching a conclusion. A statute couched in plain and unambiguous language is not open to a construction at variance with its clear claims. State v O'Neil, 209 M 219, 296 NW 7; Muskovitz v City of St. Paul, 218 M 543, 16 NW(2d) 745; United States v State of Minnesota, 113 F(2d) 770.

(8) The common law is in force in Minnesota except as it has been abrogated by statute, or is not adapted to our conditions; and while the common law is flexible and adaptive and may be applied to new conditions, courts cannot abrogate its established rules any more than they can abrogate a statute, and modification must be left to the legislative branch. Jung v St. P. Fire Dept. Relief Assn. 223 M 402, 27 NW(2d) 152.

Rules of statutory construction are merely to aid in ascertaining the legislative intent, and statutes must be so construed as to give effect to the obvious legislative intent, though the construction is contrary to such rules. Where there is no uncertainty the statute speaks for itself and there is no room for judicial construction. Arlandson v Humphrey, 223 M 49, 27 NW(2d) 819.

Under rules of interpretation, sections 645.16 to 645.18, section 222.18 requires the recording of mortgages or deeds of trust executed by railroad companies in the office of the secretary of state, and also in the office of the register of deeds of each county through which the railway runs. 1944 OAG 296, July 7, 1944 (365-A).

645.17 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT.

Generally

Section 645.17 follows the interpretative statutes of Pennsylvania.

Canons of construction are not the masters of courts, but merely their servants to aid them in ascertaining legislative intent; but in ascertaining the meaning of the language of a statute resort should be had to statutory rules of construction in aid of the process. Judd v Landin, 211 M 465, 1 NW(2d) 861; Burnquist v Cook, 220 M 48, 19 NW(2d) 394.

A practical effect should be given to provisions of the statute. It should be broadly, liberally, and reasonably construed. Tankar v Lumbermen's Mutual Co. 215 M 265, 9 NW(2d) 754.

Legislative intent is determined in the light of the object to be attained, mischief to be remedied, the occasion and necessity for the law, as well as circumstances under which it was enacted. State v Industrial Tool Works, 220 M 591, 21 NW(2d) 31.

A statute in derogation of the common law should be construed sensibly and in harmony with the purpose of the statute. Maust v Maust, 222 M 135, 23 NW(2d) 538.

All laws should be sensibly construed and general terms therein should be so limited in application as not to lead to injustice, oppression, or absurd consequences. Legislature will be presumed to have intended exceptions avoiding such results, and the reason for the law should prevail over its letter. Thoresen v Schmahl, 222 M 304, 24 NW(2d) 273.

Since statutory interpretation lies wholly within the domain of ambiguity, there is no room for construction where language is plain and unambiguous. City of Mpls. v Village of Brooklyn Center, 223 M 498, 27 NW(2d) 563.

Procedural effect of res ipsa loquitur. 20 MLR 241; 25 MLR 117.

Ethnic backgrounds of law. 25 MLR 739.

Construction of statutes; effect of reenactment after judicial construction. 31 MLR 625.

Clause (1)

A statute must be enforced literally if its language embodies a definite meaning which involves no absurdity or contradiction, the statute in such case being its own best expositor; but the legislature does not intend a result which is absurd, impossible of execution, or unreasonable. Knudson v Anderson, 199 M 479, 272 NW 376; Peterson v Halverson, 200 M 253, 273 NW 812; Pomeroy v National City Co. 209 M 155, 296 NW 513; Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378; Evans v City of St. Paul, 211 M 558, 2 NW(2d) 35; Merritt v Stuve, 215 M 44, 9 NW(2d) 329; Village of Aurora v Commissioner, 217 M 64, 14 NW(2d) 292; State v Industrial Tool Co. 220 M 591, 21 NW(2d) 31; Thoresen v Schmahl, 222 M 304, 24 NW(2d) 273; Piper v Willcutts, 64 F(2d) 813; United States ex rel v Anderson, 76 F(2d) 375.

An ordinance like a statute may be subject to the same implied exceptions and presumptions as are found in section 645.17. The same rules of public policy and maxims of natural justice to avoid absurd and unjust consequences govern ordinances as they do statutes. Smith v Barry, 219 M 182, 17 NW(2d) 324.

In applying L. 1945, c. 19, s. 1, care must be taken not to construe the word "veteran" in a manner which would make meaningless the provisions of the act. OAG May 10, 1945 (310).

In construing a statute an absurd result must be avoided. OAG Oct. 25, 1946 (377-a-15).

Clause (2)

A statute should be construed so as to give effect to all of its language. The legislature intends the entire statute to be effective and certain; and when any doubts arise as to the constitutionality of a statute such doubts must be resolved in favor of the law. State v District Court, 134 M 131, 158 NW 798; Knudson v Anderson, 199 M 479, 272 NW 376; State ex rel v Probate Court, 205 M 545, 287 NW 297; Pillsbury Flour Mills v Great Northern, 25 F (2d) 66; North American Creamery v Willcutts, 38 F(2d) 483; LaPage v United States, 146 F(2d) 536.

Clause (3)

An act will not be declared unconstitutional unless its invalidity appears clearly or unless it is shown beyond reasonable doubt that it violates some constitutional provision. All reasonable presumptions or intendments must be indulged in in favor of the validity of an act. The legislature does not intend to violate the constitution of the United States or of the state of Minnesota. State v Kenny, 202 M 605, 278 NW 407; Williams v Mack, 202 M 402, 278 NW 585; Sverkerson v City of

Mpls. 204 M 388, 283 NW 555; State ex rel v Probate Court, 205 M 545, 287 NW 297; State v Comer, 207 M 93, 290 NW 434; Dimke v Finke, 209 M 29, 295 NW 75; State ex rel v Flach, 213 M 353, 6 NW(2d) 805; State v Minnesota Federal, 218 M 229, 15 NW(2d) 568; Sandy v Butler, 221 M 215, 21 NW(2d) 612; State v Lanesboro Hatchery, 221 M 246, 21 NW(2d) 792; Pure Oil Co. v State of Minnesota, 39 SC 35, 248 US 158.

Clause (4)

When a court of last resort has construed the language of the law the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language. Congdon v Congdon, 160 M 343, 200 NW 76; Jones v Fiesel, 204 M 333, 283 NW 535; State v Ritschel, 220 M 578, 20 NW(2d) 673; United States ex rel v Farrell, 87 F(2d) 957; McDonald v United States, 89 F(2d) 128.

Clause (5)

The legislature intends to favor the public interest as against any private interest. Cudahy v Fleming, 122 F(2d) 1005.

645.18 GRAMMAR AND PUNCTUATION OF LAWS.

This provision may be found in the interpretative statutes of Pennsylvania and Texas.

"It is interesting to recall a mistake in punctuation which largely negatived the intended provisions of the U.S.A. tariff bill many years ago. Among the articles scheduled for admission free of duty were 'all foreign fruit plants.' In the bill as enacted this appeared as 'all foreign fruit, plants.' As a consequence all foreign bananas, oranges, lemons, and so forth, were imported free of duty; and a heavy loss in revenues was suffered until the law could be amended." Sir Alison Russell, Legislative Drafting and Forms (third edition) 75.

Imperfect punctuation is not of controlling importance in construing a statute nor will bad grammar alone vitiate it. Judd v Landin, 211 M 466, 1 NW(2d) 861; Sexton v Baehr, 212 M 205. 3 NW(2d) 1.

While a statute, if possible, should be construed in accordance with the rules of grammar, the obvious intention of the legislature must prevail over this or any other rule of construction. Canons of construction are not the masters of courts but merely their servants. Mattson v Flynn, 216 M 354, 13 NW(2d) 11; State v Industrial Tool Works, 220 M 591, 21 NW(2d) 31; Great Atlantic & Pacific v Ervin, 23 F. Supp. 70.

Courts cannot supply that which the legislature purposely omits or inadvertently overlooks. In re Raynolds' Estate, 219 M 449, 18 NW(2d) 238.

645.19 CONSTRUCTION OF PROVISOS AND EXCEPTIONS.

This follows the rulings of the Supreme Court of Minnesota and may be found in the interpretative statutes of Pennsylvania.

Courts should be extremely cautious in reading an exception into a statute because an exception in a statute eliminates from its operation something that otherwise would be within it. State v Goodman, 206 M 203, 288 NW 157; United States v City Nat'l. Bank, 31 F. Supp. 530.

Irrespective of the advantage to the public and to the general welfare of its citizens, a court is not justified in engrafting thereon exceptions where a statute is couched in broad and comprehensive language. State v Tennyson, 212 M 158, 2 NW(2d) 833.

Where a statute enumerates persons or things to be affected by its provisions there is an implied exclusion of others. Maytag v Commissioner, 218 M 460, 17 NW(2d) 37.

Where a statute designates an exception, proviso, savings clause, or negative, the rule operates conversely so the exclusion of one thing includes all others. Maytag v Commissioner, 218 M 460, 17 NW (2d) 37.

The words "provided however," "provided nevertheless" are wrongfully used in a conjunctive sense though the court may be forced to so construe them. The ordinary function of a proviso is to exempt something which otherwise would be in the provisions of the statute and the proviso must be construed in harmony with the remainder of the statute. Gullings v State Board, 200 M 115, 273 NW 703.

See as to construction of provisos in section 126.06, subd. 11. OAG Aug. 21, 1947 (168)(180-D).

645.20 CONSTRUCTION OF SEVERABLE PROVISIONS.

This section is in accord with the decisions of the Supreme Court of Minnesota.

The provisions in the act respecting liability on the part of the state and the manner and means of enforcing payment are not so inseparably interwoven as to lead to the conclusion that the legislature would not have passed the one without the other. The part dealing with liability can and should be allowed to stand. Westerson v State, 207 M 412, 291 NW 900.

If certain provisions of Ex. L. 1937, c. 93, are invalidated, the remainder of the act is enforcible in view of the provision in the act that each and every part and provision of the act was severable. Thomas Stores v Spaeth, 209 M 504, 297 NW 9.

The elimination of the provisions creating a medical board from the compensation act, merely eliminates certain procedure declared not due process of law, and does not nullify the balance of the act. Hunter v Zenith Dredge Co. 220 M 318, 19 NW(2d) 795.

Invalidity of L. 1927, c. 409, limiting non-resident automobile owners to a 90-days continuance, did not invalidate the remaining portion of the law relating to service upon the secretary of state. Jones v Paxton, 27 F(2d) 364.

A part of L. 1937, c. 116, cited as Minnesota unfair trade practices act, having been found invalid, the invalidity spreads to the entire act as the substantive provisions of the act cannot be separated from the enforcement provisions. Great Atlantic & Pacific v Ervin, 23 F. Supp. 70.

To construe a statute valid in part and invalid in part there must be a legislative intention manifested in the act or a general provision in the statute to indicate a policy of severable ability. Chgo. Milwaukee v City of Mpls. 238 F. 384.

L. 1919, c. 514, prohibiting certain improvements, was invalid in its entirety since the invalid portions of the statute embodied the entire purpose of the act. Chg. Northwestern v Railroad & Warehouse Commission, 280 F. 387.

645.21 PRESUMPTION AGAINST RETROACTIVE EFFECT.

Possibly the word "stated" should be used instead of "intended." It depends upon the policy of the legislature as to how broad it desires the statute to be. This provision is found in the interpretative statutes of Arizona, Georgia, North Dakota, South Dakota, Idaho, Kentucky, and Pennsylvania.

A tax statute like any other statute will not be given a retrospective effect in the absence of an express command or a necessary implication. Board v Anderson, 205 M 77, 285 NW 80.

A tax imposed by section 60.63 on the premiums of insurance companies received "during the preceding calendar year" is not a license tax to continue in business during the following year, but a tax on premiums for the year during which they were received. In the absence of a clear expression to the contrary, a tax is construed to be "prospective." State v Casualty Mutual, 213 M 220, 6 NW(2d) 800.

The provisions of L. 1943, c. 633, when construed in the light of their legislative history and according to the rules prescribed by sections 645.21 and 645.35, are not retroactive, and consequently a right to compensation under section 176.66, for

death caused by occupational disease accruing while that statute was in force is governed by that statute; but the procedure and evidence are governed by the 1943 statute. Ogren v City of Duluth, 219 M 555, 18 NW(2d) 555; Foley v Western Alloyed Steel, 219 M 571, 18 NW(2d) 541.

L. 1945, c. 282, s. 1, subd. 2, has no application in the instant case because it was enacted subsequent to the trial in the trial court, and the statute is not retroactive. Welsh v Barnes, 221 M 37, 21 NW(2d) 46.

Presumptively a statute is not retroactive and a statute will not receive a retroactive implication unless the words of the statute are so clear, strong, and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot otherwise be satisfied. Lynch v Turrish, 236 F. 653, 247 US 221; Fullerton v Northern Pacific, 45 SC 143, 266 US 435.

Laws not retroactive. 1944 OAG 345, May 18, 1943 (412-A-9); 1944 OAG 153, Oct. 14, 1943 (885-D-2); 1944 OAG 263, May 5, 1944 (644-C).

Rule against retroactive legislation. 20 MLR 775.

Retroactive effect of overruling decision construing a statute. 26 MLR 658.

645.22 UNIFORM LAWS.

This provision has been adopted by Arizona and other states and is intended to permit the deletion of this particular section from uniform laws adopted by the state.

Uniformity of interpretation of statutes among the several states is desirable. Mattson v Flynn, 216 M 354, 13 NW(2d) 11; Commissioner v Bennett, 219 M 449, 18 NW(2d) 238; Raynolds' Estate, 219 M 457, 18 NW(2d) 238.

645.23 PENALTIES NO BAR TO CIVIL REMEDIES.

This appears in the interpretative statutes of California, Kentucky, North Dakota, and Oregon.

645.24 PENALTIES FOR EACH OFFENSE.

The language of this section was taken from the interpretative statute of Massachusetts. It has for a long time been the law in Minnesota.

645.25 INTENT TO DEFRAUD.

A similar provision is found in the interpretative statutes of Arizona, Montana, and North Dakota, and follows the law as laid down by the Minnesota Supreme Court.

645.26 IRRECONCILABLE PROVISIONS.

Provisions similar to those found in section 645.26 may be found in the interpretative statutes of Rhode Island, Texas, and Pennsylvania.

Even where a legislative act is imperfectly drawn, it is the duty of the courts to ascertain the legislative purpose from a consideration of the act as a whole; and where general and specific provisions are in conflict the specific and not the general control. Judd v Landin, 211 M 465, 1 NW(2d) 861; Wollner v State, 213 M 96, 5 NW(2d) 67; State ex rel v Mpls. St. Paul Metropolitan Airports Commission, 223 M 175, 25 NW(2d) 718.

Two provisions of the same law being in conflict as a general rule, subject to certain exceptions, the last controls. Great Northern v United States, 155 F. 945.

A broad statutory provision will not apply to a matter specifically dealt with in another part of the same act. LaPage v United States, 146 F(2d) 536.

Where statutes are apparently in conflict they should be reconciled and validity given to each if by any reasonable construction it may be done. Sonnesyn v Federal Cartridge, 54 F. Supp. 29.

Where on the same day two conflicting amendments were enacted to the same law a declaratory judgment or some form of judicial determination is advised. OAG Feb. 19, 1946 (399-H).

645.27 STATE BOUND BY STATUTE, WHEN.

Canons of construction are not the masters of the courts but merely their servants to aid them in ascertaining legislative intent; and when such intent is ascertained the statute must be so construed as to give it effect. The statute defining private nuisance has no effect against the state or its officers and agents engaged in a lawful undertaking under its sovereign authority; and consequently, section 561.01 is inapplicable to a contractor proceeding in a lawful manner to construct a highway bridge in performance of duty owing to the state under contract. Nelson v McKenzie, 192 M 180, 256 NW 96.

Rules of the division of boiler inspection in the department of labor are controlling as to boilers operated by the University of Minnesota in business property owned by the university. OAG Jan. 31, 1946 (34-G-14).

Sale of tax-forfeited land at public auction are not subject to such rules as to conveyance of real estate as require written memorandum and statement of consideration. OAG Feb. 13, 1946 (425-E).

645.29 MANNER OF AMENDMENT.

This section is taken from Mason's Statutes, section 10931. In order to make reference to a prior statute for the purpose of amendment or repeal, there must be some means to identify that statute. The purpose of this section is to resolve disputes as to the wording of a statute enacted before 1905 in accordance with R. L. 1905, which constitutes the last official revision of the Minnesota statutes prior to the revision of 1945.

645.31 CONSTRUCTION OF AMENDATORY LAWS.

Statutes similar to the provisions of section 645.31 are found in Montana, North Carolina, and Pennsylvania. It is merely declaratory of the common law.

The failure to specifically include "boiled linseed oil" in the amendment did not indicate an intention that the statute should apply to raw oil only. State v Williams, 93 M 155, 100 NW 641.

The cardinal rule of statutory construction is that effect shall be given to the intention of the lawmakers. Another equally well settled and more specific rule is that it will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law. In the instant case it seems clear that the 1915 act should modify the act of 1913. An amendment of a statute "to read as follows" repeals everything in the old statute not embodied in the new. From then on the old provisions derive their force from the amendatory act. The old provisions are not, however, repealed and re-enacted. The old are considered as having been the law all along, the new as enacted at the time the amendment took effect; in other respects this form of amendment is no different in effect from one in the form of an independent statute. State ex rel v District Court, 134 M 131, 158 NW 798.

The regularity of the enactment of a statute may be inquired into by examining the legislative journals to ascertain whether there has been compliance with constitutional requirements. An erroneous reference included in a mandatory act identifying the statute to be amended may be eliminated as surplusage and the statute read as corrected when the legislative intention is clear. The rule of construction that an amendatory act providing that the amended act shall "read as follows" and then setting forth the amendment, repeals all of the amended act not reenacted is no obstacle to the application of the rule that erroneous references in the amendatory act identifying the amended statute may be corrected or eliminated by construction to conform to the legislative intent. Bull v King, 205 M 427, 286 NW 311.

Substituting the word "may" for the word "shall" has the effect of making the statute "permissive" instead of "mandatory." State ex rel v Pohl, 214 M 221, 8 NW(2d) 227.

Where the legislature has failed to provide a method for the suspension and removal of an incumbent to the classified service under the county civil service act, L. 1941, c. 423, and by subsequent amendment has made such a provision, the court may not read the provision into the original act by inference, since the presumption is that the legislature intended to make some change in the existing law. State ex rel v County of St. Louis, 216 M 140, 12 NW(2d) 193.

Law is the government of the living by the dead. The past gives us our vocabulary and fixes the limits of our imagination. The present has the right to govern itself if it can. Historic continuity with the past is not a duty, it is only a necessity. 30 MLR 411.

645.33 TWO OR MORE AMENDMENTS TO SAME SECTION, ONE OVERLOOKING THE OTHER.

Separate acts passed at the same legislative session, approved and effective on the same day, stand together and may be harmonized if possible. Halverson v Elsberg, 202 M 232, 277 NW 535.

The amendments to sections 169.12, 171.17, relative to revocation of drivers' licenses, passed in 1939, and approved and effective on the same day, are required to stand together and be harmonized. Osman v Hoffman, 208 M 13, 292 NW 421.

Two amendments to the same law were approved on the same day. Where in conflict a declaratory judgment or some other form of judicial determination is recommended. OAG Feb. 19, 1946 (399-H).

645.34 REPEAL OF AMENDATORY AND ORIGINAL LAWS SUBSEQUENTLY AMENDED.

This section is in accordance with the common law and is in the interpretative statutes of several states. Some states, notably New York, have the reverse of this rule, possibly because controlled by special provisions of their state constitution. At common law, repeal of an amendatory act would be a repeal of the provisions therein contained in force from the original act.

645.35 EFFECT OF REPEAL.

Mason's Statutes, section 10930, is rewritten and placed in two sections, sections 645.35, 645.36. The last paragraph of section 645.35 is probably in accordance with our present law, but it differs materially and is much broader in its implications than laws generally throughout the nation. Some states preserve only "rights vested or transactions passed and closed"; others preserve only "those already ripened into judgment." The courts hold that when there is a mere change in the form of the remedy, proceedings continue under the repealing act. Some states apply this rule to criminal actions, but that practice is extremely controversial. The provisions of this section have been adopted by Arizona, Arkansas, Colorado, Illinois, Indiana, Kentucky, Missouri, Montana, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, West Virginia. With variations, it has been adopted in Georgia, Iowa, Maine, Massachusetts, North Carolina, Ohio, and South Dakota.

The equitable action for separate maintenance was not abolished by L. 1933, c. 165, repealing the statute authorizing actions by the wife for a limited divorce. The abolition by a repealing statute of an existing statutory remedy, without more, can have no effect upon a well established and existing common law and equitable remedy. Barich v Barich, 201 M 34, 275 NW 421.

A "saving clause" in a statute simply limits the scope of the repeal; and a title which recites that the act contains a repeal need not refer to a germane saving clause. Thomas Stores v Spaeth, 209 M 504, 297 NW 9.

A statute which expressly supersedes an earlier one is a repeal thereof; and a general saving clause against repeal cannot prevail over a subsequent express repeal. State ex rel v Railroad and Warehouse Comm. 209 M 530, 296 NW 906.

All that remained of section 263.09 after it had been declared unconstitutional was the lifeless form of what purported to be a statute. It was void and ineffectual without any repeal; but its lack of vitality imposed no insuperable obstacle to a repeal. An unconstitutional statute can be repealed. It at least serves the purpose of purging the laws of what purports to be, but is not, a statute. City of Jackson v County of Jackson, 214 M 244, 7 NW(2d) 753.

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 moot the questions here presented for determination, and in consequence the appeals must be dismissed. State ex rel v Brown, 216 M 135, 12 NW(2d) 180.

Where an employee, as a result of his employer's breach of statutory duty, contracted silicosis more than three years prior to the effective date of L. 1943, c. 633, and died as a result thereof after said date, employee's personal representative may maintain an action for the wrongful death of the employee, because the statute is substitutionary of the rights of employees and their dependents at the time of its enactment and because the statute provides no substitutionary right in the case mentioned for the reason it does not cover cases of death occurring after its effective date resulting from silicosis contracted more than three years prior thereto. Foley v Western Alloyed Steel, 219 M 571, 18 NW(2d) 541.

The legislature clearly intended to repeal sections 219.68 and 219.74 of Minnesota Statutes 1941, and to supersede them by L. 1945, c. 21. A repealing provision which provides that section 645.35 should not apply to the 1945 act makes such general saving clause statute inoperative as to said act. State v Chicago, Gt. Western, 222 M 504, 25 NW(2d) 295.

645.36 EFFECT OF REPEAL OF A REPEALER.

See, section 645.35.

In absence of declaration of a contrary legislative intention, a statute amending a former statute by reenacting its terms with supplementary provisions, does not repeal the former statute but the former statute is merged in the amending statute and is not revived by the repeal of the amending statute. State ex rel v Elmquist, 201 M 403, 276 NW 735.

645.37 REPEAL AND REENACTMENT.

This follows the interpretative statutes of California, Illinois, Kansas, Montana, New York, North Dakota, Pennsylvania, Washington. It follows the rule that provisions of any statute so far as they are substantially the same as existing statutes, or the common law, must be construed as continuations thereof and not as new enactments. The New York law provides: "The provisions of the law repealing a prior law which are substantial reenactments of the provisions of the prior law, shall be construed as a continuation of such prior law modified or amended according to the language employed, and not as new enactments."

In the absence of a declaration of other legislative intent, where a statute amends a former statute by reenacting its terms with supplementary provisions, such an act is not a repeal of the previous act, but as to all future matters the amended statute is merged in the amending statute and repeal of the latter does not revive the first statute. Wenger v Wenger, 200 M 436, 274 NW 517; State ex rel v Elmquist, 201 M 403, 276 NW 735; Jones v First Mpls. Trust, 202 M 187, 277 NW 899; Bull v King, 205 M 427, 286 NW 311.

645.38 EFFECT OF REENACTMENT ON INTERVENING LAW.

This section embodies the common law. The courts have held: "A later law which is merely a reenactment of a former does not repeal an intermediate act which

qualifies and limits the first one, but such intermediate act shall be deemed to remain in force and to modify the new act in the same manner as did the first." The courts have further held that: "The amending act has no effect on a prior act extending the provisions of the original act nor as to repeal of the amending act."

The presumption is that no change is intended in an existing law by a revision unless the contrary clearly appears from its language. Wangensteen v Northern Pacific, 218 M 318, 16 NW(2d) 50.

A law which reenacts the provisions of an earlier law shall not be construed to repeal an intermediate law which modified such earlier law. Such intermediate law shall be construed to remain in force and modify the reenactment in the same manner as it modified the earlier law. OAG May 13, 1947 (217-H).

L. 1947, c. 462, and L. 1947, c. 551, amending the same law, are each to be given effect, and under the construction as provided in section 645.38, Chapter 551 does not modify the definition of "commercial passenger transportation" in Chapter 462. OAG June 4, 1947 (632-E-17).

645.39 IMPLIED REPEAL BY LATER LAW.

The courts have held: "Where a new statute contains all but one of the provisions of an earlier act dealing with the same subject, the presumption is that this one provision is not intended to be continued." Again, "the subsequent statute provides a comprehensive method of doing what was provided for in an earlier statute, and the two methods are exclusive and cannot be harmonized." Again, "in determining whether or not an act is repealed, the courts will consider long practice under it and the fact that it has been upheld by a number of suits in local statutes."

The rule that an amendatory act providing that the amended act shall be amended so as "to read as follows" impliedly repeals everything in the amended act which is not reenacted is no obstacle to applying the rule that clerical errors may be corrected and rejected, as the case may be required. State v District Court, 134 M 131, 158 NW 798; Mannheimer Bros. v Kansas Surety, 147 M 350, 180 NW 229; Gerdtz v Gerdtz, 196 M 599, 265 NW 811; Bull v King, 205 M 427, 286 NW 311; Martinka v Hoffman, 214 M 346, 9 NW(2d) 13.

A special act is not repealed by a general statute unless such was the legislature's manifest intention. Hobart v City of Mpls. 139 M 368, 166 NW 411; Phelps v City of Mpls. 174 M 509, 219 NW 872.

A later law abrogates a prior contrary law insofar as there is conflict between them. State v District Court, 107 M 437, 120 NW 894; Absetz v McClellan, 207 M 202, 290 NW 298; Great Northern v United States, 155 F. 945.

Implied repeals are not favored by the courts. Phelps v City of Mpls. 174 M 509, 219 NW 872; Tanke v Eddy, 205 M 303, 285 NW 720; Sonnesyn v Federal Cartridge, 54 F. Supp. 29; Blumenthal v United States, 88 F(2d) 522.

In the absence of unmistakable legislative intent that the subsequent act should be a substitute for and contain all the law on the subject, the courts will not consider it a substitute for the earlier act. State v Soberman, 199 M 232, 271 NW 484.

Where a statute complete in itself clearly indicates the legislative intention to substitute its provisions for provisions previously in force, it substitutes prior legislation in respect to such subject matter and repeals prior laws insofar as they apply thereto. Re Eystad, 214 M 490, 8 NW(2d) 613; La Vasseur v Mpls. St. Ry. 221 M 205, 21 NW(2d) 522; State v Chicago, Gt. Western, 222 M 504, 25 NW(2d) 295.

The highway traffic regulation act is a general and systematic revision of all traffic laws and repeals all pre-existing and irreconcilable city ordinances pertaining to the same subject matter or classification. So that a city ordinance providing that street cars driven in the same direction should not approach each other nearer than a distance of 200 feet was repealed by the statute requiring vehicle overtaking a street car which has stopped to discharge passengers to stop at least 10 feet to rear of such street car. La Vasseur v Mpls. St. Ry. 221 M 205, 21 NW(2d)

522; City of Jackson v County of Jackson, 214 M 244, 7 NW(2d) 753; State v C. M. & St. P. Ry. 210 M 484, 299 NW 212.

DEFINITION OF WORDS AND PHRASES

645.44 PARTICULAR WORDS AND PHRASES.

Amended by L. 1947 c. 201 s. 4.

Subdivision 2. County, town, city, borough, or village

The borough of Belle Plaine, the only borough now existing in the state of Minnesota, was created by Special Laws of 1868, Chapter 36, and under its charter a chattel mortgage was properly filed in the office of the town clerk of the town of Belle Plaine. Bannon v Boler, 34 M 416, 26 NW 237.

There is a difference between a village in a mining country and a village in an agricultural community, and the question whether the territory may be properly subject to village government is primarily a legislative one for the voters to whose determination the court defers, subject to the conditions under which incorporation is authorized by the legislature. State ex rel v City of Nashwauk, 151 M 534, 189 NW 592.

"Towns" as used in section 197.45, 197.46, includes villages. State ex rel v Chisholm, 173 M 485, 217 NW 681.

Subdivision 3. Folio

The definition of the word "folio" by section 331.07, as enacted by L. 1921, c. 484, s. 1, supersedes and repeals the definition of the same term by this section previously enacted insofar as the two definitions are inconsistent. 1940 OAG 61.

Subdivision 4. Holidays

The publication of an ordinance in the official newspaper of a city on a holiday is not the "transaction of public business" within the provisions of section 542.07 (6) prohibiting a transaction of public business on holidays. City of St. Paul v Robinson, 129 M 383, 152 NW 777.

Thanksgiving day not being a legal holiday, was not a holiday within the provisions of section 645.15 providing that where the last day for doing the act falls on a holiday the act may be done on the next business day. Lucke v Gas Traction Co. 129 M 522, 151 NW 273.

Service of process on Armistice day conferred no jurisdiction on the court. Chapman v Foshay, 184 M 318, 238 NW 637.

Public business transacted on a legal holiday is legal in case of necessity and the existence of necessity will be presumed in the absence of a contrary showing; and the fact that an order by the town board laying out a highway was adopted on Memorial day did not invalidate the order since in the absence of contrary showing necessity for adopting the order at that time was presumed. Ingleson v Olson, 199 M 422, 272 NW 270.

Statutory notice of appeal from the probate court to the district court was not "process" within a statute prohibiting service of process on election day. Dahmen's Estate, 200 M 55, 273 NW 364.

The asssessor should not work on Sundays and holidays, and accordingly should not be compensated for work done on those days. OAG Feb. 13, 1942 (12-B-1).

Town boards may legally hold meetings and transact business on Sundays. OAG April 7, 1943 (276-G).

The teachers college board should decide whether or not the colleges should be open for instruction on Columbus day. OAG Oct. 8, 1945 (276-E).

A teacher cannot be required to teach on Columbus day, October 12, or on any other holiday, unless her contract so provides. OAG Nov. 2, 1945 (168).

The governor by proclamation may request the people of the state to set aside a day to be celebrated as "Victory Day." Compliance on the part of the public would be voluntary, and the day set aside would not be a legal holiday such as those designated in section 645.44. OAG July 31, 1946 (213-H).

Subdivision 6. Person

General statutes of limitation apply to foreign corporations notwithstanding the fact foreign corporations are not specifically named. Pomeroy v National City Co. 209 M 155, 296 NW 513.

Person defined in relation to the granting of liquor licenses. OAG July 30, 1946 (218.G-6).

Subdivision 7. Population

The court takes judicial notice of the results of a census taken under federal or state authority. State ex rel v Erickson, 160 M 510, 200 NW 813.

Subdivision 8. Recorded; filed for record

While the filing of an instrument consists not in the endorsement of the officer but in its being delivered and accepted by him for filing, the date of filing endorsed by him is prima facie the date of the actual filing, and must control in the absence of clear and unequivocal evidence of error. Re Real Estate Taxes in Morrison County, 121 M 173, 141 NW 101.

The notice required by L. 1945, c. 363, must be filed but need not be recorded. OAG Jan. 3, 1946 (372-B-16).

Subdivision 12. Time, month, year

In determining the consequences of a disregard of a statutory provision as to time, a court must ascertain the legislative intention. It will consider the language of the statute, the subject matter, the importance of the provision, and the object intended to be secured; and if the provision does not go to the essence of the thing to be done, or if there are no negative words restricting the doing of an act after the time fixed by the statute, the provision should be directory. Rambeck v LaBree, 156 M 310, 194 NW 643.

Subdivision 13. Writing

Signatures by stamps, mimeograph, typewriters or other printing devices, do not comply with the statute, and a notice of intention to strike or lockout should be signed in writing by the person giving it. OAG May 26, 1941 (270-d-9).

Subdivision 15. May

L. 1947, c. 201, amending section 645.44, and defining "may" as permissive and "shall" as mandatory are rules of construction for the aid of, but not binding upon, the courts. OAG June 10, 1947 (277-a-5).

645.45 DEFINITIONS, CONTINUED.

The legal fiction that there are no fractions of the day does not apply where the statute expressly requires that notice shall be given of the precise time an official act is done and that a record thereof be made. Brady v Gilman, 96 M 234, 104 NW 897.

The day begins at 12 o'clock midnight and the law does not recognize fractions of the day. State v McIntosh, 109 M 18, 122 NW 462.

International neutrality defined. 22 MLR 602.

"Tippling house" defined. State v Wilson, 221 M 224, 21 NW(2d) 521.

645.46 REFERENCE TO SUBDIVISION.

HISTORY. 1947 c. 201 s. 1.

645.47 REFERENCE TO PARAGRAPH.

HISTORY. 1947 c. 201 s. 2.

645.48 USE OF WORD "TO" WHEN REFERRING TO SEVERAL SECTIONS.

HISTORY. 1947 c. 201 s. 3.