

# ANNOTATIONS TO MINNESOTA STATUTES

## VOLUME III

A continuation and supplement to Volumes I and II of Annotations  
to Minnesota Statutes published in 1945; and embracing  
Minnesota Reports through Volume 223, Minnesota  
Law Review articles through Volume 31;  
and Attorney General Opinions and  
Federal cases through August,  
1947

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1947

# MINNESOTA STATUTES 1947 ANNOTATIONS

## PREFACE

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Annotations to Minnesota Statutes are based upon original research and were edited by the Revisor of Statutes under authority granted to the Revisor of Statutes under Laws 1939, Chapter 442, Section 5, as amended by Laws 1943, Chapter 545, Section 4, and printed and published in accordance with Laws 1945, Chapter 461.

Reference has been made to dicta as well as to authoritative cases. The annotations are in complete paragraph form and follow the arrangement of Minnesota Statutes 1945, progressively and consecutively. The annotation paragraphs digest Minnesota supreme court decisions, federal decisions relating to our statutes, opinions of the attorney general, and Law Review articles, and occasionally to other sources of the law, and are found under each section to which they are applicable. The annotations found in Volume III cover Minnesota supreme court decisions, Volume 219 through 223; Law Review articles through Volume 31; and opinions of the attorney general and federal decisions construing Minnesota statutes through August, 1947. The present policy of the legislature is to publish the statutes biennially; and the annotations quinquennially, with occasional supplements to keep them up to date.

In editing these annotations we have found it advisable, in the interest of clarity, to follow generally, but not specifically, the folio lines or running titles at the top of the pages of the statutes.

Respectfully submitted,

WILLIAM B. HENDERSON,

Revisor of Statutes.

# MINNESOTA STATUTES 1947 ANNOTATIONS

August 28, 1947

Miss Ethel Martin  
Supreme Court Reporter  
State Capitol  
St. Paul, Minnesota

Dear Miss Martin:

In connection with our use of M. S. A. followed by the section number in citing the statutes, I think you should put a statement in each volume of our reports to the effect that M. S. A. refers to the official state statutes, together with those private publications of the statutes using the official numbering system.

Yours truly,

Charles Loring  
Chief Justice

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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.

Where the statutory language is clear and unambiguous, there is no room for construction and interpretation.

State ex rel v Washburn, 224 M 269, 28 NW(2d) 652.

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slave-owning, Church of England colonials of Virginia were anathema. To the colonists of Georgia, Carolina, and Virginia the puritanical, rum-importing smugglers of New England were obnoxious. The Catholics in Maryland and the Quakers in Pennsylvania were non-cooperative. In between these groups, the Swedes of Delaware, the Dutch of New York, and the Germans of Pennsylvania, lent no assistance. During a century and a half the policy of the British was to use the colonies as producers of raw material to exchange for British goods. No cooperation between the colonies was permitted. Even when, under threat of the French and Indian war a convention of the colonies was held in Albany in 1754, the British refused to permit the creation of a colonial army for defense. During its entire history each colony was obliged to defend its frontiers against the Indians.

During the Revolutionary War and until the adoption of the Federal Constitution brought relief, the condition of the colonists was desperate. There existed no markets, no manufactures, and few safe banks. Bank notes, and colonial and continental currency issues, were at a tremendous discount. Each colony had its own tariffs and imposts.

The soldiers of the Revolutionary Armies, knowing they would never be paid in sound money, being without capital or means of obtaining it, disgusted with the politics, compromises, and ineffectiveness of the Congress of the Confederation, wished to establish themselves in the fertile lands west of the Ohio River.

Until some adequate plan could be evolved, settlers west of the Ohio could not obtain title nor be protected from the Indians. Titles west of the Ohio were uncertain. The Indian tribes, treated as foreign nations, claimed title to the greater portion of the territory and continued to do so until General Wayne drove them further west. Their titles were slowly relinquished through treaties. The New England states claimed lands under their colonial charters, as did also Virginia, Maryland, and Pennsylvania. New York's claim was based upon treaties with the Iroquois Indians. The treaty with Britain of 1783 gave to each of the thirteen colonies an indefinite and undivided interest covering the entire Northwest Territory.

The soldiers, and those who furnished supplies for the Revolutionary Armies, were authorized to exchange their continental money at par for government lands. The fact that continental currency and claims against the government were worth approximately nine cents on the dollar was a great incentive to use the depreciated currency in purchase of Ohio lands.

New York ceded her claims to the Federal government in 1780, Virginia in 1784, and other colonies in due course. Several reserved sufficient lands to take care of their military obligations. Maryland withheld her lands, and likewise her consent to the Constitution, until some workable arrangement could be devised for the disposition of western lands. The Continental Congress, by the Land Ordinance of 1785, and the township surveys of the eastern Ohio ranges, and similar acts, failed to encourage settlement.

While "The Ohio Company of Associates" was a private enterprise and the congressional "Ordinance of 1787" a government act establishing a local government, they should be considered together. It is possible that the one probably would not have been created without the other. Earlier efforts at colonization failed for lack of protection, which was afforded by the Ordinance. Previous enactments by the colonies and by Congress were ineffective because their provisions did not attract prospective settlers, or capital, or encourage organized colonization.

Who was primarily the author of the Ordinance is uncertain. Features of the Army Plan, otherwise known as the Newburgh Petition, are found in the Ordinance. Although at that time every colony, except one, recognized slavery, Rufus King's anti-slavery suggestion is found in the instrument. The Bill of Rights, of which Jefferson was so ardent an advocate, which did not appear in the original Federal Constitution, was incorporated into the Ordinance. Many of the

admirable provisions of the Ordinance were based upon suggestions and demands of the "Ohio Company of Associates" as prerequisite to the purchase of the lands for which they were negotiating. In a bill drawn by any committee, commission, or legislative session, it is hard to determine to whom credit should be given. Credit is generally given to Nathan Dane of Massachusetts for the excellent draftsmanship of the Ordinance. The author borrowed liberally from the crown charter of Virginia, which in turn was patterned after the royal grant to the palatinate of Durham.

While plans for disposing of Congress lands were pending in Congress, Generals Rufus Putnam and Benjamin Tupper, who had been engaged in surveying land west of the Ohio, called a meeting at the Bunch of Grapes Tavern in Boston, March 1, 1786, and as a result "The Ohio Company of Associates" was organized. By March 1787 ample subscriptions had been secured and Samuel H. Parsons, Rufus Putnam, Manasseh Cutler, and James Varnum were directed to purchase one million acres, provided proper legal title and protection was assured by Congress.

Cutler, who was employed to negotiate with the treasury and with Congress, was educated, of commanding presence, courtly manners, and a born diplomat, altogether a most remarkable man. He had been engaged in the whaling business and had operated a general store. He was a graduate of Yale, admitted to the bar, and practiced law. He studied medicine and was licensed and practiced as a physician. He was an ordained minister of the gospel and served the pastorate at Ipswich for more than fifty years. In addition to being a member of the three learned professions, law, divinity, and medicine, he was a member of the Academy of Arts and Sciences and other learned bodies and equal in scientific reputation to Benjamin Franklin and Benjamin Rush. He served as chaplain during the Revolutionary War, was a member of the Massachusetts Legislature, and a member of Congress for two terms. He declined appointment as Chief Justice of the Northwest Territory as his three sons were members of the colony.

Cutler practically rewrote the pending Ordinance and dictated the terms of the purchase contract. The final government patent, issued May 20, 1792, evidenced the purchase of 1,040,285 acres for a consideration of a corresponding number of dollars in scrip. This was equivalent to \$93,000 in metal money. The land selected by the Ohio Company of Associates, having previously been a part of the territory claimed by Virginia, the Virginia legislature ratified the division of the territory December 30, 1788.

The Ordinance naturally falls into two divisions; the first dealing with the details of government, and the second containing the articles of compact.

In the first stage, colonial administration of the district was vested in a governor, a secretary, and three judges appointed by the president with the consent of the Senate. Unlike colonial government by other nations, the Ordinance provided that when the whole or any part of the territory attained a male population of 5,000 or more, a territorial form of government might be formed with a legislative assembly of which one house should be popularly elected. When any territory attained a population of 60,000 it might apply for statehood and have equal rights with states previously a part of the United States. The colonial and territorial stages were transitory. The Ordinance provided for the eventual creation of five sovereign states.

During the colonial stage the legislature consisted of the governor and three judges and, acting in their legislative capacity, they prepared a complete code known as the "Maxwell Code" approved by an act of Congress May 8, 1792.

Arthur St. Clair, who had been president of the Congress of the Confederation, was the first governor, James Mitchell Varnum, Samuel Holden Parsons, John Cleve Symmes, constituted the first members of the supreme court of the territory. Winthrop Sargent was secretary.

The colonial stage was a short duration, as was also the territorial stage, and within a few years there were five sovereign states. The states created

out of the Northwest Territory were required to accept the compacts set forth in the Ordinance. This plan, unique at the date of its adoption, was adapted by Britain in the establishment and government of her dominions, and has been used by other foreign nations.

An Act of Congress, providing for the government of the Territory of Missouri, enacted June 4, 1812, by reference in sections 14 and 15, extended the provisions of the Northwest Ordinance to the entire northern portion of the Louisiana Purchase. The essential provisions of the compacts found in the Northwest Ordinance, with the exception of the provision prohibiting slavery, were thus assured to the inhabitants of Missouri, Iowa, Minnesota, and the other states established out of the original Missouri Territory.

Every state constitution adopted, as the nation marched across the continent to the Pacific, reflects the influence of the Ordinance.

The Ordinance set forth the modern rule for the inheritance of property.

The British held the northern part of the territory until July 12, 1796, under the pretext of forcing the colonies to comply with the terms of the Treaty of 1783, in which the colonies agreed not to confiscate, without payment, the property of British loyalists who had fled to Canada, and also agreed to pass no laws hindering British creditors from collection of debts due from colonists to British citizens. The British again occupied the territory from 1812 to 1815. During the British occupation the Northwest Company of Montreal controlled the trade and commerce of the area.

The articles of compact between the original states and the people and states in the territory were to remain forever unalterable unless by common consent.

Article I guaranteed freedom of religion as determined by the conscience of the individual citizen.

Article II was a bill of rights providing to the inhabitants of the territory the benefit of the writ of habeas corpus, jury trial, bail, and moderate punishments; proportional representation of the people in the legislature; and the protection of judicial proceedings according to the course of the common law. No person was to be deprived of life or property except by due process of law, and the property or services of the citizen could only be taken upon payment or guarantee of just compensation. It was forbidden to enact any law that would interfere with or affect private contracts.

Article III provided for the encouragement of education and protection of the rights of the Indians. The provision relating to the Indians is the only part of the articles not fulfilled.

Article IV provided that the states formed within the territory were forever to remain a part of the Union and the inhabitants thereof to bear their portion of federal burdens. Waterways were to be common highways free to all citizens of the United States. The primary disposal of the soil was to remain a function of the Congress. There was to be equal taxation of residents and non-residents, and the property of the United States was not to be taxed. Trade within the states was to be without impost, tax, or duty.

Article V set out the manner of admission into statehood and provided that the constitutions and governments of the states must be republican and in conformity with the principles contained in the Ordinance.

Article VI prohibited slavery within the territory but permitted reclamation of fugitive slaves. Had it not been for this provision the states of Indiana and Illinois would undoubtedly have been admitted as slave states, as each, upon application for admission, petitioned Congress to waive the provision relating to slavery.

Although that part of Minnesota lying between the Mississippi and St. Croix Rivers, as extended northward, was a part of the territory covered by the North-

west Ordinance, it was, at the time the Northwest Territory as such existed, Indian land and the rights of the Indians had not been extinguished by treaty; but was a component part of the Northwest Territory and of the Territories of Indiana, Illinois, Michigan, and Wisconsin. That part of Minnesota west of the Mississippi River became subject to the articles of compact by virtue of the Act of Congress establishing the Territory of Missouri. The Ordinance of 1787 is the fundamental law upon which our present constitution and statutes rest.

#### **TERRITORY UNDER THE ORGANIC ACT**

The ordinance for the government of the Territory of the United States northwest of the Ohio River was enacted by the Congress of the United States under the Confederation July 13, 1787. After the adoption of the Federal Constitution, the ordinance was ratified by the Congress of the United States August 17, 1789. After five states had been created out of the territory, the remainder became a part of the territory of Minnesota. Minnesota came into existence as a territory by virtue of the organic act of Minnesota passed March 3, 1849, effective March 10, 1849. Section 12 of the organic act provided that the laws in force in the territory of Wisconsin at the date of the admission of the State of Wisconsin were to be operative and valid in the territory of Minnesota until altered, modified, or repealed by the Minnesota Legislature. These laws, except for three special acts, were superseded and became obsolete on September 1, 1851, the date when the revised statutes of the territory of Minnesota went into effect. The territory was made up of a part of Crawford County, Wisconsin, part of Clayton County, Iowa, and the Red River Valley acquired by the Convention of 1818; was bounded on the west by the Missouri River and contained 166,000 square miles of territory. Governor Ramsey on June 1, 1849, signed a proclamation declaring the territorial government in existence.

That portion of Minnesota west of the Mississippi River was unorganized territory of the United States from December 28, 1846, to March 3, 1849, as was also the portion east of the river from March 29, 1848, to March 3, 1849. The Red River Valley was unorganized territory.

#### **ADMISSION TO STATEHOOD**

Politics were dormant in the territory until the passage of the Kansas-Nebraska Act of May 26, 1854. This act rendered ineffective the Missouri Compromise, and revived the question of slavery in the territories. It widened the split between the Douglas Democrats and the conservative southern Democratic faction; and brought forth the Republican Party which absorbed the Whigs, the Anti-slavery Democrats, the Free-soilers, as well as the Know Nothing faction.

Although the original pressure for early admission of Minnesota came from national political leaders all factions in Minnesota at once fell in line. Congress wished to be relieved of the expense of territorial administration.

The enabling act was introduced in the House December 24, 1856, and favorably reported out by the Committee on Territories January 31, 1857. It reached the Senate on February 2, 1857, was reported out favorably February 18, 1857, passed February 25, 1857, and signed by the president the next day.

Governor Gorman on March 16, 1857, called a special session of the legislature to meet April 27. A bill relating to election of delegates to the Constitutional Convention and the expenses thereof was introduced May 6, 1857, and finally passed, and the governor signed the bill on May 25, one week before the election of delegates on June 1.

The questions as to the legal existence of the session and the legality of its acts are of no importance at this date.

The enabling act permitted the election of two delegates to the convention from each representative district. The legislature construed "representative" to be a generic term, and authorized election of two delegates for each of the fifteen

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## FUNDAMENTAL LAW

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members of the council and the thirty-nine members of the lower house, or 108 delegates in all.

Both the Democrats and Republicans claimed colonization and other election malpractices on the part of the others, and that certificates of election were fraudulently issued. It being important to control the organization of the convention, each obtained as many credentials as possible.

The Constitutional Convention never held a meeting as a whole. At the first meeting, called for 12 M., July 13, 1857, the factions were unable to organize as a whole and each faction organized separately, and thereafter the Republicans met in the House chamber and the Democrats in the Council chamber.

There was no real reason for this separation. The vituperative campaign waged over the election of delegates and the bitter feeling between the members of the rump conventions was not based on facts. The Democrats had no wish to make Minnesota a slave state nor to prevent negroes from voting. The Republicans did not desire to insert a prohibition clause in the Constitution. Both favored liberal grants to encourage the building of railroads. The fight was entirely for political prestige. Each party desired to win for the effect thereof on the coming state and national elections.

Each rump convention followed the same course; had the same objectives; based its proposed Constitution on the provisions in the Ordinance of 1787 and in the organic and enabling acts; and borrowed, as to classification and draftsmanship, from the constitutions of the five states created out of the Northwest Territory.

The leaders of each faction found that no joint organization could be effected, and further fighting meant loss for all. Efforts at cooperation resulted, on August 18, 1857, in the passage of a resolution by each body to appoint conferees. The Constitution drafted by the conferees was reported to each body on August 27, and on August 28 both bodies adopted the report without amendment, and each substituted the conference copy for its own. Two copies were made of the articles agreed to, and fifty-three members signed one, and fifty-one the other.

Fifty-five accredited members took part in the Democratic convention and fifty-nine in the Republican, six more than the 108 provided for in the call. The treasurer of the territory recognized and paid the expense, per diem, and mileage warrants for the members of the Democratic wing but refused to pay the corresponding warrants for the Republican members. The Democrats admitted that fifty-three Republicans were legally elected, but seated fifty-five of their delegates. A subsequent legislature authorized payment of the per diem and expenses of the Republican delegates.

The conference constitution, in arrangement and wordage, closely followed that of the Democratic proposal, but both factions were satisfied; the Democrats, because they had saved face and obtained some political prestige, and the Republicans, because they had been able to incorporate in the constitution an easy method of amendment. Upon canvass of the vote of the electorate, there were 30,055 affirmative votes and 5,071 negative.

The haste and the number of persons engaged in making the copies for enrollment resulted in unimportant differences between the two enrolled copies. The differences were trivial, not affecting any policy.

President Buchanan received a copy of the Constitution, adopted August 13, 1857, and submitted it to the Senate on January 11, 1858, and notified the House of Representatives.

The fight between the Southern Democrats and the Douglas faction created a condition which delayed consideration of the bill for admission for many weeks. The bill received favorable action by the Senate on April 7, 1858, and by the House on May 11, and was approved by the president on May 11.

Questions arising out of the irregularities in the calling and functioning of the Constitutional Convention; and unsettled differences of opinion as to whether Minnesota became a state on October 13, 1857, the date of the adoption of the Constitution, or on May 11, 1858, the date of admission, is of historical significance only.

**ORIGINAL CONSTITUTION OF THE STATE OF MINNESOTA, ADOPTED  
OCTOBER 13, 1857, TOGETHER WITH NOTES RELATING TO  
AMENDMENTS, AND TO BILLS PROPOSING AMENDMENTS  
WHICH FAILED OF PASSAGE**

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**PREAMBLE**

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings, and secure the same to ourselves and our posterity, do ordain and establish this Constitution:

**ARTICLE I**

**BILL OF RIGHTS**

**Object of government.** Sec. 1. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform such government, whenever the public good may require it.

**Rights and privileges.** Sec. 2. No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

**Liberty of the press.** Sec. 3. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

**Trial by jury.** Sec. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

[Amendment proposed by Laws 1889; Chapter 1, ratified November 4, 1890, added "and the legislature may provide that the agreement of five-sixths of any jury in any civil action or proceeding, after not less than six hours deliberation, shall be sufficient to render a verdict therein."

NOTE: The statute implementing the amendment is Laws 1913, Chapter 63, and twelve hours deliberation is required.]

**No excessive bail or unusual punishments.** Sec. 5. Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted.

**Rights of accused in criminal prosecutions.** Sec. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

**Further rights of accused; when bailable.** Sec. 7. No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment or in cases cognizable by justices of

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the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger, and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to [be] witness against himself, nor be deprived of life, liberty, or property, without due process of law. All persons shall before conviction be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require.

[Amendment proposed by Laws 1903, Chapter 269, ratified November 8, 1904, entirely superseded Article 1, Section 7, of the original Constitution and in effect abolished the old grand jury requirements. Section 7 should be read together with Section 12.]

**Redress of injuries or wrongs.** Sec. 8. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase; completely and without denial; promptly and without delay, conformably to the laws.

**Treason defined.** Sec. 9. Treason against the state shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Right against unreasonable searches.** Sec. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

**Prohibits ex post facto laws, or laws impairing contracts.** Sec. 11. No bill of attainder or ex post facto law, nor any law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

**Imprisonment for debt; property exemption.** Sec. 12. No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment, or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale, for the payment of any debt or liability; the amount of such exemption shall be determined by law.

[Amendment proposed by Laws 1887, Chapter 2, ratified November 6, 1888, had for its purpose the protection of the rights of working men and women in certain cases and added the following proviso: "Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair, or improvement of same; and provided further, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed."

NOTE: This amendment put strength in our lien laws and permitted enforcement of mechanics liens filed against a homestead.]

**Private property for public use.** Sec. 13. Private property shall not be taken for public use without just compensation therefor, first paid or secured.

[Amendment proposed by Laws 1895, Chapter 5, was ratified November 3, 1896. The supreme court having held in *Henderson v City of Minneapolis*, 32 M 319, 20 NW 322, that damages to property resulting from a change in the grade of a city street did not constitute a "taking," the amendment inserted the words "destroyed or damaged" after the word "taken," thus making the damage recoverable.]

[Laws 1915, Chapter 384, proposed an amendment authorizing the taking of private property under condemnation proceedings to improve the construction of private drainage ditches.



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NAME AND BOUNDARIES ART. 2 s 2

NOTE: The amendment was not adopted.]

**Military power subordinate.** Sec. 14. The military shall be subordinate to the civil power, and no standing army shall be kept up in this state in time of peace.

**Lands declared allodial; leases, when void.** Sec. 15. All lands within this state are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural land for a longer period than twenty-one years, hereafter made, in which shall be reserved any rent or service of any kind, shall be void.

**Freedom of conscience; no preference to be given to any religious establishment or mode of worship.** Sec. 16. The enumeration of rights in this constitution, shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support any places of worship, or to maintain any religious or ecclesiastical ministry against his consent, nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

**No religious test or property qualifications to be required.** Sec. 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the state. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

**No license required to peddle.** Sec. 18. (New) [Section 18 proposed by Laws 1905, Chapter 283, ratified November 6, 1906, is a new section and was thought necessary because of the decision of the supreme court in *State v Jensen*, 93 M 88, 100 NW 644. The section reads as follows: "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining license therefor."]

## ARTICLE II

### ON NAME AND BOUNDARIES

**Name and boundaries.** Sec. 1. This state shall be called and known by the name of the State of Minnesota, and shall consist of and have jurisdiction over the territory embraced in the following boundaries, to wit: beginning at the point in the center of the main channel of the Red river of the north, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to lake Traverse; thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake, thence through its center to its outlet; hence by a due south line to the north line of the state of Iowa; thence east along the northern boundary of said state to the main channel of the Mississippi river; thence up the main channel of said river and following the boundary line of the state of Wisconsin, until the same intersects the St. Louis river; thence down the said river to and through lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and British possessions; thence up Pigeon river and following said dividing line to the place of beginning.

**Jurisdiction on bordering rivers.** Sec. 2. The state of Minnesota shall have concurrent jurisdiction on the Mississippi and on all other rivers and waters bordering on the said state of Minnesota, so far as the same shall form a common boundary to said state, and any other state or states now or hereafter to be

formed by the same; and said rivers and waters, and navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said state as to other citizens of the United States, without any tax, duty, impost or toll therefor.

**Acceptance of propositions in enabling act.** Sec. 3. The propositions contained in the act of congress entitled "An Act to authorize the people of the territory of Minnesota to form a constitution and state government preparatory to their admission into the Union on an equal footing with the original states," are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents.

### ARTICLE III

#### DISTRIBUTION OF THE POWERS OF GOVERNMENT

**Divisions of powers.** Sec. 1. The powers of government shall be divided into three distinct departments, legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the instance expressly provided in this constitution.

### ARTICLE IV

#### LEGISLATIVE DEPARTMENT

**Legislature meets biennially; length of session.** Sec. 1. The legislature of the state shall consist of a senate and house of representatives, who shall meet at the seat of government of the state, at such times as shall be prescribed by law.

[Amendment proposed by Laws 1860, Chapter 22, ratified November 6, 1860, added "but no session shall exceed the term of sixty days."

NOTE: Originally there was no limit to the duration of a session.]

[Laws 1873, Chapter 3, proposed an amendment providing for biennial sessions of the legislature. The amendment was not ratified.]

[Amendment proposed by Laws 1877, Chapter 1, ratified November 6, 1877, was designed to supersede the 1860 amendment to this section and read as follows: "The legislature of the state shall consist of a Senate and House of Representatives who shall meet biennially at the seat of government of the state at such time as shall be prescribed by law; but no session shall exceed the term of sixty days."

NOTE: Prior to the adoption of this amendment the legislature convened annually.]

[Laws 1881, Chapter 2, proposed to strike out the words "but no session shall exceed the term of sixty days." This proposal was not ratified.]

[Amendment proposed by Laws 1887, Chapter 3, ratified November 6, 1888, extended the term to ninety days, and forbade introduction of new bills during the last twenty days of the session, except upon written request of the governor.]

[Laws 1913, Chapter 584, and Laws 1915, Chapter 385, each proposed to reserve to the people the direct power of the initiative and referendum as additional means to secure and control legislation, and as an additional means by which the people may amend the constitution. These proposals were not ratified.]

**Apportionment of members.** Sec. 2. The number of members who compose the senate and house of representatives shall be prescribed by law, but the representation in the senate shall never exceed one member for every five thousand

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inhabitants, and in the house of representatives one member for every two thousand inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law.

[Laws 1911, Chapter 395, and Laws 1913, Chapter 590, proposed that no county be apportioned more than seven senators. These proposals were not ratified.]

**Eligibility of members; quorum.** Sec. 3. Each house shall be judge of the election returns, and eligibility of its own members; a majority of each shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as it may provide.

**Rules of government.** Sec. 4. Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but no member shall be expelled a second time for the same offense.

**Officers; journal of proceedings.** Sec. 5. The house of representatives shall elect its presiding officer, and the senate and house of representatives shall elect such other officers as may be provided by law; they shall keep journals of their proceedings, and from time to time publish the same, and the yeas and nays, when taken on any question, shall be entered on such journals.

**Length of adjournments.** Sec. 6. Neither house shall, during a session of the legislature, adjourn for more than three days, (Sunday excepted,) nor to any other place than that in which the two houses shall be assembled, without the consent of the other house.

**Compensation.** Sec. 7. The compensation of senators and representatives shall be three dollars per diem, during the first session, but may afterwards be prescribed by law. But no increase of compensation shall be prescribed which shall take effect during the period for which the members of the existing house of representatives may have been elected.

[Laws 1881, Chapter 2, proposed an increase in the compensation of the legislators, but the proposed amendment was not adopted.]

**Privileged from arrest.** Sec. 8. The members of each house shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the session of their respective houses, and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

**Restriction as to holding office.** Sec. 9. No senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States, or the state of Minnesota, except that of postmaster; and no senator or representative shall hold an office under the state, which had been created, or the emoluments of which had been increased during the session of the legislature of which he was a member, until one year after the expiration of his term of office in the legislature.

**Bills of revenue to originate in House.** Sec. 10. All bills for raising a revenue shall originate in the house of representatives, but the senate may propose and concur with amendments, as on other bills.

**Approval of bills by Governor; action on non-approval.** Sec. 11. Every bill which shall have passed the senate and house of representatives, in conformity to the rules of each house and the joint rules of the two houses, shall before it becomes a law, be presented to the governor of the state. If he approve, he shall sign and deposit it in the office of secretary of state for preservation, and notify the house, where it originated, of the fact. But if not, he shall return it, with his objections, to the house in which it shall have originated, when such objections shall be entered at large on the journal of the same, and the house shall proceed to re-consider the bill. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the

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## ART. 4 s. 12 LEGISLATIVE DEPARTMENT

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other house, by which it shall likewise be re-considered, and if it be approved by two-thirds of that house it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by adjournment within that time, prevent its return, in which case it shall not be a law. The governor may approve, sign and file in the office of the secretary of state, within three days after the adjournment of the legislature, any act passed during the last three days of the session, and the same shall become a law.

[Amendment proposed by Laws 1876, Chapter 1, inserted the second paragraph of the section beginning "If any bill presented" and was ratified November 7, 1876.]

[Laws 1915, Chapter 383, proposed an amendment permitting the approval in part by the governor of single items of an appropriation bill. The proposed amendment did not pass.]

**Money appropriations, how made.** Sec. 12. No money shall be appropriated except by bill. Every order, resolution or vote requiring the concurrence of the two houses, (except such as relate to the business or adjournment of the same,) shall be presented to the governor for his signature, and before the same shall take effect, shall be approved by him, or being returned by him with his objections, shall be re-passed by two-thirds of the members of the two houses, according to the rules and limitations prescribed in case of a bill.

**Majority vote of all members-elect to pass a law.** Sec. 13. The style of all laws of this state shall be: "Be it enacted by the legislature of the state of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each branch of the legislature, and the vote entered upon the journal of each house.

**Impeachment powers.** Sec. 14. The house of representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present.

**Exclusion from civil rights.** Sec. 15. The legislature shall have full power to exclude from the privilege of electing or being elected, any person convicted of bribery, perjury, or any other infamous crime.

**Protest and dissent of members.** Sec. 16. Two or more members of either house shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public or to any individual, and have the reason of their dissent entered on the journal.

**Vacancies in legislature.** Sec. 17. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature. The legislature shall prescribe by law the manner in which evidence in cases of contested seats in either house shall be taken.

**Punish for disorderly conduct.** Sec. 18. Each house may punish by imprisonment, during its session, any person not a member who shall be guilty of any disorderly or contemptuous behavior in their presence, but no such imprisonment shall at any time exceed twenty-four hours.

**Open sessions.** Sec. 19. Each house shall be open to the public during the sessions thereof, except in such cases as in their opinion may require secrecy.

**Reading of bills.** Sec. 20. Every bill shall be read on three different days in each separate house, unless in case of urgency two-thirds of the house where such bill is depending, shall deem it expedient to dispense with this rule, and no bill shall be passed by either house until it shall have been previously read twice at length.

**Enrollment of bills.** Sec. 21. Every bill having passed both houses, shall be carefully enrolled, and shall be signed by the presiding officer of each house. Any presiding officer refusing to sign a bill which shall have previously passed both houses, shall thereafter be incapable of holding a seat in either branch of the legislature, or hold any other office of honor or profit in the state, and in case of such refusal, each house shall, by rule, provide the manner in which such bill shall be properly certified for presentation to the governor.

**Passage of bills on last day of session prohibited.** Sec. 22. No bill shall be passed by either house of the legislature upon the day prescribed for the adjournment of the two houses. But this section shall not be so construed as to preclude the enrollment of a bill, or the signature and passage from one house to the other, or the reports thereon from committees, or its transmission to the executive for his signature.

**Census enumeration; apportionment.** Sec. 23. The legislature shall provide by law for the enumeration of the inhabitants of this state in the year one thousand eight hundred and sixty-five, and every tenth year thereafter. At their first session after each enumeration so made, and also at their first session after each enumeration made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts, according to the provisions of section second of this article.

[Laws 1909, Chapter 509, proposed an amendment relating to reapportionment, but it was rejected by the voters.]

**Senatorial districts; term of office of senators and representatives.** Sec. 24. The senators shall also be chosen by single districts of convenient contiguous territory, at the same time that the members of the house of representatives are required to be chosen, and in the same manner, and no representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in regular series, and the senators chosen by the districts designated by odd numbers, shall go out of office at the expiration of the first year, and the senators chosen by the districts designated by even numbers shall go out of office at the expiration of the second year; and thereafter the senators shall be chosen for the term of two years, except there shall be an entire new election of all the senators at the election next succeeding each new apportionment provided for in this article.

[Laws 1873, Chapter 3, proposed an amendment extending the terms of representatives and senators to two and four years respectively. The amendment was not adopted.]

[Amendment proposed by Laws 1877, Chapter 1, proposed a new section superseding the original Section 24 and was adopted November 6, 1877. This extended the terms of representatives to two years and senators to four years.]

**Qualification of legislators.** Sec. 25. Senators and representatives shall be qualified voters of the state, and shall have resided one year in the state, and six months immediately preceding the election in the district from which they are elected.

**Senators to Congress.** Sec. 26. Members of the senate of the United States from this state shall be elected by the two houses of the legislature in joint convention, at such times and in such manner as may be provided by law.

[NOTE: This section is inoperative since the adoption of the 17th Amendment to the Federal Constitution, effective May 31, 1913.]

**Laws to embrace only one subject.** Sec. 27. No law shall embrace more than one subject, which shall be expressed in its title.

**Divorces.** Sec. 28. Divorces shall not be granted by the legislature.

**Oath of office.** Sec. 29. All members and officers of both branches of the legislature shall, before entering upon the duties of their respective trusts, take and subscribe an oath or affirmation to support the constitution of the United

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States, the constitution of the state of Minnesota, and faithfully and impartially to discharge the duties devolving upon him as such member or officer.

**Elections viva voce.** Sec. 30. In all elections to be made by the legislature, the members thereof shall vote viva voce, and their votes shall be entered on the journal.

**Prohibition of lotteries.** Sec. 31. The legislature shall never authorize any lottery, or the sale of lottery tickets.

**Change of form of taxation of railroads to be voted upon.** Sec. 32.[a] (New) [Amendment proposed by Laws 1871, Chapter 18, ratified November 8, 1871, is a new section and was originally numbered Section 32. Gross earnings tax laws enacted prior to the adoption of this section were invalid. This section permitted the enforcement of a gross earnings tax on railroads provided the act be submitted to a vote of the electorate and ratified by a majority of the voters voting at the election at which the act was submitted to them.]

**Sale of internal improvement lands and investment of proceeds.** Sec. 32. [b] (New) [Amendment proposed by Laws 1872, Chapter 14, ratified November 5, 1872, added a new section. It created a method of disposition of 500,000 acres of land donated to the state by the federal government under an act of Congress approved September 4, 1841; and the conservation and use of the proceeds of the sale of the lands.]

[Laws 1877, Chapter 5, proposed an amendment authorizing the use of the proceeds from the sale of the internal improvement lands to retire certain defaulted railroad bonds, but failed of approval.]

**Against special legislation.** Sec. 33. (New) [Amendment proposed by Laws 1881, Chapter 3, ratified November 8, 1881, is a new section. It prohibited the enactment of special or private laws in certain scheduled cases. It was prospective in operation and did not apply to special laws in existence on the date of the adoption of the amendment. It was entirely superseded by the present section adopted November 8, 1892.]

[Amendment proposed by Laws 1891, Chapter 1, ratified November 8, 1892, entirely superseded the section adopted November 8, 1881, and makes a sweeping prohibition of special laws when a general law can be made applicable; increases the number of subjects upon which special laws may not be enacted; and permits the repeal but prohibits amendment or extension of any special law.]

**Refers to amendment of 1881, superseded as above.** Sec. 34. (New) [Amendment proposed by Laws 1881, Chapter 3, ratified November 8, 1881, is new; is the "uniformity" section, and is supplemental to Section 33.]

**Against combinations or pools to affect markets.** Sec. 35. (New) [Amendment proposed by Laws 1887, Chapter 1, ratified November 6, 1888, is new, and is generally known as the anti-monopoly section.]

**Home rule charter for cities.** Sec. 36. (New) [Amendment proposed by Laws 1895, Chapter 4, ratified November 3, 1896, is the home rule charter amendment.]

[Amendment proposed by Laws 1897, Chapter 280, ratified November 8, 1898, entirely revised the home rule charter section adopted in 1896.]

[Laws 1911, Chapter 393, proposed a method of simplifying the process by which a municipality might come under the provisions of this section. The proposed amendment was not adopted.]

[Laws 1923, Chapter 448, proposed to change the requirements for the publication of proposed amendments to charters of cities and villages, but was not adopted.]

[Laws 1937, Chapter 493, again proposed a change in the requirements for publication, but the amendment was not adopted.]

[Laws 1939, Chapter 447, again proposed a change in the requirements for publication of proposed amendments to home rule charters, but the amendment was not adopted.]

[Amendment proposed by Laws 1941, Chapter 555, ratified November 3, 1942, changed the requirements for the publication of proposed amendments to charters to cities and villages.]

## ARTICLE V

### EXECUTIVE DEPARTMENT

**Officers in executive department.** Sec. 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the state.

**Election returns to be sent to secretary of state.** Sec. 2. The returns of every election, for the officers named in the foregoing section, shall be made to the secretary of state, and by him transmitted to the speaker of the house of representatives, who shall cause the same to be opened and canvassed before both houses of the legislature, and the result declared within three days after each house shall be organized.

[Laws 1873, Chapter 3, proposed a section to supersede the original Article V, Section 2, but failed of approval.]

[Amendment proposed by Laws 1877, Chapter 1, ratified November 6, 1877, proposed a new section which superseded the original Section 2.]

NOTE: Originally the legislature canvassed the vote and declared the result of the election of the executive officers.]

**Official term of governor and lieutenant governor; qualifications.** Sec. 3. The term of office for the governor and lieutenant governor shall be two years and until their successors are chosen and qualified. Each shall have attained the age of twenty-five (25) years, and shall have been a bona fide resident of the state for one year next preceding his election. Both shall be citizens of the United States.

**Powers and duties of governor.** Sec. 4. The governor shall communicate by message to each session of the legislature such information touching the state and condition of the country as he may deem expedient. He shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, suppress insurrection and repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, after conviction, for offenses against the state, except in cases of impeachment. He shall have power, by and with the advice and consent of the senate, to appoint a state librarian and notaries public; and such other officers as may be provided by law. He shall have power to appoint commissioners to take the acknowledgment of deeds, or other instruments in writing, to be used in the state. He shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this constitution prescribed. He may on extraordinary occasions convene both houses of the legislature. He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney-general, and such other state and district offices as may be hereafter created by law, until the next annual election, and until their successors are chosen and qualified.

[Amendment proposed by Laws 1895, Chapter 2, ratified November 3, 1896, entirely superseded the original section. The amendment granted additional powers to the governor, but entirely changed the method of granting reprieves and pardons.]

**Official term of other executive officers.** Sec. 5. The official term of the secretary of state, treasurer and attorney-general shall be two years. The official term of the auditor shall be three years, and each shall continue in office until his successor shall have been elected and qualified. The governor's salary for the first term under this constitution shall be two thousand five hundred dollars per annum. The salary of the secretary of state for the first term shall be fifteen

hundred dollars per annum. The auditor, treasurer and attorney-general shall, each, for the first term receive a salary of one thousand dollars per annum. And the further duties and salaries of said executive officers shall each thereafter be prescribed by law.

[Amendment proposed by Laws 1883, Chapter 1, ratified November 6, 1883, entirely superseded the original section. The term of the state auditor was increased to four years; and the duty affixing salaries was imposed upon the legislature.]

**Duties of lieutenant-governor.** Sec. 6. The lieutenant-governor shall be ex-officio president of the senate; and in case a vacancy should occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy. The compensation of lieutenant-governor shall be double the compensation of a state senator. Before the close of each session of the senate, they shall elect a president pro tempore, who shall be lieutenant-governor in case a vacancy should occur in that office.

**Official terms of first State officers (Obsolete).** Sec. 7. The term of each of the executive offices named in this article shall commence upon taking the oath of office, after the state shall be admitted by congress into the Union, and continue until the first Monday in January, eighteen hundred and sixty, except the auditor, who shall continue in office until the first Monday in January, eighteen hundred and sixty-one, and until their successors shall have been duly elected and qualified.

[Amendment proposed by Laws 1858, Chapter 2, ratified April 15, 1858, entirely superseded the original section. The state was not admitted into the Union until May 11, 1858. This section is now obsolete.]

**Oath of office to be taken by State officers.** Sec. 8. Each officer created by this article, shall before entering upon his duties, take an oath or affirmation to support the constitution of the United States, and of this state, and faithfully discharge the duties of his office to the best of his judgment and ability.

**(Obsolete.)** Sec. 9. Laws shall be passed at the first session of the legislature after the state is admitted into the Union to carry out the provisions of this article.

## ARTICLE VI

### JUDICIARY

**Judicial powers.** Sec. 1. The judicial power of the state shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote.

**Supreme court; jurisdiction and powers; reporter of decisions; clerk of supreme court.** Sec. 2. The supreme court shall consist of one chief justice, and two associate justices, but the number of the associate justices may be increased to a number not exceeding four, by the legislature, by a two-thirds vote, when it shall be deemed necessary. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court. It shall hold one or more terms in each year, as the legislature may direct, at the seat of government, and the legislature may provide by a two-thirds vote, that one term in each year shall be held in each or any judicial district. It shall be the duty of such court to appoint a reporter of its decisions. There shall be chosen by the qualified electors of the state, one clerk of the supreme court, who shall hold his office for the term of three years, and until his successor is duly elected and qualified, and the judges of the supreme court, or a majority of them, shall have the power to fill any vacancy in the office of clerk of the supreme court until an election can be regularly had.



[Laws 1913, Chapter 585, proposed an amendment increasing the number of associate justices from four to six; and provided that at least five justices must concur in order to declare a statute unconstitutional. The amendment was defeated.]

[Laws 1915, Chapter 382, again proposed increasing the number of associate justices from four to six. The proposal was not adopted.]

[Laws 1925, Chapter 428, proposed increasing the number of associate justices from four to six. The proposal was not adopted.]

[Amendment proposed by Laws 1929, Chapter 430, ratified November 4, 1930, raised the number of associate justices from four to six.]

**Election and term of office for judges.** Sec. 3. The judges of the supreme court shall be elected by the electors of the state at large, and their term of office shall be seven years, and until their successors are elected and qualified.

[Amendment proposed by Laws 1876, Chapter 3, ratified November 7, 1876, inserted the words "Whenever all" at the beginning of the second paragraph.]

[Amendment proposed by Laws 1883, Chapter 3, ratified November 6, 1883, reduced the term of supreme court justices from seven to six years.]

**Judicial districts for district courts; election of judges; term of office and residence.** Sec. 4. The state shall be divided by the legislature into six judicial districts, which shall be composed of contiguous territory, be bounded by county lines, and contain a population as nearly equal as may be practicable. In each judicial district, one judge shall be elected by the electors thereof, who shall constitute said court, and whose term of office shall be seven years. Every district judge, shall, at the time of his election, be a resident of the district for which he shall be elected, and shall reside therein during his continuance in office.

[Amendment proposed by Laws 1875, Chapter 1, was ratified November 2, 1875. Section 4 originally provided for six judicial districts, each district to be served by one district judge. To relieve the congested calendars in the two most populous districts the legislature, prior to the adoption of this amendment, had created a court of Common Pleas in Hennepin and Ramsey counties. The amendment entirely superseded the original section and imposed upon the legislature the duty to create such districts as they deemed necessary, declare their boundaries, and determine the number of judges to serve in each.]

**Jurisdiction of district courts.** Sec. 5. The district courts shall have original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds one hundred dollars, and in all criminal cases where the punishment shall exceed three months' imprisonment, or a fine of more than one hundred dollars, and shall have such appellate jurisdiction as may be prescribed by law. The legislature may provide by law that the judge of one district may discharge the duties of the judge of any other district not his own, when convenience or the public interest may require it.

**Qualifications.** Sec. 6. The judges of the supreme and district courts shall be men learned in the law, and shall receive such compensation, at stated times, as may be prescribed by the legislature, which compensation shall not be diminished during their continuance in office, but they shall receive no other fee or reward for their services.

**Probate court; judges to be elected; jurisdiction.** Sec. 7. There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one judge, who shall be elected by the voters of the county for the term of two years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office, and his compensation shall be provided by law. He may appoint his own clerk, where none has been elected, but the legislature may authorize the election by the electors of any county, of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. A

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probate court shall have jurisdiction over the estates of deceased persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.

[Laws 1913, Chapter 589, proposed to extend terms of judges of probate court from two to four years. The proposed amendment was not ratified.]

[Laws 1915, Chapter 386, proposed the same amendment and was not ratified.]

[Amendment proposed by Laws 1919, Chapter 531, was ratified on November 2, 1920. It entirely superseded the original section and made the terms of probate judges four instead of two years.]

**Justices of the peace to be elected; jurisdiction.** Sec. 8. The legislature shall provide for the election of a sufficient number of justices of the peace in each county, whose term of office shall be two years, and whose duties and compensation shall be prescribed by law: provided, that no justice of the peace shall have jurisdiction of any civil cause where the amount in controversy shall exceed one hundred dollars, nor in a criminal cause where the punishment shall exceed three months' imprisonment, or a fine of over one hundred dollars, nor in any cause involving the title to real estate.

**Judges for other courts to be elected.** Sec. 9. All judges other than those provided for in this constitution shall be elected by the electors of the judicial district, county or city, for which they shall be created, not for a longer term than seven years.

**Vacancies; appointment by governor.** Sec. 10. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

**Prohibition, supreme or district judges to hold other offices or to be voted for office while in office.** Sec. 11. The justices of the supreme court and the district courts shall hold no office under the United States, nor any other office under this state. And all votes for either of them for any elective office under this constitution, except a judicial office, given by the legislature or the people, during their continuance in office, shall be void.

**Change of judicial districts.** Sec. 12. The legislature may at any time change the number of judicial districts or their boundaries, when it shall be deemed expedient, but no such change shall vacate the office of any judge.

**Clerk of court.** Sec. 13. There shall be elected in each county where a district court shall be held, one clerk of said court, whose qualifications, duties and compensation shall be prescribed by law, and whose term of office shall be four years.

**Legal pleadings.** Sec. 14. Legal pleadings and proceedings in the courts of this state shall be under the direction of the legislature. The style of all process shall be "The state of Minnesota," and all indictments shall conclude "against the peace and dignity of the state of Minnesota."

**Court commissioner; powers and jurisdiction.** Sec. 15. The legislature may provide for the election of one person in each organized county in this state, to be called a court commissioner, with judicial power and jurisdiction not exceeding the power and jurisdiction of a judge of the district court at Chambers; or the legislature may, instead of such election, confer such power and jurisdiction upon judges of probate in the state.

## ARTICLE VII

### ELECTIVE FRANCHISE

**Elective franchise.** Sec. 1. Every male person of the age of twenty-one years or upwards belonging to either of the following classes, who shall have re-

sided in the United States one year, and in this state for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for all officers that now are, or hereafter may be, elective by the people.

First. White citizens of the United States.

Second. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States upon the subject of naturalization.

Third. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

Fourth. Persons of Indian blood residing in this state, who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.

[Laws 1865, Chapter 57, proposed an amendment deleting the word "white" from the first and second clauses of the section. The proposal was defeated.]

[Laws 1867, Chapter 25, proposed the same amendment and again the proposal was defeated.]

[Amendment proposed by Laws 1868, Chapter 106, ratified November 3, 1868, eliminated the word "white" from the first and second clauses of Section 1.

NOTE: The same result would have been accomplished two years later by the passage in 1870 of the 15th Amendment to the Federal Constitution.]

[Amendment proposed by Laws 1895, Chapter 3, ratified November 3, 1896, disqualified aliens from voting.]

**Non-eligible.** Sec. 2. No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony, unless restored to civil rights, and no person under guardianship or who may be non compos mentis or insane, shall be entitled or permitted to vote at any election in this state.

**Residence not lost in certain cases.** Sec. 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this state or of the United States; nor while a student of any seminary of learning; nor while kept at any alms-house or asylum; nor while confined in any public prison.

**Soldiers and sailors; restriction.** Sec. 4. No soldier, seaman or marine in the army or navy of the United States, shall be deemed a resident of this state in consequence of being stationed within the same.

**Civil process suspended on election day.** Sec. 5. During the day on which any election shall be held, no person shall be arrested by virtue of any civil process.

**Elections by ballots.** Sec. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

**Right to hold office.** Sec. 7. Every person who, by the provisions of this article, shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this constitution, or the constitution and laws of the United States.

**Women may vote (Obsolete).** Sec. 8. (New) [Amendment proposed by Laws 1875, Chapter 2, ratified November 2, 1875, creates a new section permitting the legislature to enact laws giving to women the right to vote at school elections and to hold certain school offices.]

[Laws 1877, Chapter 2, proposed to permit women to vote in "local option" elections. The proposed amendment was not adopted.]

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[Amendment proposed by Laws 1897, Chapter 175, ratified November 8, 1898, was self-executing and extended to women the right to vote for library boards.]

[NOTE: There have been no further amendments to Article VII, Section 8, of our State Constitution, but in effect the adoption of the 19th Amendment to the Federal Constitution is to render null and of no effect the word "male" in Section 1.]

**Official year of the State.** Sec. 9. (New) [Amendment proposed by Laws 1883, Chapter 2, ratified November 6, 1883, created a new section. Under its provisions state elections have been held biennially since 1884.]

[Laws 1913, Chapter 593, proposed an amendment to be numbered Section 10 and proposing provisions for the recall of "every public official in Minnesota elective or appointive." The proposed amendment was not adopted.]

## ARTICLE VIII

### SCHOOL FUNDS, EDUCATION AND SCIENCE

**Uniform system of public schools.** Sec. 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

**Proceeds of school lands to be a perpetual fund.** Sec. 2. The proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, shall remain a perpetual school fund to the state, and not more than one-third (1-3) of said lands may be sold in two (2) years, one-third (1-3) in five (5) years, and one-third (1-3) in ten (10) years; but the lands of the greatest valuation shall be sold first, provided that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales, or other disposition of lands, or other property, granted or entrusted to this state in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school lands shall be distributed to the different townships throughout the state, in proportion to the number of scholars in each township between the ages of five and twenty-one years, and shall be faithfully applied to the specific objects of the original grants or appropriations.

[Amendment proposed by Laws 1875, Chapter 3, ratified November 2, 1875, added to Article VIII, Section 2, a second paragraph beginning "Suitable laws" and related to the investment of state trust funds.]

[Amendment proposed by Laws 1881, Chapter 4, ratified November 8, 1881, added a third paragraph beginning "All swamp lands."]

[Laws 1913, Chapter 586, proposed a new paragraph relating to "a revolving fund" but failed of adoption.]

[Amendment proposed by Laws 1915, Chapter 379, ratified November 7, 1916, added a new paragraph beginning "A revolving fund."]

**Public schools in each township to be established.** Sec. 3. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the state.

[Amendment proposed by Laws 1877, Chapter 3, ratified November 6, 1877, added a new paragraph prohibiting the appropriation of state money in support of sectarian schools. The paragraph begins "But in no case."]

**University of Minnesota; location confirmed.** Sec. 4. The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the university of the state of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto the said university, and all lands which may be granted hereafter by congress, or other donations for said university purposes, shall vest in the institution referred to in this section.

**Permanent school funds may be loaned to districts or counties for school purposes.** Sec. 5. (New) [Amendment proposed by Laws 1885, Chapter 1, ratified November 2, 1886, added a new section relating to loans from the permanent school funds to districts or counties for school purposes.]

**Investment of permanent school and university funds; approval; bonded indebtedness not to exceed 15 per cent, draw not less than 3 per cent, run not less than 5 nor more than 20 years.** Sec. 6. (New) [Amendment proposed by Laws 1895, Chapter 6, ratified November 3, 1896, added a new Section 6 authorizing the investment of the permanent school and university fund in the purchase of bonds of any county, school district, town, or village of the state provided the bonded indebtedness of the municipality did not exceed seven per cent of the assessed valuation.]

[Laws 1899, Chapter 92, proposed changing the seven per cent limitation to fifteen per cent. The proposal was defeated.]

[Laws 1901, Page 10, proposed the same change and was again defeated.]

[Laws 1903, Chapter 25, proposed to change the seven per cent limitation to fifteen per cent and was ratified November 8, 1904.]

[Laws 1911, Chapter 392, proposed to authorize the loan of school funds on improved farm lands. The proposal was not ratified.]

[Laws 1913, Chapter 588, proposed authorizing loaning of school funds on improved farm property. The proposal was not ratified.]

[Laws 1915, Chapter 380, ratified November 7, 1916, permitted the investment of school and university funds in first mortgages on improved farms in the state up to thirty per cent of their cash value.]

[Amendment proposed by Laws 1941, Chapter 171, was ratified November 3, 1942. This authorized the investment of swamp land funds in a manner similar to the investment of school and university funds.]

**Non-agricultural lands.** Sec. 7. (New) [Amendment proposed by Laws 1913, Chapter 592, ratified November 3, 1914, added a new section which authorized the setting apart of certain state lands as state forests and the management thereof on forestry principles.]

**Exchange of public lands.** Sec. 8. (New) [Laws 1929, Chapter 431, proposed a new section authorizing the exchange of public lands of the state for lands of the United States as the legislature might provide. The proposed amendment was not ratified.]

[Laws 1931, Chapter 417, proposed the same amendment, but was not ratified.]

[Laws 1933, Chapter 443, proposed to authorize the exchange of state public lands for federal or privately owned lands. The proposal was not ratified.]

[Laws 1935, Chapter 393, proposed to authorize a similar exchange, but it failed of ratification.]

[Amendment proposed by Laws 1937, Chapter 492, ratified November 8, 1938, authorized the exchange of public lands of the state for lands of the United States or privately owned lands as the legislature might provide.]

## ARTICLE IX

### FINANCES OF THE STATE, AND BANKS AND BANKING

**Power of taxation; legislature may authorize.** Sec. 1. All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state.

[Amendment proposed by Laws 1869, Chapter 51, ratified November 2, 1869, added a proviso authorizing municipal corporations to levy assessments for local improvements on property benefited.]

[Amendment proposed by Laws 1881, Chapter 1, ratified November 8, 1881, broadened the powers of taxation for local assessments as had been provided by the amendment adopted on November 2, 1869.]

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[Laws 1891, Chapter 2, proposed an amendment authorizing the legislature to impose progressive taxes on certain industries, but the proposal was defeated.]

[Amendment proposed by Laws 1893, Chapter 1, ratified November 6, 1894, added an additional clause authorizing taxation on inheritances.]

[Amendment proposed by Laws 1895, Chapter 7, ratified November 3, 1896, authorized the legislature to impose taxes on sleeping, parlor and drawing room cars, telegraph and telephone companies, express and insurance companies, and other industries.]

[Laws Ex. 1902, Chapter 1, proposed a wide open tax amendment, but the proposal was defeated.]

[Amendment proposed by Laws 1905, Chapter 168, ratified November 6, 1906, supersedes Sections 1, 2, 3, and 4, and the unnumbered section adopted November 3, 1896. This is the so-called "wide open tax amendment."]

[Laws 1907, Chapter 477, proposed an amendment to take the place of Sections 1, 2, 3, and 4, but the proposed amendment failed to pass.]

[Laws 1919, Chapter 532, proposed an amendment to Section 1 authorizing a tax on incomes. The proposed amendment failed to pass.]

[Laws 1921, Chapter 529, proposed an occupation tax on the mining of iron ore. The proposal was not ratified.]

[Laws 1931, Chapter 420, proposed a tax on incomes. It was not adopted.]

[Amendment proposed by Laws 1933, Chapter 442, ratified November 6, 1934, exempted certain household goods and farm machinery from taxation.]

[Laws 1933, Chapter 444, proposed to exempt certain property from taxation. The proposed amendment was not adopted.]

[Laws 1935, Chapter 394, proposed the limiting of taxes on real estate. The proposed amendment was not adopted.]

**Occupation Tax.** Sec. 1A. (New) [Amendment proposed by Laws 1921, Chapter 529, ratified November 7, 1922, authorized a net profits tax on the occupation of mining.]

Sec. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year, and whenever it shall happen that such ordinary expenses of the state for any year shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year.

[Laws 1860, Concurrent Resolution 1, proposed an amendment which was ratified on November 6, 1860. This related to the annual levying of tax to cover expenses and a limitation regarding the payment of "Minnesota State railroad bonds." The amendment, having been declared unconstitutional both by the state and federal courts, was void from the beginning. The wide open tax amendment, adopted November 6, 1906, supersedes this section.]

Sec. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose and personal property to an amount not exceeding in value two hundred dollars for each individual, shall, by general laws, be exempt from taxation.

[Laws 1891, Chapter 2, proposed gross earnings taxes and a special tax on the products of mines. The proposal was defeated. The wide open tax amendment, adopted November 6, 1906, supersedes this section.]

Sec. 4. Laws shall be passed for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects or dues of every description, of all banks, and of all bankers; so that all property employed in banking shall

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always be subject to a taxation equal to that imposed on the property of individuals.

[Laws 1867, Chapter 118, proposed an amendment authorizing a tax on bank shares, but the proposal was defeated. The wide open tax amendment, ratified November 6, 1906, supersedes this section.]

**State debt limited; how contracted.** Sec. 5. For the purpose of defraying extraordinary expenditures, the state may contract public debts, but such debts shall never, in the aggregate, exceed two hundred and fifty thousand dollars; every such debt shall be authorized by law, for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the legislature, to be recorded by yeas and nays on the journals of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt, and also a tax sufficient to pay the principal of such debt within ten years from the final passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation and taxes shall not be repealed, postponed, or diminished until the principal and interest of such debt shall have been wholly paid. The state shall never contract any debts for works of internal improvement, or be a party in carrying on such works, except in cases where grants of land, or other property, shall have been made to the state, especially dedicated by the grant to specific purposes, and in such cases the state shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

[Laws 1923, Chapter 447, proposed an amendment authorizing the state to place to the credit of the "trunk highway fund" excise taxes collected from the selling of fluids used for motor vehicle purposes. The amendment was not ratified.]

[Amendment proposed by Laws 1927, Chapter 445, ratified November 6, 1928, related to the allocation of gasoline excise taxes.]

**Issue of bonds for created debt.** Sec. 6. All debts authorized by the preceding section shall be contracted by loan on state bonds of amounts not less than five hundred dollars each, on interest, payable within ten years after the final passage of the law authorizing such debt; and such bonds shall not be sold by the state under par. A correct registry of all such bonds shall be kept by the treasurer, in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable.

**Limitation as to when debt may be contracted.** Sec. 7. The state shall never contract any public debt, unless in time of war, to repel invasion or suppress insurrection, except in the cases and in the manner provided in the fifth and sixth sections of this article.

**Disposition of funds received for bonds.** Sec. 8. The money arising from any loan made or debt or liability contracted, shall be applied to the object specified in the act authorizing such debt or liability, or to the repayment of such debt or liability, and to no other purpose whatever.

**Money drawn from the State treasury.** Sec. 9. No money shall ever be paid out of the treasury of this state, except in pursuance of an appropriation by law.

**Credit of the State limited.** Sec. 10. The credit of the state shall never be given or loaned in aid of any individual association or corporation.

[Amendment proposed by Laws 1858, Chapter 1, was ratified April 15, 1858. This was prior to the admission of Minnesota as a state on May 11, 1858.]

[Amendment proposed by Laws 1860, Concurrent Resolution 1, ratified November 6, 1860, superseded the original section.]

[Amendment proposed by Laws 1921, Chapter 528, ratified November 7, 1922, superseded the original section. A system of state rural credits was authorized.]

[Laws 1931, Chapter 419, proposed an amendment relating to the operation of the system of rural credits. The proposal was not adopted.]

# MINNESOTA STATUTES 1947 ANNOTATIONS

## ART. 9 s 11 FINANCES

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[Laws 1933, Chapter 441, proposed the modification of the system of rural credits but was not ratified.]

**Publication of receipts and expenditures by treasurer.** Sec. 11. There shall be published by the treasurer, in at least one newspaper printed at the seat of government, during the first week of January in each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year, for what purposes and to whom paid, and by what law authorized, and also of all moneys received, and by what authority, and from whom.

[Laws 1907, Chapter 507, attempted to repeal this section but failed of ratification.]

[Laws 1937, Chapter 587, proposed the repeal of Section 11. The proposal was not ratified.]

**State school fund; investment; safe keeping; all State funds to be deposited in name of State.** Sec. 12. Suitable laws shall be passed by the legislature for the safe keeping, transfer, and disbursement of the state and school funds, and all officers and other persons charged with the same shall be required to give ample security for all moneys and funds of any kind, to keep an accurate entry of each sum received, and of each payment and transfer, and if any of said officers or other persons shall convert to his own use in any form, or shall loan with or without interest, contrary to law, or shall deposit in banks, or exchange for other funds, any portion of the funds of the state, every such act shall be adjudged to be an embezzlement of so much of the state funds as shall be thus taken, and shall be declared a felony; and any failure to pay over or produce the state or school funds intrusted to such persons, on demand, shall be held and taken to be prima facie evidence of such embezzlement.

[Amendment proposed by Laws 1873, Chapter 4, ratified November 4, 1873, related to the safe-keeping, transfer, and disbursement of state and school funds and entirely supplanted and superseded the original section.]

**General banking law; provision and restrictions.** Sec. 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz.:

First—The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description.

Second—The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security in United States stock or state stocks for the redemption of the same in specie, and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third—The stockholders in any corporation and joint-association for banking purposes issuing bank notes, shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation or association, and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth—In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth—Any general banking law which may be passed in accordance with this article, shall provide for recording the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer, and to whom transferred.

**Special provision for a loan for hospital building for insane.** Sec. 14. (a) (New) [Laws 1871, Chapter 19, proposed to grant authority to increase the public debt for certain specific purposes. The proposal was not ratified.]



[Amendment proposed by Laws 1872, Chapter 11, ratified November 5, 1872, added a new section, 14a, to increase the public debt for certain purposes.]

**Superseded by section 15 but not repealed in express terms.** Sec. 14(b) (New) [Amendment proposed by Laws 1872, Chapter 13, ratified November 5, 1872, authorized municipalities to issue bonds under certain conditions. This section is superseded by Article IX, Section 15, but was never expressly repealed.]

**County, city or township aid to railroads limited.** Sec. 15. (New) [Amendment proposed by Laws 1879, Chapter 1, ratified November 4, 1879, is identical with Section 14b, except that it reduces the limit of indebtedness of municipalities for the stated purpose from ten per cent to five per cent of the value of the taxable property.]

**State Road and Bridge Fund.** Sec. 16. (New) [Amendment proposed by Laws 1897, Chapter 333, ratified November 8, 1898, added a new section and is the first "road and bridge fund" amendment.]

[Laws 1901, pp. III, IV, proposed an amendment to this section which was not ratified.]

[Amendment proposed by Laws 1905, Chapter 212, related to obtaining additional funds for the road and bridge fund. The state canvassing board declared that at the election on November 6, 1906, the amendment did not pass. An appeal was taken to the district court of the eleventh judicial district; a partial recount was had; and, based upon the theory of average error, the court found that the amendment had been adopted and entered judgment accordingly. An appeal was taken from this decision but later abandoned, and the amendment is accepted as having been ratified.]

[Laws 1907, Chapter 478, proposed an amendment for the purpose of lending aid to the improvement of public highways, but the proposal failed to pass.]

[Amendment proposed by Laws 1909, Chapter 506, was ratified November 8, 1910. This supersedes the amended section and deals entirely with lending aid to the improvement of public highways and bridges and generally to the "state road and bridge fund."]

[Amendment proposed by Laws 1911, Chapter 390, ratified November 5, 1912, related to the maximum and minimum percentage of the road and bridge fund that may be allocated to counties.]

## GENERALLY

The following amendments to Article IX have been proposed, each of which failed of adoption:

Laws 1907, Chapter 479, Laws 1909, Chapter 508, and Laws 1911, Chapter 391, proposed state taxation for the support of state hail and wind insurance on growing crops.

Laws 1909, Chapter 510, Laws 1909, Chapter 511, and Laws 1913, Chapter 591, proposed various amendments for the encouragement of reforestation.

Laws 1913, Chapter 594, authorized a dog tax for certain purposes.

Laws 1915, Chapter 387, proposed an amendment authorizing the state to mine ore upon the public domain under lakes and rivers.

## ARTICLE X

### OF CORPORATIONS HAVING NO BANKING PRIVILEGES

**Corporation for general purposes.** Sec. 1. The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges, and all corporations

shall have the right to sue, and shall be liable to be sued in all courts in like manner as natural persons.

**Not to be created by special act.** Sec. 2. No corporations shall be formed under special acts, except for municipal purposes.

**Liability of Stockholders.** Sec. 3. Each stockholder in any corporation shall be liable to the amount of the stock held or owned by him.

[Laws 1870, Chapter 21, proposed to exempt holders of railroad stock from double liability. Under the original section each stockholder in any corporation was liable for double liability. The proposed amendment was not ratified.]

[Amendment proposed by Laws 1872, Chapter 12, ratified November 5, 1872, exempted stockholders in manufacturing corporations from double liability.]

[Laws 1875, Chapter 4, Laws 1876, Chapter 2, Laws 1877, Chapter 4, each proposed modification or relief from double liability, but none were ratified.]

[Amendment proposed by Laws 1929, Chapter 429, ratified November 4, 1930, authorized the legislature to "provide for, limit, or otherwise regulate the liability of stockholders." Double liability of stockholders in banks and trust companies was expressly retained.]

**Lands may be taken for public use.** Sec. 4. Lands may be taken for public way, for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and the damages arising from the taking of the same; but all corporations being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions or manufactures on equal and reasonable terms.

## ARTICLE XI

### COUNTIES AND TOWNSHIPS.

**County organization.** Sec. 1. The legislature may, from time to time, establish and organize new counties, but no new county shall contain less than four hundred miles; nor shall any county be reduced below that amount; and all laws changing county lines in counties already organized, or for removing county seats, shall, before taking effect, be submitted to the electors of the county or counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of such electors. Counties now established may be enlarged, but not reduced below four hundred (400) square miles.

**Cities of 20,000 population may be organized into separate counties.** Sec. 2. The legislature may organize any city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

**Township organization.** Sec. 3. Laws may be passed providing for the organization, for municipal and other town purposes, of any congressional or fractional townships in the several counties in the state, provided that when a township is divided by county lines, or does not contain one hundred inhabitants, it may be attached to one or more adjoining townships or parts of townships, for the purposes aforesaid.

**Election of county and town officers.** Sec. 4. Provision shall be made by law for the election of such county or township officers as may be necessary.

**Local taxation may be authorized.** Sec. 5. Any county and township organization shall have such powers of local taxation as may be prescribed by law.

**Money drawn from county or town treasuries.** Sec. 6. No money shall be drawn from any county or township treasury except by authority of law.

**County of Manomin abolished.** Sec. 7. (New) [Amendment proposed by Laws 1869, Chapter 50, ratified November 2, 1869, is a new section. It abolished the county of Manomin and added the territory to Anoka county.]

## ARTICLE XII

### OF THE MILITIA

**Militia organization.** Sec. 1. It shall be the duty of the legislature to pass such laws for the organization, discipline and service of the militia of the state as may be deemed necessary.

## ARTICLE XIII

### IMPEACHMENT AND REMOVAL FROM OFFICE

**Impeachment and removal from office.** Sec. 1. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such case shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit, in this state. The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sec. 2. The legislature of this state may provide for the removal of inferior officers from office, for malfeasance or nonfeasance in the performance of their duties.

Sec. 3. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

Sec. 4. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court.

Sec. 5. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

## ARTICLE XIV

### AMENDMENTS TO THE CONSTITUTION

**Amendments to constitution; majority vote of electors voting makes amendment valid.** Sec. 1. Whenever a majority of both houses of the legislature shall deem it necessary to alter or amend this constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection; and if it shall appear in a manner to be provided by law, that a majority of voters present and voting shall have ratified such alterations or amendments, the same shall be valid to all intents and purposes, as a part of this constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each separately.

[Amendment proposed by Laws 1897, Chapter 185, was ratified November 8, 1898. Prior to the adoption of this amendment, it was quite easy to amend the constitution. The amendment had the effect of making it exceedingly difficult.]

[Prior to 1898 each proposal submitted by the legislature needed only a popular majority over negative votes. Now it requires a majority of all votes cast at the election. In the 89 years since 1858, seventy-four amendments have been adopted.]

**Revision of constitution.** Sec. 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution, they shall recommend to the electors to vote, at the

next election, for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

[Charles B. Cheney says: "The fathers of 1858 fixed it so a complete revision of the Constitution is almost impossible. It takes a two-thirds vote of each branch of the legislature to submit the question. At a general election it must have a majority of all votes cast. That granted, and it never has been granted yet, another legislature must provide for election of delegates to a constitutional convention.

When the elected delegates to that convention have agreed on a new draft, another popular majority is required to make it effective. Only once, in 1896, has the question of a convention been submitted to the people. It was buried by 'no' votes."]

## ARTICLE XV

### MISCELLANEOUS SUBJECTS

**Seat of government.** Sec. 1. The seat of government of the state shall be at the city of St. Paul, but the legislature at their first, or any future session, may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by congress, for a seat of government to the state, and in the event of the seat of government being removed from the city of St. Paul to any other place in the state, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts, to be organized by the legislature of the state, and of which institution the Minnesota historical society shall always be a department.

**Residents on Indian lands.** Sec. 2. Persons residing on Indian lands within the state shall enjoy all the rights and privileges of citizens as though they lived in any other portion of the state, and shall be subject to taxation.

**Uniform oath at elections.** Sec. 3. The legislature shall provide for a uniform oath or affirmation to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

**State seal.** Sec. 4. There shall be a seal of the state, which shall be kept by the secretary of state, and be used by him officially, and shall be called by him the great seal of the state of Minnesota, and shall be attached to all official acts of the governor, (his signature to acts and resolves of the legislature excepted.) requiring authentication. The legislature shall provide for an appropriate device and motto for said seal.

**State prison location.** Sec. 5. The territorial prison as located under existing laws shall, after the adoption of this constitution, be and remain one of the state prisons of the state of Minnesota.

[No suggestions for amendment have been submitted to any of the five original sections.]

[Laws 1868, Chapter 108, proposed an amendment providing for a referendum relating to disposing of the 500,000 acres of permanent improvement lands. The proposal was not ratified.]

[Laws 1917, Chapter 515, proposed the prohibition amendment. This was not ratified.]

(New)

## ARTICLE XVI

### TRUNK HIGHWAY SYSTEM

[This article was proposed by Laws 1919, Chapter 530, and adopted November 2, 1920. There have been no changes in Sections 1, 2, 4, and 5.]

**Taxation of motor vehicles.** Sec. 3. (New) [Amendment proposed by Laws 1931, Chapter 418, ratified November 8, 1932, authorized taxation of motor vehicles on a more even basis.]

(New)

#### ARTICLE XVII

[Laws 1923, Chapter 449, proposed to authorize the state to own and operate public terminal elevators. The proposed amendment was not ratified.]

**Protection against forest fires.** Sec. 1. (New) [Amendment proposed by Laws 1923, Chapter 451, ratified November 4, 1924, added a new article authorizing the state and its political divisions to pledge public credit and engage in any work tending to prevent forest fires.]

(New)

#### ARTICLE XVIII

[Laws 1923, Chapter 450, proposed a new article authorizing the state to enact laws encouraging forestation and reforestation. The amendment did not pass.]

**Encouragement of Forestation.** Sec. 1. (New) [Amendment proposed by Laws 1925, Chapter 427, ratified November 2, 1926, authorized the legislature to enact laws encouraging forestation and reforestation of lands.]

(New)

#### ARTICLE XIX

[Amendment proposed by Laws 1943, Chapter 666, ratified November 7, 1944, authorized the levying of taxes in support of air navigation facilities.]

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### SCHEDULE

**Territorial laws valid in change to State organization.** Sec. 1. That no inconvenience may arise by reason of a change from a territorial to a permanent state government, it is declared that all rights, actions, prosecutions, judgments, claims and contracts, as well of individuals as of bodies corporate, shall continue as if no change had taken place; and all process which may be issued under the authority of the territory of Minnesota previous to its admission into the Union of the United States, shall be as valid as if issued in the name of the state.

**Territorial laws not repugnant to constitution to be in force.** Sec. 2. All laws now in force in the territory of Minnesota not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature.

Sec. 3. All fines, penalties or forfeitures accruing to the territory of Minnesota, shall inure to the state.

**Civil rights under territorial government secured in the change to State government.** Sec. 4. All recognizances heretofore taken, or which may be taken before the change from a territorial to a permanent state government shall remain valid, and shall pass to and may be prosecuted in the name of the state, and all bonds executed to the governor of the territory, or to any other officer or court in his or their official capacity, shall pass to the governor or state authority, and their successors in office, for the uses therein respectively expressed; and may be sued for and recovered accordingly; and all the estate of property, real, personal or mixed, and all judgments, bonds, specialties, choses in action, and claims and debts of whatsoever description, of the territory of Minnesota, shall inure to and vest in the state of Minnesota, and may be sued for and recovered in the same manner and to the same extent by the state of Minnesota as the same could have been by the territory of Minnesota. All criminal prosecutions and penal actions which may have arisen or which may arise before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All offenses committed against

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the laws of the territory of Minnesota before the change from a territorial to a state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the state of Minnesota, with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the territory of Minnesota at the time of the change from a territorial to a state government, may be continued and transferred to any court of the state which shall have jurisdiction of the subject matter thereof.

**Territorial officers continued until superseded.** Sec. 5. All territorial officers, civil and military, now holding their offices under the authority of the United States or of the territory of Minnesota, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state.

**First session of State legislature.** Sec. 6. The first session of the legislature of the state of Minnesota shall commence on the first Wednesday of December next, and shall be held at the capitol in the city of St. Paul.

Sec. 7. The laws regulating the election and qualification of all district, county and precinct officers, shall continue and be in force until the legislature shall otherwise provide by law.

**Constitution submitted to a vote of the people.** Sec. 8. The president of the convention, shall, immediately after the adjournment thereof, cause this constitution to be deposited in the office of the governor of the territory, and if after the submission of the same to a vote of the people, as hereinafter provided, it shall appear that it has been adopted by a vote of the people of the state, then the governor shall forward a certified copy of the same, together with an abstract of the votes polled for and against the said constitution, to the president of the United States, to be by him laid before the congress of the United States.

**Representation to congress.** Sec. 9. For the purposes of the first election, the state shall constitute one district, and shall elect three members to the house of representatives of the United States.

**First apportionment into legislative districts.** Sec. 10. For the purposes of the first election for members of state senate and the house of representatives, the state shall be divided into senatorial and representative districts as follows, viz.: first district, Washington county; second district, Ramsey county; third district, Dakota county; fourth district, so much of Hennepin county as lies west of the Mississippi; fifth district, Rice county; sixth district, Goodhue county; seventh district, Scott county; eighth district, Olmsted county; ninth district, Fillmore county; tenth district, Houston county; eleventh district, Winona county; twelfth district, Wabashaw county; thirteenth district, Mower and Dodge counties; fourteenth district, Freeborn and Faribault counties; fifteenth district, Steele and Waseca counties; sixteenth district, Blue Earth and Le Sueur counties; seventeenth district, Nicollet and Brown counties; eighteenth district, Sibley, Renville and McLeod counties; nineteenth district, Carver and Wright counties; twentieth district, Benton, Stearns and Meeker counties; twenty-first district, Morrison, Crow Wing and Mille Lac counties; twenty-second district, Cass, Pembina and Todd counties; twenty-third district, so much of Hennepin county as lies east of the Mississippi; twenty-fourth district, Sherburne, Anoka, and Manomin counties; twenty-fifth district, Chisago, Pine and Isanti counties; twenty-sixth district, Buchanan, Carlton, St. Louis, Lake and Itasca counties.

Sec. 11. The counties of Brown, Stearns, Todd, Cass, Pembina, and Renville, as applied in the preceding section, shall not be deemed to include any territory west of the state line, but shall be deemed to include all counties and parts of counties east of said line as were created out of the territory of either, at the last session of the legislature.

**Apportionment of members.** Sec. 12. The senators and representatives at the first election shall be apportioned among the several senatorial and representative districts as follows, to wit:

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1st district,	2 senators,	3 representatives.
2d district,	3 senators,	6 representatives.
3d district,	2 senators,	5 representatives.
4th district,	2 senators,	4 representatives.
5th district,	2 senators,	3 representatives.
6th district,	1 senator,	4 representatives.
7th district,	1 senator,	3 representatives.
8th district,	2 senators,	4 representatives.
9th district,	2 senators,	6 representatives.
10th district,	2 senators,	3 representatives.
11th district,	2 senators,	4 representatives.
12th district,	1 senator,	3 representatives.
13th district,	2 senators,	3 representatives.
14th district,	1 senator,	3 representatives.
15th district,	1 senator,	4 representatives.
16th district,	1 senator,	3 representatives.
17th district,	1 senator,	3 representatives.
18th district,	1 senator,	3 representatives.
19th district,	1 senator,	3 representatives.
20th district,	1 senator,	3 representatives.
21st district,	1 senator,	1 representative.
22d district,	1 senator,	1 representative.
23d district,	1 senator,	2 representatives.
24th district,	1 senator,	1 representative.
25th district,	1 senator,	1 representative.
26th district,	1 senator,	1 representative.

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Sec. 13. The returns from the 22d district shall be made to, and canvassed by the judges of election at the precinct of Otter Tail City.

**Judicial districts.** Sec. 14. Until the legislature shall otherwise provide, the state shall be divided into judicial districts as follows, viz.:

The counties of Washington, Chisago, Manomin, Anôka, Isanti, Pine, Buchanan, Carlton, St. Louis, and Lake, shall constitute the first judicial district.

The county of Ramsey shall constitute the second judicial district.

The counties of Houston, Winona, Fillmore, Olmsted, and Wabashaw, shall constitute the third judicial district.

The counties of Hennepin, Carver, Wright, Meeker, Sherburne, Benton, Stearns, Morrison, Crow Wing, Mille Lac, Itasca Pembina, Todd, and Cass, shall constitute the fourth judicial district.

The counties of Dakota, Goodhue, Scott, Rice, Steele, Waseca, Dodge, Mower, and Freeborn, shall constitute the fifth judicial district.

The counties of Le Sueur, Sibley, Nicollet, Blue Earth, Faribault, McLeod, Renville, Brown, and other counties in the state not included within the other districts, shall constitute the sixth judicial district.

Sec. 15. Each of the foregoing enumerated judicial districts may, at the first election, elect one prosecuting attorney for the district.

**First State election.** Sec. 16. Upon the second Tuesday, 13th day of October, 1857, an election shall be held for members of the house of representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature, and all other officers designated in this constitution, and also for the submission of this constitution to the people for their adoption or rejection.

**Voters at the first election.** Sec. 17. Upon the day so designated as aforesaid, every free white male inhabitant over the age of twenty-one years, who shall have resided within the limits of the state for ten days previous to the day of said elec-

# MINNESOTA STATUTES 1947 ANNOTATIONS

## PROPOSED CONVENTIONS

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tion, may vote for all officers to be elected under this constitution at such election, and also for or against the adoption of this constitution.

**Vote on the constitution.** Sec. 18. In voting for or against the adoption of this constitution, the words "for constitution," or "against constitution," may be written or printed on the ticket of each voter, but no voter shall vote for or against this constitution on a separate ballot from that cast by him for officers to be elected at said election under this constitution; and if upon the canvass of the votes so polled it shall appear that there was a greater number of votes polled for than against said constitution, then this constitution shall be deemed to be adopted as the constitution of the state of Minnesota; and all the provisions and obligations of this constitution, and of the schedule hereunto attached, shall therefore be valid to all intents and purposes as the constitution of said state.

**Election—how conducted.** Sec. 19. At said election the polls shall be opened, the election held, returns made and certificates issued in all respects as provided by law for opening, closing and conducting elections and making returns of the same, except as hereinbefore specified, and excepting also that polls may be opened and elections held at any point or points, in any of the counties where precincts may be established as provided by law, ten days previous to the day of election, not less than ten miles from the place of voting in any established precinct.

**Returns of election.** Sec. 20. It shall be the duty of the judges and clerks of election, in addition to the returns required by law for each precinct, to forward to the secretary of the territory by mail immediately after the close of the election, a certified copy of the poll book containing the name of each person who has voted in the precinct, and the number of votes polled for and against the adoption of this constitution.

**Canvassing returns.** Sec. 21. The returns of said election for and against this constitution, and for all state officers and members of the house of representatives of the United States, shall be made and certificates issued in the manner now prescribed by law for returning votes given for delegate to congress, and the returns for all district officers, judicial, legislative or otherwise, shall be made to the register of deeds of the senior county in each district, in the manner prescribed by law, except as otherwise provided. The returns for all officers elected at large shall be canvassed by the governor of the territory, assisted by Joseph R. Brown and Thomas J. Galbraith, at the time designated by law for canvassing the vote for delegate to congress.

Sec. 22. If upon canvassing the votes for and against the adoption of this constitution, it shall appear that there has been polled a greater number of votes against than for it, then no certificate of election shall be issued for any state or district officer provided for in this constitution, and no state organization shall have validity within the limits of the territory until otherwise provided for, and until a constitution for a state government shall have been adopted by the people.

## SCHEDULE

This was temporary in nature and implemented the transition from territorial to state government.

## PROPOSED CONVENTIONS

Laws 1933, Chapter 214, proposed a convention to pass on the proposed amendment to the Constitution of the United States which has been proposed by Congress for ratification by conventions in the several states. This amendment was not ratified.

\* \* \* \* \*

## PROPOSED AMENDMENTS

Year Proposed	Subject	Art.	Sec.
1858	Prior to the admission of Minnesota as a state on May 11, 1858.	XI	10
	Laws 1858, Chapter 1. Ratified April 15, 1858.		



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## PROPOSED AMENDMENTS

Year Proposed	Subject	Art.	Sec.
1858	Proposing an amendment which entirely superseded the original section, but is now obsolete. Laws 1858, Chapter 2. Ratified April 15, 1858.	V	7
1860	Proposing an amendment limiting the duration of the legislative session. Laws 1860, Chapter 22. Ratified Nov. 6, 1860.	IV	1
1860	Relating to the annual levying of tax to cover expenses and a limitation regarding the payment of "Minnesota State railroad bonds." Laws 1860, Concurrent Resolution 1.  Ratified Nov. 6, 1860. NOTE: This amendment, having been declared unconstitutional both by the state and federal courts, was void from the beginning. The wide open tax amendment, adopted November 6, 1906, supersedes this section.	IX	2
1860	Proposing an amendment which superseded the original section. Laws 1860, Concurrent Resolution 1.  Ratified Nov. 6, 1860.	IX	10
1865	A proposal to delete the word "white" from the first and second clauses of the section. (To amend Article VII, Section 1) Rejected.		
1867	A proposal to delete the word "white" from the first and second clauses of the section. (To amend Article VII, Section 1) Rejected.		
1867	A proposal to authorize a tax on bank shares. (To amend Article IX, Section 4) Rejected.		
1868	Proposing an amendment deleting the word "white" from the first and second clauses of the section. Laws 1868, Chapter 106. Ratified Nov. 3, 1868.	VII	1
1868	A proposal to provide for a referendum to dispose of the 500,000 acres of permanent improvement lands. (To amend Article XV, Section 5) Rejected.		
1869	Proposing to abolish the county of Manomin and adding the territory to Anoka county. Laws 1869, Chapter 50. Ratified Nov. 2, 1869.	XI	7
1869	Authorizing municipal corporations to levy assessments for local improvements on property benefited. Laws 1869, Chapter 51. Ratified Nov. 2, 1869.	IX	1
1870	A proposal to exempt holders of railroad stock from double liability. (To amend Article X, Section 3) Rejected.		
1871	Proposing an amendment permitting the enforcement of a gross earnings tax on railroads, with certain provisions. Laws 1871, Chapter 18. Ratified Nov. 8, 1871.	IV	32(a)
1871	A proposal to grant authority to increase the public debt for certain specific purposes. (To amend Article IX, Section 14a) Rejected.		
1872	Proposing to increase the public debt for certain purposes. Laws 1872, Chapter 11. Ratified Nov. 5, 1872.	IX	14a

# MINNESOTA STATUTES 1947 ANNOTATIONS

## PROPOSED AMENDMENTS

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Year Proposed	Subject	Art.	Sec.
1872	Exempting stockholders in manufacturing corporations from double liability. Laws 1872, Chapter 12. Ratified Nov. 5, 1872.	X	3
1872	Authorizing municipalities to issue bonds under certain conditions. Superseded by Article IX, Section 15, but never expressly repealed. Laws 1872, Chapter 13. Ratified Nov. 5, 1872.	IX	14b
1872	Proposing an amendment creating a method of disposition of federal land grants, and the conservation and use of the proceeds of the sale of the lands. Laws 1872, Chapter 14. Ratified Nov. 5, 1872.	IV	32(b)
1873	A proposal to provide for biennial sessions of the legislature. (To amend Article IV, Section 1) Rejected.		
1873	A proposal to extend the terms of legislators. (To amend Article IV, Section 24) Rejected.		
1873	A proposal for a section to supersede the original Article V, Section 2. (To amend Article V, Section 2) Rejected.		
1873	Relating to the safe-keeping, transfer, and disbursement of state and school funds. Laws 1873, Chapter 4. Ratified Nov. 4, 1873.	IX	12
1875	Proposing an amendment imposing on the legislature the duty to create such judicial districts as they deemed necessary, declare their boundaries, and determine the number of judges to serve in each. Laws 1875, Chapter 1. Ratified Nov. 2, 1875.	VI	4
1875	Proposing an amendment permitting the legislature to enact laws giving women the right to vote at school elections and to hold certain school offices. Laws 1875, Chapter 2. Ratified Nov. 2, 1875.	VII	8
1875	Relating to the investment of state trust funds. Laws 1875, Chapter 3. Ratified Nov. 2, 1875.	VIII	2
1875	A proposal for modification or relief from double liability. (To amend Article X, Section 3) Rejected.		
1876	Proposing an amendment inserting the second paragraph of the section beginning "If any bill presented." Laws 1876, Chapter 1. Ratified Nov. 7, 1876.	IV	11
1876	Proposing an amendment inserting the words "whenever all" at the beginning of the second paragraph. Laws 1876, Chapter 3. Ratified Nov. 7, 1876.	VI	3
1876	A proposal for modification or relief from double liability. (To amend Article X, Section 3) Rejected.		
1877	Proposing an amendment that the legislature shall meet biennially and limiting the session to a term of 60 days. This amendment to supersede the 1860 amendment. Laws 1877, Chapter 1. Ratified Nov. 6, 1877.	IV	1
1877	Proposing an amendment to have a new section supersede the original Section 24, extending the terms of legislators. Laws 1877, Chapter 1. Ratified Nov. 6, 1877.	IV	24

# MINNESOTA STATUTES 1947 ANNOTATIONS

Year Proposed	Subject	Art.	Sec.
1877	Proposing an amendment to provide a new section which superseded the original Section 2. Laws 1877, Chapter 1. Ratified Nov. 6, 1877. NOTE: Originally the legislature canvassed the vote and declared the result of the election of the executive officers.	V	2
1877	Prohibiting the appropriation of state money in support of sectarian schools. Laws 1877, Chapter 3. Ratified Nov. 6, 1877.	VIII	3
1877	A proposal authorizing the use of proceeds from the sale of the internal improvement lands to retire certain defaulted railroad bonds. (To amend Article IV, Section 32(b)). Rejected.		
1877	A proposal to permit women to vote in "local option" elections. (To amend Article VII, Section 8) Rejected.		
1877	A proposal for modification or relief from double liability. (To amend Article X, Section 3) Rejected.		
1879	Identical with Article IX, Section 14b, except reducing the limit of indebtedness of municipalities for the stated purpose from ten per cent to five per cent of the value of the taxable property. Laws 1879, Chapter 1. Ratified Nov. 4, 1879.	IX	15
1881	Broadening the powers of taxation for local assessments as had been provided by the amendment adopted November 2, 1869. Laws 1881, Chapter 1. Ratified Nov. 8, 1881.	IX	1
1881	Proposing an amendment prohibiting the enactment of special or private laws in certain scheduled cases. (Superseded by present section adopted November 8, 1892.) Laws 1881, Chapter 3. Ratified Nov. 8, 1881.	IV	33
1881	This is the "uniformity section," and is supplemental to Section 33. Laws 1881, Chapter 3. Ratified Nov. 8, 1881.	IV	34
1881	Relating to the sale of swamp lands and the division of the proceeds. Laws 1881, Chapter 4. Ratified Nov. 8, 1881.	VIII	2
1881	A proposal to strike out the sixty-day limit of a session. (To amend Article IV, Section 1) Rejected.		
1881	A proposal to increase the compensation of legislators. (To amend Article IV, Section 7) Rejected.		
1883	Proposing an amendment increasing the term of state auditor to four years, and imposing the duty of affixing salaries upon the legislature. Laws 1883, Chapter 1. Ratified Nov. 6, 1883.	V	5
1883	Proposing an amendment under the provisions of which state elections have been held biennially since 1884. Laws 1883, Chapter 2. Ratified Nov. 6, 1883.	VII	9
1883	Proposing an amendment to reduce the term of supreme court justices from seven to six years. Laws 1883, Chapter 3. Ratified Nov. 6, 1883.	VI	3

# MINNESOTA STATUTES 1947 ANNOTATIONS

## PROPOSED AMENDMENTS

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Year Proposed	Subject	Art.	Sec.
1885	Relating to loans from the permanent school funds to districts or counties for school purposes. Laws 1885, Chapter 1. Ratified Nov. 2, 1886.	VIII	5
1887	Proposing an amendment generally known as the anti-monopoly section. Laws 1887, Chapter 1. Ratified Nov. 6, 1888.	IV	35
1887	Proposing an amendment to protect the rights of working men and women in certain cases. Laws 1887, Chapter 2. Ratified Nov. 6, 1888.	I	12
1887	Proposing an amendment to extend the legislative session to ninety days, and forbade the introduction of new bills during the last twenty days of the session, except upon written request of the governor. Laws 1887, Chapter 3. Ratified Nov. 6, 1888.	IV	1
1889	Providing that five-sixths of any jury in any civil action or proceeding, after not less than six hours deliberation, shall be sufficient to render a verdict therein. Laws 1889, Chapter 1. Ratified Nov. 4, 1890.	I	4
1891	Proposing an amendment relating to sweeping prohibition of special laws when a general law can be made applicable. Laws 1891, Chapter 1. Ratified Nov. 8, 1892.	IV	33
1891	A proposal to authorize the legislature to impose progressive taxes on certain industries. (To amend Article IX, Section 1) Rejected.		
1891	A proposal for gross earnings taxes and a special tax on the products of mines. (To amend Article IX, Section 3) Rejected.		
1893	Authorizing taxation on inheritances. Laws 1893, Chapter 1. Ratified Nov. 6, 1894.	IX	1
1895	Proposing an amendment granting additional powers to governor, but entirely changing the method of granting reprieves and pardons. Laws 1895, Chapter 2. Ratified Nov. 3, 1896.	V	4
1895	Proposing an amendment disqualifying aliens from voting. Laws 1895, Chapter 3. Ratified Nov. 3, 1896.	VII	1
1895	Proposing the home rule charter amendment. Laws 1895, Chapter 4. Ratified Nov. 3, 1896.	IV	36
1895	Proposing an amendment making the damage to property recoverable by inserting the words "destroyed or damaged" after the word "taken." Laws 1895, Chapter 5. Ratified Nov. 3, 1896.	I	13
1895	Authorizing investment of the permanent school and university fund in purchase of bonds of any county, school district, town, or village of the state with a proviso. Laws 1895, Chapter 6. Ratified Nov. 3, 1896.	VIII	6
1895	Authorizing the legislature to impose taxes on certain industries. Laws 1895, Chapter 7. Ratified Nov. 3, 1896.	IX	1
1897	Proposing an amendment extending to women the right to vote for library boards. Laws 1897, Chapter 175. Ratified Nov. 8, 1898.	VII	8

# MINNESOTA STATUTES 1947 ANNOTATIONS

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## PROPOSED AMENDMENTS

Year Proposed	Subject	Art.	Sec.
1897	Proposing an amendment to make it difficult to amend the constitution. Laws 1897, Chapter 185. Ratified Nov. 8, 1898.	XIV	1
1897	Proposing an amendment entirely revising the home rule charter section adopted in 1896. Laws 1897, Chapter 280. Ratified Nov. 8, 1898.	IV	36
1897	Proposing the first "road and bridge fund" amendment. Laws 1897, Chapter 333. Ratified Nov. 8, 1898.	IX	16
1899	A proposal to change the seven per cent limitation to fifteen per cent. (To amend Article VIII, Section 6) Rejected.		
1901	A proposal to change the seven per cent limitation to fifteen per cent. (To amend Article VIII, Section 6) Rejected.		
1901	A proposal to amend Article IX, Section 16. (To amend Article IX, Section 16) Rejected.		
Ex. 1902	A proposal for a wide open tax amendment. (To amend Article IX, Section 1) Rejected.		
1903	Proposing to change the seven per cent limitation to fifteen per cent. Laws 1903, Chapter 25. Ratified Nov. 8, 1904.	VIII	6
1903	Proposing an amendment which abolished the old grand jury requirements. Laws 1903, Chapter 269. Ratified Nov. 8, 1904.	I	7
1905	Proposing the so-called "wide open tax amendment" and superseding Sections 1, 2, 3, 4, and the unnumbered section adopted November 3, 1896. Laws 1905, Chapter 168. Ratified Nov. 6, 1906.	IX	1
1905	Relating to obtaining additional funds for the road and bridge fund. Laws 1905, Chapter 212. Ratified Nov. 6, 1906.	IX	16
1905	Proposing an amendment authorizing any person to sell or peddle the products of the farm or garden occupied by him without obtaining a license therefor. Laws 1905, Chapter 283. Ratified Nov. 6, 1906.	I	18
1907	A proposal for state taxation for the support of state hail and wind insurance on growing crops. (To amend Article IX) Rejected.		
1907	A proposal for an amendment to take the place of Sections 1, 2, 3, and 4. (To amend Article IX, Section 1) Rejected.		
1907	A proposal attempting to repeal Article IX, Section 11. (To repeal Article IX, Section 11) Rejected.		
1907	A proposal to lend aid to the improvement of public highways. (To amend Article IX, Section 16) Rejected.		
1909	Superseding the amended section and dealing entirely with lending aid to the improvement of public highways and bridges. Laws 1909, Chapter 506. Ratified Nov. 8, 1910.	IX	16

# MINNESOTA STATUTES 1947 ANNOTATIONS

## PROPOSED AMENDMENTS

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Year Proposed	Subject	Art.	Sec.
1909	A proposal relating to re-apportionment. (To amend Article IV, Section 23) Rejected.		
1909	A proposal for state taxation for the support of state hail and wind insurance on growing crops. (To amend Article IX) Rejected.		
1909	Various proposals for the encouragement of reforestation. (To amend Article IX) Rejected.		
1911	Relating to the maximum and minimum percentage of the road and bridge fund that may be allocated to counties. Laws 1911, Chapter 390. Ratified Nov. 5, 1912.	IX	16
1911	A proposal to limit the apportionment of any county to seven senators. (To amend Article IV, Section 2) Rejected.		
1911	A proposal to simplify the process whereby a municipality might come under the provisions of this section. (To amend Article IV, Section 36) Rejected.		
1911	A proposal to authorize the loan of school funds on improved farm lands. (To amend Article VIII, Section 6) Rejected.		
1911	A proposal for state taxation for the support of state hail and wind insurance on growing crops. (To amend Article IX) Rejected.		
1913	Authorizing the setting apart of certain state lands as state forests and the management thereof on forestry principles. Laws 1913, Chapter 592. Ratified Nov. 3, 1914.	VIII	7
1913	A proposal to reserve to the people the direct power of initiative and referendum. (To amend Article IV, Section 1) Rejected.		
1913	A proposal to limit the apportionment of any county to seven senators. (To amend Article IV, Section 2) Rejected.		
1913	A proposal to increase the number of associate justices; and providing that at least five justices must concur in order to declare a statute unconstitutional. (To amend Article VI, Section 2) Rejected.		
1913	A proposal to extend the terms of judges of probate. (To amend Article VI, Section 7) Rejected.		
1913	A proposal to make provisions for the recall of "every public official in Minnesota elective or appointive." (To amend Article VII, Section 9) Rejected.		
1913	A proposal relating to "a revolving fund." (To amend Article VIII, Section 2) Rejected.		
1913	A proposal to authorize the loan of school funds on improved farm property. (To amend Article VIII, Section 6) Rejected.		
1913	A proposal for the encouragement of reforestation. (To amend Article IX) Rejected.		
1913	A proposal to authorize a dog tax for certain purposes. (To amend Article IX) Rejected.		

# MINNESOTA STATUTES 1947 ANNOTATIONS

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## PROPOSED AMENDMENTS

Year Proposed	Subject	Art.	Sec.
1915	Relating to a revolving fund derived from sale of school and swamp lands and its uses. Laws 1915, Chapter 379. Ratified Nov. 7, 1916.	VIII	2
1915	Permitting the investment of school and university funds in first mortgages on improved farms in the state up to thirty per cent of their cash value. Laws 1915, Chapter 380. Ratified Nov. 7, 1916.	VIII	6
1915	A proposal to authorize the taking of private property under condemnation proceedings to improve the construction of private drainage ditches. (To amend Article I, Section 13) Rejected.		
1915	A proposal to reserve to the people the direct power of initiative and referendum. (To amend Article IV, Section 1) Rejected.		
1915	A proposal to permit the approval in part by the governor of single items of an appropriation bill. (To amend Article IV, Section 11) Rejected.		
1915	A proposal to increase the number of associate justices. (To amend Article VI, Section 2) Rejected.		
1915	A proposal to extend the terms of judges of probate. (To amend Article VI, Section 7) Rejected.		
1915	A proposal to authorize the state to mine ore upon the public domain under lakes and rivers. (To amend Article IX) Rejected.		
1917	A proposal to add the prohibition amendment. (To amend Article XV, Section 5) Rejected.		
1919	Proposing Article XVI relating to the "Trunk Highway System." Laws 1919, Chapter 530. Ratified Nov. 2, 1920.	XVI	1 to 5
1919	Proposing an amendment entirely superseding the original section and extending the terms of probate judges from two to four years. Laws 1919, Chapter 531. Ratified Nov. 2, 1920.	VI	7
1919	A proposal for an amendment to Section 1 authorizing a tax on incomes. (To amend Article IX, Section 1) Rejected.		
1921	Proposing a system of state rural credits. Laws 1921, Chapter 528. Ratified Nov. 7, 1922.	IX	10
1921	Authorizing a net profit tax on the occupation of mining. Laws 1921, Chapter 529. Ratified Nov. 7, 1922.	IX	1A
1921	A proposal for an occupation tax on the mining of iron ore. (To amend Article IX, Section 1) Rejected.		
1923	Proposing to authorize the state to pledge public credit and engage in any work tending to prevent forest fires. Laws 1923, Chapter 451. Ratified Nov. 4, 1924.	XVII	1
1923	A proposal to change the requirements for the publication of proposed amendments to charters of cities and villages. (To amend Article IV, Section 36) Rejected.		

# MINNESOTA STATUTES 1947 ANNOTATIONS

## PROPOSED AMENDMENTS

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Year	Proposed	Subject	Art.	Sec.
1923	A proposal to authorize the state to place to the credit of the "trunk highway fund" excise taxes collected from the selling of fluids used for motor vehicle purposes. (To amend Article IX, Section 5)	Rejected.		
1923	A proposal to authorize the state to own and operate public terminal elevators. (To amend Article XVII)	Rejected.		
1923	A proposal to authorize the state to enact laws encouraging forestation and reforestation. (To amend Article XVIII)	Rejected.		
1925	Authorizing the legislature to enact laws encouraging for- estation and reforestation of lands. Laws 1925, Chapter 427. Ratified Nov. 2, 1926.		XVIII	1
1925	A proposal to increase the number of associate justices. (To amend Article VI, Section 2)	Rejected.		
1927	Relating to the allocation of gasoline excise taxes. Laws 1927, Chapter 445. Ratified Nov. 6, 1928.		IX	5
1929	Authorizing the legislature to "provide for, limit, or otherwise regulate the liability of stockholders." Laws 1929, Chapter 429. Ratified Nov. 4, 1930.		X	3
1929	Proposing an amendment to increase the number of associate justices from four to six. Laws 1929, Chapter 430. Ratified Nov. 3, 1930.		VI	2
1929	A proposal to authorize the exchange of public lands of the state for lands of the United States as the legislature might provide. (To amend Article VIII, Section 8)	Rejected.		
1931	Authorizing the taxation of motor vehicles on a more even basis. Laws 1931, Chapter 418. Ratified Nov. 8, 1932.		XVI	3
1931	A proposal to authorize the exchange of public lands of the state for lands of the United States as the legislature might provide. (To amend Article VIII, Section 8)	Rejected.		
1931	A proposal for a tax on incomes. (To amend Article IX, Section 1)	Rejected.		
1931	A proposal relating to the operation of the system of rural credits. (To amend Article IX, Section 10)	Rejected.		
1933	Proposing to exempt certain household goods and farm machinery from taxation. Laws 1933, Chapter 442. Ratified Nov. 6, 1934.		IX	1
1933	A proposal to authorize the exchange of state public lands for federal or privately owned lands. (To amend Article VIII, Section 8)	Rejected.		
1933	A proposal to exempt certain property from taxation. (To amend Article IX, Section 1)	Rejected.		
1933	A proposal for the modification of the system of rural credits. (To amend Article IX, Section 10)	Rejected.		



# MINNESOTA STATUTES 1947 ANNOTATIONS

Year Proposed	Subject	Art.	Sec.
1933	A proposal for a convention to pass on a proposed amendment to the Constitution of the United States. (To amend the U. S. Constitution) Rejected.		
1935	A proposal to authorize the exchange of state public lands for federal or privately owned lands. (To amend Article VIII, Section 8) Rejected.		
1935	A proposal to limit taxes on real estate: (To amend Article IX, Section 1) Rejected.		
1937	Authorizing the exchange of public lands of the state for lands of the United States or privately owned lands as the legislature might provide. Laws 1937, Chapter 492. Ratified Nov. 8, 1938.	VIII	8
1937	A proposal to change the requirements for publication. (To amend Article IV, Section 36) Rejected.		
1937	A proposal to repeal Article IX, Section 11. (To repeal Article IX, Section 11) Rejected.		
1939	A proposal to change the requirements for publication. (To amend Article IV, Section 36) Rejected.		
1941	Authorizing the investment of swamp land funds in a manner similar to the investment of school and university funds. Laws 1941, Chapter 171. Ratified Nov. 3, 1942.	VIII	6
1941	Proposing an amendment to change the requirements for publication of proposed amendments to charters of cities and villages. Laws 1941, Chapter 555. Ratified Nov. 3, 1942.	IV	36
1943	Authorizing the levying of taxes in support of air navigation facilities. Laws 1943, Chapter 666. Ratified Nov. 7, 1944.	XIX	

★   ★   ★   ★   ★

## GENERALLY

**WHEN SELF-EXECUTING.** If a provision is intended as a present enactment, complete in itself as definitive legislation and addressed to the courts, it is self-executing, but otherwise if it contemplates subsequent legislation to carry it into effect. *Willis v Mabon*, 48 M 150, 50 NW 111; *Moskovitz v City of St. Paul*, 218 M 547, 16 NW(2d) 746.

**TEST OF CONSTITUTIONALITY.** Neither the unobjectionable character of what has been done pursuant to a statute nor the possibility that future action thereunder may not transgress constitutional limitations will save the act if it clearly authorizes a violation of fundamental written law. *State ex rel v Sageng*, 182 M 570, 235 NW 383; *State v Minnesota Federal*, 218 M 242, 15NW(2d) 575.

**WHO MAY RAISE ISSUE.** As has often been pointed out, one who seeks to set aside a state statute as repugnant to the federal constitution must show that he is within the class with respect to whom the act is unconstitutional, and that the alleged unconstitutional feature injures him. *Eldred v Division of Employment*, 209 M 61, 295 NW 414; *State v Industrial Tool Works*, 220 M 607, 21 NW(2d) 31; *Mallinkrodt v Missouri*, 238 US 54.

Objection that the administrative order does not comply with the statutory conditions authorizing its promulgation cannot be raised by one not prejudiced by its irregularity. *State v Casualty Co.* 213 M 224, 6 NW(2d) 802; *Martin v Wolfson*, 218 M 575, 16 NW(2d) 890.

# MINNESOTA STATUTES 1947 ANNOTATIONS

## GENERALLY

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**EXTENT OF PROTECTION.** The rights, privileges, and immunities of citizens exist notwithstanding there is no specific enumeration thereof in the state constitution. *Thiede v Town of Scandia*, 217 M 218, 14 NW(2d) 400.

**GOVERNMENT GRANTS AMOUNTING TO CONTRACTS.** The federal act creating Minnesota's territorial status vested its legislature with broad powers in the field of legislation. It bestowed upon the territorial legislature authority to create Hamline University, with wide functions. A valid legislative grant amounting to a contract may not be impaired by subsequent legislation. *State v Trustees of Hamline*, 217 M 399, 14 NW(2d) 773.

**ENABLING ACT.** Whatever rights a state acquires by its enabling act are subordinate to the Indians' prior right of occupancy. *State v Jackson*, 218 M 432, 16 NW(2d) 755.

**ACT OF ADMISSION.** The admission of a state into the union, even without an express reservation by congress of governmental jurisdiction over the public lands within its borders, does not qualify the former federal jurisdiction over tribal Indians so as to withdraw from the United States authority to punish crimes committed by or against Indians on an Indian reservation or so as to make tribal Indians amendable to state laws for crimes committed on their reservation. *State v. Jackson*, 218 M 432, 16 NW(2d) 755.

**SELF-EXECUTING.** Prohibitive clauses of a constitution are self-executing and require no legislative provisions for their enforcement. *Payne v Lee*, 222 M 269, 24 NW(2d) 259.

**EFFECT OF ADMISSION OF STATE.** Statutes passed by states for their own uses, declaring small streams navigable, do not make them so within the meaning of any constitutional provision, treaty, or ordinance of the United States. Except for the contracts contained therein, the Northwest Ordinance of 1787 has no force when congress, or a state carved out of such territory, chose to organize and admit such state. *Duluth Lumber v St. Louis Boom Co.*, 17 F. 419.

**JURISDICTION OVER BOUNDARY WATERS.** Lake Superior, being a common boundary water between Minnesota, Wisconsin, and Michigan, the United States Marshal for the District of Minnesota may seize a vessel in the open waters of the lake. *Inman v The Lindrup*, 62 F. 851.

**INTERPRETATION.** The emergency price control act does not create an unlawful "delegation of power," nor does it violate the "due process of law" clause, nor the war powers granted to congress. A statute is not declared void unless its violation of the constitution is so manifest as to leave no room for reasonable doubt. *Brown v Warner*, 50 F. Supp. 594.

The leaning of the courts is against repeal by implication, and if it be possible to reconcile two statutes, one will not be held to repeal the other. The court will, where possible, so interpret the legislative enactment as will relieve the state committing an act of unfairness. *Red Rock v Henry*, 106 US 596.

**EFFECT OF ADMISSION OF STATE.** The federal treaty with the Chippewa Indians (1855) prohibiting traffic in spirituous liquor is in force notwithstanding the admission of Minnesota into the Union. *Johnson v Gearlds*, 234 US 422.

Lands underlying navigable waters within a state belong to the state except that where the federal government has granted rights in such lands, to carry out a public purpose, such rights are not impaired by the subsequent creation of the state, and the rights which ordinarily pass to the state are restricted and qualified in accordance with such grant. *United States v Holt State Bank*, 270 US 49.

**INTERPRETATION.** The court in passing upon constitutional questions has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect. *Near v Minnesota*, 283 US 708.

Reservation of state power must yield to limitation fairly appraised. The reserved power cannot destroy the limitation nor the limitation the reserved power. There must be a harmonious construction. The state is precluded from adopting

a policy leading to repudiation of its debts, destruction of contracts, or denial of means to enforce them. Conditions may permit a temporary restraint upon enforcement. *Home Building v Blaisdell*, 290 US 439.

**CASES RELATING TO CONSTRUCTION OF CONSTITUTIONAL PROVISIONS:**

*State v City of Mankato*, 117 M 458, 136 NW 264;  
*Chase v Babcock*, 175 M 103, 220 NW 408;  
*State v Sageng*, 182 M 565, 235 NW 380;  
*State v Finnegan*, 188 M 54, 246 NW 521;  
*Reed v Bjornson*, 191 M 254, 253 NW 102;  
*State v Kenny*, 202 M 605, 279 NW 407;  
*Mesaba Loan Co. v Sher*, 203 M 589, 282 NW 823;  
*Freeman v Goff*, 206 M 49, 287 NW 238;  
*State v Casualty Mutual*, 213 M 220, 6 NW(2d) 800;  
*Anderson v Burnquist*, 216 M 49, 11 NW(2d) 776;  
*Lyons v Spaeth*, 220 M 563, 20 NW(2d) 481.

Comparison of the Constitution of the United States with that of Canada. 4 MLR 165.

The constitution of Minnesota. 5 MLR 407.

Stage of procedure at which constitutional rights must be asserted. 6 MLR 582.

Need for constitutional revision in Minnesota. 11 MLR 189.

When are three federal judges required? 16 MLR 1, 590; 18 MLR 729, 19 MLR 92, 28 MLR 131.

Social and economic control through federal taxation. 18 MLR 757.

Federal constitutional limitations on state sales taxes. 20 MLR 461.

Use of preambles or recitals in interpretation of the constitution. 25 MLR 924.

**ARTICLE I**

**BILL OF RIGHTS**

Section 1. OBJECT OF GOVERNMENT. Nothing which is a direct burden upon interstate commerce can be imposed by the state without the consent of congress. The silence of congress is equivalent to a declaration on its part that it should be free. There is no justification for the state to exercise a power that is not possessed. *City of Waseca v Braun*, 206 M 155, 288 NW 229.

The rights, privileges, and immunities of citizens exist notwithstanding there is no specific enumeration thereof in the state constitution. *Thiede v Town of Scandia Valley*, 217 M 218, 14 NW(2d) 400.

One hundred and fifty years of the federal "Bill of Rights." 23 MLR 719.

Sec 2. RIGHTS AND PRIVILEGES.

1. Law of the land.
2. Rights and privileges.
3. Disfranchisement.
4. Slavery or involuntary servitude.
5. Class legislation.
6. Impairment of contract.
7. Generally.
8. Certain acts held constitutional.

1. Law of the land

DUE PROCESS OF LAW. "Due process of law" or "the law of the land" means the same thing; and is not necessarily judicial proceedings. One phrase was used by the democratic and the other by the republican wing of the state consti-

# MINNESOTA STATUTES 1947 ANNOTATIONS

## ART. 1 s 2' BILL OF RIGHTS

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tutional convention, and the final compromise draft contained both phrases. *State ex rel v State Board*, 34 M 387, 26 NW 123.

**DUE PROCESS.** Mason's Minnesota Statutes, Section 8960, in force when the relator alleged insane person was committed, did not violate the due process clause of the state or the federal constitution; and the same is true of Minnesota Statutes 1945, Section 525.762, now in force. *State ex rel v Carlgren*, 209 M 362, 296 NW 573.

**DUE PROCESS DEFINED.** *State v Northwest Airlines*, 213 M 395, 7 NW(2d) 691, 322 US 292; *State v Kelly*, 218 M 247, 15 NW(2d) 554; *Martin v Wolfson*, 218 M 557, 16 NW(2d) 884.

**NOT DUE PROCESS.** The decisions of the Supreme Court of the United States will be followed in the interpretation of the meaning of due process under the federal constitution. A tax by a state without jurisdiction to impose it is unconstitutional as a violation of due process. *State v Northwest Airlines*, 213 M 395, 7 NW(2d) 691, 322 US 292.

**NOT DUE PROCESS.** "The finding of intoxicating liquors in the possession of any person, by means of a search warrant, shall be prima facie evidence that such persons had possession of such liquors for the purpose of selling" cannot constitutionally be applied to the finding of a case of whiskey in one's private garage attached to his home as a part thereof, and three half pints of gin in his automobile parked nearby. A statutory presumption of prima facie case cannot be sustained if there is no rational connection between the fact proved and the fact presumed. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

**DUE PROCESS.** The alleged error in the charge of the trial judge did not, in the instant case, deprive the appellant of any rights guaranteed by the due process clause. *Kane v Locke*, 218 M 487, 16 NW(2d) 545.

**DUE PROCESS.** Where licensee was duly notified of a hearing before the city council to consider a revocation of his licenses, and was present when a motion was made and carried to fix a date for a future hearing, he was not entitled to a second notice of such second hearing. *Moskovitz v City of St. Paul*, 218 M 543, 16 NW(2d) 745.

**DUE PROCESS.** Defendant was represented before the commission. All parties were fully heard. There was much unsworn testimony, and full cross-examination. All issues were fully argued. Defendant is in no position to complain that the informality of the hearing constituted a lack of due process. *Martin v Wolfson*, 218 M 567, 16 NW(2d) 886.

**DUE PROCESS.** Where the court at time of granting motion to intervene in condemnation proceedings permitted counsel for the state an opportunity to offer counter affidavits or evidence, and counsel for the state replied that he wished to offer evidence, but not by the method of notice and motion, the state had ample opportunity to be heard, and the constitutional requirements of due process were not violated by granting the motion to intervene and ordering appointment of commissioner to ascertain damages. *Antl v State*, 220 M 129, 19 NW(2d) 77.

The power to condemn property is in the first place legislative, but the legislature may and does delegate to courts, municipal officers and boards, administrative and quasi-judicial powers to conduct proceedings to carry into effect the legislative policies. The proceeding is in rem and largely administrative. The matter of fixing values and damages is at most quasi-judicial. *Re Condemnation of Lands Owned by Luhrs*, 220 M 134, 19 NW(2d) 77.

**LAW OF THE LAND.** State securities act regulating sale of stock, especially the provision authorizing a state department of commerce, securities division, to investigate sale of securities, is not unconstitutional as depriving the bank stock holding company, stock of which was sold and traded, of rights and privileges guaranteed by the law of the land. *Northwest Bank Corp. v Benson*, 6 F. Supp. 704.

**LAW OF THE LAND.** Prospective and retroactive effect of an over-ruling state decision. 17 MLR 811.

Statute requiring filing of surety bond before sale of out of state used cars is invalid as a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution and of Article 1, Section 2, of the Minnesota Constitution. 25 MLR 942.

## 2. Rights and privileges

Insurance business is affected with public interest and by reason thereof must yield to governmental regulations; and the Fourteenth Amendment of the federal constitution, and Article 1, Section 7, of the state constitution, must yield to the police power which is paramount. *Itasca Paper Co. v Niagara Fire Ins. Co.* 175 M 75, 220 NW 425.

**EQUAL PROTECTION.** A statute making soldiers preference law operative again, becoming effective prior to determination of fireman civil service examination entitles world war veterans to preference, notwithstanding the statute was not in effect when applications for examinations were made. *State ex rel v McDonald*, 188 M 160, 246 NW 901.

**EQUAL PROTECTION.** L. 1931, c. 58, authorizing cancellation of taxes against dealers, on motor vehicles sold during the tax year to one paying a license tax for that year, is not an unconstitutional tax exemption. *City of Mpls v Armson*, 188 M 169, 246 NW 661.

**RIGHTS PERSONAL.** The natural rights mentioned in the constitution are of a personal character, all centering in the person, but because a distinction is made in reference to personal and property rights, it does not follow, in the instant case, that the applicable statutes were intended to provide separate remedies. *Myhra v Park*, 193 M 292, 258 NW 516.

**CY PRES.** The charitable trust estate providing for the application of the cy pres (as near as) doctrine by the courts is not a delegation of legislative power. *Lundquist v First Evangelical Church*, 193 M 479, 259 NW 11.

**CLASS LEGISLATION.** Section 280.38, providing for attachment by the county auditor of rents received from real estate upon which taxes have become delinquent, does not violate the uniformity provision of the state constitution. *Johnson v Torinus*, 197 M 272, 266 NW 871.

**EQUALITY PROVISION.** Ex. L. 1937, c. 88 (ss. 281.55 to 281.62), is not constitutionally vulnerable as against attack that: (1) It is special or class legislation; or (2) in violation of the equality provision of the state constitution or the equal protection clause of the federal constitution. *State ex rel v Hubbard*, 203 M 117, 280 NW 10.

**EQUAL PROTECTION.** The standards of equal protection under Minnesota Constitution, Article 1, Section 2, and Article 4, Sections 33, 34, and uniformity of taxation under Article 9, Section 1, are the same as the standard of equality required by the equal protection clause of the United States Constitution, Amendment 14; and operators of chain stores are not denied the equal protection of the law by excepting from a chain store tax retailers selling products of their own production. *C. Thomas Stores v Spaeth*, 209 M 505, 297 NW 9.

**EQUAL PROTECTION.** L. 1939, c. 284, s. 1, requiring the filing of a surety company bond with the registrar of motor vehicles and payment of a \$5.00 fee before offering for sale a used motor vehicle brought into the state for purposes of re-sale is a violation of the equal protection clause of the fourteenth amendment and the commerce clause of the federal constitution, and of Article 1, Section 2, of the state constitution. *State v Ernst*, 209 M 586, 297 NW 24.

**EQUAL PROTECTION.** The owner of a freehold cannot, without his consent, be removed therefrom to his legal settlement for poor relief purposes in another municipality, notwithstanding general statutory language conferring such right of removal. *Thiede v Town of Scandia*, 217 M 218, 14 NW(2d) 400.

**EQUAL PROTECTION.** L. 1943, c. 650, s. 2, the so-called war risk contribution tax act, amending the state employment and security act, is not unconstitutional as

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violative of the provisions of the federal and state constitutions affording all persons the equal protection of the laws and requiring that taxes be uniform upon the same class of subjects. *State v Donovan*, 218 M 606, 16 NW(2d) 897.

Under section 176.66 which requires a medical board to determine certain occupational disease questions under the workmen's compensation law, and provides that said board report and file with the industrial commission findings based thereon, which shall be binding on the commission, there is no requirement that a transcript of the evidence upon which the board's findings are based be filed with said report. There is no method by which it can be determined upon review, whether said finding is arbitrary and oppressive or whether it has sufficient foundation in fact. A claimant is denied due process of law, and section 176.66 insofar as it relates to the creation and functions of the medical board, is unconstitutional. *Hunter v. Zenith*, 220 M 318, 19 NW(2d) 795.

**PICKETING.** To proscribe picketing is to limit the right of free speech. 23 MLR 283.

The federal civil rights laws. 31 MLR 301.

Restrictive covenant against occupancy by non-Caucasians; action to enforce. 31 MLR 385.

### 3. Disfranchisement

**PROTECTION OF BALLOT.** L. 1923, c. 305, the election registration statute is highly remedial, intended to protect the right of the ballot to those entitled thereto. A writ of prohibition directed to the commission will not issue because the petitioner has ample remedy by appeal under section ten of the act. *State ex rel v Ferguson*, 203 M 604, 281 NW 765.

### 4. Slavery or involuntary servitude

The negro in the supreme court. 30 MLR 219.

### 5. Class legislation

An ordinance requiring that all pasteurized milk sold in the city must be pasteurized within the city limits is unconstitutional. *State ex rel v City of Mpls.* 190 M 138, 251 NW 121.

The question of classification is primarily for the legislature. It is not enough that the court does not see all the facts justifying the classification. To declare a statute unconstitutional, the court must be able to say that the legislature could not reasonably and intelligently make the classification it did. *Eldred v Division of Employment*, 209 M 58, 295 NW 412.

The war risk contribution tax act (L. 1943, c. 650, s. 2) is not unconstitutional as violative of the provisions of the federal and state constitutions affording to all persons the equal protection of the laws and requiring that taxes be uniform upon the same class of subjects. *State v Donovan*, 218 M 606, 16 NW(2d) 897.

A law requiring a person of certain age to carry a birth certificate, or otherwise prove legal age as a prerequisite to the purchase of liquor would be constitutional. OAG Feb. 14, 1945 (218j-12).

A legislative act providing for a higher charge for weighing at livestock stations than is charged at the South St. Paul station is illegal. OAG June 18, 1946 (371-B-10).

Effect of the federal nationality act of 1940 upon the doctrines of dual nationality and the right of election. 25 MLR 339.

Matter of classification is primarily for the legislature and the courts will not interfere if the classification is reasonable and, considering its purpose, based upon some substantial difference in the groups. 25 MLR 521.

Denaturalization based on disloyalty and disbelief in constitutional principles. 29 MLR 406.

The negro in the supreme court. 30 MLR 225.

Uncertain nationality status of German refugees. 30 MLR 372.

Requirement that children of Mexican or Latin descent attend separate schools held invalid. 30 MLR 646.

#### 6. Impairment of contract

The rule that a cause of action once barred by a statute of limitations is not revived by the repeal of the statute applies when the statute entirely extinguishes the right, and vests perfect title in the adverse holder, and does not apply to statutes which merely bar certain remedies or forms of action. *Kipp v Johnson*, 31 M 360, 17 NW 957.

A person has no vested right in a cause of action or defense based solely upon an informality or irregularity in judicial proceedings not affecting his substantial equities, and a retroactive statute curing defects in such proceedings which are mere irregularities and mistakes, and do not extend to matters of jurisdiction, is not void on constitutional grounds. *Farnsworth v Commonwealth*, 84 M 62, 86 NW 877.

It is conceded that L. 1933, c. 339, under which the time for redemption from mortgage foreclosure sales may be extended, impairs the obligation of the mortgage contract; but the existence of the economic emergency justified the legislature in the exercise of the police power of the state to enact the law to relieve from the emergency. *Blaisdell v Home Loan Assn.* 189 M 422, 249 NW 334, 290 US 398.

Neither under the due process guaranty nor otherwise is the right to freedom of contract absolute. As with most other individual rights, it is qualified and limited by similar rights of others and those of the government. Individual liberty must yield to the conflicting interest of society, acting through sovereign government. *McElhone v Geror*, 207 M 582, 292 NW 414.

The right to practice law is not a property right guaranteed or protected by either the state or federal constitution, but a privilege conferred upon the individual by the court, subordinate to the court's greater obligation to further the administration of justice and to protect constitutional rights. *Re Integration of the Bar*, 216 M 195, 12 NW(2d) 515.

The fact that more than six years had elapsed prior to the enactment of section 80.26, and that under the general statute of limitations then in force a cause of action arising out of the violation of section 80.07 was barred did not prevent the legislature by section 80.26 from lifting the bar of the statute of limitations, because the general statute of limitations applied merely to the remedy and did not vest such right in the defendant that the legislature could not lift the bar. A general statute of limitations does not operate as payment of a debt or as satisfaction of liability for tort. *Donaldson v Chase*, 216 M 270, 13 NW(2d) 1.

No rule of statutory instruction prevails as against the clear and obvious intent of the legislature; and generally in the exercise of police power, the legislature enjoys a substantially greater freedom of action from constitutional limitations than in the exercise of the taxing power, and as a consequence police power statutes are subject to a more liberal interpretation. *State v Industrial Tool Works*, 220 M 608, 21 NW(2d) 31.

It is not ground for habeas corpus that counsel made a mistake or was negligent or gave bad advice to his client. The petitioner was not thereby deprived of assistance of counsel. *Helms v Humphrey*, 63 F. Supp. 4.

#### Section 3. LIBERTY OF THE PRESS.

In the exercise of freedom of speech secured by the federal constitution, a labor union may peacefully picket the premises, where a person is engaged in building a house for the purpose of sale, to induce him to let work in connection with the construction thereof, done by him with his own hands, to others, who would employ union labor to do the same. *Glover v Mpls. Building Trades*, 215 M 533, 10 NW (2d) 481.

As part of freedom of speech, United States Constitution, Amendment XIV, secures to a labor union the right peacefully to picket the place of business of one who does all his work without any employees, for the purpose of inducing him to join the union, even though the picketing may cause him loss of patronage and prevent deliveries of supplies to his premises. *Coons v Journeymen Barbers*, 222 M 100, 23 NW(2d) 345.

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The proposed ordinance, prohibiting the printing, publishing and distributing of anonymous handbills attacking religious, racial, and other groups, if enacted, would not be invalid as an abridgement of the freedom of the press under the constitutions of the state or the United States. 1944 OAG 235, Nov. 4, 1943 (62-B).

Freedom of speech and of the press. 2 MLR 239.

Right to refuse to publish an advertisement. 18 MLR 89.

To prescribe picketing, under most phases, is to limit the right of free speech guaranteed under the federal and state constitutions. 23 MLR 283.

Freedom of speech and the press; municipal power of license and censorship. 23 MLR 375, 24 MLR 570.

Publicity in criminal trials. 24 MLR 453.

Freedom of speech and press; peaceful picketing. 25 MLR 238.

Extension and limitation of *Thornhill v Alabama*. 25 MLR 640.

Freedom of the press under the fourteenth amendment; contempts by publication. 26 MLR 552.

Freedom of speech and the press; handbill ordinances; application to commercial and non-commercial handbills. 26 MLR 553.

Handbill ordinances as they relate to freedom of speech. 26 MLR 895.

Right of labor to picket to induce unlawful act. 26 MLR 895.

Application of license tax to distribution of religious literature. 27 MLR 90.

False bannering in connection with peaceful picketing. 27 MLR 187.

Liberty of expression and contempt of court. 27 MLR 296.

Compulsory flag salute. 27 MLR 471, 28 MLR 133.

Freedom of press and religion. 28 MLR 133.

Debt of constitutional law to Jehovah's witnesses. 28 MLR 209.

Right of the state to require union organizers to register. 30 MLR 204.

Negro in the supreme court. 30 MLR 219.

Freedom of the press under the first and fourteenth amendments. 31 MLR 97.

Freedom of speech and assembly; use of school buildings. 31 MLR 199.

### Section 4. TRIAL BY JURY.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1889, Chapter 1, ratified November 4, 1890, added "and the legislature may provide that the agreement of five-sixths of any jury in any civil action or proceeding, after not less than six hours deliberation, shall be sufficient to render a verdict therein."

NOTE: The statute implementing the amendment is Laws 1913, Chapter 63, and twelve hours deliberation is required.]

1. Nature of right in civil cases.
2. Jury trial in inferior court.
3. Trial by jury upheld.
4. Trial by jury denied.
5. No jury trial in prosecutions for violations of local ordinances.
6. Jury trial waived.
7. Five-sixths verdict by jury.

#### 1. Nature of right in civil cases

POWER NOT DELEGATED. The defendant sanitary district in conducting a condemnation proceeding does so as an arm of the state in the discharge of a sovereign legislative function, and in the instant case there is no unconstitutional delegation of legislative powers to the judicial branch. *Weir v St. Paul Co.*, 18 M 139, 147, (155); *State ex rel v Simpson*, 39 M 67, 38 NW 928; *Barmel v Minneapolis, St. Paul Sanitary District*, 201 M 625, 277 NW 209.



**JURISDICTION OF PROBATE COURT.** When there is conflict between the representative and his attorney in respect to services rendered and the fees to be paid therefor, the issues presented thereby should be determined by a court of general jurisdiction and not by the probate court. The right of jury trials is a valuable one and is guaranteed by our constitution. *State ex rel v Probate Court*, 204 M 17, 283 NW 551.

Care should be taken not to permit any mere label which counsel in their pleadings attempt to put upon a lawsuit to result in the denial of the constitutional right to jury trial if the real nature of the action is such as to give a litigant that right. *Gilbertson v Independent School District*, 208 M 51, 293 NW 129.

Provision of the federal constitution preserving the right of trial by jury in courts of the United States (United States Constitution, Amendment 7) is a limitation on the federal government only and not on the states, and applies only to jury trials in federal courts. *Carl v DeToffol*, 223 M 24, 25 NW(2d) 479.

- Constitutionality of statute permitting jury trial in contempt cases. 9 MLR 378.
- Trial by jury a matter of right under the code. 19 MLR 599.
- Trial by jury in will cases. 22 MLR 513.
- Use of special juries. 31 MLR 232.

**2. Jury trial in inferior court**

Constitutionality of conciliation and small debtors courts where there is no jury. 6 MLR 161.

**4. Trial by jury denied**

The complaint sets forth an action in equity to compel issuance to plaintiff of certificates for capital stock, and defendant was not entitled to a jury trial. *Falk v Dirigold*, 174 M 219, 219 NW 82.

**PSYCHOPATHIC PERSONALITY.** The constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others. *State ex rel v Probate Court*, 205 M 545, 287 NW 297.

**6. Jury trial waived**

The fact that the judge had submitted questions to the jury, changed his mind, and tried the case himself, because of developments on the trial, was not error in this case triable by the court. *Farmer v Stillwater Water Co.* 108 M 42, 121 NW 418.

A jury was not required as the cause of action in replevin was dismissed, and both parties sought only equitable remedies. *Hormel v First National Bank*, 171 M 65, 212 NW 738.

**WAIVER.** Where appellant asked in the alternative for a jury trial or a reference on the question of the value of attorney's services, he is not in a position to claim prejudice because the case was referred to a judge for trial. *Coughlin v City of St. Paul*, 219 M 372, 18 NW(2d) 87.

Voluntary absence of defendant constitutes waiver of right to be present at rendition of verdict. 13 MLR 65.

**Section 5. NO EXCESSIVE BAIL OR UNUSUAL PUNISHMENT.**

- 1. Cruel or unusual punishment.**
- 2. Excessive bail.**

**1. Cruel or unusual punishment**

It is within the police power of the state to enact such laws as will preserve from extermination or undue depletion wild game adapted to consumption as food, or to other useful purposes; and to that end the state may adopt any reasonable

regulations, not only as to the time and manner of taking or killing such game, but also imposing such limitations or restrictions upon its use, or the right of property in it, after it is taken or killed, as will tend to prevent such extermination or depletion. *State v Rodman*, 58 M 394, 59 NW 1098.

**POISONING ANIMAL.** Section 614.46 does not offend Minnesota Constitution, Article 1, Section 5, since there is no departure in the act from our fundamental law. *State v Eich*, 204 M 134, 282 NW 810.

**GROSS MISDEMEANORS.** Absent any constitutional definition or classification, it is competent for the legislature, in creating or defining an offense, to name it, classify it, and within the limitations of Minnesota Constitution, Article 1, Section 5, to prescribe the punishment. *State v Kelly*, 218 M 265, 15 NW(2d) 555.

#### Section 6. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS.

1. Speedy and public trial.
2. To be informed of nature of accusation.
3. To be confronted by witnesses.
4. Trial by jury of county or district.
5. Assistance of counsel.

##### 1. Speedy and public trial

The court, without infringing the right of the accused to a public trial, may temporarily exclude part of the public from the trial for the preservation of order in the courtroom or of public morals, but this power of temporary and partial exclusion of the public must be exercised with extreme caution to insure that accused is not thereby deprived of the presence, aid, or counsel of any person whose presence might be of advantage to him and to insure that he is not otherwise thereby prejudiced. United States Constitution, Amendment VI, does not apply to a state criminal prosecution. *State ex rel v Utecht*, 221 M 145, 21 NW(2d) 328.

Defendant's wife has the right to be present at the trial under constitutional provision that defendant should have a public trial. *State v Haney*, 222 M 124, 23 NW(2d) 369.

In a trial for sodomy the state trial court ordered the court room cleared during the testimony of the complaining witness, a girl aged 13. Defendant was represented by counsel, and no exception was taken to the clearing of the court room and no appeal was taken from the judgment of conviction. Much later the prisoner applied to the district court of Washington County for a writ of habeas corpus which was denied. On appeal to the supreme court a motion to quash was sustained. The federal court declined to issue a writ to determine whether there was such denial of a public trial as to make the conviction invalid and subject to collateral attack. *Baker v Utecht*, 161 F(2d) 304.

##### 2. To be informed of nature of accusation

**INFORMATION.** Section 614.46 and the information charging defendant with its violation are not so indefinite as to offend against Minnesota Constitution, Article 1, Section 6. *State v Eich*, 204 M 134, 282 NW 810.

The power and duty of the grand jury to investigate crimes committed within the county is original and complete and may be exercised upon its own motion. Since that power is a continuing one during the term, such power to act is not exhausted by adverse action theretofore taken, but may be exerted and exercised as to the same instances by the same or a subsequent grand jury. The grand jury may find an indictment on the same evidence theretofore submitted to it without a reexamination of the original witnesses, or the taking of additional evidence. *State v Iosue*, 220 M 284, 19 NW(2d) 735.

##### 3. To be confronted by witnesses

Transcript of proceedings at the time of view by jury. 28 MLR 201.

**4. Trial by jury of county or district**

**DECLARATORY JUDGMENTS.** Declaratory judgments had their analogue in Roman law; have been resorted to in Scotland for several hundred years; and the procedure was adopted in England in 1852. Minnesota enacted the uniform declaratory judgment act in 1933. The procedure permits a decision of the controversy at its inception, avoids embittered relations, and perhaps irretrievable losses, and enables the plaintiff to seek a mild rather than a drastic remedy; but it does not amend the constitution and the right to trial by jury remains inviolate. *Gilbertson v Independent School*, 208 M 54, 293 NW 129; *State Farm Mutual v Skluzacek*, 208 M 447, 294 NW 414.

In the instant case there is no evidence that defendant entertained an intent to embezzle the money when he received it in Anoka County. The venue was properly laid in Hennepin County where the crime was committed. (See, *State v Brown*, 103 Vt. 312, 154 A 579). *State v Heidelberg*, 216 M 385, 12 NW(2d) 781.

**RIGHT OF TRIAL.** If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him. *State v Kelly*, 218 M 251, 15 NW(2d) 555; *Mobile v Turnipseed*, 219 US 43.

**JURY FEE.** To refuse to grant a defendant a jury trial in a criminal case for his failure to pay a jury fee, as required by section 488.21, irrespective of his financial circumstances, would be to disregard the provisions of Minnesota Constitution, Article 1, Section 6. 1940 OAG 41, March 21, 1940 (260a-4).

The shifting basis of jurisdiction. 17 MLR 149.

"Hip-pocket alibis" or "He wasn't there when he did it." 20 MLR 581.

Bills of peace or writs of prohibition to prevent multiplicity of suits. 21 MLR 601.

Disqualification of governmental employees as jurors in criminal cases for implied bias. 21 MLR 610.

**5. Assistance of counsel**

**PLEA OF GUILTY.** The court in the instant case substantially informed the defendant of his right to counsel. The provision of section 628.32, requiring the appointment of counsel for the defendant before taking a plea, does not apply to an information under sections 628.29 to 628.31. *State v McDonnell*, 165 M 423, 206 NW 952.

**COUNSEL.** Section 481.10 requires an officer having an accused in custody to grant a request for an interview with his counsel, and he shall notify such counsel "as soon as practicable and before other proceedings shall be had." The court interprets "other proceedings" to include an examination or inquisition of the accused. *State v Schabert*, 218 M 1, 15 NW(2d) 585.

**APPLICATION BY CONVICT.** Where in the face of an application for assignment of counsel to represent relator in the supreme court on an appeal from an order discharging a writ of habeas corpus it appears that the appeal is frivolous, the supreme court will not ask a member of its bar to contribute his services to relator upon such appeal. *State ex rel v Utecht*, 218 M 553, 16 NW(2d) 750.

Defendant choosing to defend himself pro se and calling and examining two witnesses in his behalf, was not deprived of right to assistance of counsel, and upon conviction is not entitled to new trial. *State v Martin*, 223 M. 414, 27 NW(2d) 160.

**STATE POLICY.** A review of state constitutional and statutory provisions, in connection with the common law, demonstrates that, in a great majority of states, it has been the considered judgment of the people, their representatives and their courts that an appointment of counsel for indigent defendants in criminal cases is not a fundamental right, essential to a fair trial, and that the matter has generally been deemed one of legislative policy. It cannot be said that the concept of due process incorporated in the fourteenth amendment obliges the states,

whatever may be their own views, to furnish counsel in every case. *Belts v Brady*, 316 US 456, (Comparative Law 468).

Right to counsel in criminal prosecutions. 17 MLR 415, 26 MLR 657.

Plea of guilty not an absolute waiver of right to counsel. 31 MLR 195.

Section 7. FURTHER RIGHTS OF ACCUSED.

AMENDMENTS ADOPTED

[Amendment proposed by Laws 1903, Chapter 269, ratified November 8, 1904, entirely superseded Article I, Section 7, of the original Constitution and in effect abolished the old grand jury requirements. Section 7 should be read together with Section 12.]

1. Twice in jeopardy.
2. Self-incrimination.
3. Bail.
4. Held due process of law.
5. Held not due process of law.
6. Habeas corpus.

1. Twice in jeopardy

Where the accused was convicted of the crime of burglary and sentenced therefor and subsequently under section 610.31 was found guilty of two prior felony convictions and thereupon, after vacation of the first sentence, was sentenced to an increased punishment, the constitutional guarantee against double jeopardy or punishment for the same offense was not violated, since the second sentence imposed was for an aggravated offense, which carried a more severe penalty than the crime for which the first sentence was imposed. *State v Utecht*, 221 M 138, 21 NW(2d) 241.

To sustain "double jeopardy" plea, there must be substantial identity of offenses, but not formal, technical, absolute identity; and the test of identity is whether the same evidence is required to sustain the offenses, and, if it is not, the mere fact that both charges relate to and grow out of one and the same transaction does not necessarily make a single offense where two are defined by the statute. *Michener v United States*, 157 F(2d) 616.

Double jeopardy and the power of review. 3 MLR 484.

2. Self-incrimination

POSSESSION OF LIQUOR. A statutory presumption or prima facie case cannot be sustained if there be no rational connection, rooted in common experience, between the fact proved and the ultimate fact presumed. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

Where the defendant voluntarily appeared before the grand jury, who were considering a charge of rape against him, and executed a "waiver of immunity" in case he be indicted on any criminal charge, such waiver was not limited as to time, but extended to a later investigation on a charge of assault by the defendant. *State v Iosue*, 220 M 283, 19 NW(2d) 735.

Compulsory bodily action or exhibition as violating the privilege against self-incrimination. 17 MLR 187.

Rules governing the allowance of the privilege against self-incrimination. 19 MLR 426.

Plea for withdrawal of the federal and state constitutional privilege from the criminal. 22 MLR 200.

Self-incrimination. 23 MLR 740.

Use of confessions obtained by coercion. 28 MLR 487.

**3. Bail**

An indemnification agreement regarding a criminal bond or recognizance is void as against public policy, since the purpose of the recognizance is to have sureties exert all their influence on principal to appear; but a surety on a criminal recognizance, having made full payment of the judgment entered against both sureties, is entitled to contribution from his co-surety. *Sansome v Samuelson*, 222 M 417, 24 NW(2d) 702.

**4. Held due process of law**

L. 1931, c. 58, relating to the taxation of automobiles of dealers in new and unused motor vehicles, is valid, and does not offend any constitutional provision. *City of Minneapolis v Armson*, 188 M 168, 246 NW 660.

**CONDEMNATION FOR HIGHWAY.** Though the state cannot be sued, and even if the claimant may have relief from the legislature, when the state institutes a condemnation for a right of way for a trunk highway under article 16 of the constitution, by a procedure fixed by the general highway act and the general condemnation statute, and omits to include a tract of land which it uses and damages, the owner upon proper showing may have such land included in the condemnation proceeding to the end that there may be an assessment of damages. *State ex rel v Stanley*, 188 M 392, 247 NW 509.

L. 1933, c. 339, can be sustained only by reason of the fact that it is legislation wherein the police power of the state is called into exercise because of "a public economic emergency" which the act declares to exist. Courts have held that the police power of the state may impair the obligations of contract. *Blaisdell v Home Association*, 189 M 425, 249 NW 334; 290 US 398, 54 SC 231.

**AUTOPSY.** The order directing an autopsy did not conclude plaintiff, and she had the right in this action to show that the autopsy was unauthorized or that it was improperly made. This being the construction placed upon L. 1915, c. 272, as amended by L. 1919, c. 404, and L. 1921, c. 280, it cannot be claimed that they are in violation of the due process clause of the state or federal constitutions. *Kingsley v Forsythe*, 192 M 468, 257 NW 95.

**CY PRES.** The trust is valid against the objection that L. 1927, c. 180, is invalid because it authorizes the courts to exercise judicial cy pres which should properly be a power reserved to the legislature. *Lundquist v First Evangelical Church*, 193 M 480, 259 NW 10.

Defendant owns all or the majority interest in numerous state and national banks in other states, and manages and controls them from a central Minneapolis unit. Defendant's bank stocks have a business situs in Minnesota, and taxation of said stocks here is not a denial of due process, even as to stocks in state banks in other states which are taxed by the domiciliary states. *State v First Bank Stock Corporation*, 197 M 544, 267 NW 519; 269 NW 37.

**CORPORATE POWERS.** L. 1935, c. 44, is not invalid as impairing or taking away any vested property rights of the plaintiff, nor is it unconstitutional as class legislation; and the resolution adopted by the defendant corporation under the provisions of L. 1935, c. 44, not to accept or be bound by L. 1933, c. 300, was adopted under statutory authority and not in excess of its corporate powers. *Muller v Hamm*, 197 M 608, 268 NW 204.

The statute authorizing the state fire marshal to condemn and order torn down a building which by reason of age, dilapidated condition, or other defect is liable to fire, and is so situated as to endanger life and limb, or other buildings or property in the vicinity, is a valid exercise of the police power of the state. *State Fire Marshal v Sherman*, 201 M 594, 277 NW 249.

**SETTLEMENT OF MINOR'S ACTION FOR TORT.** Under the provisions of section 540.08, a father may with the approval of the district court, settle a minor's cause of action for personal injuries without suit actually begun. Such a settlement cannot be attacked collaterally. There is no infringement of the probate courts constitutional jurisdiction by the creation of a trust in favor of a minor who has

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no guardian. The constitution in committing to the probate courts jurisdiction over the estates of deceased persons and those under guardianship did so without defining its extent and left limitations thereon to be fixed by statute within the general powers named. *Ernst v Daily*, 202 M 360, 278 NW 516.

**JEOPARDY.** The words "same offense" mean same offense, not the same transaction, not the same acts, and not the same circumstances, or the same situation. If the defendant upon the first charge could have been convicted of the offense charged in the second, then he has been in jeopardy; consequently where a person has been acquitted of rape under an indictment where no age of the female raped is averred, he may be tried for the same act under an indictment charging carnal knowledge and abuse of a female child under the age of consent. *State v Winger*, 204 M 167, 282 NW 819.

**POLICE POWER.** An ordinance requiring fuel dealers to carry liability insurance is reasonable and does not violate United States Constitution, Amendment 14, or Minnesota Constitution, Article 1, Section 7. *Sverkerson v City of Minneapolis*, 204 M 388, 283 NW 555.

**RECEIVER.** A district court has the power to appoint a receiver "ex parte" in cases of extreme emergency. The facts pleaded in the instant case do not show such an emergency as to warrant the appointment of a receiver with summary power to take over the property and assets of defendants without notice to them and an opportunity to be heard. *State ex rel v District Court*, 204 M 421, 283 NW 738.

**OBLIGATION OF CONTRACTS.** The procedure provided for termination of right of redemption under the provisions of sections 281.16 to 281.27, while different from the procedure prescribed by section 281.13, falls within permissible legislative changes respecting the remedy and does not substantially impair any contract obligation. *State v Aitkin County Farm*, 204 M 502, 284 NW 63.

**ZONING.** The exclusion of the bag-cleaning industry from the light industrial zone cannot be held unreasonable, arbitrary, or discriminatory as to defendant's premises or violative of either United States Constitution, Amendment 14, or of Minnesota Constitution, Article 1, Section 7. *State v Miller*, 206 M 345, 288 NW 713.

**MORATORIUM.** The purpose of the moratorium act was to grant distressed mortgagors, for a limited time only, an opportunity to save equities in their holdings, being required in the meantime to pay to the holder of the sheriff's certificate the reasonable rental value or income toward meeting secured obligation. See list of cases and articles. *Shumaker v Hoover*, 206 M 461, 288 NW 839.

**OLD AGE LIEN.** The lien provided in L. 1939, c. 315, is given with the consent of the recipient of old age benefits. Foreclosure thereof must be in the manner provided for the foreclosure of a mechanic's lien. This requires notice and an opportunity to be heard and to defend in orderly proceedings before a tribunal having jurisdiction of the cause. These requirements being met, there is no taking of property without due process of law in violation of Minnesota Constitution, Article 1, Section 7. *Dimke v Finke*, 209 M 29, 295 NW 75.

**DUE PROCESS.** A corporation incorporated under the laws of Minnesota, and which had its principal place of business in that state, owned and operated in interstate commerce a fleet of airplanes. St. Paul was home port and overhaul base. None of the planes were continuously without the state during the whole tax year. A general Minnesota personal property tax applied to all personal property within the state and without discrimination applied on the corporation's entire fleet of airplanes did not violate the commerce clause, nor the due process clause of the federal constitution. *State v Northwest Airlines*, 213 M 395, 7 NW(2d) 691, 322 US 292.

**STATUTE OF LIMITATIONS.** The fact that more than six years had elapsed prior to the enactment of section 80.26 and that under the general statute of limitations then in force a cause of action arising out of the violation of section 80.07 was barred did not prevent the legislature by section 80.26 from lifting the bar of the statute of limitations, because the general statute of limitations applied

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merely to the remedy and did not vest such right in the defendant that the legislature could not lift the bar. *Donaldson v Chase*, 216 M 269, 13 NW(2d) 1, 325 US 304.

**DISTRICT COURT JURISDICTION.** The protection guaranteed plaintiff by United States Constitution, Amendment 14, was not violated in the trial, in this personal injury action, of plaintiff's alleged cause of action in the district or supreme court of the state. *Kane v Locke*, 218 M 486, 16 NW(2d) 545.

**WAGES.** Where at a public hearing of industrial commission spokesmen for industry offered oral testimony, argument, written data, and briefs, in opposition to recommendations of advisory board appointed to make estimate of wages, and such spokesmen made no demand that witnesses be sworn and examined and evidence introduced as in court proceedings, informality of proceedings was waived and could not be raised collaterally in subsequent action based on wage order adopted by commission. *Martin v Wolfson*, 218 M 568, 16 NW(2d) 884.

**BANK DEPOSITS; ESCHEAT.** A state has constitutional power to protect bank depositors' interests from risks attending long-neglected accounts by taking them into custody when they have been inactive so long as to be presumptively abandoned. *State v Northwestern National*, 219 M 471, 18 NW(2d) 569.

**ADOPTION PROCEEDINGS.** A person cannot assert that he was denied his "day in court" when he had notice of the proceedings, voluntarily participated therein, and the nature and effect of the proceedings were fully explained to him by the trial judge. *Gale v Lee*, 219 M 414, 18 NW(2d) 147.

A state may impose a tax on a foreign corporation commercially domiciled within its jurisdiction, based upon or measured by income from intangibles of such corporation which have acquired a business situs in said state, or which are correlated to and form an integral part of the business of said corporation there; but may not impose a tax on a foreign corporation commercially domiciled within its jurisdiction when such tax is based upon or measured by income from intangibles of such corporation which have not acquired a business situs there and which are unrelated in every respect to the local business of said corporation within said state. Such tax is invalid under the due process clause of United States Constitution, Amendment XIV. *Marshall-Wells Co. v Commissioner of Taxation*, 220 M 458, 20 NW(2d) 92.

An appealable order requires final determination of the action or some positive legal right relating thereto. *Antl v State*, 220 M 129, 19 NW(2d) 78.

The retroactive application of the war risk contributions act to a period antedating the enactment of the statute, are within the same calendar year, is to a transaction period sufficiently recent not to be violative of due process of law under the federal and state constitutions. *State v Industrial Tool Works*, 220 M 591, 21 NW(2d) 33.

The court, without infringing the right of the accused to a public trial, may temporarily exclude part of the public from the trial for the preservation of order in the courtroom or of public morals. *State v Utecht*, 221 M 145, 21 NW(2d) 329.

The standards of conduct required by section 169.11, making it homicide to cause the death of a human being by operating or driving a vehicle "in a reckless or grossly negligent manner," satisfy the requirement of due process that a statute creating a crime must prescribe the standards of guilt that are reasonably ascertainable. *State v Bolsinger*, 221 M 154, 21 NW(2d) 483.

Section 17.15 is valid as against the challenge of lack of due process on the ground that the section omits the element of intent to destroy competition from the definition of the crime of undue discrimination. *State v Lanesboro*, 221 M 246, 21 NW(2d) 792.

The commission is justified in refusing to approve the operation of an airport too close for safety to a public airport known as Wold-Chamberlain Field, owned and operated by it; and aside from whether such refusal constitutes a deprivation of property without due process of law, the commission is not required as a matter of law to acquire by the exercise of the power of eminent domain the right to prevent property from being operated as an airport, when the proposed airport would

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be a hazard to operations of a nearby state-owned airport. The police power of the state is invoked. *State v Mpls. St. P. Commission*, 223 M 175, 25 NW(2d) 720.

The fact that plaintiff's property was less valuable for residential purposes than as a site for a boat-renting business was not controlling in determining whether a zoning ordinance placing plaintiff's property in a residential zone was unconstitutional as violating the fourteenth amendment. *Dennis v Village of Tonka Bay*, 156 F(2d) 672.

**SALE OF SECURITIES.** State securities act regulating the sale of stock; especially provision authorizing state department of commerce, securities division, to investigate sale of securities, orders for investigation of sale of capital stock of bank stock holding company, and similar, and proceeding under such orders is not a violation of the constitutional provision relating to due process. *Northwest Bancorporation v Benson*, 6 F. Supp. 705.

**ZONING.** Provision of zoning statute authorizing alteration in zoning regulations on consent of two-thirds of owners of realty situated within one hundred feet of realty affected is not an unconstitutional taking of property without due process, nor is there an unlawful delegation of legislative power. *Leighton v City of Minneapolis*, 16 F. Supp. 103.

Provisions of Minnesota unfair trade practice act, L. 1937, c. 116, is for various reasons unconstitutional. *Great Atlantic & Pacific v Ervin*, 23 F. Supp. 72.

In imposing sentence on petitioner under indictment charging violation of statute making it an offense to knowingly and wilfully present false claims against the United States, based upon alleged false statement to the collector of internal revenue, the federal district court, was not without jurisdiction either on the ground that the statute was invalid or that it had been repealed by implication. In re *Berkoff*, 65 F. Supp. 976.

Right of state banks, trust companies, savings banks, building and loan associations, credit unions, industrial loan and thrift companies, and small loan companies to make loans under the provisions of servicemen's readjustment act of 1944 (GI Bill of Rights) fully discussed. 1944 OAG 23, Nov. 27, 1944 (29-A-20).

Valuation in rate cases. 9 MLR 211.

Due process in valuation of public utilities. 13 MLR 409.

The imposition of a tax directly on the net income received or accrued from the beginning of the year by a statute enacted during such year but subsequent to its beginning has been held not to involve any violation of due process. (Minnesota Income Tax Law) 18 MLR 93.

Validity of ordinance fixing hours during which barber shops may be open for business. 19 MLR 802.

Trade unions; validity of discrimination between classes of members. 19 MLR 819.

Removal from public office. 20 MLR 725.

Discussion of constitutionality of the provision "conduct unbecoming a person licensed to practice medicine as detrimental to the best interests of the public" found in Minnesota Statutes 1945, s. 147.02. 22 MLR 246.

Governmental responsibility for torts. 26 MLR 318.

Holmes decisions and their effect on due process. 29 MLR 318.

Doctrine of *Erie R. R. v Tomkins* applied to equity. 30 MLR 643.

Requirement that children of Mexican or Latin descent attend separate schools held invalid. 30 MLR 646.

Recognition of foreign ex parte judgment for arrears of alimony. 31 MLR 95.

### 5. Held not due process of law

**POLICE POWER.** An ordinance of the city of Minneapolis requiring that all pasteurized milk sold within that city must be pasteurized within the city limits is unconstitutional. *State ex rel v City of Minneapolis*, 190 M 138, 251 NW 121.



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In the interest of public safety a municipality may impose restrictions even to the extent of denying vehicular access to repair shop if the circumstances are such that to permit crossing the curb and sidewalk might constitute a traffic hazard. Such restraint would not be a denial of due process. *Alexander v City of Owatonna*, 222 M 312, 24 NW(2d) 244.

The failure to provide a litigant a fair and impartial tribunal before which to adjudicate his private rights is in violation of the due process clause of the federal constitution, amendment 14. *Payne v Lee*, 222 M 269, 24 NW(2d) 264.

**WORKMEN'S COMPENSATION.** Where in a claim arising under the workmen's compensation act, compensation was declared at an end and the rights of the parties were finally determined and fixed prior to the passage of L. 1933, c. 74 (section 176.34), the commission has no authority to grant a new hearing under that section since the substantive rights of the parties are affected. *Johnson v Jefferson*, 191 M 631, 255 NW 87.

**HOURS OF LABOR.** An ordinance of the city of Minneapolis which assumes to prescribe the hours when barber shops may be open for business is unconstitutional and void insofar as it prescribes such hours, in that it violates the due process clause of the state and federal constitutions. *State ex rel v Johannes*, 194 M 10, 259 NW 537.

**LACHES.** Intervention was not available after the closing of the condemnation proceedings in the establishment of a state highway. The remedy is purely statutory and available only during the pending of the proceedings. The final certificate was intended to and in fact took the place of a final decree applicable under section 117.17. *State ex rel v Hall*, 195 M 79, 261 NW 874.

**MORATORIUM LAW.** Notice and an opportunity to be heard are universally recognized as essential to due process. The legislature did not intend to bind anyone, in a moratorium any more than in any other proceeding, unless provision for notice and opportunity to be heard were first made. *Tomasko v Cotton*, 200 M 74, 273 NW 629.

**BEAUTY CULTURE.** The last sentence of section 154.04 is unconstitutional insofar as applied to licensed beauty culturists in that it deprives them of the right to pursue their calling in respect to trimming and dressing women's hair. *Johnson v Ervin*, 205 M 84, 285 NW 77.

**FAIR TRADE.** A fair trade act prohibiting sales below cost for the purpose or with the effect of injuring competitors and destroying competition establishes a policy within the police power of the state. *McElhone v Geror*, 207 M 580, 292 NW 414.

**INTOXICATING LIQUOR.** A statutory presumption or prima facie case cannot be sustained if there be no rational connection, rooted in common experience between the fact proved and the ultimate fact presumed. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

**REVOCAION OF LICENSE.** The general power of the city council to revoke liquor license under a provision of the charter cannot be restricted by an ordinance limiting power to revoke to violations of the liquor ordinance and the state liquor control act. *Moskovitz v City of St. Paul*, 218 M 544, 16 NW(2d) 745.

**DISORDERLY CONDUCT.** Conduct of a "Jehovah's Witness" in the instant case did not constitute disorderly conduct. *State v Korich*, 219 M 268, 17 NW(2d) 497.

**CONDEMNATION.** In proceedings for condemnation of land to conserve the natural resources of the state, where lands are damaged or taken in the construction of a public project and they are not included in the condemnation proceeding, the aggrieved owners of such omitted lands may compel condemnation of them by an action in mandamus. *State v Anderson*, 220 M 139, 19 NW(2d) 74.

Section 176.66 as amended by L. 1943, c. 633, s. 11, created a medical board which was to determine certain questions relating to occupational diseases, and required the industrial commission to accept said findings and render decision ac-

accordingly, offended against the due process clause of both state and federal constitutions, and so far as such board and its functions are concerned the act is unconstitutional. *Hunter v Zenith Dredge Co.* 220 M 318, 19 NW(2d) 796.

**TAXATION.** A state in which a foreign corporation is commercially domiciled may not tax the intangibles of such corporation unless they have a business situs within the state or are related to and form an integral part of the business of such corporation in such state. *Marshall-Wells Co. v Commissioner*, 220 M 458, 20 NW(2d) 92.

Salary schedules in public schools discriminating against negro school teachers. 25 MLR 236.

#### 6. Habeas Corpus

**CUSTODY OF CHILDREN.** Ordinarily, parents are entitled to the custody of their children, but in exceptional cases, as in the instant case, this right may be denied. The principal consideration is the welfare of the child. *State ex rel v Jensen*, 214 M 193, 7 NW(2d) 393.

Denial of the constitutional right to a public trial, where the accused enjoys the benefit of a competent counsel at every stage after proceeding, does not ipso facto violate the due process clause of the Fourteenth Amendment so as to deprive the trial court of its jurisdiction to proceed and thereby render its judgment void and subject to collateral attack in habeas corpus proceeding. *State v Utecht*, 221 M 145, 21 NW(2d) 329.

#### Section 8. REDRESS FOR INJURIES AND WRONGS.

**REMEDY ASSURED.** Where there is a clear violation of the constitutional right of property of a private person, a remedy therefor is assured to him by the constitution. *Nelson v Babcock*, 188 M 588, 248 NW 49.

**TORT.** Neither wife nor minor child may recover damages for personal injuries inflicted upon the husband and father by the negligent act of another. *Eschenbach v Benjamin*, 195 M 381, 263 NW 154.

**FORCIBLE REMOVAL OF FREEHOLDER.** Town supervisors who, as superintendents of the poor, unlawfully and forcibly removed an alleged pauper from her freehold, without her consent, are personally liable for all actual damages proximately resulting from their acts; and if their conduct was wilful, arbitrary, and malicious, plaintiff may, in addition, be awarded punitive damages. "Article 1, section 8, was not inserted in the constitution as a matter of idle ceremony, or as a string of glittering generalities." *Thiede v Town of Scandia*, 217 M 230, 14 NW(2d) 400.

**STATE TAKING OF LANDS.** Where lands are damaged or taken in construction of a public project and are not included in condemnation proceedings, the aggrieved owners of such omitted lands may compel condemnation of them by an action in mandamus against the proper state officer empowered to acquire by condemnation the land required. *State v Anderson*, 220 M 139, 19 NW(2d) 75.

Failure of a probate judge to recognize bias as a ground of disqualification is an abuse of discretion and a violation of Minnesota Constitution, Article 1, Section 8. *Payne v Lee*, 222 M 269, 24 NW(2d) 262.

The federal government having exclusive jurisdiction over its property, the Minnesota industrial commission cannot enforce state safety laws in the erection of the federal post office in the city of St. Paul. 1934 OAG 524, July 28, 1933 (605b-23).

Minnesota labor injunctions. 21 MLR 626, 24 MLR 779.

Right of attorney to intervene for the sole purpose of protecting his reputation. 24 MLR 880.

Governmental responsibility for torts in Minnesota. 26 MLR 293.

## Section 10. RIGHT AGAINST UNREASONABLE SEARCHES.

**WRIT OF PROHIBITION.** A writ of prohibition may issue out of the supreme court when it clearly appears that an inferior court has no rightful jurisdiction or is exceeding its legitimate powers in a matter of which it has jurisdiction. *State ex rel v District Court*, 204 M 421, 283 NW 738.

Evidence obtained in search of defendant's premises and reputation was admissible and together with other evidence supports the conviction. *State v Siporen*, 215 M 439, 10 NW(2d) 353.

**FORFEITURE.** A city ordinance covering a subject also covered by a state law is valid if it is consistent with the state law and preserves the standard of regulation as molded by the general law. The provision as to forfeiture under the ordinance in question differed only in detail from a similar provision in the state law. *City of Duluth v Cerveney*, 218 M 511, 16 NW(2d) 779.

Where officers, having no previous knowledge of facts warranting suspicion defendant was violating the prohibition act, entered defendant's private premises and uninvited entered his home and arrested him, the arrest was unlawful. *Kroska v United States*, 51 F(2d) 330.

**INVESTIGATION.** Orders of state department of commerce, securities division, for investigation of sale of capital stock of bank stock holding company, and investigation made pursuant thereto, is not in violation of the due process clause. *Northwest Bancorporation v Benson*, 6 F. Supp. 705.

The rights of privacy and personal security are to be regarded as the very essence of constitutional liberty and the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of individual citizens. A search incident to lawful arrest may extend beyond the person of the one arrested to include premises under his control. *Harris v United States*, 67 SC 1106.

A game warden may halt and legally search an automobile if he has reasonable ground to believe the car is carrying illegal game. 1940 OAG 22, December 29, 1939.

Because of the nature of the business of locker plants, their semi-public character, the necessity of strict supervision, and the difficulty in procuring a search warrant, the legislative authority to enter and inspect without other knowledge than that game and fish are stored therein is not a violation of the constitutional provision. 1942 OAG 16, September 18, 1941.

Evidence obtained by unlawful search; return of property. 3 MLR 536.

Use of information or property obtained by unreasonable search and seizure. 4 MLR 447, 5 MLR 465, 7 MLR 152.

Sufficiency of affidavit for issuance of search warrant. 6 MLR 602.

Legality of seizure of automobile by officer without warrant upon probable cause for believing that it contains liquor being illegally transported. 9 MLR 474.

Proper time for objection to the admission of evidence unlawfully obtained by illegal search and seizure. 11 MLR 179.

Right to search a person under a warrant to search certain premises. 11 MLR 180.

Effect of delay in execution of a search warrant may cause the search to be deemed unreasonable. 12 MLR 181.

Law of search and seizure. 13 MLR 1.

Admissibility of evidence obtained by tapping telephone wires. 13 MLR 58.

Officers' perception by sense of smell, or of the commission of a crime, as justifying arrest and search without warrant. 15 MLR 359.

Validity of ordinance requiring junk dealers to consent to inspection and search of premises. 15 MLR 481.

Return of liquor unlawfully seized by federal agents. 15 MLR 840.

Officer's perception through a mechanical instrument of the commission of a crime as justifying search, seizure, and arrest without a warrant. 19 MLR 468.

Constitutional limitations of a procedural nature relating to search and seizure. 28 MLR 261.

Admissibility of evidence seized upon arrest for an unrelated crime. 30 MLR 207.

Section 11. PASSAGE OF CERTAIN LAWS PROHIBITED.

1. **Ex post facto laws.**
2. **Contracts impaired.**
3. **Contracts not impaired.**
4. **Abdicating police power.**
5. **Attainder.**

1. **Ex post facto laws**

EMPLOYMENT. A teacher with full rights returning to employment from maternity leave, must be reinstated over those junior to her classification, the ex post facto rule which would deprive her of her rights not being constitutional. State v Hauser, 219 M 297, 17 NW(2d) 504.

CONSTRUCTION. "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature"; and the repeal of any law shall not affect any right accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the law repealed. Ogren v City of Duluth, 219 M 560, 18 NW(2d) 535.

In determining the constitutionality of a statute the words "retroactive" and "retrospective" are synonymous in their application. State v Industrial Tool Works, 220 M 591, 21 NW(2d) 33.

Retroactive application of inheritance tax laws. 15 MLR 726.

Rule against retroactive legislation; a basic principle of jurisprudence. 20 MLR 775.

2. **Contracts impaired**

Where the rights of the parties to a contract are settled by a judgment, the legislature cannot, by subsequent enactment, change such rights. Twenty Associates v First National Bank, 200 M 211, 273 NW 696.

DISCHARGE OF EMPLOYEE. The prospect that observance of constitutional limitations will work serious inconvenience in the administration of a legislative act does not justify the denial of due process in making decisions. The requirement of due process cannot be waived or dispensed with either by the legislature or by the executive tribunal to which it delegates the duty of administering the law. Juster v Christgau, 214 M 108, 7 NW(2d) 501.

A valid legislative grant amounting to a contract may not be impaired by subsequent legislation. State v Trustees of Hamline, 217 M 399, 14 NW(2d) 773.

BUILDING RESTRICTION. The deeds provided that improvements must be confined to one residence building on a lot to cost not less than \$4,000. The remodeling of a building, on a lot to which the restriction applied, so that it might be used for church purposes, may be enjoined. Strauss v Ginsberg, 218 M 57, 15 NW(2d) 130.

Resolution instructing village treasurer to refuse payment of village warrants issued prior to date of resolution was an impairment of contract. 6 MLR 330.

Although the state in granting the corporate charter reserved the right to alter or repeal it, an amendment of the charter abolishing the designated sinking fund was unconstitutional as impairing the corporation's contract with its shareholder. 14 MLR 413.

Inadequacy of price upon the foreclosure of mortgages and on account of depression. 17 MLR 822.

## 3. Contracts not impaired

**LIQUIDATION.** A creditor has no constitutional right to insist upon a particular form or method of liquidation, nor has he a vested right to demand liquidation at the hands of any particular official. *Timmer v Hardwick Bank*, 194 M 589, 261 NW 456.

**MORTGAGE MORATORIUM LAW.** Mortgages held by defendant, organized and operating under the federal farm loan act, 12 USCA, ss. 641 to 1021, as amended and affected by executive order 6084 of March 27, 1933, are by the terms of the mortgage moratorium act, L. 1935, c. 47, excepted from its operation. *Leuthold v Des Moines Land Bank*, 197 M 137, 266 NW 450.

A mortgagor may not, at the time of nor as a part of the mortgage transaction, bargain away his equity of redemption; but mortgagor may bargain away, sell, or convey to the mortgagee his equity of redemption subsequent to the time that he executed the mortgage, provided such conveyance is not made pursuant to a collateral agreement contemporaneous with the execution of the mortgage. *Twenty Associates v First National Bank*, 200 M 211, 273 NW 696.

**WORKMEN'S COMPENSATION.** An existing common law remedy is not to be taken away by a statute unless by direct enactment or necessary implication; and when an injury does not fall within the workmen's compensation act the common-law remedy is not affected by it. *Rosenfield v Matthews*, 201 M 117, 275 NW 698.

What the sovereign power can authorize in prospect it can adopt or validate in retrospect. A curative act, L. 1939, c. 137, covers "all cases" where a city or village utility commission has contracted for the sale of warrants or bonds payable solely from the earnings of the utility, including refunding obligations with similar limitation as to the source of payment. *Vorbeck v City of Glencoe*, 206 M 180, 288 NW 4.

Bibliography relating to mortgage moratorium law. *Shumaker v Hoover*, 206 M 461, 289 NW 839.

The uniformity clause of the state constitution is not violated if the state legislature, in the exercise of its discretionary powers, classifies as to subject matter of taxation, provided there is a difference constituting a reasonable ground for making a distinction between the subjects, and provided also the classification made bears a reasonable relation to a permitted end of governmental action. The difference between federal savings and loan associations and credit unions organized under the laws of Minnesota is sufficient to sustain classification. *State v Minnesota Federal*, 218 M 229, 15 NW(2d) 568.

**TEACHERS RETIREMENT.** Since the revision of the retirement act did not apply to annuities already granted or applied for prior to the adoption thereof, no vested rights were violated thereby. *Leslie v Mpls. Retirement Fund*, 218 M 369, 16 NW(2d) 313.

**ESCHEAT.** A state has constitutional power to protect bank depositor's interests from risks attending long-neglected accounts by taking them into custody when they have been inactive so long as to be presumptively abandoned. *State v Northwestern National*, 219 M 471, 18 NW(2d) 569.

The statute authorizing renewal of a corporation creates no contract or vested right to a renewal either as between the state and the corporation or as among the stockholders. *State ex rel v Crookston Trust*, 222 M 17, 22 NW(2d) 613.

Freedom of contract. Massachusetts minimum wage law not violative of the freedom of contract clause. 3 MLR 43.

Irrigation as a public use. No impairment of contract. 3 MLR 199.

The stipulation in the mortgage though unenforceable when executed, became effectual after the amendment to the statute had removed the obstacle to enforcement. 14 MLR 177.

A South Dakota statute (L. 1925, c. 104) permitting reinstatement of insolvent banks upon consent of 80 per cent of the stockholders was held legal and binding on non-consenting stockholders. 14 MLR 553.

Has the conflict of laws become a branch of constitutional law, as illustrated by *Fox v Postal Telegraph Co.* 138 Wis. 648, 120 NW 399. 15 MLR 161.

Validity of statutes limiting freedom of contract. 16 MLR 435.

Emergency legislation for the relief of debtors. 19 MLR 210, 22 MLR 1047.

Minimum wage laws. 21 MLR 743.

The older tendency to regard any tax as an incident to property rights is completely disregarded. See as to taxation of income from exempt securities. 22 MLR 889.

**4. Abdicating police power**

Because habitual sales below cost such as result in injury to competition may be properly regarded by the legislature as detrimental to public welfare, their prohibition regardless of intent is not objectionable on constitutional grounds. Fixing of minimum prices in the retail trade, because a reasonable means of furthering such policy, is not violative of due process. L. 1937, c. 116, as amended by L. 1939, c. 403, promotes a policy within the police power of the state. *McElhone v Geror*, 207 M 580, 292 NW 414.

**5. Attainder**

INSURANCE OF FELON. Death of the insured while committing a felony is not a ground of exemption from liability or for forfeiture of life insurance policy issued for the benefit of a third person, in the absence of a provision in the policy excepting such a risk, unless it appears that the policy was obtained in contemplation of the commission of a felony. *Domico v Metropolitan Life*, 191 M 220, 253 NW 538.

Provisions of the urgent deficiency appropriation act that after Nov. 15, 1943, no salary or compensation should be paid to certain individuals, then government employees, out of moneys then or thereafter appropriated, unless they were again appointed to jobs by the president and confirmed by the senate is unconstitutional as a bill of attainder. *United States v Lovett*, 66 SCR 1073.

Section 12. IMPRISONMENT FOR DEBT; PROPERTY EXEMPTION.

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1887, Chapter 2, ratified November 6, 1888, had for its purpose the protection of the rights of working men and women in certain cases and added the following proviso: "Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair, or improvement of same; and provided further, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed."

NOTE: This amendment put strength in our lien laws and permitted enforcement of mechanics liens filed against a homestead.]

- 1. Imprisonment for debt.
- 2. Property exemption.
- 3. Proviso.

**1. Imprisonment for debt**

Encroachment of constitutional guarantees. *Blaisdell v Home Loan Assn.* 189 M 447, 249 NW 334, 290 US 398.

Summary probate proceedings. 19 MLR 839.

**2. Property exemption**

JURISDICTION. Sections of the probate code which deprive the probate court of jurisdiction over claims against the homestead and which confer such juris-

diction upon the district court are not in violation of the constitutional provision which gives the probate court exclusive jurisdiction of estates of deceased persons. *Peterson v Probate Court*, 198 M 46, 268 NW 707.

The homestead; summary probate proceedings. 20 MLR 104.

Creditors' claim against homestead; constitutionality of statutory limitations on jurisdiction of probate court. 21 MLR 212.

### 3. Proviso

The proviso in the Constitution of Minnesota that all property exempt from seizure or sale for payment of any debt or liability shall be liable to seizure and sale for any debts incurred to any person for work done or material furnished in the construction, repair, or improvement of the homestead is self-executing, and applies to enforcement by one granting credit under the national housing act. *United States v Lucas*, 66 F. Supp. 7.

## Section 13. PRIVATE PROPERTY FOR PUBLIC USE.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1895, Chapter 5, was ratified November 3, 1896. The supreme court having held in *Henderson v City of Minneapolis*, 32 M 319, 20 NW 322, that damages to property resulting from a change in the grade of a city street did not constitute a "taking," the amendment inserted the words "destroyed or damaged" after the word "taken," thus making the damage recoverable.]

1. Taking.
2. Public use.
3. Damage or destruction.
4. Just compensation.
5. Police power.

#### 1. Taking

CONDEMNATION. The defendant sanitary district in conducting a condemnation proceeding does so as an arm of the state in the discharge of a sovereign legislative function and is not liable in tort for the alleged malicious prosecution of such proceeding. *Barmel v Minneapolis-St. Paul District*, 201 M 624, 277 NW 208.

OLD AGE RECIPIENT. There is no taking for public use without compensation and no violation of Minnesota Constitution, Article 1, Section 13. *Dimke v Finke*, 209 M 29, 295 NW 75.

HIGHWAY. When the state institutes a condemnation for a right of way for a trunk highway, and omits to include a tract of land which it uses and damages as part of the general project, the owner upon a proper showing may have such land included in the proceedings. *State ex rel v Stanley*, 188 M 393, 247 NW 509.

An order granting the motion of an omitted property owner to intervene in eminent domain proceedings by the state is not appealable; nor can an appeal be taken from an order appointing commissioners in such proceedings. *Antl v State*, 220 M 129, 19 NW(2d) 78.

The power of eminent domain cannot be resorted to to condemn private property, which when acquired is to be sold to others for use in private enterprise. OAG Jan. 29, 1945 (817f).

Meaning of "property" as used in the constitution and including adjoining land owners. 7 MLR 64.

Telegraph, telephone, and electric power lines and wires as additional servitudes on the highway. 14 MLR 183.

## 2. Public use

Where a city erected a bridge which had the effect of changing the grade of the central part of the street which abutted plaintiff's property and devoted the bridge exclusively to street car traffic, the street railway company was not liable to plaintiff merely because it contributed to the cost of the bridge or because the city excluded other traffic. *Bruer v City of Mpls.* 201 M 40, 275 NW 368.

Private property cannot be acquired by condemnation proceedings for the purpose of re-selling to private owners. OAG Jan. 29, 1945 (817f).

Where a building is built on the owner's property, the village may not refuse a building license solely on the ground that it might constitute a traffic license. OAG Aug. 19, 1946 (477-B-3).

Liability of a municipal corporation for removal of lateral support in making a street grade. 2 MLR 206.

This constitutional provision is self-executing. Consent of state to suit. 4 MLR 364.

A street railway company which renders the usual local service on the city street does not create an additional servitude thereon entitling abutting owners to compensation by also using the streets for interurban service. 5 MLR 394.

Liability of municipality for change of grade made within its limits by the state highway department. 14 MLR 182.

Parking meters as an interference with right of ingress and egress. 22 MLR 112.

Governmental responsibility for torts. 26 MLR 323.

## 3. Damage or destruction

NOTE: The words "destroyed or damaged" were inserted by the amendment adopted Nov. 3, 1896. Judge Collins in *Dickerman v City of Duluth*, 88 M 293, 92 NW 1120, says:

"When this amendment was proposed by the legislature, and when adopted by the people, it was well known that the rule which had been laid down by this court, in common with the courts of nearly every other state, respecting damages to lot owners arising from a change of grade, had caused great hardships, and was an exceedingly unfair and unjust rule. No man was safe, when improving his property, by building in conformity with an established grade line, for he was at the mercy of the city authorities, who might practically confiscate his property by raising or lowering the surface or grade line of the street. In such cases, while there was no taking of property for public use as the fundamental law was construed, there was a taking in fact, amounting, in many cases, to complete destruction and confiscation. The unrighteousness of this rule was impressed upon the people of other states long before it became apparent to us, for as early as 1870 these amendatory words were engrafted into the constitution of the state of Illinois, and it has been repeatedly held in that jurisdiction that the proper construction is that a recovery may be had where private property has sustained a substantial damage by the making and using of an improvement that is public in its character, and that it does not require that the damage shall be caused by trespass or actual invasion of the owner's real estate." This decision follows *City v Eaton*, 83 Ill. 535; *Rigney v City*, 102 Ill. 64; *Chicago v Ayres*, 106 Ill. 511.

HIGHWAY. The highway statutes bestow great powers on the commissioner, if exercised within the scope of his authority; but damage done must be compensated. *Nelson v Babcock*, 188 M 588, 248 NW 49.

HIGHWAY. Plaintiffs suffered damage, but defendant was guilty of no negligence, is not charged with trespass, and so, although its acts might otherwise have been a nuisance, it has been guilty of no breach of legal duty. It was proceeding in the lawful performance of its contractual duty to the state. *Nelson v McKenzie*, 192 M 180, 256 NW 96.

DAMAGE BY BRIDGE. The final certificate in condemnation proceedings takes the place of the final decree under section 117.17. The negligent construc-



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tion of the bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require the imposition of a perpetual easement. *State v Hall*, 195 M 87, 261 NW 874.

**DAMAGES.** The word "taking" as used in section 117.02 includes "every interference, under the right of eminent domain, with the ownership, possession, enjoyment, or value of private property;" and the word "owner" extends to all persons interested in the property as proprietors, tenants, encumbrancers, or otherwise. *Seabloom v Krier*, 219 M 362, 18 NW(2d) 88.

**HIGHWAY.** Omitted landowners may intervene by motion in condemnation proceedings if such proceeding has not terminated. The remedy of mandamus is available. *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 75.

**PROPERTY.** Property includes rights of access to and egress from a public highway; but such easement of access may be later extinguished by subsequent condemnation proceedings. *Burnquist v Cook*, 220 M 48, 19 NW(2d) 395.

**DAM.** In condemnation proceeding involving amount of damages sustained by a railroad because of construction of a dam flooding part of railroad's right of way, evidence as to necessity of riprapping track below dam was properly admitted. *U. S. v Burlington*, 82 F(2d) 140.

**MEASURE OF DAMAGE.** Measure of compensation to which owners of land on which flowage easements were imposed were entitled was the difference between fair market value of land just before, and fair market value just after imposition of easements. *Karlson v United States*, 82 F(2d) 331.

**ZONING.** A provision in a zoning law, enacted under a police power, authorizing consent to modifications, or waiver of restrictions by property owners, is not an unconstitutional delegation of legislative power. *Leighton v City of Mpls.* 16 F. Supp. 103.

Expense of moving, inconvenience, interruption of business, and loss of goodwill. 17 MLR 476.

Governmental responsibility for torts. 26 MLR 316.

## 4. Just compensation

**TRANSFER OF AIRPORT.** The provisions of L. 1943, c. 500, authorizing transfer without compensation of the use and possession of the municipal airport from the park board of Minneapolis to the Metropolitan Airports Commission is not in violation of Minnesota Constitution, Article 1, Section 13. *Monaghan v Armatage*, 218 M 108, 15 NW(2d) 241.

**COMPENSATION.** Appropriation of private property for public use is forbidden unless a full and exact equivalent be returned to the owner. That equivalent is the market value of the property at the time of the taking contemporaneously paid. The sum required to be paid to the owner does not depend upon the uses to which the owner has devoted his property, but upon just consideration of all the uses for which it is suitable. *Olson v United States*, 292 US 246.

**COMPENSATION TO MUNICIPALITY.** "Private property" includes property ordinarily considered public property such as streets and highways. Where a lake had long been unlawfully raised and township roads were poor, measure of the town's damages on condemnation of flowage rights by the United States was the difference between the cost of maintaining at natural lake levels cheapest type of road it was town's duty to maintain, and the cost of maintaining such road at increased levels fixed by treaties and condemnation. *United States v Wheeler Township*, 66 F(2d) 978.

Compensation to owner of land taken for damages to remainder from use to which lands of others applied. 9 MLR 385.

Remedy when land is taken for public purpose without provision for just compensation. 9 MLR 480.

Loss of profits resulting from competition of the condemning party. 14 MLR 296.

Admissibility of sales prices of other lands to prove the value of land sought to be condemned. 14 MLR 689.

Measure of compensation in eminent domain. 17 MLR 461.

Ascertainment of interest on compensation award. 18 MLR 878.

When the fee is subject to a street easement. 23 MLR 528.

Right of compensation for taking an equitable servitude. 24 MLR 425.

Governmental responsibility for torts. 26 MLR 867.

Proceeding for securing compensation to private owners of property expropriated by the state. 29 MLR 214.

Contrary to the constitution of the United States this provision states that compensation or security must precede the taking; but in reality the Minnesota rule is not to be distinguished from that expressed in the compensation clause of the fifth amendment and implied in the due process clause of the fourteenth amendment to the federal constitution. 30 MLR 171.

### 5. Police power

In drainage proceedings, counties are involuntary corporate subdivisions of the state for governmental purposes and are not liable for the neglect of their officers or agents unless expressly made so by statute. *Nostdal v Watonwan County*, 221 M 376, 22 NW(2d) 461.

#### Section 14. MILITARY POWER SUBORDINATE.

Plaintiff excluded from its property by state National Guard under charge of the adjutant general sent by the governor at request of the mayor because of unlawful assemblages around plaintiff's plant, is entitled to an injunction restraining interference with plaintiff's possession and use of property. *Strutwear v Olson*, 13 F. Supp. 385.

Civil authority versus military. 3 MLR 105.

#### Section 15. LANDS DECLARED ALLODIAL; LEASES, WHEN VOID.

**GUN CLUB LEASE.** The lease created a profit a prendre to take wild game on the designated premises, and in no way violates Minnesota Constitution, Article 1, Section 15. *Minnesota Gun Club v Northline Corp.* 207 M 126, 290 NW 222.

L. 1933, c. 412, invalid in part. 1934 OAG 176, Aug. 7, 1933 (483d).

Grant in fee with perpetual rent charge. 3 MLR 208.

Leases of agricultural lands for a term beyond statutory limitations. 26 MLR 901.

#### Section 16. FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP.

The devise to the church is a charge or lien upon the share going to the residuary legatees, the legatees are personally liable for the payment of the \$2,000 if they accept the devise; and if they do accept, the requirement to pay does not violate Minnesota Constitution, Article 1, Section 16. *Lundquist v First Evangelical Church*, 193 M 474, 259 NW 9.

A regulation promulgated by a school board under a Pennsylvania statute providing for instruction of public school children in civics, including loyalty to government, requiring pupils to salute the flag as a part of daily school exercises and as a condition of the right to attend the school, is an unconstitutional infringement of the free exercise of religion as applied to pupils who conscientiously object to saluting the flag on religious grounds. *Minersville School v Gobitis*, 108 F(2d) 683.

Petitioner, who was classified under the selective service act as a conscientious objector, was not denied due process with respect to religious freedom, upon being denied admission to the bar. *In re Summers*, 65 SCR 1309.

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As to distribution of religious handbills and leaflets. OAG Jan. 22, 1945 (62b).

Reading of the Bible in public schools as sectarian instruction or religious worship. 11 MLR 675.

## Section 17. NO RELIGIOUS TESTS.

That qualified voters of the municipality were each presented with a conveyance of a small tract of land, no consideration passing from grantee to grantor, for the sole purpose of qualifying them to serve on a charter commission called by the constitution and statute a "board of freeholders" does not prevent the grantees from being considered freeholders, the good faith of all being established. A freeholder is one having title to real estate the amount or value of his interest being immaterial. State ex rel v City of Fraser, 191 M 433, 254 NW 776.

The constitution has defined the qualifications of voters. Neither the legislature nor any municipality may add additional qualifications. 1934 OAG 380, June 4, 1934 (59a-7).

An ordinance requiring that a member of the village council be a property owner is invalid. 1938 OAG 234, June 14, 1938 (184i).

## Section 18. NO LICENSE TO PEDDLE.

### AMENDMENTS ADOPTED

(New) [Section 18 proposed by Laws 1905, Chapter 283, ratified November 6, 1906, is a new section and was thought necessary because of the decision of the supreme court in State v Jensen, 93 M 88, 100 NW 644. The section reads as follows: "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining license therefor."]

An ordinance requiring a license and bond of certain persons selling farm products, and exempting others is violative of the constitutional prohibition against class legislation. State v Peterson, 205 M 579, 287 NW 313.

Inspection of farm products before sale. 1936 OAG 20, Oct. 2, 1935 (290j-6); 1940 OAG 213, Dec. 7, 1939 (477b-21).

Power of a municipality to exclude sale of milk from outside plants under municipal health ordinances. 18 MLR 846.

## ARTICLE II

### ON NAME AND BOUNDARIES

#### Section 1. NAME AND BOUNDARIES.

Boundary controversies between states bordering on a navigable river. 4 MLR 463.

#### Section 2. JURISDICTION ON BORDERING RIVERS.

The right of the public for the use of streams for driving logs is not paramount, but is subject to the incidental delays occasioned by dams, if the means of passage through or around them is reasonably sufficient. What constitutes a sufficient means of passage depends upon the conditions of each particular case. Crookston v Sprague, 91 M 461, 98 NW 347, 99 NW 420.

Where the federal government sanctioned the building of a bridge across a navigable stream; and the railway company to facilitate the driving of logs on the river constructed a fender to control the passage of the logs, an abutting owner, none of whose land property was taken, is not entitled to damages, his injury being inconsequential in comparison with commercial need for proper use of the river. Fish v Chgo. & Gt. Western, 125 M 380, 147 NW 431.

The state of Minnesota has no power to burden commerce passing from one point in Canada down the international boundary waters to another point in Can-

ada; and a boom company obstructing such use was under the treaty of August 22, 1842, interfering with foreign commerce, and legal action by the Canadian citizen will lie. *Clark v Pigeon River Boom Co.*, 52 F(2d) 552.

The United States cannot interfere with the exercise by the state of her right of eminent domain, but when the conditions prescribed by the state statute are observed and a judicial proceeding is pending between a citizen of Minnesota and the citizen of another state, the proceeding may in proper cases be removed to the federal court. *Boom Co. v Patterson*, 98 US 403.

When trying cases in the federal court the rights of riparian owners of land situated upon navigable rivers are to be measured by the rules and decisions of the courts of the state in which the land is situated. *St. Anthony Power Co. v St. Paul Water Commsrs.*, 163 US 349; *Norton v Whiteside*, 239 US 144.

The business of a Delaware corporation, with its principal office in Ohio, was carriage of merchandise by steamer in interstate and foreign commerce, between ports on the Great Lakes and tributary waters including ports in Minnesota. Its vessels navigated waters in Lake Superior over which Minnesota and Wisconsin have concurrent jurisdiction, and it maintained an agent in Duluth. When one of its vessels bearing cargo partly destined for Duluth arrived in adjacent waters, it was attached by another Delaware corporation whose business was in Minnesota, and it was held that maintenance of an action for negligence in the transportation of cargo between Chicago and Buffalo would not be an unreasonable burden on interstate commerce. *International Milling v Columbia Co.*, 292 US 520.

The power of the federal government over navigation covers the entire bed of a navigable stream, including all lands below ordinary highwater mark. Whether title to the bed is retained by the state or is in the riparian owner, the rights of the title-holder are subservient to the dominant easement. *United States v Chgo, Milwaukee*, 312 US 592.

Public waters lying between Minnesota and Wisconsin are subject to Minnesota jurisdiction. OAG Nov. 1, 1945 (238-L).

The shifting basis of jurisdiction. 17 MLR 146.

Mitigation of damages where third party is obligated to compensate injured plaintiff. 31 MLR 201.

### ARTICLE III

#### DIVISION OF POWERS

##### Section 1. DIVISION OF POWERS.

1. Generally.
2. Legislative power.
3. Executive power.
4. Judicial.

##### 1. Generally

L. 1901, c. 237, providing for the Torrens system of registering land titles, is not unconstitutional in that it is special legislation; nor in that it deprives the owner of his interest in land without due process of law; nor that it violates Article III of the constitution; vesting the powers of government in three distinct departments; nor in that examiners of title provided by the act are appointed by the court, and not elected as county officers are required to be by Article XI, Section 4, of the state constitution. *State ex rel v Westfall*, 85 M 437, 89 NW 175.

The packers and stockyards act, 7 USCA ss. 181 to 229, is not intended to supersede or disturb state law respecting chattel mortgage security on livestock delivered at public stockyards, and the judgment appealed from in the instant case does not contravene the fourteenth amendment or any other provision of the federal constitution. *Mason v Ellingson*, 205 M 544, 286 NW 713.

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Section 281.10, requiring the county auditor to apportion a tax judgment so that an owner of a specific part of a parcel taxed as a whole can redeem pursuant to section 281.08, does not impose judicial functions upon an administrative officer. *State ex rel v Erickson*, 212 M 219, 3 NW(2d) 231.

An appeal under a parent union's laws by a local union from a decision of the parent union's general president to its general executive board will not be held futile and illusory in advance of the event, where provision is made for a full hearing on such appeal; but where the general executive board by its conduct renders such an appeal nugatory, the parent union will be held to have waived compliance with the provisions of its laws requiring that redress of grievances must be sought by exhaustion of intro-union remedies before there can be recourse to the courts. *Local Union v Hotel & Rest. Internat'l*, 212 M 587, 4 NW(2d) 771.

The power of taxation is inherent in sovereignty; as such, constitutional provisions are not a grant of, but a limitation upon, this power, and, except as thus limited, it is exhaustive and embraces every conceivable subject of taxation. *S.R.A. Inc. v State*, 213 M 487, 7 NW(2d) 484.

L. 1913, c. 91, was adjudicated to be constitutional when it was enacted. It was an apportionment act, administrative and political in that it required the exercise of judgment and discretion, and governmental in the sense that it was in furtherance of the structure of state government, not an exercise of police power. It cannot now be held unconstitutional on account of the growth of population in some districts whose representation in the legislature has, in consequence, become grossly unequal to that of others. *Smith v Holm*, 220 M 487, 19 NW(2d) 914.

It is well established that mandamus cannot be used for the purpose of reviewing the decision of a board or tribunal which has exercised its discretion within the jurisdiction conferred upon it by law. The court cannot substitute its judgment for that of a city council, except where arbitrariness and caprice are so clearly manifest as to constitute an abuse of discretion. *Zion Evangelical Church v City of Detroit-Lakes*, 221 M 55, 21 NW(2d) 205.

A grant of power to one department is a denial of such power to the others. *Bloom v American Express*, 222 M 249, 23 NW(2d) 570.

A Minnesota corporation having its principal place of business in that state, owned and operated in interstate commerce, a fleet of airplanes; for all of the planes, a city within the state was the home port, registered with the civil aeronautics authority and the overland base; and none of the planes was continuously without the state during the entire tax year. The general Minnesota personal property tax applied to all personal property within the state and without discrimination applied on the corporation's entire fleet. Such tax does not violate the commerce or the due processes clauses of the federal constitution. *Northwest Airlines v Minnesota*, 322 US 292, 213 M 395, 7 NW(2d) 691.

L. 1939, c. 442, creates the office of revisor of statutes, to be filled by an appointee of the supreme court, who is to hold office at the pleasure of the court. The power to appoint to a public office is generally held to be an executive function. It is clear that the court may decline the duty if they wish. Appointment by the judiciary of subordinate officers and assistants is a proper exercise of the judicial function. It has been held that the duty of appointing a revisor was such a ministerial or administrative duty as may properly be imposed upon the judiciary. 24 MLR 265.

Thomas Jefferson and the constitution. 29 MLR 265.

## 2. Legislative power

The defendant sanitary district in conducting a condemnation proceeding does so as an arm of the state in the discharge of a sovereign legislative function and is not liable in tort for the alleged malicious prosecution of such proceeding. *Barmel v Mpls. St. P. San. Dist.*, 201 M 622, 277 NW 208.

The proprietary rights of the state are as absolute and unqualified as those of an individual. In the absence of constitutional restriction it may sell and dispose of its property upon its own terms and conditions. Any classification is permissible which has a reasonable relation to some permitted end of governmental

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action. Ex. L. 1937, c. 88, is not constitutionally vulnerable as against attack that: (1) It is special or class legislation; (2) in violation of the equality provision or the equal protection clause; or (3) as imposing taxes for private purposes. *State ex rel v Hubbard*, 203 M 112, 280 NW 9.

Rate-making for the future is an inherently legislative act, whether done by the legislature directly or by an administrative body; and the orders of such tribunals are subject to the same tests, and command the same regard as enactments of the legislature. The function of a reviewing court is to protect constitutional rights and not to sit as a board of revision, or submit its own judgment for that of the commission. *State v Tri-state Tel. Co.*, 204 M 516, 284 NW 294.

There is much and complaining argument about the extent to which labor unions may dictate the management of business by its owners. That goes to the policy of statutory law, which we have no right to review except as it transgresses constitutional limitations. *Lichterman v Laundry Drivers Union*, 204 M 75, 283 NW 752.

The legislature has provided an exclusive remedy for contesting the validity of elections called and conducted in an illegal manner. Any prayer for equitable relief premised solely upon the alleged invalidity of an election is properly denied. *Repsold v Ind. School Dist.* 205 M 316, 285 NW 827.

Because of the statute and because the holding in *Holdridge v Stowell* never had any sound basis in fact, the doctrine that general agreements to arbitrate oust the jurisdiction of the courts, is discarded. Such doctrine is against public policy. *Park Construction v Ind. School Dist.* 209 M 182, 296 NW 475.

The establishment of highways is primarily a legislative function, exercised by county or town boards or under section 162.20 by commissioners. In a judicial proceeding to establish a road under section 162.20, the function of the court is limited to one of confirmation or rejection of the commissioner's report. *Re Petition for Est. of Judicial Highway*, 213 M 314, 6 NW(2d) 626.

The decisions of the supreme court of the United States will be followed in the interpretation of the meaning of due process under the federal constitution. Although our state constitution contains a similar provision, it was not intended to be more restrictive than the federal constitution. *State v N. W. Airlines*, 213 M 395, 7 NW(2d) 691, 322 US 292.

The state may delegate to a village as a governmental agency its powers to regulate navigable waters within the corporate area thereof. *Nelson v DeLong*, 213 M 426, 7 NW(2d) 342.

The legal effect of a referee's findings and award, affirmed on appeal by evenly divided industrial commission, is affirmance of the referee's findings as a matter of law. *Fehland v City of St. Paul*, 215 M 94, 9 NW(2d) 349.

Upon adoption of our penal code (1885), all common-law offenses were abolished, so that now no act or omission is a crime except as defined and prescribed by statute. It is within the exclusive province of the legislature to declare what acts, deemed inimical to public welfare, shall constitute a crime, to prohibit them, and to impose appropriate punishment for violation thereof. Judicial consideration is limited to the inquiry whether the constitutional rights of the accused are thereby violated or impaired. *State v Cantrell*, 220 M 13, 18 NW(2d) 681.

Judicial consideration of an act of the legislature is limited to inquiring whether the constitutional rights of the complaining party are violated or impaired. Section 17.15 is valid as against the challenge of lack of due process on the ground that the section omits the element of intent to destroy competition from the definition of the crime of unfair discrimination. *State v Lanesboro Hatchery*, 221 M 246, 21 NW(2d) 792.

The apportionment of taxes and assessments is a legislative function. If the question of benefits is a matter upon which reasonable men may differ, the determination by the taxing officers must be sustained. *Qvale v City of Willmar*, 223 M 51, 25 NW(2d) 699.

Sections 360.018, subd. 9, and 360.111, delegating to the metropolitan airports commission the power to approve the acquisition and operation of airports are

not unconstitutional upon the ground that the delegation is without definite standards governing the exercise of the power, for reasons that (a) the approved power is to be construed and applied as part of the metropolitan airports commission act as a whole, and when so construed and applied established definite standards, including among others those relating to the promotion of public safety in aviation, governing the exercise of the power, and (b) a delegation of a specified power to a public corporation to enable it to legislate with respect to it is not within the ban of the rule prohibiting delegation of legislative powers without definite standards governing the exercise thereof. *State v Mpls. St. P. Airports Com.*, 223 M 175, 25 NW(2d) 720.

A statute which attempts to confer administrative or legislative powers on the court is unconstitutional. Making regulations governing separation of grades by railroads is exercise of legislative, or administrative power, not judicial power. *Minnesota v C. M. & St. P.*, 50 F(2d) 430.

The legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized. *Mairs v Reynolds*, 120 F(3d) 857.

Under the facts in the instant case, the double damage provision of the fair labor standards act appears extremely severe. The court cannot conceive that the congressional intent in enacting this wholesale legislation, or the administrator's regulations in interpreting it, encompassed any such result as in the instant case; but it is not for the courts to change the law but only to apply it. *Anderson v Fed. Cartridge*, 62 F. Supp. 785.

The authority of the state to prescribe what shall be reasonable charges for intrastate transportation is state-wide, unless it be limited by the exertion of the constitutional power of Congress with respect to interstate commerce or its instruments. The state power extends to cities adjacent to its boundaries as well as those in the interior. When the situation becomes such that adequate regulation of interstate rates cannot be maintained without imposing requirements with respect to interstate rates of interstate carriers, it is for the Congress to determine. *Minn. Rate Cases*, 230 US 353.

Emergency does not increase the constitutional power, nor diminish constitutional restrictions; but it may furnish occasion for exercise of power possessed. The Minnesota legislature has power to temporarily extend the time allowed under existing law for redeeming real property from foreclosure and sale under existing mortgages. *Home Bldg. v. Blaisdell*, 290 US 398.

The power of the commissioner of taxation under section 270.07 is exceedingly broad, and he has the power to grant reductions or abatements under circumstances he may deem just and equitable. 1940 OAG 291, Dec. 12, 1939 (414d-6).

Delegation of legislative power to administrative bodies. 18 MLR 740.

### 3. Executive Power

Testimony of a police officer based on memoranda taken in preparation of a report to highway commissioner was rightfully excluded. Courts have nothing to do with the wisdom or expediency of statutes; the remedy for unwise or inexpedient legislation being political, not judicial. *Hickok v Margolis*, 221 M 481, 22 NW (2d) 850.

### 4. Judicial

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.

The question of classification is primarily for the legislature. It is not enough that the court does not see all the facts justifying the classification. To declare a statute unconstitutional, the court must be able to say that the legislature could not

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reasonably make the classification it did. *Eldred v Div. of Employment*, 209 M 58, 295 NW 412.

It is within the exclusive province of the legislature to declare what acts shall constitute a crime, to prohibit the same, and to impose penalties for violation thereof; and the courts have jurisdiction to interfere only when there has been a clear departure from the fundamental law and the spirit and purpose thereof and a punishment imposed which is manifestly in excess of constitutional limitations. *State v Ives*, 210 M 141, 297 NW 563.

While an order of an administrative board removing an appointee from office may be reviewed by the supreme court by certiorari, the inquiry by the reviewing court is not whether the findings of the board are sustained by a preponderance of the evidence, but whether there is evidence to sustain the order of removal. *State ex rel v State Board*, 213 M 184, 6 NW(2d) 251.

In reviewing the determination of a school board that a statutory ground for discharging a tenure teacher exists, the jurisdiction of the courts is limited to questions affecting the jurisdiction of the school board, the regularity of its proceedings, and, as to the merits, whether the determination was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it. *State ex rel v Board of Education*, 213 M 569, 7 NW(2d) 544.

Courts of law may review administrative action or an executive or administrative officer or tribunal to determine whether such action is within the law, constitutional or statutory. The requirement of due process cannot be waived or dispensed with either by the legislature or by an executive tribunal to which it delegates the duty of administering a law. *Juster v Christgau*, 214 M 108, 7 NW(2d) 501.

Although taxation is basically a legislative and executive function, fixing the value of property for taxation purposes may be delegated to the courts, by way of appeal, but the burden of proof is on the person challenging the valuation. *Kalscheuer v State*, 214 M 441, 8 NW(2d) 624.

The limitation period provided by section 573.02, is a condition precedent to the right of action for wrongful death, to be strictly complied with, and is not extended by the tolling provisions of section 541.16. *Cashman v Hedberg*, 215 M 463, 10 NW(2d) 388.

The right to practice law is not a property right guaranteed or protected by either the state or federal constitution, but a privilege conferred upon the individual by the court, subordinate to the court's greater obligation to further the administration of justice and to protect constitutional rights. In re *Integration of the Bar*, 216 M 195, 12 NW(2d) 515.

The public policy of a state is for the legislature to determine and not the courts, which are without authority to engraft additional limitations into the law not there appearing. *Mattson v Flynn*, 216 M 354, 13 NW(2d) 11.

Within the legislative field lies the power to remove public officers, whether elective or not, or to authorize their removal, without notice or hearing, subject only to constitutional limitations as to the particular office. *State ex rel v Oehler*, 218 M 296, 16 NW(2d) 765.

Courts must turn a deaf ear to cries of "administrative finality" where jurisdictional and constitutional questions are involved. There may be "collateral attack when it can be shown that fundamental requirements have not been observed." *Martin v Wolfson*, 218 M 566, 16 NW(2d) 884.

Under the constitution, initiative in legislation relative to apportionment lies entirely with legislature, and the judicial branch may not interfere with legislative power except in cases involving police power in any other way than by passing upon the constitutionality, as of the time of enactment. *Smith v Holm*, 220 M 486, 19 NW(2d) 914.

Courts have nothing to do with the wisdom or expediency of statutes; the remedy for unwise or inexpedient legislation being political, not judicial. *Hickok v Margolis*, 221 M 480, 22 NW(2d) 850.

It is not the province of the court to substitute its judgment for that of a city council in a decision involving judgment and discretion, but merely to determine



whether that body was within its jurisdiction, was not mistaken as to the applicable law, did not act arbitrarily, oppressively, or unreasonably, and that there was evidence to support the decision. *Alexander v City of Owatonna*, 222 M 312, 24 NW(2d) 244.

The making of rates to be charged consumers by a gas company or other public utility is a legislative and not a judicial function; but a court, which has appointed a receiver for a gas company, may, on petition by the receiver for instruction, fix the rates to be charged by him for gas during the receivership. *City of Minneapolis v Rand*, 285 F 878.

Suit to restrain commissioners constituting state department of commerce, securities division, from taking further proceedings in matter of investigation of sales of common capital stock of bank stock holding company, in view of alleged violation of rights secured by due process clause, is within the jurisdiction of the federal district court. *Northwest Bancorporation v Benson*, 6 F. Supp. 704.

Delegation to the judiciary of legislative power to create political districts. 14 MLR 289.

Constitutionality of statute incorporating state bar. 15 MLR 814.

Delegation of judicial power to a non-judicial body. 15 MLR 822.

Validity of statute conferring on the judiciary power to set aside a driver's license. 19 MLR 701.

Judicial interference with public funds. 27 MLR 541.

Judicial review of administrative decisions and orders. 29 MLR 157.

#### ARTICLE IV

##### LEGISLATIVE DEPARTMENT GENERALLY

The laws of one state have no extraterritorial effect, and substantive law must yield when it conflicts with the laws of the forum. *Gale v Lee*, 219 M 425, 18 NW(2d) 154.

Interpretation of section 645.16; definition and effect of "identity" or "identifiable" as found in sections 291.03, 291.06. *Commissioner v Bennett*, 219 M 449, 18 NW(2d) 239.

The constitution places legislative power exclusively in the legislature and forbids it to the courts. A statute, such as section 291.06, should be construed in the light of its obvious purpose in order to ascertain and give effect to the intention of the legislature. *Estate of Reynolds*, 219 M 460, 18 NW(2d) 238:

SEE: The legislative process. 30 MLR 653.

Legislative reference service. 30 MLR 674.

Section 1. BICAMERAL; SESSIONS.

##### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1860, Chapter 22, ratified November 6, 1860, added "but no session shall exceed the term of sixty days."

Originally there was no limit to the duration of a session.]

[Amendment proposed by Laws 1877, Chapter 1, ratified November 6, 1877, was designed to supersede the 1860 amendment to this section and read as follows: "The legislature of the state shall consist of a Senate and House of Representatives who shall meet biennially at the seat of government of the state at such time as shall be prescribed by law; but no session shall exceed the term of sixty days."

Prior to the adoption of this amendment the legislature convened annually.]

[Amendment proposed by Laws 1887, Chapter 3, ratified November 6, 1888, extended the term to ninety days, and forbade introduction of new bills during the last twenty days of the session, except upon written request of the governor.]

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Last date for introduction of new bills, Minnesota Constitution, Article IV, Section 1. Last date upon which bills may be passed by either house, Minnesota Constitution, Article IV, Section 22. Last date to which session may continue, Minnesota Constitution, Article IV, Section 1. 1934 OAG 757, Feb. 16, 1933.

Approving acts passed during last three days of legislative session. Acts passed last day of session when the clock is covered. 1940 OAG 289, April 17, 1939.

Brief relating to extension of time for meeting of the legislature by the device of covering the clock, and treating more than 24 hours as a continuous last day. 1940 OAG 289, April 17, 1939 (289).

The governor may approve, sign, and file in the office of the secretary of state within three days after the adjournment of the legislature any act passed during the last three days of the session. OAG April 23, 1947 (213-C).

The purpose of H. F. 501 is to provide annual sessions of the legislature and limit them to sixty days and in odd numbered years to the consideration of certain defined subjects. Such change must be made by constitutional amendment and voted on by the electorate. 1944 OAG 283, March 16, 1943 (280).

Delegation of legislative powers to state agencies and municipalities. 7 MLR 241.

Power of legislature to punish for contempt. 19 MLR 804.

Nebraska's unicameral legislature. 22 MLR 60.

## Section 2. MEMBERSHIP; REPRESENTATION.

The constitutional mandate, Minnesota Constitution, Article IV, Sections 2 and 23, confers upon the legislature an administrative, political power involving the exercise by that body of judgment and discretion. An apportionment act redistricting the state for the election of members of the legislature may only be held unconstitutional if its enactment is an arbitrary departure from the rule of equal representation evincing a total failure to exercise any judgment or discretion whatever. *Smith v Holm*, 220 M 486, 19 NW(2d) 914.

Legislative apportionment; failure to apportion; effect of change of population. 30 MLR 37.

## Section 3. ELECTION; QUORUM.

The court is not authorized by section 205.78 to determine the eligibility of a candidate for the state senate who holds a certificate of nomination for that office issued by the canvassing board of a primary election duly held and canvassed, and may not order the county auditor to desist or refrain from placing his name upon the official general election ballots. *State ex rel v Erickson*, 203 M 390, 281 NW 366.

See, 1938 OAG 246, Oct. 6, 1938 (183r).

## Section 4. RULES OF GOVERNMENT.

Legislative procedure and processes. 31 MLR 161.

## Section 5. OFFICERS; JOURNAL OF PROCEEDINGS.

The regularity of an enactment of a statute may be inquired into by examining the legislative journals to ascertain whether there has been compliance with constitutional requirements. Where there is a discrepancy between the bill passed by the legislature and the bill approved by the governor, construction may be resorted to for the purpose of determining whether or not the latter differs from the former in substance and legal effect. *Bull v King*, 205 M 427, 286 NW 311.

Minnesota is committed to the "journal entry rule" under which the regularity of the enactment of a statute may be inquired into by examining the legislative journals to ascertain whether there has been a compliance with constitutional requirements. In the instant case, the bill passed by the legislature has never been

presented to the governor nor approved by him. The variance being material, the enactment is thereby invalidated. *Freeman v Goff*, 206 M 49, 287 NW 238.

#### Section 7. COMPENSATION.

Representatives of the 1943 legislature are eligible to reelection to their legislative offices in 1944 notwithstanding the increase of their salaries in the 1943 session. The salary of the lieutenant governor has been increased by the 1943 legislature and a representative who was a member of that body at the time such increase was voted, would under our constitution be ineligible to become a candidate for lieutenant governor until one year after the expiration of the legislator's term of office. 1944 OAG 278, Aug. 5, 1943 (213-D).

#### Section 8. PRIVILEGES.

Immunity of legislators. 21 MLR 274.

Legislative immunity. 23 MLR 274.

Constitutional privileges of legislators. 9 MLR 442.

#### Section 9. MEMBERS NOT TO HOLD CERTAIN OFFICES.

A member of the legislature cannot be a member of a charter commission. 1934 OAG 517, Nov. 1, 1933 (280h).

A member of the legislature cannot be a member of the high school board. 1934 OAG 518, Feb. 27, 1933 (358f).

A member of the legislature cannot become a member of a state constitutional convention created by an act of the legislature. 1934 OAG 756, May 5, 1933 (358g).

A member of the legislature is ineligible to hold the office of deputy sheriff. 1938 OAG 278, Oct. 7, 1937 (280h).

The legality of running for one office while holding another has been upheld. 1938 OAG 279, March 16, 1937 (184i); *Hoffman v Downs*, 145 M 465, 177 NW 669.

A member of the legislature may not be a truck or bus inspector in the employ of the railroad and warehouse commission. 1938 OAG 395, Oct. 8, 1937 (280h).

State senators and representatives may not constitutionally serve on the legislative emergency committee (now succeeded by the legislative advisory committee). 1942 OAG 291, April 7, 1941 (280h).

A member of the legislature may resign and file his resignation with the governor, but he is still prohibited by the constitution from holding any office during the time for which he was elected. 1942 OAG 292, Aug. 19, 1942 (280-D).

An attorney member of the legislature may as an individual be employed by the city, but he cannot be an official, such as city attorney. OAG Oct. 21, 1945 (371a-5).

Removal from public office. 20 MLR 731.

Legal status of members of the officers' reserve corps. 21 MLR 162.

Eligibility for other office as affected by membership in the legislature. 26 MLR 281.

A member of the legislature may serve on the advisory council for the division of employment and security. 1944 OAG 280, June 16, 1943 (280-H).

Members of the Minneapolis police department are ineligible to be members of the state legislature. OAG Feb. 8, 1946 (280-H).

A member of the senate at the session when the legislature enacted L. 1945, c. 525, may become a candidate for county attorney in a county where the salary was not increased by the 1945 act. OAG March 25, 1946 (280-G).

One holding the office of state senator cannot at the same time serve as veteran service officer. OAG March 27, 1946 (280-H).

The park board of a city may employ a member of the legislature as an entertainer or director of singing at open air concerts. OAG March 30, 1946 (280-H).

# MINNESOTA STATUTES 1947 ANNOTATIONS

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### Section 10. REVENUE BILLS TO ORIGINATE IN HOUSE.

L. 1933, c. 389, which provides for annual levy to pay certain installments of interest is not a revenue producing act within the meaning of Minnesota Constitution, Article IV, Section 10. 1934 OAG 734, June 7; 1933 (82h).

A bill need not originate in the house where it merely reduces the rate of an existing revenue provision. OAG Feb. 8, 1945 (280b).

Bills for raising revenue under the federal and state constitutions. 4 MLR 330.

Minnesota state income tax. 12 MLR 683, 18 MLR 93.

The question as to whether an act is a regulatory act, or a revenue measure which must originate in the house, is a matter to be decided from the act itself and the facts as they existed and were known to the legislature at the time of enactment. 21 MLR 593.

### Section 11. GOVERNOR TO APPROVE OR VETO BILLS.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1876, Chapter 1, inserted the second paragraph of the section beginning "If any bill presented" and was ratified November 7, 1876.]

Approval of acts passed during the last three days of a legislative session. 1938 OAG 396, April 23, 1937 (213c).

Acts passed during the last day of session when clock is covered. 1940 OAG 289, April 17, 1939 (280).

### Section 12. MONEY APPROPRIATIONS, HOW MADE.

1947 Resolution No. 29, House Resolution No. 25, appropriating \$52,500 from legislative expense for improvement of the house chamber, said money to be expended and contracts made by a house legislative committee, is not a legal appropriation because not a bill enacted by both houses and signed by the governor as required by the state constitution. OAG Aug. 8, 1947 (280-L-1).

### Section 13. ENACTING CLAUSE; PASSAGE OF LAWS.

Where a charter or statute provides that the vote of a majority of the members elected to the council shall be necessary to pass a measure, the fact that there are vacancies in office due to death, resignation, or other cause, does not diminish the number of votes necessary to pass such measure. *State ex rel v Hoppe*, 194 M 190, 260 NW 215.

The bill presented to the governor for his approval must be the same bill which passed the legislature. This requirement is mandatory. A material variance between the bill passed by the legislature and that approved by the governor invalidates the entire enactment. Absolute correspondence is not required. Minor discrepancies and clerical errors which do not change the substance and legal effect of the statute will be disregarded. *Bull v King*, 205 M 431, 286 NW 311.

Power to continue investigation after appointing body has adjourned. 21 MLR 458.

The legislative process. 30 MLR 653.

### Section 14. IMPEACHMENT POWERS.

Partisan politics and federal impeachments since 1903. 23 MLR 185.

### Section 21. BILLS, HOW ENROLLED AND SIGNED.

The failure of the engrossing staff of the senate to delete from H. F. 767 the words or lines stricken by the amendment No. 8, shown by the senate

# MINNESOTA STATUTES 1947 ANNOTATIONS

journal of April 4, 1941, was a clerical error and vitiates L. 1941, c. 218. *Minnesota Mutual v Johnson*, 212 M 575, 4 NW(2d) 625.

A party attacking an administrative order or statute because of the manner of its adoption must show that the faulty method of enactment deprives him of his constitutional rights. *Martin v Wolfson*, 218 M 568, 16 NW(2d) 884.

## Section 22. BILLS, NOT TO BE PASSED ON THE LAST DAY OF SESSION.

A bill may be passed on the day of the adjournment of a special session if the date for adjournment has not been set by resolution. 1944 OAG 284, March 10, 1944 (280-O).

The governor may approve, sign, and file in the office of the secretary of state within three days after the adjournment of the legislature any act passed during the last three days of the session. OAG April 23, 1947 (213-C).

## Section 23. CENSUS; APPORTIONMENT.

There is no universal rule by which the directory provisions in a statute may, under all circumstances, be distinguished from those which are mandatory. Consideration must be given to the legislative history, the language of the statute, its subject matter, the importance of its provisions, their relation to the general object intended to be secured by the act, and whether there is a public or private right involved. The provisions of Minnesota Statutes 1941, Section 375.02, are mandatory. *State ex rel v Pohl*, 214 M 221, 8 NW(2d) 227.

An apportionment act redistricting the state for election of members of the legislature may only be held unconstitutional by virtue of its enactment if it is an arbitrary departure from the rule of equal representation evincing a total failure to exercise any judgment or discretion whatever and to ignore Article IV, Sections 2 and 23, and to promote some other object. *Smith v Holm*, 220 M 486, 19 NW(2d) 915.

Legislative apportionment; failure to apportion; effect of change of population. 30 MLR 37.

## Section 24. SENATORIAL DISTRICTS; TERM OF OFFICE OF SENATORS AND REPRESENTATIVES.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1877, Chapter 1, proposed a new section superseding the original section 24 and was adopted Nov. 6, 1877. This extended the terms of representatives to two years and senators to four years.]

## Section 26. SENATORS TO CONGRESS.

[NOTE: This section is inoperative since the adoption of the 17th Amendment to the Federal Constitution, effective May 31, 1913.]

## Section 27. SUBJECT AND TITLE OF LAWS.

1. Object of section.
2. Construction and application of section.
3. Laws embracing more than one subject.
4. Laws held not to embrace more than one subject.
5. Subject-matter to be expressed in title.
6. Reference to title in interpretation of act.
7. Title held sufficient.
  - (a) Title broader than body of act.
  - (b) Purpose of act not expressed.
  - (c) Provision for fees not expressed.

- (d) Provision for penalties not expressed.
- (e) State and county affairs.
- (f) Town and city affairs.
- (g) Court and judicial matters.
- (h) Mortgage foreclosure, execution, and tax sales.
- (i) Exemption laws.
- (j) Miscellaneous.
- (k) No discussion of terms.

8. Amendatory acts.

- (a) Titles sufficient.
- (b) Titles held insufficient

1. Object of section

Governmental responsibility for torts. 26 MLR 700.  
 The legislative process. 30 MLR 655.  
 Legislative bill drafting. 31 MLR 110.

2. Construction and application of section

That part of L. 1933, c. 359, reducing the rates at which homesteads may be valued for taxation but preserving former and higher rates for the purpose of figuring "tax limitation," is not an amendment of any part of the city charter. 510 Groveland v Erickson, 201 M 381, 276 NW 287.

3. Laws embracing more than one subject

This section, imposing joint and several liability upon one furnishing an automobile to a minor under the age of 18 for negligence of minor, is not limited by title, as it was when adopted in the first instance, since adoption of Kentucky Revised Statutes was a complete enactment of statutory law of the Commonwealth. Falender v Hankins, 296 Ky. 396, 177 SW(2d) 382.

Under a Minnesota statute a person may be subjected to a proceeding akin to lunacy proceeding with a view to his restraint if proven to be of a "psychopathic personality." In a prohibition proceeding the state supreme court properly construed the statute. The legislature is free to recognize degrees of harm and may confine its restrictions to those classes of cases where the need is deemed to be clearest. Minnesota ex rel v Probate Court, 309 US 270.

4. Laws held not to embrace more than one subject

The ordinance entitled "an ordinance to license and regulate the sale of intoxicating liquors" fairly suggests the subject matter of forfeiture and is not violative of Minnesota Constitution, Article IV, Section 27. City of Duluth v Cerveny, 218 M 512, 16 NW(2d) 779.

The title of L. 1941, c. 440, amendment to the survivorship statute, was sufficient under the constitutional provision that no law shall embrace more than one subject which shall be embraced in its title. Kuhnle v Swedlund, 220 M 573, 20 NW(2d) 396.

5. Subject-matter to be expressed in title

The title to L. 1941, c. 440, amending the survivorship statute is sufficient under the provisions of Minnesota Constitution, Article IV, Section 27. Kuhnle v Swedlund, 220 M 573, 20 NW(2d) 396.

State securities act regulating sale of stock, especially the provision authorizing state department of commerce, securities division, to investigate sale of securities, is not invalid on the ground the subject-matter of act is not sufficiently expressed in the title. Northwest Bancorporation v Benson, 6 F. Supp. 705.

Query as to whether L. 1933, c. 412, conforms to the provisions of Minnesota Constitution, Article IV, Section 27. 1934 OAG 176, Aug. 7, 1933 (483d).

The ordinance is not void even though it did not contain the words "and repealing ordinances inconsistent therewith" or the words "and providing penalties for the violation thereof." 1942 OAG 236, April 7, 1942 (218-G-13).

Contents of an amendment to a former act, unless the title is also amended, must be limited by any restrictions which are contained in the title to the amended act. OAG OCT. 17, 1944 (519d).

Section 2 of L. 1941, c. 64, prohibits using an order authorized in section 1, as evidence in certain cases. If the term "this act" is not used in section 2, in reference to chapter 64, then the title of chapter 64 violates Minnesota Constitution, Article IV, Section 27. 26 MLR 229.

### 7. Title held sufficient

#### (b) Purpose of act not expressed

The title of L. 1933, c. 165, was sufficient though it only named the numbers of the sections to be repealed, and the title did not name the subject (law relating to limited divorce) in any way. 18 MLR 465.

Validity of state housing authorities act. 26 MLR 112.

Failure to mention saving clause in title of repealing act. 26 MLR 136.

#### (j) Miscellaneous

L. 1935, c. 278, codified as section 281.23, satisfies the constitutional requirements as to title. OAG March 7, 1946 (419-F).

L. 1945, c. 177, codified as section 48.245, satisfies the constitutional requirements as to title. OAG April 9, 1946 (29-a-20).

Section 28. DIVORCES.

L. 1933, c. 165, repealing all laws relating to limited divorces. 18 MLR 465.

Section 31. PROHIBITION OF LOTTERIES.

As courts have construed the word "lotteries," the legislature, under our present constitution, has no power to authorize the licensing of slot machines in order to obtain revenue with which to pay veterans' bonus. OAG Dec. 23, 1946 (82).

Section 32a. RAILROADS GROSS EARNINGS TAX LAWS SUBMITTED TO VOTE.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1871, Chapter 18, ratified November 8, 1871, is a new section and was originally numbered Section 32. Gross earnings tax laws enacted prior to the adoption of this section were invalid. This section permitted the enforcement of a gross earnings tax on railroads provided the act be submitted to a vote of the electorate and ratified by a majority of the voters voting at the election at which the act was submitted to them.]

1. Generally.
2. Exemption granted in territorial days.
3. Property subject to general taxation.
4. Effect of amendment of 1906 to Article 9, Section 1.

#### 1. Generally

The only provision for referendum is found in Minnesota Constitution, Article 4, Section 32a. 1934 OAG 567, Nov. 7, 1933 (217a).

# MINNESOTA STATUTES 1947 ANNOTATIONS

As far as the corporate franchise is being exercised for railroad purposes, the tax is invalid under Minnesota Constitution, Article IV, Section 32a, as an attempt to amend without referendum procedure. 24 MLR 595.

## 4. Effect of amendment of 1906 to Article 9, Section 1

As of the date of this decision railroads by reason of a contract with the State of Minnesota are excepted from the ordinary rule of taxation, and in lieu thereof pay a gross earnings tax. L. 1895, c. 168, confirmed by a vote of the people at the general election in 1896, breached the contract and is unenforceable. *Stearns v Minnesota*, 179 US 223.

## Section 32 (b) INTERNAL IMPROVEMENT LANDS.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1872, Chapter 14, ratified November 5, 1872, added a new section. It created a method of disposition of 500,000 acres of land donated to the state by the federal government under an act of Congress approved September 4, 1841; and the conservation and use of the proceeds of the sale of the lands.]

A statute providing for an attachment by the county auditor of rents received from realty on which taxes had become delinquent is not an unconstitutional delegation of legislative power. *Johnson v Richardson*, 197 M 266, 266 NW 867.

The decision relating to the constitutionality of L. 1943, c. 500, the Metropolitan Airports Commission rests in large measure upon constitutional provisions relating to public highways. *Erickson v King*, 218 M 103, 15 NW(2d) 201.

Title of riparian owners. 24 MLR 321.

## Section 33. SPECIAL LEGISLATION PROHIBITED.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1881, Chapter 3, ratified November 8, 1881, is a new section. It prohibited the enactment of special or private laws in certain scheduled cases. It was prospective in operation and did not apply to special laws in existence on the date of the adoption of the amendment. It was entirely superseded by the present section adopted November 8, 1892.]

[Amendment proposed by Laws 1891, Chapter 1, ratified November 8, 1892, entirely superseded the section adopted November 8, 1881, and makes a sweeping prohibition of special laws when a general law can be made applicable; increases the number of subjects upon which special laws may not be enacted; and permits the repeal but prohibits amendment or extension of any special law.]

1. Before amendment of 1892.
2. Distinction between general and special legislation.
3. Generally.
4. Arbitrary classification.
5. Population classification, valid.
6. Population classification, invalid.
7. Population classification; effect of Article IV, Section 36.
8. Restrictive time limitation.
9. City or county finances.
10. Other city or county measures.
11. Police measures, valid.
12. Police measures, invalid.
13. Temporary needs.
14. Remedial acts.



15. Amending, extending, or modifying special or local acts.

16. Repeal of special or local laws.

## 2. Distinction between general and special legislation

Section 280.38 providing for the attachment by the county auditor of rents received from real estate upon which taxes have become delinquent, does not offend against constitutional provisions. *Johnson v Richardson*, 197 M 266, 266 NW 867.

Class legislation, discriminating against some and favoring others, is prohibited, but legislation is not prohibited either by the state or federal constitution which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated and the classification is not arbitrary. *State ex rel v Hubbard*, 203 M 111, 280 NW 9.

The state may engage in selling and distributing liquor. 1934 OAG 599, Oct. 25, 1933 (217i).

Laws 1915, c. 364, applies to Ramsey County as it amends a general law and is constitutional. 1938 OAG 150, March 4, 1938 (373a).

## 3. Generally

L. 1933, c. 359, reducing the rates at which homesteads shall be valued for taxation but preserving former and higher rates of figuring "tax limitations" does not violate the constitutional demand for uniformity of taxation. It is no objection on that ground that, for the purpose of applying "tax limitations" the former basis of valuation is preserved as to homesteads only but as to all of them, while at the same time taxes are levied against them on the basis of a new and lower valuation. *510 Groveland v Erickson*, 201 M 381, 276 NW 287.

The selection and classification of subjects for taxation and exemption is an inherent legislative power, subject only to constitutional restraints. It is for the legislature to fix the classification, and if a classification so made falls within the field where men of reason may reasonably differ, the legislature must have its way. Legislative determination of what should be allowed for "evaporation and loss" in determining the tax base, is valid and constitutional. *Arneson v Barber*, 210 M 42, 297 NW 335.

L. 1943, c. 500, providing for the creation of a Metropolitan Airports Commission does not violate Article IV, section 33, relating to special legislation. *Erickson v King*, 218 M 99, 15 NW(2d) 201.

A city of the fourth class under special law providing for one election district may not create wards within the city and provide election of aldermen from the wards so created. OAG Jan. 28, 1947 (64-s).

Special legislation; general laws of special application. 7 MLR 133, 187.

Validity of graduated rates and exemptions relating to income taxes. 18 MLR 584.

## 4. Arbitrary classification

The question of classification is primarily for the legislature. It is not enough that the court does not see all the facts justifying the classification. To declare a statute unconstitutional, the court must be able to say that the legislature could not reasonably and intelligently make the classification it did. *Eldred v Division of Employment*, 209 M 60, 295 NW 412.

An act which requires the retirement at sixty-five years of age of all police and firemen in cities of the first class but which allows those who have reached sixty-five without pension rights to continue in the service until their pension rights have matured, subject to the rules of the civil service commission, is not unconstitutional as class legislation. *Burns v City of St. Paul*, 210 M 217, 297 NW 638.

It has been held in a number of cases that the legislature may not, under the guise of the use of police power, used as a cloak, grant the invasion of property

or that it be exercised for private purposes, nor for the exclusive benefit of particular individuals or classes. 1934 OAG 176, Aug. 7, 1933 (483d).

War veterans' exemption from license tax. 17 MLR 811.

**5. Population classification, valid**

The uniform declaratory judgments act is not an extraordinary, but an alternative remedy and is available where there is a justiciable controversy. Determination of the point at which the legislature may draw the line in classifying cities by population when population is germane to the subject matter lies within the wisdom of the legislative body so long as the distinction is not clearly arbitrary. The fact that there is but one city in the state to which L. 1945, c. 351, presently applies does not make the act violative of Minnesota Constitution, Article IV, Sections 33, 34, as special legislation. *Leighton v City of Minneapolis*, 222 M 516, 25 NW(2d) 263.

L. 1945, c. 486, authorizing for certain purposes a one and one-half mill tax levy in cities of 450,000 or more population is not special legislation. *Leighton v City of Minneapolis*, 222 M 524, 25 NW(2d) 267.

**7. Population classification; effect of Article IV, Section 36**

Special legislation and municipal home rule. 16 MLR 659.

**8. Restrictive time limitation**

The time within which an appeal may be taken from an award in condemnation proceedings brought pursuant to section 117.20 is under clause (2) thereof limited to thirty days from the date of filing the report of the commissioners. That statute is not special legislation. If the classification is not arbitrary or special, but applies generally and uniformly throughout the state, such classification will be upheld. *State ex rel v Severson*, 194 M 645, 261 NW 469.

L. 1933, c. 181, violates Minnesota Constitution, Article IV, Sections 33, 34. 1934 OAG 375, Sept. 29, 1934 (86a-20); 1934 OAG 376, Dec. 12, 1933 (64).

Mortgage moratorium act. Inadequacy of price because of depression. 17 MLR 823.

Extension of corporate existence. 22 MLR 108.

**9. City or county finances**

L. 1943, c. 500, is not special as distinguished from general legislation merely because at the time it was passed there was but one group of two contiguous cities of the first class to which it could be applied, if the classification was not arbitrary or special, but applicable generally and uniformly throughout the state. The classification of airports for contiguous cities of the first class from single cities or non-contiguous ones was justified as based on a substantial distinction germane to the subject matter. *Erickson v King*, 218 M 99, 15 NW(2d) 201; *Monaghan v Armatage*, 218 M 109, 15 NW(2d) 241.

Validity of tax bargain statute. 18 MLR 857.

**10. Other city or county measures**

L. 1915, c. 272, as amended by L. 1919, c. 404, and modified by L. 1921, c. 280, relating to the duties of the coroner of Hennepin county, is not violative of the constitutional provision prohibiting special legislation. *Kingsley v Forsyth*, 192 M 468, 257 NW 95.

Justices of the peace are state officers. Their courts are state courts. By constitutional authority, the legislature placed the power of removal in the governor. A similar power cannot be given to the city council under a home rule charter. *State ex rel v Hutchinson*, 206 M 446, 288 NW 845.

Sections 33 and 34 of Article IV of the state constitution do not prohibit the legislature from enacting general laws relating to the affairs of cities. The only

limitation therein, as general laws, is that they have uniform operation upon all municipalities of the class covered by the law. 1934 OAG 59, Aug. 24, 1933 (59a-36); 1934 OAG 67, Aug. 22, 1934 (335d); 1934 OAG 71, Aug. 3, 1933 (59a-6); 1934 OAG 74, Nov. 16, 1934 (785e); 1934 OAG 144, Dec. 28, 1933 (204a-5).

Held constitutional. OAG Nov. 25, 1944 (107b-1); OAG Feb. 16, 1945 (82L).

Held unconstitutional. OAG Dec. 28, 1944 (347i); OAG Jan. 26, 1945 (59a-33); OAG Feb. 16, 1945 (104a-9); OAG March 19, 1945 (218g-13).

#### 11. Police measures, valid

A gasoline filling station selling more than forty different articles for automobile and home use comes within the provisions of the statute exempting "general merchandise stores" from the requirement of obtaining a license to sell soft drinks. *State v Comer*, 207 M 93, 290 NW 434.

L. 1933, c. 73, regulating burial insurance companies and prohibiting affiliation with funeral homes, is valid. 1934 OAG 538, May 24, 1933 (249b-14).

#### 12. Police measures, invalid

A police civil service commission law, L. 1943, c. 381, is invalid because it applies to only one city. OAG Nov. 14, 1945 (785-E-3).

#### 14. Remedial acts

Where a new statute, not in the form of amendment to prior statutes, is complete in itself and shows that the legislature intended to substitute its provisions for those previously in force and intended the new statute to prescribe the only rules governing the subject matter, it supersedes all prior legislation in respect to the subject matter and repeals all prior laws insofar as they apply thereto. The legislature clearly intended that L. 1945, c. 21, should supersede sections 219.68, and 219.74. *State v Chgo. & Gt. Western*, 222 M 505, 25 NW(2d) 294.

Governmental responsibility for torts. 7 MLR 133-151, 187-207; 26 MLR 726.

#### 15. Amending, extending, or modifying special or local acts

By Spl. L. 1878, c. 69, Minnesota Central University organized under L. 1854, c. 36, was not continued in existence. A new corporation, now Pillsbury Academy, was created. *Trustees v State*, 204 M 372, 283 NW 727.

An amendment to section 52.04 so as to read "To invest in any investment legal for savings banks or for trust funds in the state and in shares or deposits of the 'League Credit Union' incorporated under the laws of the state" is invalid as offending against Minnesota Constitution, Article IV, Section 33. 1938 OAG 103, Feb. 24, 1937 (29a-19).

Notwithstanding the prohibition contained in Minnesota Constitution, Article IV, Section 33, Special Laws 1891, Chapter 59, creating a municipal court in the city of Ely, may be amended in certain particulars by a subsequent special act. OAG March 18, 1947 (307-i).

Effect of corporation's long inactivity and amendment to charter subsequent to constitutional restrictions against exemption upon exemption originally granted. 23 MLR 703.

L. 1941, c. 328, amending L. 1941, c. 169, art. 9, s. 8, relating to high schools in Hennepin and Ramsey counties only, may offend against the provisions of Minnesota Constitution, Article IV, Section 33. 26 MLR 225.

The legislative process. 30 MLR 655.

Legislative bill drafting. 31 MLR 111.

#### 16. Repeal of special or local laws

Sections 33 and 34, engrafted on Article IV of the Minnesota Constitution by the 1892 amendment prohibit the passage of certain special or local laws, but au-

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thorize repeal. General Statutes 1894, Section 258, provides that when a law was repealed which repealed a former law, the former law shall not thereby be revived unless it is so specially provided. In 1895 the special act creating a certain village was repealed. It was held that the above quoted constitutional provision had no application to the repealing act. *Pepin v Sage*, 129 F. 657.

## Section 34. GENERAL LAWS.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1881, Chapter 3, ratified November 8, 1881, is new, is the "uniformity" section, and is supplemental to Section 33.]

The provisions of Minnesota Constitution, Article 4, Section 34, do not render L. 1931, c. 205, in any way unconstitutional. *Sweet v Richardson*, 189 M 492, 250 NW 46.

L. 1933, c. 181, is unconstitutional in that it does not operate uniformly throughout the state and is special in its regulation of the affairs of cities of less than 3,500 inhabitants operating under L. 1895, c. 8. *Hiler v City of East Grand Forks*, 189 M 620, 250 NW 579.

In the constitutional sense a law is general if it applies to and operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to such class; and the mere fact that the members of such class are limited in number, or that the class consists of a single member, or thing, is unimportant. *Board v Borgue*, 192 M 369, 256 NW 894; *State ex rel v Severson*, 194 M 645, 261 NW 469.

L. 1933, c. 363, amending section 375.02 by adding a proviso that no city of the second class shall be in more than two commissioners' districts, is not unconstitutional as against the objection that it is an arbitrary and capricious classification and discriminatory as against inhabitants of cities of the second class. *State ex rel v Cooke*, 195 M 103, 262 NW 163.

Section 571.07 superseded by section 571.46, subjecting to garnishment money owed by the state to employees in the highway department, is constitutional as against the objection of special legislation; lack of equal protection, and due process. *Franke v Allen*, 199 M 450, 272 NW 165.

L. 1935, c. 170 (section 423.22 et seq), providing for a police fund in cities of the fourth class having an assessed valuation of over eight million dollars is not vulnerable to a charge of unconstitutionality on the ground of classification. *Nichols v City of Eveleth*, 204 M 356, 283 NW 539.

A gasoline filling station selling more than forty different articles for automobile and home use comes within the provision of the statute exempting "general merchandise stores" from the requirement of obtaining a license to sell soft drinks. *State v Comer*, 207 M 94, 290 NW 434.

Standards of equal protection under Minnesota Constitution, Article I, Section 2, and Article IV, Sections 33 and 34, and of uniformity of taxation under Article IX, Section 1, are the same as the standard of equality required by the equal protection clause of United States Constitution, Amendment XIV; and operators of chain stores are not denied the equal protection of the law by excepting from a chain store tax retailers selling products of their own production. *Thomas Stores v Spaeth*, 209 M 504, 297 NW 9.

An act which requires the retirement at sixty-five years of all police and firemen in cities of the first class but which allows those who have reached sixty-five without pension rights to continue in the service until their pension rights have matured, subject to the rules of the civil service commission, is not unconstitutional. *Burns v City of St. Paul*, 210 M 218, 297 NW 638.

There is no double taxation of the earnings received by an express company from a railroad where each pays a gross earnings tax on its own property in lieu of all other taxes. *State v Railway Express Agency*, 210 M 575, 299 NW 657.

Testing the admitted facts shown in the instant case, L. 1943, c. 15, violates Minnesota Constitution, Article IV, Sections 33, 34, in that it is but another way of naming Pine County under the guise of a general law. *Hamlin v Ladd*, 217 M 249, 11 NW(2d) 396.

The classification of airports for contiguous cities of the first class, as distinguished from single cities of non-contiguous ones, was justified as based on a substantial distinction germane to the subject matter of L. 1943, c. 500. *Monaghan v Armatage*, 218 M 109, 15 NW(2d) 241.

L. 1937, c. 455, relating to an appropriation for public improvements in and about Lake Minnetonka is constitutional. OAG Nov. 25, 1944 (107b-1).

Taxation of property held by college fraternities. 17 MLR 678.

Section 35. CURTAILMENT OF MARKETS FOR FOOD PRODUCTS A CRIMINAL CONSPIRACY.

#### AMENDMENT ADOPTED

[Amendment proposed by Laws 1887, Chapter 1, ratified November 6, 1888, is new, and is generally known as the anti-monopoly section.]

Application of the anti-trust statute to labor unions. 24 MLR 770.

Section 36. CITY CHARTERS; CITIES CLASSIFIED BY POPULATION FOR LEGISLATIVE PURPOSES.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1895, Chapter 4, ratified November 3, 1896, is the home rule charter amendment.]

[Amendment proposed by Laws 1897, Chapter 280, ratified November 8, 1898, entirely revised the home rule charter section adopted in 1896.]

[Amendment proposed by Laws 1941, Chapter 555, ratified November 3, 1942, changed the requirements for the publication of proposed amendments to charters of cities and villages.]

1. **Generally.**
2. **Board of freeholders.**
3. **Scope and contents of charters.**
4. **Force and effect of charters.**
5. **Submission and ratification of charters or amendments.**
6. **Amendments.**
7. **Classification of cities by population.**
8. **Crimes or misdemeanors.**

#### 1. Generally

The home rule charter amendment to the constitution (Article IV, Section 36) followed a six years' experience with the prohibition against special legislation regulating the affairs of cities and as a practical matter and within prescribed limitations restored to cities a means of obtaining charters specially adapted to local needs which, prior to the adoption of Article IV, Section 36, of the Constitution as amended in 1892, had been obtainable by special law. *Hiler v City of East Grand Forks*, 189 M 620, 250 NW 579.

Where a charter or statutory provision requires an affirmative vote of a majority of the entire council to give effect to a measure, the requirement is satisfied by an affirmative majority vote of all the members of the council in existence when the measure is passed, and not all of those originally elected; but where a charter or statute provides that the vote of a majority of the members elected to the council shall be necessary to pass a measure, the fact that there are vacancies

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in office due to death, resignation, or other cause does not diminish the number of votes necessary to pass such measure. *State ex rel v Hoppe*, 194 M 187, 260 NW 215.

The adoption of a home rule charter by the people of a municipality is legislation, and the authority which it furnishes to the city officers is legislative authority. *State ex rel v Oehler*, 218 M 290, 16 NW(2d) 765.

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. *Freeman v City of Mpls.*, 219 M 202, 17 NW(2d) 364.

A municipal corporation's power to provide for public health and care of sick and destitute appertains to its "governmental function" and not its "corporate function," and therefore where a city under its charter and general law of the state establishes a hospital, the city is not responsible to a person injured because of misconduct of the city's agents and employees therein. *Gillies v City of Minneapolis*, 66 F. Supp. 467.

Where a charter has been once adopted pursuant to Article IV, Section 36, of the Constitution, the courts uniformly hold that the mode of direct amendment prescribed by the constitution is exclusive, and constitutes the only method by which a city might abandon its charter and resume operation under general laws. 1934 OAG 70, Oct. 2, 1933 (58a).

Membership on the charter commission of city of International Falls is incompatible with holding the office of city attorney, city treasurer, or member of the police civil service commission. A clerk of the district court or a member of the county board may serve. OAG Feb. 14, 1947 (358-E-1).

When a city charter sets up a government of the schools, and a change from a special to an independent district as authorized by section 122.30 is made, the change must be made as prescribed in Minnesota Constitution, Article IV, Section 36. OAG March 4, 1947 (166-D-1-d).

### 3. Scope and contents of charters

Prior to the adoption of a home rule charter in 1920 the education system of Minneapolis functioned under the Spl. L. 1878, c. 157, as amended. The home rule charter incorporated all special and general laws relating to education into chapter 18, one provision of which stated "that the aggregate annual levy of taxes in any one year, exclusive of state and county school taxes, shall not exceed twenty-two mills on each dollar of the assessed valuation etc." No concept of emergency power, however modern, can justify a departure by a governmental agency from fixed limitations upon its taxing power imposed by its creator. *Board v Erickson*, 209 M 39, 295 NW 302.

Under chapter 19, section 4, of the Minneapolis home rule charter, investing the city's civil service commission with power over the "entire service of the city," classified employees of the board of education are included. Such provision does not conflict with legislative policy or the state constitution. *Tanner v Civil Service Commission*, 211 M 454, 1 NW(2d) 602.

Relating to changes in the patrol limits in Minneapolis and St. Paul. 1934 OAG 595, Feb. 17, 1934 (218g-1(a)).

Powers of the city council and the board of public welfare in Minneapolis relating to work farms defined. OAG Sept. 16, 1944 (63b).

A city charter provision as to the date when the city assessor may begin his assessment duties must yield to the provisions of the state law. OAG March 26, 1946 (12-A-2).

Except as prohibited by the state constitution or statutes, the St. Paul charter may be amended so that it may by ordinance levy taxes for any public purpose. OAG April 16, 1946 (58-C).

#### 4. Force and effect of charters

The city of St. Paul, under its charter, has power and authority to require that persons and corporations operating motor buses upon its streets for the carrying of passengers for hire as common carriers shall obtain a license or franchise from the city council for carrying on such business. *City of St. Paul v Twin City Motor Bus Co.*, 189 M 612, 250 NW 472.

An ordinance requiring those selling certain products to file a bond, and exempting those selling other products, is unconstitutional. *State v Peterson*, 205 M 573, 287 NW 313.

By constitutional authority, the legislature has placed the power to remove justices of the peace in the governor. That power is exclusive as against the attempt by home rule charter to give a similar power to the city council. *State ex rel v Hutchinson*, 206 M 447, 288 NW 845.

The legislature preserves the power to enact "general laws relating to affairs of cities which shall be paramount while in force to the provisions relating to the same matter included in the local charter." *Rice v City of St. Paul*, 208 M 516, 295 NW 529.

Possessed of specific authority under its charter to enact legislation regulating the sale of intoxicating liquor, the city of Duluth has the further power under its broad charter provisions to pass an ordinance providing for the forfeiture of intoxicating liquor in possession for the purpose of sale, contrary to the ordinance. *City of Duluth v Cervený*, 218 M 511, 16 NW(2d) 779.

Charter provision authorizing a city council "to revoke for misconduct of a license any license granted under this charter" is self-executing. *Moskovitz v City of St. Paul*, 218 M 543, 16 NW(2d) 745.

It is not for courts to pass upon merits, wisdom, or justice of legislation. So long as the legislature does not transgress constitutional limits, matters concerning claimed hardship or injustice of such legislation are for legislative, not judicial, consideration. 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. *Freeman v City of Mpls.*, 219 M 202, 17 NW(2d) 364.

Since the rules of the Minneapolis civil service commission have the force and effect of statutory law, they should be sustained unless violative of constitutional guaranties, controlling state law, or the provisions of its home rule charter pursuant to which the rules were adopted. *State ex rel v Hauser*, 219 M 297, 17 NW(2d) 504.

The statute supersedes city charter provision with reference to examination and publication of books and accounts of cities of the first class. 1934 OAG 71, Aug. 3, 1933 (59a-6).

Waseca has power to acquire land outside corporate limits for airport purposes. 1934 OAG 77, Aug. 3, 1934 (817f).

Inspection of records of public utilities for rate making purposes may be compelled by mandamus. 1934 OAG 146, April 21, 1933 (624c-11).

As between a private individual and a utility company where an application for extension is made, mandamus is the appropriate remedy to compel the utility company to connect its system with a private applicant's premises. 1934 OAG 148, Aug. 20, 1934 (624c-11).

Opening and closing of polls is governed by general laws pursuant to home rule charter. 1934 OAG 388, June 17, 1933 (64L).

As to state highways, state statute prevails over charter provision giving city control over city streets. The highway commissioner's power to establish angle-parking zones is a constitutional delegation of power by the legislature. 1940 OAG 127, Sept. 26, 1939 (989a-16).

Validity of provision retaining unseparated status of village from township for election and assessment purposes. 1942 OAG 103, Aug. 14, 1941 (58-o).

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Power of a municipality operating under a home rule charter to prohibit liquor traffic. 1 MLR 160, 188.

## 5. Submission and ratification of charters or amendments

L. 1909, c. 236 (410.23 to 410.25), is constitutional and provides that a new charter may be adopted in the same manner as provided for the original adoption of a home rule charter. 1938 OAG 34, July 30, 1937 (59a-11).

Publication required upon the adoption to amendments to a home rule charter. 1942 OAG 102, Oct. 21, 1941 (58-m).

The city may, prior to the election, publish the suggested revision of a home rule charter, but it is not mandatory that it be done. OAG Jan. 11, 1946 (58-B).

Publication of proposed amendment to municipal charters. 22 MLR 228; 24 MLR 243; 26 MLR 226.

## 6. Amendments

Subject to constitutional limitations the control of the legislature over municipalities is absolute. This control is not affected by the fact that a city has a home rule charter. 1934 OAG 59, Aug. 24, 1933 (59a-36); 1934 OAG 67, Aug. 22, 1934 (335d).

Amendment to charter to qualify the city of Eveleth to sell bonds to state board of investment. 1934 OAG 65, Aug. 25, 1933 (58c).

Publication of amendment in three papers. 1934 OAG 66, March 17, 1934 (58c).

Adoption of civil service commission by a city operating under a home rule charter. 1934 OAG 74, Nov. 16, 1934 (785e).

Amendments to a home rule charter may be submitted at a special city election called for that purpose. 1936 OAG 17, Nov. 6, 1935 (64t); 1938 OAG 35, Oct. 18, 1937 (58c).

## 7. Classification of cities by population

L. 1901, c. 75, authorizing cities having a population of more than 50,000 to issue the bonds of the city to construct a bridge over a navigable canal within its limits, is not unconstitutional as special legislation. The act applies to all cities of the state having the designated population, and the presence of a navigable canal is not an element of the classification. *LeTourneau v Hugo*, 90 M 420, 97 NW 115.

The powers conferred by L. 1919, c. 65, are charter powers and the power to adopt them cannot be delegated by the legislature except in the manner provided in Minnesota Constitution, Article 4, Section 36. The provisions of the act, which permits each city of the fourth class having a home rule charter to determine for itself whether that law shall become operative therein, violates Minnesota Constitution, Article 4, Sections 33, 34, and 36, and is void. *Lodoen v City of Warren*, 146 M 181, 178 NW 741.

L. 1935, c. 170 (section 423.22 et seq), providing for a police retirement fund in certain cities of the fourth class is constitutional. *Nichols v City of Eveleth*, 204 M 355, 283 NW 539.

The classification of airports for contiguous cities of the first class, as distinguished from single cities or non-contiguous ones, was justified as based on a substantial distinction germane to the subject matter of L. 1943, c. 500. *Monaghan v Armatage*, 218 M 110, 15NW(2d) 241.

The legislature has no power to adopt a means of determining population which is arbitrary and designed as an evasion of the constitution; but it is within the constitutional power of the legislature to provide that, for the purpose of classification of cities, population shall be determined according to the state census alone. *Kuhnle v Swedlund*, 220 M 573, 20 NW(2d) 396.



Classifying cities according to a population of 450,000 or over is germane to the subject matter and purpose of L. 1945, c. 351. *Leighton v City of Minneapolis*, 222 M 516, 523, 25 NW(2d) 264.

Determination of the point at which the legislature may draw the line in classifying cities by population when population is germane to the subject matter lies within the wisdom of that body so long as the distinction is not clearly arbitrary. *Leighton v City of Minneapolis*, 222 M 516, 523, 25 NW(2d) 264.

The classification of cities by population contained in Minnesota Constitution, Art. 4, s. 36, is not exclusive or restrictive, but merely empowers the legislature to enact general legislation based on such classification, regardless of whether population is germane to the subject matter or purpose of the enactment. The legislature may use other rates of classification by population when it is germane to the subject matter. *Leighton v City of Minneapolis*, 222 M 516, 523, 25 NW(2d) 263.

Kinds and classes of municipal corporations. 20 MLR 584.

L. 1941, c. 98; federal commodity stamp program for Hennepin county. 26 MLR 247.

ARTICLE V

EXECUTIVE DEPARTMENT

Section 1. OFFICERS IN EXECUTIVE DEPARTMENT.

Laws 1931, Chapter 186, creating a department of conservation and transferring to the conservation commissioner all functions of the state auditor in respect to state lands, as land commissioner or otherwise, is constitutional. In the beginning there was nothing giving the auditor any power over state lands. The conclusion of constitutionality of Laws 1931, Chapter 186, is sustained by the unbroken practical interpretation based on amendments of 1872 of Article IV, Section 32b, and 1881 Article VIII, Section 2. *State ex rel v Finnegan*, 188 M 56, 246 NW 521.

Restrictions on the governor's removal power. 20 MLR 737.

Executive reorganizations within the federal government. 31 MLR 263.

Section 2. ELECTION RETURNS TO BE SENT TO SECRETARY OF STATE.

AMENDMENTS ADOPTED

[Amendment proposed by Laws 1877, Chapter 1, ratified November 6, 1877, proposed a new section which superseded the original Section 2.

NOTE: Originally the legislature canvassed the vote and declared the result of the election of the executive officers.]

Section 4. GOVERNOR'S POWERS AND DUTIES.

AMENDMENTS ADOPTED

[Amendment proposed by Laws 1895, Chapter 2, ratified November 3, 1896, entirely superseded the original section. The amendment granted additional powers to the governor, but entirely changed the method of granting reprieves and pardons.]

The governor's power to suspend an officer who is under charges for malfeasance or nonfeasance in office is incident to the power to remove such officer, and upon such suspension it is the duty of the governor to appoint an acting officer to perform the duties of the office during the suspension. *State ex rel v Strunk*, 219 M 529, 18 NW(2d) 457.

When breakdown of law and order in community in Minnesota made necessary use of state troops, means employed to restore law and order were largely in the

discretion of the governor and commanding officer of troops, and acts of the governor within range of his permitted discretion were not subject to regulation or control by judiciary, although the governor's arbitrary and capricious acts and those having no relation to necessities of situation could be enjoined. *Powers Mercantile Co. v Olson*, 7 F. Supp. 865.

The defendants had the right to place troops at and about the plant of the plaintiff to prevent the destruction of life and property, and it was their duty to do that. The defendants, as a means of suppressing disorder, had no right to use the troops for the purpose of depriving the plaintiff of its right to possess its own property, or to prevent it from using its property in the conduct of its lawful business. *Strutwear v Olson*, 13 F. Supp. 392.

During the leave of absence of the state auditor authorized by L. 1941, c. 120, s. 4, his deputy is, in effect, the acting auditor and as such he may, under section 6.02, perform the duties of the office, among which is the acting as a member of the official bodies on which the state auditor is by law required to serve. 1942 OAG 293, April 8, 1942 (24).

The term of one appointed a member of the railroad and warehouse commission does not expire on election day, but on the date when a certificate of election is issued to his successor. OAG Oct. 21, 1944 (371a-5).

To provide for annual sessions, or limit the number of days of a legislative session, there must be an authorization by the electorate. 1944 OAG 283, March 16, 1943 (280).

The appointive term of a commissioner (Railroad and Warehouse Commission) expires when his successor is elected and has qualified. 1944 OAG 293, Oct. 21, 1944 (371-A-5).

The power granted by L. 1943, c. 600, having expired, the governor at this time has no power to issue a rent control proclamation. OAG July 1, 1946 (213-H).

Punishment of civilians by military courts. 5 MLR 540.

Power to suspend a criminal sentence for an indefinite period or during good behavior. 6 MLR 363.

Pardons; interpretation of the term "convictions." 9 MLR 384.

Delegation of power. 12 MLR 291.

Power of governor to pardon for criminal contempt. 13 MLR 506.

Liability of governor to mandamus. 14 MLR 572.

Governor's discretion in enforcement of measures undertaken under declaration of martial law. 19 MLR 481.

Removal from public office. 20 MLR 726.

Judicial determination of propriety of governor's declaration of martial law. 20 MLR 830.

Power of the legislature to grant pardon. 21 MLR 860.

Governor's constitutional powers of appointment and removal. 22 MLR 451.

#### Section 5. TERM OF OTHER EXECUTIVE OFFICERS.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1883, Chapter 1, ratified November 6, 1883, entirely superseded the original section. The term of the state auditor was increased to four years; and the duty affixing salaries was imposed upon the legislature.]

The date when the certificate of election is issued to his successor ends the "appointive term" of one holding the office of railroad and warehouse commissioner by appointment. OAG Oct. 21, 1944 (371a-5).

Section 6. LIEUTENANT GOVERNOR'S DUTIES; PRESIDENT PRO TEMPORE OF SENATE.

The president pro tempore of the senate does not cease to become a senator when he becomes lieutenant governor. *State v Stearns*, 72 M 200, 75 NW 210.

Relator was a state senator of the 1943 session of the state legislature which increased the salary of the members effective the first Tuesday after the first Monday in January 1945. This automatically, under Minnesota Constitution, Article V, Section 6, increased the compensation of the lieutenant governor to double that of a state senator. The secretary of state properly refused to receive relator's filing for the office of lieutenant governor at the primary to be held July 10, 1944. *Miller v Holm*, 217 M 166, 14 NW(2d) 99.

Section 7. OFFICIAL TERMS OF FIRST STATE OFFICERS (Obsolete).

AMENDMENTS ADOPTED

[Amendment proposed by Laws 1858, Chapter 2, ratified April 15, 1858, entirely superseded the original section.. The state was not admitted into the Union until May 11, 1858. This section is now obsolete.]

Section 8. OATH OF OFFICE TO BE TAKEN BY STATE OFFICERS.

With the statutory bond should be included an oath of office required to be given to every person elected or appointed to any public office pursuant to section 358.05, and in the form prescribed by Minnesota Constitution, Article V, Section 8. 1938 OAG 136, Aug. 25, 1937 (104a-2).

ARTICLE VI

JUDICIARY

Section 1. JUDICIAL POWERS.

1. Generally.
2. Municipal courts.
3. Establishment of new courts.

1. Generally

The jurisdiction of a probate court over an estate, once properly invoked, precludes the subsequent exercise of jurisdiction over the same matter by another probate court, unless and until the first proceeding is dismissed or discontinued. A conflict between probate courts as to which shall exercise jurisdiction of an estate is a question of venue rather than jurisdiction. *Martin's Estate*, 188 M 409, 247 NW 515.

The judicial power of the supreme court has its origin in the constitution; but when the court came into existence it came with inherent powers. *In re Great-house*, 189 M 55, 248 NW 735.

Right to establish courts. *State ex rel v Probate Court*, 205 M 548, 287 NW 297.

An application for a writ of habeas corpus is an independent proceeding to enforce a civil right and is a collateral attack upon a criminal judgment, and may not be used as a substitute for a writ of error or appeal. *State ex rel v Utecht*, 206 M 41, 287 NW 229.

The decisions of the United States Supreme Court are final as to what constitutes interstate commerce. *City of Waseca v Braun*, 206 M 154, 288 NW 229.

If a classification in a legislative enactment is made on a reasonable basis and is applicable without discrimination to all similarly situated, it is valid. L. 1939, c. 315, requiring a lien on all the real property of a recipient of old age assistance, is not an improper classification. *Dimke v Finke*, 209 M 29, 295 NW 75.

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The industrial commission may apply equitable principles in determining the questions committed by the legislature to its determination. *Steidel v Metcalf*, 210 M 104, 297 NW 324.

A district judge is a state official and may not become a member of a public employees retirement association of any state subdivision or municipality. 1934 OAG 682, March 25, 1933.

Prospective and retroactive effect of an overruling state decision. 17 MLR 811.

Power of the judiciary to integrate the bar. 22 MLR 262.

Delegation of a judicial function to the executive. 22 MLR 729.

Jurisdiction of probate court; controversy between attorney and representative of estate as to fee. 23 MLR 677.

Reorganizing Minnesota's Judiciary (Anderson). 27 MLR 383.

## 2. Municipal courts

The judges of the municipal courts of the state are state officers and not officers of the municipality electing them. Where municipal courts are established under statutory authority, the municipality may not abridge the term of those elected judges thereof by any charter provisions or amendments. *State ex rel v Bensel*, 194 M 55, 259 NW 389.

Municipal court cannot be abolished by the municipality where created by a legislative act. 1934 OAG 284, July 13, 1933, (306a-1).

The term of a municipal judge elected under the provisions of section 488.05 may not be changed by electors in incorporating as a city of the fourth class. 1934 OAG 290, Sept. 13, 1934 (307k).

## 3. Establishment of new courts

Where, as in the instant case, a court has been established by an act of the legislature apparently valid and has gone into operation under such act, it is to be regarded as a court de facto, and any order or judgment entered therein antecedent to a judicial determination that the statute creating the court is unconstitutional is valid and binding. *Marckel v Zitzow*, 218 M 305, 15 NW(2d) 777.

De facto courts. 29 MLR 36.

Section 2. SUPREME COURT; JURISDICTION AND POWERS; REPORTER OF DECISIONS; CLERK OF SUPREME COURT.

## AMENDMENTS ADOPTED

[Amendment proposed by Laws 1929, Chapter 430, ratified November 4, 1930, raised the number of associate justices from four to six.]

1. Jurisdiction, generally.
2. Original jurisdiction.
3. Appellate jurisdiction.
4. No trial by jury.
5. Clerk.

### 1. Jurisdiction, generally

An order for inspection of books and papers is an intermediate order and so not reviewable by certiorari. The supreme court's function of review, as created by the constitution and regulated by statute, is not to be extended by judicial action to the field of supervisory and visitorial power. It is not an inspector of mere procedure and preliminary orders in a cause pending in the district court; and therefore must not by certiorari indulge in the practice of interrupting proceedings

in the trial court by reviewing interlocutory orders. *Asplund v Brown*, 203 M 573, 282 NW 473.

## 2. Original jurisdiction

Since quo warranto is an extraordinary remedy, procedure is not governed by the requirement of service of notice of trial applicable in civil actions. Quo warranto as recognized by our constitution and statutes is not the old common-law writ, but rather information in the nature of quo warranto. We follow the procedure of the common law as modified by Statute 9 Anne, Chapter 20. By Minnesota Constitution, Article VI, Section 2, the supreme court is given "original jurisdiction in such remedial cases as may be prescribed by law." Section 480.04 gives to the supreme court, and section 484.03 to the district court power "to issue writs of quo warranto." The attorney general determines whether to proceed in district or supreme court. As no notice of trial is required in supreme court, by analogy notice should not be required in the district court. *State ex rel v Village of North Pole*, 213 M 302, 6 NW(2d) 458.

Laws 1895, Chapter 327, Section 3 (Section 589.30), relating to appeals to the supreme court in habeas corpus cases established a new practice. In practice the supreme court has proceeded in two ways: (1) consideration of the case has been confined to the evidence adduced in the court below; or (2) the case has been heard de novo based on evidence of its own, or on additional evidence taken before a referee. The trial judge was usually named referee. "Remedial cases" referred to in Minnesota Constitution, Article VI, Section 2, includes those cases in habeas corpus proceedings which are described as "writ of liberty" or "habeas corpus ad subjiciendum et recipiendum." It is doubtful if the supreme court has original jurisdiction in a determination as to the person entitled to custody of an infant child. *State ex rel v Jensen*, 214 M 197, 7 NW(2d) 393.

The provisions of Minnesota Constitution, Article VI, Section 2, establishes the supreme court as a court of review, for the correction of errors by inferior tribunals, and it is not to exercise original jurisdiction except where conferred by law. Reversing in part the decision in *Reynolds v La Crosse*, 10 M 144 (178), and reinstating the holding in *Babcock v Sanborn*, 3 M 86 (141). *Whipple v Mohler*, 215 M 583, 10 NW(2d) 771.

The word "original" as used in the compensation act provision that the supreme court, on review on certiorari, shall have and take original jurisdiction, does not enlarge jurisdiction of the supreme court beyond its appellate jurisdiction as prescribed by the constitution, but indicates legislative intent to emphasize that the supreme court has jurisdiction to review the entire proceedings from their inception as to any issue raised by an assignment of error. *Larson v Le Mere*, 220 M 25, 18 NW(2d) 696.

## 5. Clerk

The provisions of Minnesota Constitution, Article VI, Section 2, makes the clerk of the supreme court one of the elective state officers. But to the judges of the supreme court is given the power to fill any vacancy in that office until an election can be legally had. This is a typical case showing the control by a special rule of a matter thereby excepted from the general law that otherwise would govern. *State ex rel v Quinlivan*, 198 M 77, 268 NW 858.

### Section 3. ELECTION AND TERM OF OFFICE FOR JUDGES.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1876, Chapter 3, ratified November 7, 1876, inserted the words "Whenever all" at the beginning of the second paragraph.]

[Amendment proposed by Laws 1883, Chapter 3, ratified November 6, 1883, reduced the term of supreme court justices from seven to six years.]

Where a vacancy in the office of associate justice of the supreme court occurs more than 30 days before the regular election at which the office is to be filled in

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the ordinary course of elections, the vacancy is to be filled in the regular course of election, and not by election to fill the vacancy under Minnesota Constitution, Article VI, Section 10. *Enger v Holm*, 213 M 154, 6 NW(2d) 101.

Where a vacancy in a nomination for the office of associate justice of the supreme court occurs after the primary, under sections 202.23 and 202.19, the person having the next highest number of votes at the primary shall be the candidate, and it is the duty of the secretary of state to place the name of such person on the ballot as the nominee and not to accept a nomination by petition for that office of an unsuccessful candidate at the primary. *Enger v Holm*, 218 M 154, 6 NW(2d) 101.

Section 4. JUDICIAL DISTRICTS FOR DISTRICT COURTS; ELECTION OF JUDGES; TERM OF OFFICE AND RESIDENCE.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1875, Chapter 1, was ratified November 2, 1875. Section 4 originally provided for six judicial districts, each district to be served by one district judge. To relieve the congested calendars in the two most populous districts the legislature, prior to the adoption of this amendment, had created a court of Common Pleas in Hennepin and Ramsey counties. The amendment entirely superseded the original section and imposed upon the legislature the duty to create such districts as they deemed necessary, declare their boundaries, and determine the number of judges to serve in each.]

District court judges are subject to the state income tax, whether appointed or elected before or after the enactment of L. 1933, c. 405. 1940 OAG 312, June 25, 1940 (531h).

Section 5. JURISDICTION OF DISTRICT COURTS.

Insofar as Minnesota Statutes 1945, ss. 484.05 or 542.43, assumes to empower the governor to designate a judge of another district to discharge the duties of a district judge, it is in contravention of Article III, section 1, and beyond the authority of Article VI, section 5, of our state constitution. *State ex rel v Day*, 200 M 78, 273 NW 684.

Where a testator in creating a testamentary trust made no provision for the appointment of successors to named trustees in event of vacancies, and a vacancy occurred in the office of trustee because of the failure of one of the named trustees to qualify, the district court, which had complete jurisdiction in personam of the named trustees and the trust beneficiaries, had authority to appoint a co-trustee to act as such with the one named in the will. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

Our entire social and political structure rests upon the cornerstone that all men have certain rights which are inherent and inalienable: Right to be protected in life, liberty, and the pursuit of happiness; to acquire, possess, and enjoy property; to establish a home and family; and similar—all under equal and impartial laws which govern the whole community and each member thereof. Constitutions measure the power of rulers, but they do not measure the rights of the governed; and the rights, privileges, and immunities of citizens exist notwithstanding there is no specific enumeration thereof in state constitutions. *Thiede v Town of Scandia Valley*, 217 M 225, 14 NW(2d) 400.

Under Minnesota Constitution, Article VI, Section 5, the district court is competent and authorized to hear and determine justiciable issues arising under our declaratory judgments act. *Montgomery v Mpls. Fire Dept.* 218 M 27, 15 NW(2d) 122.

Constitutionality of statute authorizing declaratory judgments. 6 MLR 327.

Relating to the commitment of a patient for examination, protection and treatment. 20 MLR 346.

Labor injunctions. 21 MLR 622, 629; 24 MLR 779.

Delegation of a judicial function to the executive. 22 MLR 729.

#### Section 6. QUALIFICATIONS.

Based upon construction of Minnesota Constitution, Article VI, Section 6, and Article VII, Section 7, to be eligible to the office of municipal judge of the village of Perham a person need not be an attorney at law. While it is important that judges of all courts of record be persons learned in the law, the supreme court is without power to increase the qualifications prescribed by the Constitution. *State ex rel v Welter*, 208 M 341, 293 NW 914.

Minnesota Constitution, Article VI, Section 6, provides that judges of the district court and justices of the supreme court be learned in the law. There are no such qualifications prescribed for court commissioners or judges of any other court. 1934 OAG 288, Feb. 9, 1933 (307g).

Justices of the supreme court, and judges of the district, probate and municipal courts are liable for payment of state income tax. 1934 OAG 804, April 7, 1934 (531h); 1940 OAG 312, June 21, 1940 (531h).

Controlled by Minnesota Constitution, Article VI, Section 6, and section 488.05 of the statutes, the salary of an appointed municipal judge cannot be increased or diminished during the term for which his predecessor was elected. 1936 OAG 154, July 30, 1935 (307k).

Reduction of judge's salary during term of office. 17 MLR 326, 18 MLR 118.

State income tax as diminution of judge's salary. 22 MLR 106.

#### Section 7. PROBATE COURT; JUDGES TO BE ELECTED; JURISDICTION.

##### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1919, Chapter 531, was ratified on November 2, 1920. It entirely superseded the original section and made the terms of probate judges four instead of two years.]

1. Terms.
2. Jurisdiction, generally.
3. Jurisdiction over estates of deceased persons.
4. Jurisdiction over persons under guardianship.
5. Powers of district court.

##### 1. Terms

Relating to vacancy in office and term of successor. *Enger v Holm*, 213 M 158; 6 NW(2d) 101.

Each newly elected probate judge to fill a vacancy holds for a full four-year term. 1934 OAG 296, March 20, 1934 (347j); 1936 OAG 161, May 29, 1936 (347k).

##### 2. Jurisdiction, generally

While original jurisdiction of the administration proceeding is exclusive and complete in the probate court, and in administering the estate it applies equitable principles and exercises equitable powers, it has no independent jurisdiction in equity or at law over controversies between the representatives of the estate, or those claiming under it, with strangers claiming adversely, nor of collateral actions. *Sprain's Estate*, 199 M 517, 272 NW 779.

Specific performance of a contract to make a will disposing of property may be granted by the district court by a judgment against the representative, heirs, legatees, and devisees, without interfering with the probate court's exclusive jurisdiction of estates of decedents. *Jannetta v Jannetta*, 205 M 266, 285 NW 619.

Minnesota Constitution, Article VI, Section 7, ordains that a probate court shall have jurisdiction over the estates of deceased persons. This includes administration of the estate and distribution of what remains after administration is concluded to the person or persons entitled thereto. This necessarily requires an adjudication as to who is an heir, devisee, or legatee of the deceased. *Hencke's Estate*, 220 M 414, 19 NW(2d) 719.

Within its sphere the original jurisdiction of the probate court is exclusive, and a court of general jurisdiction has only appellate jurisdiction in such matters; and once a court of competent jurisdiction acquires jurisdiction of the subject matter and parties to a cause, its authority continues until the matter is finally disposed of; and hence no court of coordinate authority is at liberty to interfere with its action. *Shapiro v Larson*, 206 M 440, 289 NW 48.

Under section 573.02, the death by wrongful act statute recovery is for the exclusive benefit of the "surviving spouse and next of kin." Jurisdiction to enforce the act lies with the district court. The probate court has no jurisdiction. The element of dependency is not involved, but the element of pecuniary loss is. *Fehland v City of St. Paul*, 215 M 94, 9 NW(2d) 349.

Probate court is required to keep records of insanity and juvenile matters. 1934 OAG 297, March 27, 1933 (346).

Jurisdiction relating to insane persons. 1936 OAG 268, Feb. 19, 1935 (248b-3).

Probate judges are required to file a fee statement as required by section 382.05. 1940 OAG 194, Jan. 9, 1940 (347e).

Proper classification having been made, and standards fixed, the legislature may delegate power to fix the salaries of probate judges. OAG April 13, 1945 (347-1).

Summary proceedings in probate court. 20 MLR 104.

### 3. Jurisdiction over estates of deceased persons

The probate court may not allow a claim against a decedent's estate after the expiration of five years from his death where such claim during said five years remains contingent, but becomes absolute prior to the distribution of the estate. *Simon's Estate*, 192 M 43, 255 NW 241.

The probate court, like the district court, has power, authority and jurisdiction to correct clerical errors, clarify ambiguities, and vacate orders, judgments, and decrees. *Jordan's Estate*, 199 M 58, 271 NW 104.

As far as original probate jurisdiction goes to determine heirship or who may be entitled to take as beneficiaries under a will, both the district court and the industrial commission are equally without constitutional power. *Fitzpatrick v City of St. Paul*, 217 M 62, 13 NW(2d) 737.

The probate court's constitutional jurisdiction may not be interfered with by the district court, by injunction or otherwise, except by virtue of its appellate and remedial jurisdiction. *Hauge's Estate*, 219 M 192, 17 NW(2d) 305.

Minnesota probate court is the only court of original jurisdiction for settlement and allowance of accounts of administratrices and its judgments are final unless appealed from in manner provided by statute; and on his authority to make findings of fact and conclusions of law that reasonable time in which administratrix should have applied and sold realty expired at a certain named date. *Nat'l Surety v Ellison*, 88 F(2d) 403.

Right of alien property custodian to seize money in hands of administrator belonging to a foreign heir of a country with which the United States is at war. 1944 OAG 76, Oct. 24, 1944 (349-E).

### 4. Jurisdiction over persons under guardianship

A father may under the provisions of section 540.08, with the approval of the district court, settle a minor's cause of action for personal injuries without suit



actually begun. Such a settlement cannot be attacked collaterally. *Ernst v Daily*, 202 M 360, 278 NW 516.

In the absence of constitutional definition, legislative enactments extending back to territorial days, uniformly approved by our decisions, clearly demonstrate that, as a matter of public policy, minors are proper subjects for guardianship. *Campbell v Baker*, 216 M 113, 11 NW(2d) 786.

Municipal court of Minneapolis is without jurisdiction of subject matter of action brought by ward after reaching his majority to recover of his former guardian money belonging to the ward which the guardian had failed to pay over and for which the guardian had made no accounting to probate court. Jurisdiction of probate court over estates of persons under guardianship is entire, exclusive, and plenary. *Kemmelmueller v Zachman*, 220 M 44, 18 NW(2d) 590.

Jurisdiction over persons under guardianship involves both rights in rem and rights in personam; and the probate court has jurisdiction over persons under guardianship which confers general jurisdiction over the subject of guardianship. *Jasperson v Jacobson*, 224 M —, 27 NW(2d) 788.

County welfare board has no duties in connection with the appointment of a guardian of the estate of an old age recipient. OAG Dec. 28, 1944 (121b).

#### 5. Powers of district court

The district court on appeal from the probate court is in duty bound to try the case *de novo* and exercise its own discretion, not merely to review the exercise of the discretion of the probate court. *Hencke's Estate*, 220 M 414, 19 NW(2d) 719.

When a judge of probate has fixed time and place of a hearing, and dies, and a successor is appointed and qualified before the date set, the successor may conduct the hearing. OAG Oct. 9, 1946 (347-K).

While the probate court has power to commit, it does not determine the patient's status as insane, inebriate, feeble-minded, or epileptic, but only that he is a person to be cared for by the state. Upon commitment the state agency to whom committed may designate what is expedient from an institutional, administrative, or medical point of view; but this would not be a judicial determination of his status. 20 MLR 344.

Jury trial in will cases. 22 MLR 514.

Liability of an administrator in his representative capacity for wrongful detention of chattels belonging to a third person. 25 MLR 649.

### Section 8. JUSTICES OF THE PEACE; JURISDICTION.

1. Generally.
2. Civil cases.
3. Criminal cases.
4. Title to real estate involved.

#### 1. Generally

Substituted service is authorized only in cases where a justice of the peace otherwise could obtain jurisdiction by personal service. Adoption of a process statute insofar as it conforms with a court's jurisdiction as defined by statute should not be construed as enlarging the court's jurisdiction as there defined. *Thomas v Hector*, 216 M 217, 12 NW(2d) 769.

Where there were three candidates, one of the old justices was reelected and the other defeated. The new candidate refused to qualify, so there was a vacancy. The defeated candidate cannot hold over. The vacancy created by the refusal of the newly elected justice to qualify must be filled by appointment. 1934 OAG 280, Feb. 3, 1933 (469b-3).

The office of justice of the peace is limited by the constitution to two years. He does not hold until a successor is elected and qualified. 1936 OAG 145, Jan. 31, 1936 (266a-11).

Where a justice resigns, the person appointed to fill the vacancy does not hold over until the end of the term of his predecessor. There must be an election at the next annual town meeting. 1938 OAG 173, Jan. 20, 1937 (266a-12).

### 3. Criminal cases

A justice does not have jurisdiction where the punishment may exceed three months imprisonment or a fine of \$100. He would have jurisdiction to conduct a preliminary hearing and if the evidence warranted, to bind over to the district court for final disposition. 1938 OAG 190, July 15, 1937 (266b-21).

#### Section 10. VACANCIES FILLED BY APPOINTMENT.

Where a charter or statute provides that the vote of a majority of the members elected to the council shall be necessary to pass a measure, the fact that there are vacancies in office, does not diminish the number of votes necessary to pass the measure. *State ex rel v Hoppe*, 194 M 186, 260 NW 215.

If the vacancy is in the office of probate judge, the appointment is by the governor; if in any other county office, by the county commissioners. *Whaling v County of Itasca*, 194 M 302, 260 NW 299.

When a vacancy in an elective office is filled by appointment, such appointment continues until the next general election occurring after there is sufficient time (more than 30 days) to give the notice required by law, and until a successor is elected and qualified. *State ex rel v Atwood*, 202 M 53, 277 NW 357.

The filing of a candidate's petition under the provisions of section 202.19, to fill a vacancy in office caused by the death of an incumbent district judge whose official term would not expire, had he lived, until January 1947, and whose death occurred Oct. 1, 1942, after the primaries but more than 30 days before the next general election to be held Nov. 3, 1942, falls within the provisions of section 202.27. *Flakne v Erickson*, 213 M 146, 6 NW(2d) 40.

Where a vacancy in the office of associate justice of the supreme court occurs more than 30 days before the regular election at which the office is to be filled in the ordinary course of elections, the vacancy is filled in the regular course of elections and not by election to fill the vacancy under Minnesota Constitution, Article 6, Section 10. *Enger v Holm*, 213 M 154, 6 NW(2d) 101.

Where a vacancy occurs and an appointment made there must be an election to fill the vacancy at the first annual election occurring more than 30 days after the vacancy is created, and the appointee holds until his successor is elected and has qualified. 1934 OAG 292, Oct. 14, 1933 (307L).

A newly elected probate judge holds for a full four year term. 1934 OAG 296, March 20, 1934 (347j).

Where there is an appointment to fill a vacancy in the office of municipal judge, such appointee holds office only "until a successor is elected and qualified" and which should be "at the first annual election that occurs more than 30 days after the vacancy shall have happened." 1936 OAG 154, July 30, 1935 (307k).

Where a vacancy occurs in the office of judge of probate, there is no authority for electing a judge for the so-called short term. 1936 OAG 161, May 29, 1936 (347k).

Where a vacancy occurs in the office of district judge, there is no authority for electing a judge for the so-called short term. 1942 OAG 76, July 27, 1942 (184-I).

A special judge of the municipal court having been elected Nov. 2, 1943, died Nov. 11 of the same year. His successor, appointed by the governor, holds office until his successor is elected at the next general election, and has qualified. 1944 OAG 74, Dec. 20, 1943 (307-J).

A judge of the seventh judicial district having died after the date set for the filing for judge of the district court, a candidate to succeed to the office must file by petition, and be voted upon at a special election, held at the time of the an-

nual election, but using ballot and box separate from those used to elect a successor to a judge whose term expires January 1947. OAG Aug. 26, 1946 (28-B-2).

#### Section 11. PROHIBITIONS AGAINST HOLDING OTHER OFFICES.

Justices of the supreme court and judges of the district court during their continuance in office are prohibited from running for any office except a judicial office. 1938 OAG 279, March 16, 1937 (1841).

#### Section 13. CLERK OF COURT.

Petition for removal, notice thereof, and bond delivered to clerk of circuit court at her home at 9:00 P. M. and marked "filed" by her on last rule day, following *Engstrom v Canadian Northern*, 291 F. 738, constituted filing with the court, although such documents were not physically within the walls or room occupied by the clerk, nor officially stamped until the following day. *Hartman v Bethlehem Steel*, 31 F. Supp. 684.

Clerk of district court may appoint a minor as deputy provided the duties are ministerial only, and in cases where no bond is required. OAG Jan. 30, 1945 (1449-1).

#### Section 14. LEGAL PLEADINGS AND PROCEEDINGS.

"Nobody denies that the legislature may regulate the practice and proceedings of the courts. Nobody questions its right by law to say when, for what cause, and in what manner a trial judge may be disqualified to proceed further in a case. But the matter of selecting the substitute judge pertains to the everyday, routine management of the courts and therefore is a judicial function, which cannot be delegated to the executive department." The executive order of March 30, 1937, is without authority and void. *State ex rel v Day*, 200 M 82, 273 NW 684.

The district court has the power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of the trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon the parties and rendering their subject matter *res judicata*. *Melgaard Trusteeship*, 200 M 499, 274 NW 641.

Our constitution provides that the legislature may regulate the practice and proceedings of the state courts. L. 1933, c. 416, without impinging on the jurisdiction of the court, properly imposed a duty on it. There is a distinction between power or jurisdiction on the one hand and mere duty on the other. *Reid v Ind. Union*, 200 M 601, 275 NW 300.

Inasmuch as a district court has original jurisdiction of the subject matter (a trust), it is immaterial that the probate court had none, the parties having, without timely objection, litigated the cause on its merits in that court. *Halweg's Estate*, 207 M 263, 290 NW 577.

Under the provisions of the constitution, the power to make the necessary rules and regulations governing the bar was intended to be vested exclusively in the supreme court, free from the dangers of encroachment either by the legislative or executive branches, to the end that the court's primary functions of administering justice, and protecting constitutional rights might be effectively performed. The court has jurisdiction to hear the petition for integration of the bar. *Re Integration of the Bar*, 216 M 198, 12 NW(2d) 515.

The minimum punishment for a violation of section 340.36, defining offenses in prohibition territory, is a fine of not less than \$50 and imprisonment in jail for not less than 30 days, notwithstanding the section names the offense a "misdemeanor." *State v Kelly*, 218 M 247, 15 NW(2d) 554.

Forms of proceedings in civil actions and the rules by which the sufficiency of pleadings is to be determined are governed by statute. *Nostdal v County of Watonwan*, 221 M 376, 22 NW(2d) 461.

The legislature alone has power to prescribe the procedure for service of summons. *Bloom v American Express*, 222 M 249, 23 NW(2d) 570.

Section 15. COURT COMMISSIONER.

Powers of court commissioner. 1936 OAG 138, June 21, 1935 (128b); 1938 OAG 170, Aug. 2, 1937 (128b); 20 MLR 345.

ARTICLE VII

ELECTIVE FRANCHISE

Section 1. PERSONS ENTITLED TO VOTE.

AMENDMENTS ADOPTED

[Amendment proposed by Laws 1868, Chapter 106, ratified November 3, 1868, eliminated the word "white" from the first and second clauses of Section 1.

NOTE: The same result would have been accomplished two years later by the passage in 1870 of the 15th Amendment to the Federal Constitution.]

[Amendment proposed by Laws 1895, Chapter 3, ratified November 3, 1896, disqualified aliens from voting.]

1. Generally.
2. Right to vote.
3. Citizens of the United States.
4. Tribal Indians.

1. Generally

Where a vacancy in the office of associate justice occurs more than 30 days before the regular election at which the office is to be filled in the ordinary course of elections, the vacancy is to be filled in the regular course of election and not by election to fill the vacancy under Minnesota Constitution, Art. 6, s. 10. *Enger v Holm*, 213 M 154, 6 NW(2d) 101.

Conflict of laws as to domicil. 15 MLR 668.

Delegation of judicial power in election cases to a non-judicial body. 15 MLR 822.

2. Right to vote

The constitutional right to vote is subject to regulation by registration laws, but any provision of any statute which fails to give a voter a reasonable opportunity to register and vote would be unconstitutional. 1934 OAG 371, Sept. 12, 1934 (183i).

A limitation restricting the right to vote at bond elections to taxpayers only would be unconstitutional. 1934 OAG 380, June 4, 1934 (59a-7).

Upon dissolution of township organizations the voters within the territory cannot be disfranchised; and there devolves on the county board the duty to provide voting districts an opportunity to vote. 1934 OAG 382, July 31, 1933 (185a-5); 1934 OAG 383, May 1, 1934 (185a-5).

The right of voters to vote by stickers is not in any way restrained. 1934 OAG 395, Feb. 4, 1933 (186).

Any duly qualified voter of any election district who is absent from such district on the day of any general election may vote by using an absentee ballot as prescribed by statute. 1934 OAG 400, June 22, 1934 (490a).

Schoolteachers may vote at the voting place of their residence, as determined by the intention of the voter. 1934 OAG 404, Oct. 16, 1934 (490L).

Generally the election judges determine whether or not the facts are such as to entitle a CCC employee to vote. 1934 OAG 405, April 6, 1934 (639j).

The 1868 amendment grants to citizens of foreign birth the right to vote, if they have declared their intentions to become citizens. 1936 OAG 218, Aug. 16, 1935 (490h).

The residence of a soldier and his wife is a question of fact. OAG Sept. 29, 1944 (490k).

A resident of Washington, D. C., who resided there 20 years after becoming of age and never has resided in Minnesota during that time is not entitled to vote in Minnesota. After he attained the age of 21 years he establishes his own residence, and such residence is not determined in any way by the residence of his father. 1944 OAG 139, April 10, 1944 (490-J-2).

Persons residing in territory annexed to a city cannot vote at a city election occurring less than 30 days after the date of the annexation. OAG Nov. 1, 1945 (64-N).

Permitting taxpayers only to vote on bond issues. 6 MLR 330.

Domicil at a place other than the home. 18 MLR 224.

Separate domicil of wife while living on amicable terms with husband. 18 MLR 476.

Conflicting adjudications as to domicil. 18 MLR 736.

Uncertain nationality status of German refugees. 30 MLR 372.

### 3. Citizens of the United States

In view of Philippine Independence Act under which inhabitants of Philippine Islands are considered as aliens for purposes of immigration, a native-born Filipino who resided in the United States but had not been admitted to United States citizenship was an "alien" required by the Alien Registration Act to register and be finger-printed. U. S. v Gancy, 54 F. Supp. 755.

Where a woman married a Canadian and moved to Canada, but later returned to the United States and divorced her husband, her minor child is entitled to benefits of American citizenship, the mother not having renounced her American citizenship. In re Black, 64 F. Supp. 518.

### 4. Tribal Indians

Election officials who wilfully refuse to allow qualified Indians to vote at school elections are subject to prosecution. 1934 OAG 398, Sept. 21, 1934 (490g).

Indian rights and the federal courts. 24 MLR 145.

#### Section 2. NON-ELIGIBLE.

A person who has been convicted of a felony in Minnesota under Federal law can have his right to vote and hold office restored by a pardon from the President of the United States, and in no other manner. 1934 OAG 399, May 2, 1933 (68d).

A special municipal judge may file for the regular position of municipal judge, holding his present office pending the election. 1934 OAG 401, March 25, 1933 (184i).

The county auditor is governed by the affidavits of candidacy filed in his office; cannot go behind the statements therein, or determine whether or not the candidate has lost his citizenship; and unless directed otherwise by a court must place the candidate's name on the primary ballot. 1940 OAG 73, Aug. 8, 1940 (184i).

It is the fact of conviction, and not the fact of imprisonment, which disqualifies a voter. 1940 OAG 88, April 8, 1939 (490d).

A person might be insane and not entitled to vote even though discharged from a state hospital; and a person may be a sane person and establish proof of it though adjudged insane. He is entitled to vote if he understands the nature of his act. That is the essential test. 1942 OAG 82, Oct. 22, 1942 (490F); OAG Jan. 22, 1945 (183r).

A person who has been convicted of felony under the Laws of the United States is not entitled to file for office in Minnesota. 1944 OAG 136, July 17, 1944 (144-i).

A person may vote or hold state office though convicted of a misdemeanor under federal law. OAG April 1, 1946 (471-J).

### Section 3. RESIDENCE NOT LOST IN CERTAIN CASES.

A Minnesota resident who wandered into Wisconsin and was declared insane, had not lost his residence for the purpose of hospitalization, and may be returned to Minnesota. 1934 OAG 532, May 11, 1933 (248b-7).

A qualified voter who is a member of the Minnesota national guard and is called out of the state in military service retains his right to file as a candidate for public office and as a voter may participate in the state primary and general election and to that end proceed under the absent voters act. 1940 OAG 89, Aug. 5, 1940 (639e).

Residence of a soldier, for voting purposes, may be considered to be that of his wife. Judge of election to determine as in other cases. It is not the duty of the county auditor to determine. 1944 OAG 140, Sept. 2, 1944 (639-E).

### Section 5. CIVIL PROCESS SUSPENDED ON ELECTION DAY.

A notice of appeal from the probate to the district court is not "process," and service of the notice on election day is not prohibited by the provisions of section 645.44, subd. 4. Dohmen v Simmons, 200 M 55, 273 NW 364.

### Section 7. WHO MAY HOLD OFFICE.

1. Generally.
2. Eligibility to office.
3. Other than constitutional qualifications.

#### 2. Eligibility to office

Neither constitution nor statute requires as a condition precedent to incorporation of a municipality the existence therein of a freehold population. The motives of the electors at a city charter election are not to be considered so long as their actions are within the law. State ex rel v City of Frazer, 191 M 427, 254 NW 776.

In the absence of the restrictions in Minnesota Constitution, Article 4, Section 9, and Article 6, Section 11, the relator could file for any office to be filled. Miller v Holm, 217 M 168, 14 NW(2d) 99; 1938 OAG 279, March 16, 1937 (184i).

Right to use stickers. 1934 OAG 395, Feb. 4, 1933 (186); 1940 OAG 71, Sept. 26, 1940 (28a-8); 1942 OAG 188, March 27, 1942 (59-A-5).

Article 7, Section 7, controls and supersedes an inconsistent charter provision. 1938 OAG 53, June 4, 1937 (63a-1).

Requirement that officers must own property is not valid. 1938 OAG 234, June 14, 1938 (184i).

A rural mail carrier may serve as village clerk. OAG May 13, 1946 (358-E).

A candidate defeated at the primary election may be elected by sticker votes should he receive a majority of the votes cast at the general election for the office sought. 1940 OAG 71, Sept. 26, 1940 (28a-8).

The office of street commissioner and member of the school board are not incompatible. 1942 OAG 226, June 2, 1941 (358-F).

A layman may be elected, and may hold the office of city attorney, but it is doubtful if he would be allowed to represent the city in court. 1942 OAG 188, March 27, 1942 (59-A-5).

A person convicted of felony under the federal laws is not entitled to file for office in Minnesota. 1944 OAG 136, July 17, 1944 (184-i).

The following offices are not incompatible: town clerk and county commissioner. OAG Sept. 15, 1944 (358a-3);

Village assessor and justice of the peace. OAG Nov. 30, 1944 358d-5);

Deputy county auditor and county land commissioner. OAG Dec. 2, 1944 (358a-2);

Alderman and school janitor. OAG Dec. 18, 1944 (358f).

Offices constitutionally created or recognized are subject to all the provisions prescribing the power of appointment to them and their qualifications and tenure; and the power of the courts to enforce these particularized constitutional mandates cannot be excluded. 20 MLR 726.

Section 8. WOMEN MAY VOTE. (Obsolete.)

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1875, Chapter 2, ratified November 2, 1875, creates a new section permitting the legislature to enact laws giving to women the right to vote at school elections and to hold certain school offices.]

[Amendment proposed by Laws 1897, Chapter 175, ratified November 8, 1898; was self-executing and extended to women the right to vote for library boards.]

[NOTE: There have been no further amendments to Article VII, Section 8, of our State Constitution, but in effect the adoption of the 19th Amendment to the Federal Constitution is to render null and of no effect the word "male" in Section 1.]

Section 9. OFFICIAL YEAR OF THE STATE.

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1883, Chapter 2, ratified November 6, 1883, created a new section. Under its provisions state elections have been held biennially since 1884.]

All judges of the supreme and district courts, whenever elected, are now holding for a term of six years from the first Monday in January next succeeding their election; and this applies in case of a vacancy in office, whether or not the governor makes an interim appointment. *Flakne v Erickson*, 213 M 149, 6 NW(2d) 40; *Enger v Holm*, 213 M 158, 6 NW(2d) 101.

County officers are entitled to compensation for the days of service rendered in the month of January, up to the time their successors qualify and take office. 1934 OAG 240, Dec. 1, 1934 (104a-9); 1934 OAG 296, March 20, 1934 (347j); 1936 OAG 118, Feb. 2, 1935.

The terms of municipal court judges are controlled and fixed by state law and cannot be changed by provisions of home rule charter. 1934 OAG 291, Dec. 1, 1934 (307k); 1935 OAG 161, May 29, 1936 (347k).

Vacancies occurring in judicial office. 1942 OAG 75, Oct. 1, 1942 (184-D); 1942 OAG 76, July 27, 1942 (184-D); 1942 OAG 77, Sept. 21, 1942 (184-D).

An appointive term does not expire until the successor qualifies, and he cannot qualify until there is issued to him a certificate of election. 1944 OAG 293, Oct. 21, 1944 (371-A-5).

**ARTICLE VIII**

**SCHOOL FUNDS, EDUCATION, AND SCIENCE**

Section 1. UNIFORM SYSTEM OF PUBLIC SCHOOLS.

When a city engages in activities which are of a nature ordinarily engaged in by private persons and which subject private persons to liability for negligence,

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the city is likewise liable for negligence. *Borwege v City of Owatonna*, 190 M 394, 251 NW 915.

The power of the school board to levy taxes is defined and limited by L. 1921, c. 332, and the statute does not contravene the provisions of Minnesota Constitution, Article 8, Sections 1 to 3. *Board v Borgen*, 192 M 369, 256 NW 894.

Even where an emergency exists, a charter limitation upon the taxing power of a board of education is effective to restrict efforts to exceed it. *Board of Education v Erickson*, 209 M 39, 295 NW 302.

If the school board, in its honest judgment, is of the opinion that the serving of hot luncheons to all students at noon at the schoolhouse will promote physical and mental development of the school children and will tend toward the maintenance of an efficient school system, the board may adopt a rule to that end. 1934 OAG 323, Jan. 17, 1934 (159b-11).

Pupils, persons between the ages of five and 21. 1936 OAG 191, Sept. 3, 1935 (168).

Since the teacher employed is not a qualified teacher holding a proper certificate, the district is not entitled to receive apportionment aid. 1938 OAG 227, Oct. 6, 1937 (8b).

### Section 2. PROCEEDS OF SCHOOL LANDS TO BE A PERPETUAL FUND.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1875, Chapter 3, ratified November 2, 1875, added to Article VIII, Section 2, a second paragraph beginning "Suitable laws" and related to the investment of state trust funds.]

[Amendment proposed by Laws 1881, Chapter 4, ratified November 8, 1881, added a third paragraph beginning "All swamp lands."]

[Amendment proposed by Laws 1915, Chapter 379, ratified November 7, 1916, added a new paragraph beginning "A revolving fund."]

1. Public sale; eminent domain.
2. Mineral lease.
3. Adverse possession.

#### 1. Public sale; eminent domain

L. 1931, c. 186, creating a department of conservation and transferring to the conservation commissioner all functions of the state auditor in respect to state lands, as land commissioner or otherwise, by a practical interpretation of the swamp land amendment of 1881. *State v Finnegan*, 188 M 54, 246 NW 521.

Proceedings in condemnation is equivalent to public sale. *State ex rel v Flach*, 213 M 357, 6 NW(2d) 805.

Under a drouth emergency, the commissioner may lease state forest or grazing land to preserve live stock. 1934 OAG 750, July 23, 1934 (928c-13).

Distribution under L. 1935, c. 290, is in accordance with provisions of Minnesota Constitution, Article 8, Section 2. 1938 OAG 211, Jan. 5, 1937 (8b).

It is not within the constitutional power of the Minnesota supreme court to make any grants of state lands. That power resides in the legislature. 24 MLR 321.

#### 2. Mineral lease

Where the state of Minnesota leased school mining lands for 50 years to an individual who assigned the lease to a private corporation which subleased to private parties who were required to pay to the corporation royalties after paying royalties required by original lease to state, income received by the corporation



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from sublessees is not exempt from federal income tax, since the corporation parted with its direct relationship with state. *Wanless v Commissioner*, 75 F (2d) 779.

## Section 3. PUBLIC SCHOOLS IN EACH TOWNSHIP TO BE ESTABLISHED.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1877, Chapter 3, ratified November 6, 1877, added a new paragraph prohibiting the appropriation of state money in support of sectarian schools. The paragraph begins "But in no case."]

Chapter XV of the home rule charter of Minneapolis, conferring certain powers upon the board of estimate and taxation, does not deprive the board of education of the city of Minneapolis of its power to levy taxes to carry out the duty to maintain a thorough and efficient system of public education. *State ex rel v Erickson*, 190 M 216, 251 NW 519.

Declaratory judgment determining the powers of the board of education and the county auditor as to levying and collection of school taxes in Duluth. *Board v Borgen*, 192 M 369, 256 NW 894.

History of civil service as applied to schools. *McSherry v City of St. Paul*, 202 M 106, 277 NW 541.

The duties of school districts are defined by the statutes notwithstanding the constitutional mandate to the legislature by Minnesota Constitution, Article 8, Sections 1, 3, to provide a general and uniform system of public schools and to make such provisions as will secure a thorough and efficient system of public schools in each township of the state. *State ex rel v School District*, 204 M 279, 283 NW 397.

Section 132.01 uses the word "resides" in the broad sense of being an inhabitant as distinguished from the more restricted sense of domicile, and children of proper age inhabiting an orphan home in a school district are entitled to free education therein. *State ex rel v School Board*, 206 M 67, 287 NW 625.

A charter limitation upon the taxing power of a board of education is effective to restrict efforts to exceed it. *Board v Erickson*, 209 M 40, 295 NW 302.

Under certain circumstances hot lunches may be furnished to school children at expense of the district. 1934 OAG 323, Jan. 17, 1934 (159b-11).

The mandate of the constitution cannot be disregarded in imposing tax limitations. Whether in a given case the tax limitation is too severe, is a question of fact, upon court review. 1938 OAG 427, Oct. 9, 1937 (519m).

Students of private and parochial schools may attend special classes in the public schools, but such students cannot be counted in apportioning state aid. OAG Oct. 5, 1944 (166a-7).

Constitutional provisions relating to religious instruction in schools. 11 MLR 571.

Reading of the Bible in public schools as sectarian instruction or religious worship. 11 MLR 675.

Validity of appropriations of public funds that inure to the benefits of sectarian schools. 27 MLR 311.

## Section 4. UNIVERSITY OF MINNESOTA; LOCATION CONFIRMED.

The attempt by Spl. L. 1878, c. 69, to grant to the new corporation an immunity from taxation of all its property, of whatever kind and however used, was unconstitutional. By Chapter 69, the Minnesota Central University, organized under L. 1854, c. 36; was not continued in existence. A new corporation, now Pillsbury Academy, was created. *State v Trustees*, 204 M 371, 283 NW 727.

University of Minnesota cannot be included under the divisional code authority for general contractors and cannot be required to pay the supporting percentage. 1934 OAG 767, Nov. 22, 1934 (88b).

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An order from the industrial commission, directing changes in a nurses' home built under the supervision of the board of regents on the grounds of the University, cannot be mandatory. 1934 OAG 769, May 26, 1933 (618e-1).

University of Minnesota purchasing procedure is entirely controlled by the board of regents. 1938 OAG 399, Aug. 11, 1938 (618a-5).

It is conceivable that some type of a collective bargaining agreement between a labor union and a governmental agency that has the constitutional powers possessed by the board of regents may be so drafted that it will be upheld by the courts. Any such agreement is the responsibility of the board. 1944 OAG 156, Oct. 23, 1943 (270-D).

The requirement of the regents' presence at a meeting designed to accomplish a conciliation of the dispute with the employees of the University is a proper exercise of the police power of the state and is not contrary to Article 8, Section 4, of the State Constitution; but the remaining part of L. 1947, c. 335, s. 4, as it applies to the University of Minnesota is unconstitutional. The regents cannot be compelled to arbitrate wages and hours. OAG July 8, 1947 (270-D).

Expulsion from University because of low grades. 17 MLR 809.

Refund of tuition (see note). 26 MLR 225.

Section 5. PERMANENT SCHOOL FUNDS MAY BE LOANED TO DISTRICTS OR COUNTIES FOR SCHOOL PURPOSES.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1885, Chapter 1, ratified November 2, 1886, added a new section relating to loans from the permanent school funds to districts or counties for school purposes.]

Per capita tax; L. 1941, c. 543, applied; limits of tax levy discussed. 1942 OAG 334, April 6, 1942 (519-I).

Section 6. INVESTMENT OF PERMANENT SCHOOL AND UNIVERSITY FUNDS; APPROVAL; BONDED INDEBTEDNESS NOT TO EXCEED 15 PER CENT, DRAW NOT LESS THAN TWO PER CENT, RUN NOT LESS THAN ONE YEAR NOR MORE THAN 30 YEARS.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1895, Chapter 6, ratified November 3, 1896, added a new Section 6 authorizing the investment of the permanent school and university fund in the purchase of bonds of any county, school district, town, or village of the state provided the bonded indebtedness of the municipality did not exceed seven per cent of the assessed valuation.]

[Laws 1903, Chapter 25, proposed to change the seven per cent limitation to fifteen per cent and was ratified November 8, 1904.]

[Laws 1915, Chapter 380, ratified November 7, 1916, permitted the investment of school and university funds in first mortgages on improved farms in the state up to thirty per cent of their cash value.]

[Amendment proposed by Laws 1941, Chapter 171, was ratified November 3, 1942. This authorized the investment of swamp land funds in a manner similar to the investment of school and university funds.]

Establishment of rural credit bureau was authorized by amendment to Minnesota Constitution, Article 9, Section 10, adopted in 1922. It was created under provisions of L. 1923, c. 225. It is being liquidated by a conservator under the provisions of L. 1933, c. 386. The sale of bonds without competitive bidding may be enjoined. The requirements of section 41.14 are mandatory. *Rockne v Olson*, 191 M 310, 254 NW 5.

Even though insured by FHA, federal housing administration mortgages are not legal investment of state trust funds where the amount of the mortgage exceeds thirty per cent of the value of the property. OAG March 9, 1944 (928b).

State may not purchase in excess of fifteen per cent of the total assessed valuation of a village. OAG April 25, 1934.

Bonds must yield two per cent. The stated rate in the instrument is not controlling. OAG April 17, 1946 (928-A-7).

Section 7. NON-AGRICULTURAL LANDS.

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1913, Chapter 592, ratified November 3, 1914, added a new section which authorized the setting apart of certain state lands as state forests and the management thereof on forestry principles.]

Section 8. EXCHANGE OF PUBLIC LAND.

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1937, Chapter 492, ratified November 8, 1938, authorized the exchange of public lands of the state for lands of the United States or privately owned lands as the legislature might provide.]

Exchange of trust fund land for tax-forfeited lands under control of counties is not permissible. OAG Feb. 19, 1945 (700d-6).

This amendment was proposed by L. 1937, c. 492, and adopted Nov. 8, 1938. Similar proposals were rejected by the electorate in 1930, 1932, 1934, and 1936. 22 MLR 228.

**ARTICLE IX**

**FINANCES OF STATE; BANKS AND BANKING**

Section 1. POWER OF TAXATION; LEGISLATURE MAY AUTHORIZE.

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1869, Chapter 51, ratified November 2, 1869, added a proviso authorizing municipal corporations to levy assessments for local improvements on property benefited.]

[Amendment proposed by Laws 1881, Chapter 1, ratified November 8, 1881, broadened the powers of taxation for local assessments as had been provided by the amendment adopted on November 2, 1869.]

[Amendment proposed by Laws 1893, Chapter 1, ratified November 6, 1894, added an additional clause authorizing taxation on inheritances.]

[Amendment proposed by Laws 1895, Chapter 7, ratified November 3, 1896, authorized the legislature to impose taxes on sleeping, parlor and drawing room cars, telegraph and telephone companies, express and insurance companies, and other industries.]

[Amendment proposed by Laws 1905, Chapter 168, ratified November 6, 1906, supersedes Sections 1, 2, 3, and 4, and the unnumbered section adopted November 3, 1896. This is the so-called "wide open tax amendment."]

[Amendment proposed by Laws 1933, Chapter 442, ratified November 6, 1934, exempted certain household goods and farm machinery from taxation.]

Prior to amendment of 1906

1. Generally.
2. Special assessments.

3. Inheritance taxes.
4. Equality and uniformity.

Subsequent to amendment of 1906

5. Classification; uniformity.
  - a. Generally.
  - b. Classification.
  - c. Uniformity.
  - d. Local improvements.
  - e. Gross earnings.
  - f. Motor vehicles.
  - g. Money and credits.
  - h. Mortgage registry tax.
  - i. Occupation tax.
  - j. Wheelage tax.
  - k. Royalty tax.
  - l. Exemptions.

Prior to amendment of 1906

### 1. Generally

Does exemption of church property extend to property not reasonably necessary for its purpose. 8 MLR 531.

Exemption of property owned or used by religious organizations. 11 MLR 541.

Status of the municipal corporation in American Law. 16 MLR 343.

Exemption of educational corporations. 26 MLR 763.

Federal power to tax and to spend. 31 MLR 328.

### 4. Equality and uniformity

State income tax and Minnesota constitution. 12 MLR 683.

Subsequent to amendment of 1906

### 5. Classification; uniformity

#### a. Generally

In 1907 immediately following the "wide open" tax amendment, and at various legislative sessions thereafter, many lieu tax laws were enacted. *Bemis v Wallace*, 197 M 223, 266 NW 690.

By special law 1878, c. 69, Minnesota Central University, organized under L. 1854, c. 36, was not continued in existence. A new corporation, Pillsbury Academy, was created. The attempt by the law of 1878 to grant to the new corporation an immunity from taxation of all its property, of whatever kind and however used, was unconstitutional under Minnesota Constitution, Article 9, Sections 1 and 3, as it then stood. *Trustees v State*, 204 M 366, 283 NW 727.

One may not, while seeking the benefits of a statute, attack it constitutionally. *Byard v Commissioner*, 209 M 216, 296 NW 10.

It is the province of the legislature to devise the mode, form, and extent of taxation to be imposed. Where the vendee under a contract has taken possession of the land, his interest for the purpose of taxation is the same as that of any other owner. *Petition of S. R. A. Inc.*, 213 M 489, 7 NW(2d) 484; 219 M 493, 517, 18 NW(2d) 452.

The federal act creating Minnesota's territorial status vested its legislature with broad powers in the field of legislation. It bestowed upon that body adequate

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authority to create the respondent corporation with all the functions necessary to effectuate its objects. A valid legislative grant amounting to a contract may not be impaired by subsequent legislation. *State v Trustees*, 217 M 404, 14 NW(2d) 773.

A valid legislative grant amounting to a contract may not be impaired by subsequent legislation. *State v Trustees of Hamline*, 217 M 399, 14 NW(2d) 773.

After the adoption of the 1906 amendment to Minnesota Constitution, Article 9, the state, exercising, through the legislature, its inherent sovereign power to tax, was restrained only by the equal protection clause of the United States Constitution, Amendment XIV, and the uniformity clause of the 1906 amendment. It might tax the occupation of mining and classify taxpayers within that occupation if all taxpayers similarly were brought within a class and uniformly dealt with. *Lyons v Spaeth*, 220 M 563, 20 NW(2d) 481.

The war risk contributions act, enacted under the police power to relieve the unemployment hazards resulting from a wartime economy, is to be liberally construed. The retroactive application of the war risk contributions act to a period antedating the enactment of the statute, all within the same calendar year, is to a transaction period sufficiently recent not to be violative of due process of law under federal and state constitutions. *State v Industrial Tool Works*, 220 M 593, 21 NW(2d) 33.

The apportionment of taxes and assessments is a legislative function. If the question of benefits is a matter upon which reasonable men may differ, the determination by the taxing officers must be sustained. *Qvale v City of Willmar*, 223 M 51, 25 NW(2d) 699.

An occupation tax measured solely by the weight of ore mined would result in marked inequality as between members of the class of persons engaged in mining iron ore. Aside from consideration of uniformity and equality, the occupation tax amendment to the state Constitution precludes the imposition of a tax on the business of mining which is not based on the value of the ore mined. The tax on mining predicated on a fixed rate per ton without regard to value would probably be held to be in contravention of the provisions of the constitution. The royalty tax is upon interest in mineral lands from which permission has been given to extract ores upon payment of royalty. The amount of exaction is determined by reference to the sum actually received for the use of such interest. Legislation requiring owners of mines to pay the royalty tax notwithstanding any agreement to the contrary between the mine-owners would be unconstitutional because it impairs the obligations of contracts. Aside from administrative difficulties in determining the net income of one receiving both royalty and other gross income, legislative effort to classify royalty receipts separately from other income, and particularly from other rental income within the structure of a single taxing statute applying net income as a measure of imposition, presents grave questions of uniformity and equality in treatment. OAG March 21, 1947 (311-i-3).

Constitutionality of Minnesota state income tax law. 12 MLR 683; 18 MLR 93, 97.

Taxation of Indian property. 15 MLR 182.

Taxation of intangibles. 15 MLR 741.

Legal character of income tax imposed. 18 MLR 97.

Requirement of territorial uniformity in distribution of tax proceeds. 20 MLR 234.

Validity of our appropriation of public funds for payment of a moral obligation arising through reliance on an unconstitutional statute. 20 MLR 550.

Special fund doctrine. 23 MLR 393.

Validity of state housing authorities act. 26 MLR 81.

## b. Classification

A waterworks plant owned by the city of St. Paul but located in Anoka county was not abandoned, but kept as a reserve plant. That portion of the land leased to

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private parties is taxable, but the portion not leased and reserved and kept ready for use by the city is exempt. *County of Anoka v City of St. Paul*, 194 M.554, 261 NW 588.

A general Minnesota property tax applied to all personal property in the state and without discrimination applied to the corporation's entire fleet is constitutional. *State v N. W. Airlines*, 213 M 395, 7 NW(2d) 691, 322 US 292.

One class need not materially differ from another, but there must be a clear distinction, and the classification must be germane to the government's objective. *State v Minn. Federal*, 218 M 229, 15 NW(2d) 568.

The contributions tax assessed against an employer under the employment and security act is an excise or privilege tax on the right or privilege to employ labor. The interpretation adopted by the United States Supreme Court will be followed. No vested right is acquired as against amendatory legislation. *State v Industrial Tool Works*, 220 M 591, 21 NW(2d) 31.

The classification of cities by population contained in Minnesota Constitution, Art. 4, s. 36, is not exclusive or restrictive, but merely empowers the legislature to enact general legislation based upon such classification, regardless of whether population is germane to the subject matter or purpose of the enactment. *Leighton v City of Mpls.* 222 M 516, 25 NW(2d) 263.

The government sold a piece of property located in St. Paul. It put the vendee in possession but retained the legal title, with right of re-entry, as security for a portion of the purchase price. The state levied a tax and obtained a tax judgment. The petitioner, by certiorari, asks for determination of its claim that the property was tax-exempt and asks a review of the judgment. Petitioner is the owner of the beneficial interest and in possession and the fact that the legal title still rests in the United States does not put his private property in the exempt class. *S. R. A. v State*, 66 SCR 752.

Is income tax an excise or a property tax? 6 MLR 254.

Constitutionality of separate classification of chain stores for purposes of taxation. 15 MLR 341, 18 MLR 596.

Validity of graduated rates and exemptions in Minnesota income tax law. 18 MLR 582.

Requirements for constitutionality in case of a classified ad valorem property tax. 18 MLR 751.

### c. Uniformity

Minnesota Constitution, Article IX, Section 1, was adopted under circumstances which show that it was the purpose to relieve the legislature of the rather narrow restrictions theretofore placed upon that branch of the government by the constitution, and to enlarge its powers in regard to taxation. *State ex rel v Hubbard*, 203 M 118, 280 NW 9.

The commission did not violate the uniformity clause of the state constitution by granting the application for abatement of taxes. Since the application granted was not one for the reduction of assessed valuation of property, and does not abate special assessments, the order of the commission was not affected by failure to give notice to the taxing officials of the municipality. *Application of Calhoun Beach Holding Co.*, 205 M 590, 287 NW 317.

Without defining the conditions which the commission must find before it could impose a penalty, the legislature could not leave the imposition of the penalty to the discretion of the commission. That would be an unconstitutional delegation of legislative powers. There would also be a lack of uniformity. *State v Oliver Iron Mining Co.*, 207 M 636, 292 NW 407.

L. 1933, c. 213, one item of which was a tax on gross sales, is a violation of the uniformity clause of the Minnesota constitution. *National Tea v State*, 205 M. 443, 286 NW 360; 208 M 607, 294 NW 230; 309 US 552.

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Personal property tax imposed by statute is nondiscriminatory. The gasoline products transported in interstate commerce, having come to rest, was taxable in Minnesota. *State v Continental Oil*, 218 M 123, 15 NW(2d) 542.

L. 1943, c. 650, s. 2, the war risk contribution tax act, amending the state employment and security act, is not violative of the provisions of the federal and state constitutions affording to all persons equal protection and requiring that taxes be uniform upon the same class of subjects. *State v Donovan*, 218 M 606, 16 NW(2d) 897.

After the adoption of the 1906 amendment to Minnesota Constitution, Article IX, the state exercising, through the legislature, its inherent sovereign power to tax, was restrained only by the equal protection clause of United States Constitution, Amendment XIV, and the uniformity clause of the 1906 amendment. It might tax the occupation of mining and classify taxpayers within that occupation if all taxpayers similarly situated were brought within a class and uniformly dealt with. *Lyons v Spaeth*, 220 M 563, 20 NW(2d) 482.

Is motor vehicle tax a privilege or a property tax? 6 MLR 334.

Requirement of territorial uniformity in distribution of tax proceeds. 20 MLR 234.

Constitutionality of requirement that employer pay \$1,000 into state treasury where deceased employee leaves no dependents. 23 MLR 555.

Liability of rural credit department for taxes accruing against its land while in private legal or equitable ownership. 25 MLR 392.

## d. Local improvements

Although the cost of dredging 410 feet of the river was charged to the permanent improvement fund of the city, and the improvement presently benefited one private company only, there is no showing that the lower court abused its discretion in temporarily restraining the city from going ahead with action leading to the expenditure. *Behrens v City of Minneapolis*, 199 M 365, 271 NW 874.

L. 1943, c. 500, providing for creation of a metropolitan airports commission does not violate Article IX, Section 1, by authorizing taxation for a private purpose. *Erickson v King*, 218 M 99, 15 NW(2d) 201.

The provisions of L. 1941, c. 544, and L. 1943, c. 590, giving the taxpayers within certain classes, by those laws creating "credit for certain high labor costs in computing the basis of their taxes," were, in effect, provisions reducing the rate of tax and were not in the nature of bounties to such taxpayers. *Lyons v Spaeth*, 220 M 563, 20 NW(2d) 482.

Taxation of taconite. 26 MLR 255.

## e. Gross earnings

The imposition of a franchise tax on a sleeping car company, which is subject to gross earnings receipt tax, is violative of the rule against double taxation and as contravening the constitutional provision for uniformity in taxes. *Pullman Co. v Commissioner*, 223 M 96, 25 NW(2d) 839.

## f. Motor vehicles

L. 1941, c. 548, appropriating moneys from the trunk highway fund to the office of the auditor, treasurer, civil service commission, and the commissioner of administration, respectively, to defray expenses reasonably attributable to highway matters is not violative of the constitutional provisions. *Cory v King*, 214 M 535, 8 NW(2d) 614.

An excise tax may be imposed upon gasoline consumed in municipally owned vehicles operated upon the public streets and highways for the purpose of constructing, repairing, or maintaining such streets and highways. The imposition of such tax does not offend against Minnesota Constitution, Article IX, Section 1,

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nor against the Federal Constitution, Amendment 14. *State v Spaeth*, 223 M 218, 26 NW(2d) 115.

### i. Occupation tax

After the adoption of the 1906 amendment, the state was restrained only by the equal protection clause of the federal amendment XIV, and the uniformity clause of the 1906 amendment. It might tax the occupation of mining and classify taxpayers within that occupation if all taxpayers similarly situated were brought within a class and uniformly dealt with. Provisions for credit for certain high labor costs were, in effect, provisions reducing the rate of tax and were not in the nature of bounties. *Lyons v Spaeth*, 220 M 563, 20 NW(2d) 481.

### L. Exemptions

Barber colleges, dancing academies, riding schools, beauty and hairdressing schools, and the like, are not "seminaries of learning" and are not exempt from taxation. *State v Northwestern College of Speech Arts*, 193 M 263, 258 NW 1; 1940 OAG 326, May 7, 1940 (414b-3).

Construing section 291.06 in the light of its purpose, 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 statute are met. *Reynold's Estate*, 219 M 449, 18 NW(2d) 238.

The federal government when it contracts with citizens, is controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against it. A state may levy a uniform and nondiscriminatory tax upon the equitable interests of purchasers of property from the United States under executory sales contracts. In re *S. R. A. Inc.* 219 M 509, 18 NW(2d) 442.

Land owned by a cemetery association is not exempt from taxation as a public burying ground under section 272.02 unless the land is actually and presently used for the burial of the dead. *State v Ritschel*, 220 M 578, 20 NW(2d) 673.

Hospital structure of petitioner corporation organized under sections 309.01 to 309.06, relating to social and charitable corporations, which is operated as a public hospital without stockholders and without profit or private gain to its organizers, trustees, or officers, is exempt from taxation under Minnesota Constitution, Article 9, Section 1. The decision is governed by *State v Longstreet*, 198 M 263, 269 NW 460, and *Village v Commissioner*, 217 M 528, 14 NW(2d) 923, and distinguished from *State v Willmar Hospital*, 212 M 38, 2 NW(2d) 564. *Fairmont Community Hospital v State*, 221 M 107, 21 NW(2d) 244.

*St. Mary's Hospital* is not a legal entity, and the property is owned by the Academy of Our Lady of Lourdes, and operated by the Sisters of Saint Francis of the third order regular, affiliated to the congregation of Our Lady of Lourdes. The sisters are members of the corporation which has no capital stock. Its property, moneys and credits, are exempt from taxation. *State v Academy*, 221 M 227, 21 NW(2d) 617.

A residential property owned by a subsidiary corporation organized under the auspices and operated subject to the control of the established general church organization for the sole purpose of conducting missionary and educational work in foreign lands for the propagation of its religious faith, which property is furnished rent free to, and occupied by, such subsidiary corporation's executive director, is immune from taxation. *State v Board*, 221 M 536, 22 NW(2d) 642.

The nature of the use of the property, its reasonable relation to the accomplishment of the objectives of the institution which owns it, and the identity of these objectives with the public welfare constitute the *sine qua non* of all tax exemptions; and in a metropolitan area where established means of passenger travel are readily available, the location of residential church property at a considerable distance from the administrative offices of the church is of no significance and is immaterial. *State v Board*, 221 M 536, 22 NW(2d) 642.



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The power of the commissioner of taxation under section 270.07 is exceedingly broad, and he has the power to grant reductions or abatement under circumstances he may deem just and equitable. Each request for an abatement of taxes must be determined from the facts in that particular case. There was no abuse of discretion in granting abatement to the church in the instant case. 1940 OAG 291, Dec. 12, 1939 (414d-6).

Abatement of taxes properly granted on lands in area known as St. Croix Recreational Demonstration Area, leased to the United States by private parties, and used entirely by federal government. 1940 OAG 299, Oct. 18, 1940 (414a-2).

Eighty acres owned by the city of Springfield and devoted to raising crops, and occasional use as a landing field, but to be used as an airfield in time, is probably not exempt from taxation. 1940 OAG 300, July 24, 1939 (414a-11).

A cooperative association owns land and apartment building thereon. Each occupant buys one apartment. There can be no division of assessment and taxation. There can be no homestead exemption. 1940 OAG 307, Sept. 7, 1939 (232d).

The state highway department is not subject to the tax on the user of special use fuels under the provisions of section 296.04. 1942 OAG 286, Oct. 28, 1941 (324-E).

Property owned by a church society, and used exclusively for motor parking purposes by members attending services, is exempt from taxation. 1942 OAG 308, April 8, 1942 (414-D-6).

Land purchased to fill out full block for school site is not subject to taxation. 1942 OAG 347, Aug. 27, 1942 (414b-4).

Assessments of benefits by reason of the construction of a drainage system, made against state-owned land, was void at the time that it was made. Public property, used exclusively for any public purpose not subject to taxation or special assessments unless by special provision of the statute. 1944 OAG 339, Oct. 5, 1943 (408-C).

American Legion Post Home, used exclusively for Legion purposes, is not exempt from tax. 1944 OAG 353, March 3, 1944 (414-D-11).

Excise taxes required to be paid by public corporations under L. 1941, c. 495, are valid. 1944 OAG 357, July 26, 1943 (324-M).

Where land adjoining an established cemetery is purchased by the city for future cemetery purposes, if the land embraces only such area as may reasonably be anticipated is required to supply the needs of the near future, it is exempt from taxation. Any lands in excess of such area are not exempt. A similar rule would apply to land purchased for airport purposes. 1944 OAG 358, July 6, 1944 (414-D-4).

A four flat building acquired by a church, one apartment used as a parsonage and others rented out, is not exempt as church property. 1944 OAG 359, Aug. 3, 1944 (414-D-12).

Land owned by Red Cross, held for sale, but not used for charitable purposes, is not exempt. MBTA 149, Sept. 27, 1945.

Property leased, though income is used for maintenance of public playgrounds, is not exempt. OAG Jan. 2, 1946 (414-A-11).

If a municipality purchases a schoolhouse and remodels same into a community hospital, and it is so used, the property is not taxable. OAG Jan. 9, 1946 (622-1-8).

Even though a municipality owned airport, established pursuant to section 360.032, charges for services to certain planes, it is ordinarily exempt from taxation. OAG March 1, 1946 (414-A-11).

It is the use of the educational or church property which determines whether or not it is exempt from taxation. OAG April 5, 1946 (414-D-6).

On May 1, 1945, certain lots were private property, and were purchased on July 27, 1945, by a religious corporation who contemplated building a church thereon. The property legally remains on the tax rolls for 1945. OAG June 5, 1946 (414-D-6).

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Effect of corporation's long inactivity and amendment to charter subsequent to constitutional restriction against exemption upon exemption originally granted. 23 MLR 703.

Held exempt:

Used by missionaries supported by Lutheran board of missions, when home on a furlough. OAG Nov. 28, 1944 (414d-6);

College-owned building temporarily leased to federal agency. OAG Dec. 5, 1944 (414b-2);

Property conveyed in trust to village. OAG Feb. 27, 1945 (414a-11).

Exemption of property from taxation in the United States. 48 MLR 411.

Realty purchased with war veterans' compensation and disability benefits as exempt from state taxation. 18 MLR 485.

Validity of graduated rates and exemptions in Minnesota income tax law. 18 MLR 582.

Compromise of taxes, interest, and penalties before the period of redemption has expired. 18 MLR 860.

Constitutionality of Minnesota "tax bargain" statute. 19 MLR 715.

Effect of corporation's long inactivity. 23 MLR 701.

Liability of rural credit department for taxes accruing against land while in private or equitable ownership. 25 MLR 392.

Tax exemptions. 26 MLR 95.

Power to immunize federal instrumentalities from state taxation. 26 MLR 414.

Exempting farmers' cooperative associations from federal income tax. 29 MLR 343.

### Section 1A. OCCUPATION TAX.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1921, Chapter 529, ratified November 7, 1922, authorized a net profits tax on the occupation of mining.]

Within the doctrine of the 1906 wide open tax amendment, the 1922 amendment known as Section 1A required the imposition of an occupation tax upon everyone engaged in the business of mining and required that that tax should be based on the value of the ores, but it did not prohibit, either expressly or by implication, the classification of the taxpayers within that occupation or the imposition of a different rate of tax upon the taxpayers in the respective classes if all taxpayers similarly situated were brought within a class and were dealt with according to uniform rules. This involved authorized classification. It was allowable to grant to certain classes credit for high labor costs. *Lyons v Spaeth*, 220 M 563, 20 NW(2d) 481.

L. 1921, c. 223, imposing a tax on the business of mining iron ore, measured by a percentage of the value of the ore mined or produced, is an occupation tax. Even if substantially all the ore when mined is promptly shipped into other states to satisfy existing contracts, it is not interstate commerce and is subject to local taxation. *Oliver Iron Co. v Lord*, 262 US 172.

### Section 2.

#### AMENDMENTS ADOPTED

[Laws 1860, Concurrent Resolution 1, proposed an amendment which was ratified on November 6, 1860. This related to the annual levying of tax to cover expenses and a limitation regarding the payment of "Minnesota State railroad bonds." The amendment, having been declared unconstitutional both by the state and fed-

eral courts, was void from the beginning. This wide open tax amendment, adopted November 6, 1906, supersedes this section.]

Section 5. STATE DEBT LIMITED; HOW CONTRACTED.

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1927, Chapter 445, ratified November 6, 1928, related to the allocation of gasoline excise taxes.]

1. **Extraordinary expenditures.**
2. **Internal improvements.**
3. **Excise tax on gasoline.**

**1. Extraordinary expenditures**

Minnesota Constitution, Article IX (especially section 5), places a debt limitation on the state, but the efficiency of this section has, for practical purposes, been emasculated by the Minnesota courts' interpretations. *Brown v Ringdahl*, 109 M 6, 122 NW 469; *Moses v Olson*, 192 M 173, 255 NW 617; 23 MLR 392.

Harbor construction or repair is not one of those public improvements for which the county board may expend money or incur an indebtedness. OAG March 8, 1945 (125-B).

Under sections five and ten of Article IX, money may not be expended nor public credit granted except for a public purpose. A private enterprise is not such a public purpose. OAG Aug. 2, 1946 (469-a-15).

Constitutional debt limit. 26 MLR 103, 105.

Debt limitation; special fund doctrine. 23 MLR 393.

**2. Internal improvements**

Minnesota Constitution, Article IX, Section 5, providing that "the state shall never contract any debts for works of internal improvements, or be a party in carrying on such works," is subject to an implied exception in favor of works which are used by the state as a sovereign in performance of its governmental functions. Laws 1943, chapter 500, falls within the implied exception. *Erickson v King*, 218 M 98, 15 NW(2d) 201.

**3. Excise tax on gasoline**

L. 1941, c. 548, ss. 13, 14, 19, and 22, appropriating moneys from the trunk highway fund to the offices of auditor, treasurer, department of civil service, and commissioner of administration, respectively, to defray expenses reasonably attributable to highway matters, is not violative of Minnesota Constitution, Article 16. The test whether an appropriation is toward a highway purpose within the meaning of Article 16 is not whether each dollar appropriated is ear-marked for each particular item of highway expense, but rather whether the charge upon the highway fund accurately reflects highway expenses as borne by the offices and departments, and does not exceed the amount of expense properly attributable to highway matters. *Cory v King*, 214 M 535, 8 NW(2d) 614.

Minnesota Constitution, Article 9, Section 5, does not forbid the imposition of an excise tax on gasoline consumed in municipally-owned vehicles operated upon the public streets for the purpose of construction, repair, or maintenance. *State v Spaeth*, 223 M 218, 26 NW(2d) 115.

County boards have authority to turn over to townships fifty per cent of the so-called gasoline tax money turned over to counties under the provisions of L. 1929, c. 283, s. 8, as amended. 1940 OAG 130, June 9, 1939 (324d).

The state has taken over the municipalities' maintenance responsibility as to the trunk highway, and has virtually monopolized the taxation of motor vehicles

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and taxation of gasoline to support it and the rural portions of the trunk highway system, but has never assumed the municipalities' liability to travelers for failure properly to discharge its duties of maintenance. 26 MLR 320.

Excise taxes required to be paid by public corporations under chapter 296, are valid. Municipalities are not exempt. 1944 OAG 357, July 26, 1943 (324-M).

### Section 6. ISSUE OF BONDS FOR CREATED DEBT.

Ex. L. 1933-1934, c. 67, which provides an appropriation for direct relief, work relief, and employment to needy, destitute, and disabled persons, is valid against the following objections: (1) That the title embraces more than one subject; (2) that it appropriates taxes for a private as distinguished from a public purpose; (3) that it authorizes the state to carry on works of public improvement; (4) that it creates a public debt in contravention of Article 9, Section 5; and, (5) that it lends the state's credit in violation of Minnesota Constitution, Article 9, Section 10. *Moses v Olson*, 192 M 173, 255 NW 617.

See annotations to section 5.

### Section 7. LIMITATION AS TO WHEN DEBT MAY BE CONTRACTED.

See annotations to section 5.

As no treaty or proclamation has as of the date of this opinion ended the second world war, a proper bonus act may be passed at this time. OAG March 18, 1947 (82).

### Section 8. DISPOSITION OF FUNDS RECEIVED FOR BONDS.

See annotations to section 5.

The real and personal property, including moneys and credits, being devoted to hospitalization, are exempt from taxation. *State v Academy*, 221 M 227, 21 NW(2d) 617.

Where a general church organization owns and controls a subsidiary corporation which in turn owns certain residential property used by the organizations in their church extension work, the said property is exempt from taxation. *State v Board*, 221 M 536, 22 NW(2d) 642.

### Section 9. MONEY DRAWN FROM THE STATE TREASURY.

See annotations to section 5.

Under the provisions of the constitution as implemented by L. 1939, c. 431, art. 3, s. 16(h), unless there is sufficient unencumbered balance to meet it, making any payment or incurring an obligation is prohibited. 1940 OAG 230, June 28, 1939 (640a).

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).

### Section 10. CREDIT OF THE STATE LIMITED.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1858, Chapter 1, was ratified April 15, 1858. This was prior to the admission of Minnesota as a state on May 11, 1858.]

[Amendment proposed by Laws 1860, Concurrent Resolution 1, ratified November 6, 1860, superseded the original section.]

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[Amendment proposed by Laws 1921, Chapter 528, ratified November 7, 1922, superseded the original section. A system of state rural credits was authorized.]

The proposed sale of bonds was properly enjoined. Section 41.14 requires that rural credit bonds be sold only upon competitive bidding. *Rockne v Olson*, 191 M 310, 254 NW 5.

A state taxpayer may question, by a bill of injunction, a proposed new issue of state bonds. The establishment of the rural credit bureau was authorized by the amendment of Article IX, Section 10, of the constitution, adopted in 1922. It was created by L. 1923, c. 225. The liquidation of the bureau was required and provided for in L. 1933, c. 386, a conservator being in charge. A proposed sale of bonds without competitive bidding was properly enjoined. *Rockne v Olson*, 191 M 310, 254 NW 5; *Bjerke v Arens*, 203 M 502, 281 NW 865.

L. 1943, c. 500, does not violate Minnesota Constitution, Article IX, Section 10, by lending state credit in aid of corporation, since there is an implied exception to the provision of section 10 in favor of governmental instrumentalities similar to that in regard to Article IX, Section 5. *Erickson v King*, 218 M 99, 15 NW(2d) 201; 23 MLR 377.

The commissioner of iron range resources and rehabilitation cannot lend the money of the state raised by taxation to a private corporation. OAG July 16, 1947 (416-B).

Constitutionality of soldiers bonus law. 6 MLR 68.

To circumvent constitutional provisions similar to Article IX, Section 10, pensions or retirement benefits are said to be compensation for services previously rendered for which full compensation was not received at the time of their performance. 23 MLR 377.

Loan of credit. 26 MLR 102.

Section 12. STATE SCHOOL FUND; INVESTMENT; SAFE KEEPING; ALL STATE FUNDS TO BE DEPOSITED IN NAME OF STATE.

## AMENDMENTS ADOPTED

[Amendment proposed by Laws 1873, Chapter 4, ratified November 4, 1873, related to the safe-keeping, transfer, and disbursement of state and school funds and entirely supplanted and superseded the original section.]

Section 13. GENERAL BANKING LAW; PROVISION AND RESTRICTIONS.

The statute of limitations against constitutional double liability of stockholders in a state bank begins to run when such bank closes its doors and ceases to function as a bank, either because of being taken over by the commissioner of banks or because of absorption by another bank with the approval of the commissioner. *Doely v Benson*, 197 M 479, 267 NW 482.

Conveyance of property, though fraudulent as to creditors, is good as between the parties; statutes affecting such conveyance being for protection of creditors or subsequent purchasers. Creditors cannot impeach transfer of property as fraudulent unless injured thereby. Equity will not lend its aid to one seeking it solely on technical grounds. *Brill v Foshay Co.* 65 F(2d) 421.

Where administrator of assets of a New Jersey national bank in liquidation by receiver resulted in full payment of creditors with a balance remaining in hands of receiver, creditors are entitled to have balance applied to interest from date when insolvency was declared, as against contention of stockholders who have been compelled to pay super-added liability, that they were entitled to return of what was left of their assessments. *Stein v Delano*, 121 F(2d) 978.

Stockholders' liability. 12 MLR 419; 15 MLR 233.

Taxation problems in branch banking. 15 MLR 767.

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Section 14(a). SPECIAL PROVISION FOR A LOAN FOR HOSPITAL BUILDING FOR INSANE.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1872, Chapter 11, ratified November 5, 1872, added a new section, 14a, to increase the public debt for certain purposes.]

Section 14(b). MUNICIPAL DEBTS IN AID OF RAILROADS.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1872, Chapter 13, ratified November 5, 1872, authorized municipalities to issue bonds under certain conditions. This section is superseded by Article IX, Section 15, but was never expressly repealed.]

The only debt limitation in the constitution on municipal corporations is found in Article IX, Sections 14b and 15. 23 MLR 392.

Section 15. COUNTY, CITY OR TOWNSHIP AID TO RAILROADS LIMITED.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1879, Chapter 1, ratified November 4, 1879, is identical with Section 14b, except that it reduces the limit of indebtedness of municipalities for the stated purposes from ten per cent to five per cent of the value of the taxable property.]

Debt limitations; special fund doctrine. 23 MLR 392.

Section 16. STATE ROAD AND BRIDGE FUND.

### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1897, Chapter 333, ratified November 8, 1898, added a new section and is the first "road and bridge fund" amendment.]

[Amendment proposed by Laws 1905, Chapter 212, related to obtaining additional funds for the road and bridge fund. The state canvassing board declared that at the election on November 6, 1906, the amendment did not pass. An appeal was taken to the district court of the eleventh judicial district; a partial recount was had; and, based upon the theory of average error, the court found that the amendment had been adopted and entered judgment accordingly. An appeal was taken from this decision but later abandoned, and the amendment is accepted as having been ratified.]

[Amendment proposed by Laws 1909, Chapter 506, was ratified November 8, 1910. This supersedes the amended section and deals entirely with lending aid to the improvement of public highways and bridges and generally to the "state road and bridge fund."]

[Amendment proposed by Laws 1911, Chapter 390, ratified November 5, 1912, related to the maximum and minimum percentage of the road and bridge fund that may be allocated to counties.]

L. 1925, c. 297, as amended by L. 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. *Hallett v Spaeth*, 212 M 532, 4 NW(2d) 337.

See, *State v Spaeth*, 223 M 218, 26 NW(2d) 115.

See, *Cory v King*, noted under section 5.

See, *Erickson v King*, noted under section 10.

## ARTICLE X

## OF CORPORATIONS HAVING NO BANKING PRIVILEGES

## Section 1. CORPORATION FOR GENERAL PURPOSES.

History of the limitation upon the amount of authorized capital of business corporations. Comparative table laws of various states. *Liggett v Lee*, 288 US 550. Conditions precedent to maintenance of stockholders' suits. 15 MLR 470.

Effect of corporation's long inactivity and amendment of charter subsequent to constitutional restrictions against exemption upon exemption originally granted. 23 MLR 703.

Recovery of individual judgment in a stockholder's derivative suit. 23 MLR 973.

## Section 2. NOT TO BE CREATED BY SPECIAL ACT.

By special law 1878, c. 69, Minnesota Central University, organized under L. 1854, c. 36, was not continued in existence. A new corporation, Pillsbury Academy, was created. The attempt by the law of 1878 to grant to the new corporation an immunity from taxation of all its property of whatever kind and however used, was unconstitutional under Minnesota Constitution, Article IX, Sections 1 and 3, as it then stood. *Trustees v State*, 204 M 366, 283 NW 727.

Reason for and dates listed detailing the dates when constitutional prohibitions against enactment of special laws were adopted. *Liggett v Lee*, 288 US 550, 53 SC 490.

Constitutionality of statute incorporating state bar. 15 MLR 814.

Effect of corporation's long inactivity and amendment to charter subsequent to constitutional restrictions and exemption upon exemption originally granted. 23 MLR 704.

## Section 3. LIABILITY OF STOCKHOLDERS.

## AMENDMENTS ADOPTED

[Amendment proposed by Laws 1872, Chapter 12, ratified November 5, 1872, exempted stockholders in manufacturing corporations from double liability.]

[Amendment proposed by Laws 1929, Chapter 429, ratified November 4, 1930, authorized the legislature to "provide for, limit, or otherwise regulate the liability of stockholders." Double liability of stockholders in banks and trust companies was expressly retained.]

1. Prior to amendment of 1872.
2. After 1872 amendment and prior to 1930 amendment.
  - a. Generally.
  - b. Nature of liability.
  - c. Enforcement of liability.
  - d. Manufacturing enterprises.
  - e. Mechanical enterprises.
3. After 1930 amendment.
  2. After 1872 amendment and prior to 1930 amendment
    - a. Generally

Extension of time in stockholders' liability action. 1 MLR 367.

## c. Enforcement of liability

The liability of a stockholder, which attaches as soon as his relationship is assumed, is fixed by the constitution and stands as surety for corporate debts. *Knipple v Lipke*, 211 M 238, 300 NW 620.

Defendant purchased bank stock with his own means, held it for a year, accepted dividends thereon, gave no notice to the bank that he held it in trust, and exhibited other evidences of ownership. He is estopped from claiming, after the insolvency of the bank, that he merely acted as trustee. *Horton v Mercer*, 71 F 153.

Liability of stockholders under former state constitutional provision was contractual as regards effect of amendment repealing former provision on liability of stockholders to creditors whose obligations were incurred prior to amendment. The constitutional provision as it existed prior to the 1930 amendment was self-executing. *Badger v Hoidale*, 88 F(2d) 208.

A foreign receiver may maintain an action to enforce stockholder's liability in another state, so far at least as the federal courts are concerned, where the title to the property in question has been vested in him by conveyance or statute. *Oakes v Lee*, 290 US 62.

**3. After 1930 amendment**

The legislature, having in mind that by the November 1930 election the amendment of Article X, Section 3, of the constitution was adopted, doing away with stockholders' double liability in corporations except as to banking and trust corporations, enacted L. 1931, c. 205 (section 316.20), to speed up settlement of liabilities hanging over many stockholders. There is no valid objection to the law. The receiver in the instant case had served 18 months when the act took effect and the act gave him six months within which to bring the action, but he neglected to act in time. *Sweet v Richardson*, 189 M 496, 250 NW 46.

Defendant cannot escape the liability imposed by Article X, Section 3, on stockholders in a corporation by asserting that the sale of stock to him violated a penal statute. *Stem v National City*, 25 F. Supp. 953.

The "double liability" feature of corporations is no longer a part of our law. The constitutional amendment adopted in 1930 is not self-executory. The legislature still has the power to limit and regulate the liability of stockholders and members of corporations and cooperatives, regardless of how organized. 1940 OAG 2, June 30, 1939 (93a-18).

Stockholders' liability; effect of 1930 amendment. 15 MLR 222.

Effect of the 1930 amendment as to double liability. 17 MLR 88.

**Section 4. LANDS MAY BE TAKEN FOR PUBLIC USE.**

Zoning ordinances do not prevent condemnation of right of way through residential district. OAG Oct. 2, 1944 (817f).

Remedy where land is taken for public purpose without provision for just compensation. 9 MLR 480.

Right of a de facto corporation to exercise the power of eminent domain. 11 MLR 464.

Measure of compensation in eminent domain. 17 MLR 460.

Ascertainment of interest on compensation award. 18 MLR 878.

**ARTICLE XI**

**COUNTIES AND TOWNSHIPS**

**Section 2. CITIES OF 20,000 POPULATION MAY BE ORGANIZED INTO SEPARATE COUNTIES.**

L. 1933, c. 363 (section 375.02), as amended by adding a proviso that no city of the second class shall be in more than two commission districts, is not unconstitutional as against the objection that it is an arbitrary and capricious classification. *State ex rel v Cooke*, 195 M 101, 262 NW 163.



**ARTICLE XIII**

**IMPEACHMENT**

**Section 1. IMPEACHMENT AND REMOVAL FROM OFFICE.**

Removal from public office. 20 MLR 721.  
Judicial review of removals. 20 MLR 734.

**Section 2. REMOVAL OF INFERIOR OFFICERS.**

The governor's power to suspend an officer who is under charges for malfeasance or nonfeasance in office is incident to the power to remove such officer. State ex rel v Strunk, 219 M 529, 18 NW(2d) 457.

Where a constitution gives a general power or enjoins a duty, it also gives by implication every particular power necessary for the exercise of the one or the part performance of the other. State ex rel v Strunk, 219 M 532, 18 NW(2d) 457.

Where "wolf bounties" were fraudulently paid, the state may recover the money of which it was defrauded, from those who benefited or participated in the fraud. 1938 OAG 93, March 17, 1938 (47f).

Removal from public office. 20 MLR 727, 734, 735.

**ARTICLE XIV**

**AMENDMENT TO THE CONSTITUTION**

**Section 1. AMENDMENTS TO CONSTITUTION; MAJORITY VOTE OF ELECTORS VOTING MAKES AMENDMENT VALID.**

**AMENDMENTS ADOPTED**

[Amendment proposed by Laws 1897, Chapter 185, was ratified November 8, 1898. Prior to the adoption of this amendment, it was quite easy to amend the constitution. The amendment had the effect of making it exceedingly difficult.]

An amendment may be proposed by resolution or bill passed by a majority of both houses, and the approval of the governor is not required. OAG Nov. 12, 1946 (86-a).

Validity of amendments; a judicial question. 5 MLR 551.

**Section 2. REVISION OF CONSTITUTION.**

Need for constitutional revision in Minnesota. 11 MLR 189.

**ARTICLE XV**

**MISCELLANEOUS SUBJECTS**

**Section 1. SEAT OF GOVERNMENT.**

The Minnesota state historical society is a private corporation created by L. 1849, c. 44; and, except as the society voluntarily cooperates, is not subject to L. 1939, cc. 431 or 441. 1944 OAG 248, May 26, 1944 (230).

**Section 2. RESIDENTS ON INDIAN LANDS.**

Indian land titles in Minnesota. 2 MLR 177.  
Taxation of Indian property. 15 MLR 182.  
Indian rights and the federal courts. 24 MLR 144.

**Section 4. STATE SEAL.**

In conveying land pursuant to section 94.41 the conveyance must be in accordance with provisions of Minnesota Constitution, Article XV, Section 4. 1938 OAG 389, April 17, 1937 (700e).

## ARTICLE XVI

## TRUNK HIGHWAY SYSTEM

## Section 1. CREATION OF SYSTEM.

The question being as to payment out of the "highway fund" for private property sought to be purchased by the highway commissioner near, but not part of, the right of way of a trunk highway and the statute requiring that the limits of the right of way be fixed by formal written order of the highway commissioner, and there being no formal action by the commissioner indicating the purpose for which the property was acquired, the purchase was void. *State ex rel v Werder*, 200 M 156, 273 NW 714.

Minnesota Constitution, Article XVI, Section 2, in establishing a "highway fund," requires that it be used "solely" for highway purposes. L. 1939, c. 431, Article 2, Section 20, imposing on that fund a charge to be used to defray the general expenses of government, is by that much unconstitutional. (See, 214 M 535, 8 NW(2d) 614). *Cory v King*, 209 M 434, 296 NW 506.

L. 1941, c. 548, ss. 13, 14, 19, and 22, appropriating moneys from trunk highway fund to the office of auditor, treasurer, department of civil service, and commissioner of administration, respectively, to defray expenses, is not violative of Minnesota Constitution, Article XVI. The charge on the highway fund must accurately reflect the value of the service of any department attributable to highway matters. See, *Cory v King*, 209 M 434, 296 NW 506. *Cory v King*, 214 M 535, 8 NW(2d) 614.

L. 1925, c. 297, as amended by L. 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel. *Hallett v Spaeth*, 212 M 531, 4 NW(2d) 337.

The legislature, by statute, has delegated to the commissioner of highways the power, on behalf of the state, to acquire by purchase, gift, or otherwise, all necessary right of way for the laying out and construction of the trunk highway system; and under the powers granted, the commissioner may extinguish within the highway already created the easements of access thereto and to which said highway is servient, provided due compensation is made to the owners. *Burnquist v Cook*, 220 M 58, 73, 19 NW(2d) 394.

Power of the state as exercised by the commissioner of highways in acquisition of land for highway purposes. *Petition of Burnquist*, 220 M 129, 19 NW(2d) 399, 406.

The United States is an indispensable party defendant in a condemnation proceeding brought by a state to acquire a right of way over lands which the United States owns in fee and holds in trust for Indian allottees. Where jurisdiction has not been conferred by Congress, no officer of the United States has power to give any court jurisdiction of a suit against the United States. *Minnesota v United States*, 95 F(2d) 468, 305 US 383, 59 SC 293.

It is unlawful to hunt game birds on the state trunk highways. 1940 OAG 11, Oct. 25, 1939 (210a-4).

Highway commissioner's power to establish angle-parking zones is a constitutional delegation of power by the legislature. 1940 OAG 127, Sept. 26, 1939 (989a-16).

Taxation of motor vehicles. 1940 OAG 322, Oct. 26, 1939 (632e-5).

Additional routes as part of the state trunk highway system may be established by the legislature. OAG April 5, 1945 (229-D-17).

Governmental responsibility for torts; width of streets on trunk highways. 26 MLR 319, 492.

## Section 2. TRUNK HIGHWAY SAVINGS FUND.

The state constitution creates a trunk highway fund for the establishment, construction, and maintenance of a system of state trunk highways, and provides

that such fund shall consist of that part of any tax imposed on motor vehicles not required for the trunk highway sinking fund. While moneys going into this fund are paid into the state treasury, the fund so created is separate from all other state funds, and the state legislature cannot use or dispose of the moneys therein for any other than purposes stated. *Regan v Babcock*, 196 M 252, 264 NW 803.

Article XVI, Section 2, is at some pains to say that the trunk highway fund shall be devoted solely to the highway purposes specified in Article XVI, Section 1. Those objects did not include any system of parks or beautification, independently of the highway, in either an urban or rural community. *State ex rel v Werder*, 200 M 156, 273 NW 714.

Subject to well settled exceptions it is a general rule that a government agency is not answerable for damages sustained as the result of the negligence of its officers or agents in the performance of governmental functions. A claim statute may recognize legal obligations if it sees fit to do so. It may compensate by direct appropriation or it may waive immunity from suit. By L. 1939, c. 420, the state waived its sovereign immunity to suit for damages caused by the location, relocation, construction, reconstruction, improvement, maintenance, and supervision, of the trunk highway system to the extent and within the limits therein specified. *Westerson v State*, 207 M 413, 291 NW 900.

L. 1925, c. 297, as amended by L. 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. *Hallett v Spaeth*, 212 M 532, 4 NW(2d) 337.

Minnesota Constitution, Article IX, Section 5, does not forbid the imposition of an excise tax on gasoline consumed in municipally owned vehicles operated upon public streets and highways, and used in construction or repair of highways. *State v Spaeth*, 223 M 218, 26 NW(2d) 115.

### Section 3. TAXATION OF MOTOR VEHICLES.

#### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1931, Chapter 418, ratified November 8, 1932, authorized taxation of motor vehicles on a more even basis.]

#### (After amendment of 1932)

Double taxation is not forbidden by the state or national constitutions unless it results in lack of uniformity or offends the due process or equal protection clauses. The income tax does not so offend. *Reed v Bjornson*, 191 M 270, 253 NW 102.

The court has power, and it is a general rule, that in an equity suit involving trust funds, the fruits of the litigation are chargeable with the expense of recovery. *Regan v Babcock*, 196 M 252, 264 NW 803.

Rent paid to a lessor railroad by its operating lessee may not properly be considered fruits of a non-railroad exercise of the lessor's franchise. *State v Duluth & Missabe*, 207 M 618, 292 NW 401.

Laws 1939, c. 431, art. 2, s. 20, imposing upon the "highway fund" a charge to be used to defray the general costs of government, is by that much unconstitutional. *Cory v King*, 209 M 431, 296 NW 506.

The receipts of an express company derived from "transfer" and "pick-up and delivery" services rendered to railroads under contract are part of its gross earnings for purposes of taxation; even though received from a railroad which pays a gross earnings tax. *State v Railway Express Agency*, 210 M 556, 297 NW 657.

The taxing of a franchise of a sleeping car company as property under the gross receipts tax act precluded imposition of a tax on company's franchise, in view of the provision that gross receipts tax imposed was in lieu of all ad valorem taxes. *Pullman Co. v Commissioner*, 223 M 96, 25 NW(2d) 838.

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The gasoline tax is not in lieu of personal property tax; and the payment of the Minnesota gasoline tax does not relieve equipment in which the tax-paid gasoline is used from personal property taxation. 1942 OAG 341, March 3, 1941 (325).

Fees received for duplicate plates and certificates should be credited to and re-funds made from the trunk highway fund. 1944 OAG 286, March 23, 1944 (454-E).

Governmental responsibility for torts. 26 MLR 320.

### Section 4. STATE HIGHWAY BONDS.

Certain departments and agencies may receive out of the state highway funds payment for services directly attributable to highway matters and as authorized by L. 1941, c. 548, ss. 13, 14, 19, and 22. *Cory v King*, 209 M 431, 296 NW 506; 214 M 535, 8 NW(2d) 614.

## ARTICLE XVII

### FOREST FIRE PROTECTION

#### Section 1. MANNER OF PROTECTION.

##### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1923, Chapter 451, ratified November 4, 1924, added a new article authorizing the state and its political divisions to pledge public credit and engage in any work tending to prevent forest fires.]

Timber cut as a result of the execution of a beneficial forest conservation project should be handled as a simple sale of timber products and not as a sale resulting from an act of trespass; and moneys received from the sale of products must be paid into the state treasury for the benefit and use of the applicable trust fund. 1938 OAG 101, Aug. 4, 1938 (27b).

## ARTICLE XVIII

#### Section 1. ENCOURAGEMENT OF FORESTATION.

##### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1925, Chapter 427, ratified November 2, 1926, authorized the legislature to enact laws encouraging forestation and reforestation of lands.]

## ARTICLE XIX

#### Section 1. AUTHORIZING LEVYING OF TAXES IN SUPPORT OF AIR NAVIGATION FACILITIES.

##### AMENDMENTS ADOPTED

[Amendment proposed by Laws 1943, Chapter 666, ratified November 7, 1944, authorized the levying of taxes in support of air navigation facilities.]