

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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of such charge before any judge of any District Court of this state such Court may cause such official or head of a state department to be removed upon proof being duly made of the misappropriation or for any other purpose than for which the appropriation was made, except in an emergency and then only with the approval of Commission of Administration and Finance. (Apr. 24, 1937, c. 457, §36.)

Sec. 41 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

Appropriation can only be expended for purposes stated except in emergency, and what constitutes an emergency is a matter for both official or head of department and commission of administration and finance to agree upon. Op. Atty. Gen. (9a-3), June 7, 1937.

126. Board of Relief. * * * * *

2. Certificates of indebtedness for relief of distress authorized.—The state board of relief is hereby authorized to take any measures necessary to prevent or avert any impending disaster which threatens to destroy life or property in this state, to grant relief or temporary assistance to communities in this state stricken by disease, flood, storm, fire (or) action of the elements, or extreme economic distress causing destitution of families or individuals or disabled persons, or prevent the occurrence or spread of any such calamity or disaster which might entail loss of life or property or result in great suffering and hardship among the people of this state, and in any such event, it shall have the authority to commandeer and take for use, in any such emergency, any property, vehicle, motor car or any means of transportation by rail or water or any means of communication or any public service, which in the opinion of the said board might be necessary to save life or property or prevent and avert any such impending disaster or furnish assistance or relief to communities in this state, so stricken, or for the prevention of any such calamity. The owner of any property so taken shall be given a receipt for the same and shall be paid for the use of such property or for any damage which might be caused to the same while in the service of the state board. (As amended Apr. 21, 1933, c. 355.) * * * * *

6. Loan Authorized.—For the purpose of carrying out the provisions of this act, whenever an emergency exists, the board of relief hereby created is authorized to borrow such a sum of money, not exceeding seven hundred fifty thousand dollars (\$750,000), as shall in its judgment be necessary and sufficient. (As amended Apr. 21, 1933, c. 355.) * * * * *

This act does not authorize the State Board of Relief to take a note for seed grain furnished by the state to a farmer without such grain or means to procure it, because of the excessive floods which occurred in Marshall county in the year 1919. 172M344, 215NW510.

By receiving the grain from the state and by giving his note therefor, defendant held not to have become estopped from denying liability on the note. 172M344, 215NW510.

2. Authority.

Executive council has power to place unemployed persons upon farms and furnish them with animals, machinery, feed and furniture to get them started. Op. Atty. Gen., May 20, 1933.

Act permits executive council to grant relief to be disbursed by Soldiers' Home Board. Op. Atty. Gen., Aug. 1, 1933.

Responsibility for administration of fund appropriated by executive council for relief of disabled veterans and their families rests with state board of control and not state soldiers' home board. Op. Atty. Gen., Oct. 6, 1933.

Act creating Lincoln-Lyon tornado relief commission, defining powers respecting relief to tornado swept district. Laws 1931, c. 130.

128-1. Holding two appointive offices—Compensation.

Offices of superintendent of Bureau of Criminal Apprehension and superintendent of Highway Patrol are not incompatible. Op. Atty. Gen. (2137), Jan. 14, 1939.

128-2. State Geographic Board established.—There is here established a State Geographic Board which shall consist of the Commissioner of Conservation, the Commissioner of State Highways, and the Superintendent of the Minnesota Historical Society. (Mar. 8, 1937, c. 63, §1.)

128-3. Powers and duties.—It shall be the duty of the State Geographic Board and it shall have power and authority:

(a) To determine the correct and most appropriate names of the lakes, streams, places and other geographic features in the state, and the spelling thereof;

(b) To pass upon and give names to lakes, streams, places and other geographic features in the state for which no single generally accepted name has been in use;

(c) In cooperation with the county boards and with their approval, to change the names of lakes, streams, places and other geographic features, with the end in view of eliminating, as far as possible, duplication of names within the state;

(d) To prepare and publish an official state dictionary of geographic names and to publish the same, either as a completed whole or in parts when ready;

(e) To serve as the state representatives of the United States geographic board and to cooperate with the said board to the end that there shall be no conflict between the state and federal designations of geographic features in the state. (Mar. 8, 1937, c. 63, §2.)

Constitution, art. 4, §33, does not interfere in any way with exercise of powers granted by this act. Op. Atty. Gen. (230), July 2, 1937.

128-4. Names given to be official.—Whenever the State Geographic Board shall have given a name to any lake, stream, place and other geographic feature within the State, such name shall be used in all maps, records, documents and other publications issued by the State or any of its departments and political subdivisions, and such name shall be deemed the official name of such geographic features. (Mar. 8, 1937, c. 63, §3.)

128-5. County boards naming geographic features must have approval of Geographic Board.—No County Board shall order the change of or establish the name of any lake, river, or other body of water without the written approval of the State Geographic Board endorsed on any resolution determining or fixing said name, which endorsement must be made on the same prior to recording with the Register of Deeds. (Mar. 8, 1937, c. 63, §4.)

128-6. Inconsistent acts repealed.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Mar. 8, 1937, c. 63, §5.)

Sec. 6 of Act Mar. 8, 1937, provides that the act shall take effect from its passage.

CHAPTER 5

Judicial Department

SUPREME COURT

132. Writs—Process.

Deduction of inheritance tax because of disallowance of claims against estate cannot be reached by certiorari. 179M233, 228NW920.

Appeal and not mandamus is proper remedy to compel making of findings of fact. 180M530, 230NW472.

Where mandamus is used to review an order of trial court on motion to change place of trial to promote convenience of witnesses and ends of justice, only matters presented to trial court can be considered. State v. Dis-

trict Court of Brown County, 194M595, 261NW701. See Dun. Dig. 5764a, 10126, 10127, 10129.

Granting of leave to a municipal corporation to file an information in nature of quo warranto, notwithstanding refusal of attorney general to apply for writ or to consent to its filing, lies in sound discretion of court, and that discretion should be exercised favorably, and leave granted where one municipal corporation, on grounds prima facie valid, challenges legal effectiveness of proceedings by another to take over and include within its limits territory belonging to former, issue so raised being one of public rather than mere private interest. *State v. City of Chisholm*, 196M285, 264NW798. See Dun. Dig. 8070.

Supreme court has power to grant leave to file information for writ of quo warranto to test propriety of including land within boundaries of a city over objections of the attorney general. *State v. City of Chisholm*, 196M285, 266NW689. See Dun. Dig. 8064.

In quo warranto by one town attacking taking in of additional territory by a city, another town occupying same position as petitioner will be granted leave to intervene. *Id.* See Dun. Dig. 8070.

In quo warranto by town testing validity of taking territory into city, taxpayers and residents of town having special rights that will be affected may be permitted to intervene, but this does not mean that they would be permitted to come in as original and only relators. *Id.*

To justify court in overruling judgment of attorney in refusing to institute quo warranto proceedings, case must be exceptional and one in which it clearly appears that public interests require it. *State v. Johnson*, 201M 219, 275NW684. See Dun. Dig. 8070.

Prohibition will not issue where law provides a remedy and will not lie to prevent commissioner of registration from taking steps to remove name from election register under §389, there being a remedy by appeal to the district court. *State v. Ferguson*, 203M603, 281NW765. See Dun. Dig. 7842.

A writ of prohibition may issue out of supreme court when it clearly appears that an inferior court has no rightful jurisdiction or is exceeding legitimate powers in a matter of which it has jurisdiction. *State v. District Court*, 204M415, 283NW738. See Dun. Dig. 7840.

Following *State ex rel. Hurd v. Willis*, 61 Minn. 120, 63NW1699 supreme court will not review by writ of certiorari an order of the district court adjudging the relator guilty of a civil contempt. *Guleson v. G.*, 286N W721. See Dun. Dig. 1404.

Writ of prohibition to court christian. 20MinnLaw Rev272.

133. Power—rules.

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. *State v. Jackson*, 198M111, 268NW924. See Dun. Dig. 2501.

Rules governing attorneys in the practice of their profession. 16MinnLawRev270.

COMMISSIONERS

135 to 137. [Superseded.]

Superseded by amendment of art. 6, §2, of the constitution, promulgated Nov. 20, 1930.

MINNESOTA REPORTS

150. Printing and binding reports of decisions—Contracts by commissioner of purchases—Purchase and distribution of volumes by state.—The reports of such decisions shall be printed and bound in style and quality to be approved by the court, shall contain at least six hundred pages of four and one-half inches in width, and shall be equal in quality of paper and binding to the best of those heretofore published.

The Commissioner of Purchases, pursuant to provisions of Chapter 426, General Laws 1925 [§53-10], under appropriate specifications to be approved by the court, from time to time and for designated periods not exceeding ten years, shall enter into a contract, in form and manner approved by the court, for the continued publication of such bound volumes, with suitable provisions requiring the publisher at all times to keep the published volumes on sale at a designated place within the state at a specified maximum price per volume, and specifying the number of such volumes to be sold and delivered to the state for distribution as herein directed. The volumes purchased by the state under the provisions of such contract shall be delivered to the secretary of state and shall be distributed as follows:

1. One to each judge of the District, Probate, and Municipal Courts of the State, and to each Justice,

Commissioner and the Reporter of the Supreme Court.

2. To the Attorney General, one volume for each set of reports in use in the department.

3. One to each clerk of the District Court, for the use of the court when in session, and otherwise for the use of officials and citizens of the county.

3½. One copy to the Industrial Commission of Minnesota.

All of the foregoing shall remain the property of the state and shall be delivered to the successors in office of the officials named.

4. Three to the clerk of the United States Circuit Court of Appeals for the eighth circuit, one to be kept for the use of the judges at each of its places of meeting.

5. One hundred to the State University, to be used in exchanges or otherwise for the benefit of its law library.

6. To the state library, as many as the court shall certify to be necessary for the use of the library and for exchanges with other law libraries.

The copies not disposed of hereunder shall remain in the custody of the Secretary of State. (As Am. Mar. 23, 1937, c. 81, §1.)

Sec. 2 of Act Mar. 23, 1937, cited, provides that the Act shall take effect from its passage.

DISTRICT COURT

154. Jurisdiction.

The federal district court has no discretion to refuse to hear and determine cases removed from a state court and based on the Federal Employers' Liability Act and arising out of injuries received in another state; and comity does not require the court to respect an injunction granted by the foreign court. *Beem v. Illinois Cent. Ry. Co.*, (DC-Minn). 55F(2d)708; *Doyle v. Northern Pac. Ry. Co.*, (DC-Minn). 55F(2d)708. See Dun. Dig. 1530.

Suit to enjoin railroad from abandoning a line as authorized by interstate commerce commission, was not within the jurisdiction of the state court, although it was alleged that the order violated a contract between the railroad and a municipality, and the federal district court acquired no jurisdiction of the cause upon its removal. *Village of Mantorville v. C.* (USDC-Minn), 8F Supp791. See Dun. Dig. 8400.

Public policy requires that official duties be performed without restraint, and that the motives underlying the performance of such official duties should not be inquired into in a proceeding in a court of law. *Block v. S.*, (DC-Minn), 26FSupp105.

Public policy requires that officers and agents of the government, in connection with matters arising from the performance of their official duties, shall not be held responsive to suits or claims arising from their actions. *Id.*

Officials of Works Progress Administration held not answerable in court proceedings for dismissal of plaintiff as an employee of the administration, as the result of an employment record made by them, even though they may have been actuated by improper motives. *Id.*

Custodia legis means that the jurisdiction of the court having custody of res is exclusive in so far as restrictions may be necessarily imposed on other courts for the proper control and disposition of it by the court having custody and control of the same. *National Automatic Tool Co. v. G.*, (DC-Minn), 27FSupp399.

Act of president of a national bank in receiving money of another and misapplying it was a violation of a federal statute (Mason's Code, Tit. 12, §592), and he could not be prosecuted in state court for grand larceny. 171M466, 214NW279.

District court has jurisdiction of action by nonresident against foreign corporation based on Federal Employers' Liability Act, and it is the duty of such court to assume jurisdiction. 180M52, 230NW457.

District court, in equity suit, had jurisdiction to determine whether widow had elected to take under will. 180M134, 230NW575.

Court in Minnesota may grant injunctions by default against the prosecuting of a cross-action in Texas in a case therein to foreclose a mortgage on Texas land, all parties being domiciled in Minnesota. *Child v. H.*, 183M 170, 236NW202. See Dun. Dig. 1554(29).

Public policy of this state does not forbid recovery here against estate of deceased tortfeasor for surviving liability for tort committed extraterritorially, though liability does not survive under our statutes. *Chub-buck v. Holloway*, 182Minn225, 234NW314, 868, adhered to. *Kerston v. J.*, 185M591, 242NW329. See Dun. Dig. 1531.

Our district courts are courts of concurrent jurisdiction, and when one first acquires jurisdiction over an action and parties thereto, it is an excess of jurisdiction for another, by injunctive proceedings against parties, to attempt to restrain further proceedings in court first

acquiring jurisdiction. *State v. District Court*, 195M163, 262NW165. See Dun. Dig. 2758.

It is essential, to authorize a district court to proceed in an action or proceedings, that it have jurisdiction over parties and over subject-matter. *Fulton v. O.*, 195M247, 262NW570. See Dun. Dig. 2759.

A suit by third parties against surviving partners of a firm, to recover on liabilities of firm and of surviving partners, is within jurisdiction of district court, and not probate court. *Id.*

When any court, competent to exercise it, acquires jurisdiction of an action, that jurisdiction continues to the end. *Weisman v. M.*, 196M574, 265NW431. See Dun. Dig. 2350.

Inasmuch as whole field of domestic relations, including those between parents and child, is reserved to states, state courts have jurisdiction over a statutory filiation proceeding against a foreign consul. *State v. Flores*, 197M590, 268NW194. See Dun. Dig. 2350a.

Provisions of the constitution of a voluntary, nonprofit labor organization, requiring as a condition precedent to a resort to the courts, in any matter in which a member thereof feels aggrieved by the action of the organization or its officers, that such member first exhaust all remedies open to him within the organization, are valid, if the remedies so provided are reasonable. *Skrivanek v. B.*, 198M141, 269NW111. See Dun. Dig. 2345.

It does not invalidate provisions of labor organization with insurance feature that member must exhaust remedies within organization that only aggrieved member himself or some other member acting on his behalf is permitted to appear before tribunals of organization in any dispute. *Id.*

Jurisdiction to decide is power to decide erroneously as well as correctly. *Reid v. I.*, 200M599, 275NW300. See Dun. Dig. 2345.

Where mode of acquiring jurisdiction is prescribed by statute, compliance therewith is essential or proceedings will be a nullity. *Strom v. L.*, 201M226, 275NW833. See Dun. Dig. 2345.

Whenever attention of court is called to absence of a jurisdictional fact, it may, and should, refuse to exceed its powers. *Id.*

Decisions of U. S. Supreme Court respecting federal sovereignty and immunity from state taxation are binding upon the states. *Geery v. M.*, 202M366, 278NW594. See Dun. Dig. 2350a, 9120.

Regional agricultural credit corporations are not immune from suit. *Casper v. R.*, 202M433, 278NW896. See Dun. Dig. 9955b.

Determination of issues arising under federal anti-trust laws, whether raised by way of attack or defense, is made by statutes to rest exclusively within jurisdiction of federal courts and beyond that of state courts. *General Talking Pictures Corp. v. D.*, 203M28, 279NW750. See Dun. Dig. 8437.

State court had no jurisdiction of an action by an applicant for a patent against another applicant filing for a patent, resulting in an interference in patent office, to recover damages for conspiracy to steal plaintiff's property rights by means of fraud and perjury, at least pending determination of interference by patent office. *Grob v. C.*, 204M459, 283NW774. See Dun. Dig. 7419.

Validity of acts of unrecognized de facto governments in the courts of non-recognized states. 13MinnLawRev 216.

Discretion to dismiss actions between non-residents on causes of action arising outside of state. 15MinnLawRev 83.

156. Writs.

The position of general superintendent and engineer of the water department of the city of St. Paul is an employment and not an office, and quo warranto does not lie to determine the right to hold it. 174M410, 219NW 760.

Quo warranto to test right of corporate directors to act. 180M486, 231NW197.

A district judge, exercising power of court itself, has jurisdiction to vacate an order of court commissioner for a writ of habeas corpus and to quash writ if issued, merits of matter not having been decided by commissioner. *State v. Hemenway*, 194M124, 259NW687. See Dun. Dig. 2331.

City may be ousted from territory improperly included. *State v. City of Chisholm*, 199M403, 273NW235. See Dun. Dig. 8064.

Where in election contest proceedings, court found that there was a tie vote and that a vacancy existed and ordered village council to fill it by appointment, and no appeal was taken, one of contestants will not be permitted on petition for leave to file an information in nature of quo warranto to collaterally attack the finding and order that vacancy existed which council had authority to fill by appointment. *State v. Johnson*, 201M 219, 275NW684. See Dun. Dig. 8066.

To justify court in overruling judgment of attorney in refusing to institute quo warranto proceedings, case must be exceptional and one in which it clearly appears that public interests require it. *Id.* See Dun. Dig. 8070.

Where village recorder resigned a few weeks before regular election, and trustee of village was appointed to perform duties of recorder until election, and he accepted only on understanding that he did not have to vacate his office as trustee and did not take oath of

office of recorder or accept compensation, court did not abuse its discretion in denying petition for leave to file an information in nature of quo warranto on ground that respondent forfeited his office as trustee by performing incompatible duties of office of recorder. *State v. Ingelbretson*, 201M222, 275NW686. See Dun. Dig. 8070.

One who has no certificate of election to a state office from state canvassing board is not entitled to quo warranto to test title of incumbent appointee thereto. *State v. Atwood*, 202M50, 277NW357. See Dun. Dig. 8070.

District court has discretionary power to grant leave to file an information in nature of quo warranto at instance of a private relator having no interest in matter distinct from that of general public, notwithstanding refusal of Attorney General to institute or consent to proceedings, but case should be exceptional, and one in which it clearly appears that public interests require it, and fact that there is a substantial defect in title to office is not controlling. *State v. Fredrickson*, 202M79, 277 NW407. See Dun. Dig. 8070.

Improper motives may lead to denial of relief in quo warranto, even though relator is attorney general. *State v. Crookston Trust Co.*, 203M512, 282NW138. See Dun. Dig. 8062.

In quo warranto defense of improper motive may not be disposed of by demurrer. *Id.* See Dun. Dig. 8071a.

Title to public office will not be tried in a suit for injunction against a claimant. *Doyle v. R.*, 285NW480. See Dun. Dig. 4486.

In granting leave to members of a private corporation to challenge by quo warranto rights of its officers to hold offices they claim to occupy, court exercises judicial discretion, but no judicial discretion is exercised if it appears court acted improvidently or through inadvertence and under a misapprehension of facts, in which case court may dismiss proceedings on motion. *Dollenmayer v. R.*, 286NW297. See Dun. Dig. 8062, 8070.

Where one judge improvidently issued writ of quo warranto, another judge on motion of respondents could quash proceeding, especially where no objection was made to hearing and submission of motion. *Id.* See Dun. Dig. 8073.

Petition to test validity of incorporation of a village should name officers of newly incorporated village and the defendants in the proposed proceedings. *Op. Atty. Gen.* (361e-4), Dec. 14, 1934.

157. Testing writs.

Summons is not process and need not run in name of state. *Schultz v. O.*, 202M237, 277NW918. See Dun. Dig. 7798.

158. Judge may act in another district.

Authority to "any judge of any judicial district" when "the convenience or interest of the public or the interest of any litigant shall require" substitution, has for its basis a determination of facts, and such duty is judicial or at least quasi judicial. *State v. Montague*, 195M278, 262NW684. See Dun. Dig. 4961.

Where presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district, governor may not designate an outside judge to preside thereat, it appearing that regular and properly designated judge is competent to act, that there is no accumulation of business before court, and that delay of trial is not probable. *Id.*

In so far as Mason's Minn. St. 1927, §§158 or 9218, assume to empower Governor to designate a judge of another district to discharge duties of a district judge, it is in contravention of §1 of article 3 and beyond authority of §5 of article 6 of constitution. *State v. Day*, 200M77, 273NW684. See Dun. Dig. 4961.

This section is unconstitutional, at least in its application to alleged bias on part of sitting judge. *Op. Atty. Gen.* (213B), Jan. 30, 1939.

161. District courts to be open at all times.

District court is held, within meaning of Gen. Stats. 1913, §238, as amended by Laws 1919, c. 229, when judge is sitting for the determination of questions of fact or of law, and there is no distinction between general and special term days. *Op. Atty. Gen.*, Dec. 24, 1931.

Sections 161 and 173 are not inconsistent but merely provide two different methods of calling special grand juries. *Op. Atty. Gen.* (494a-3), June 15, 1934.

Where county attorney more than 15 days before regular term obtained order from judge of district court for grand jury, but did not file order with clerk of court until less than 15 days before term, no grand jury could be called for such term. *Op. Atty. Gen.* (494a-3), Sept. 30, 1937.

TERMS OF COURT

162. Times for holding general terms.

Third Judicial District

The general terms of district court in the several counties constituting the Third Judicial District of the State of Minnesota shall be held each year at the times prescribed as follows:

Houston County on the third Monday in May and the fourth Monday in October;

Olmsted County on the third Monday in January, April and September;

Wabasha County on the third Monday in May and the second Monday in November;

Winona County on the second Monday in January and the third Monday in April and September;

Provided, however, that when any general term in any of said counties shall be adjourned for a period of more than thirty days, and issues of fact in any action are joined more than eight days before the first day of any such adjourned term, then and in that case such action may be brought on for trial at such adjourned term upon notice of trial served eight days or more before the beginning of said adjourned term; such notice of trial shall be filed with the clerk at least six days before the beginning of such adjourned term and shall serve as a note of issue. ('17, c. 2, §1; '21, c. 103, §1; '23, c. 14, §§1, 2; '25, c. 84, §§1, 2; Mar. 20, 1935, c. 62, §1).

Fifth Judicial District

The general terms of the district court in the several counties constituting the Fifth Judicial District of the State of Minnesota shall be held at the times herein prescribed, as follows:

In Dodge County, the first Monday in April and the third Monday in September.

In Rice County, the first Monday in May and the first Wednesday after the first Monday in November.

In Steele County, the first Monday in June and the first Monday in December.

In Waseca County, the first Monday in March and the second Monday in October.

Provided, however, that where any general term in any of said counties has been or shall hereafter be adjourned for a period of more than thirty (30) days, and issues of fact in any action are joined more than eight (8) days before the first days of any such adjourned term, then and in that case such action may be brought on for trial, at such adjourned term upon notice of trial served eight (8) days or more before the beginning of said adjourned term. (R. L. '05, §97; '09, c. 244, §1; '13, c. 326, §1; '25, c. 99, §1; Feb. 9, 1933, c. 15, §1.)

Sec. 2 of Act Feb. 9, 1933, cited, repeals inconsistent acts and §3 provides that the act shall take effect from its passage.

Sixth Judicial District

The general terms of the District Court to be held each year in the several counties constituting the Sixth Judicial District of the State of Minnesota shall be held at the times herein prescribed, as follows:

Blue Earth County: On the first Tuesday in February, the second Tuesday in May and the second Wednesday in October.

Watonwan County: On the second Tuesday in April and the second Tuesday in September.

Laws 1937, Chapter 5, is hereby repealed.

This act shall take effect and be in force from and after September 1, 1937. (Jan. 30, 1937, c. 5, §§1, 2; Apr. 8, 1937, c. 184, §§1-3.)

Seventh Judicial District

The general terms of the District Court in the several counties constituting the Seventh Judicial District of the State of Minnesota shall be held at the time herein prescribed, as follows:

In Becker County, on the first Monday in March, and the second Monday in September.

In Benton County, on the first Monday in March, and the second Monday in September.

In Clay County, on the second Monday in April, and the second Monday in November.

In Douglas County, on the first Monday in March, and the second Monday in September.

In Mille Lacs County, on the third Monday in March, and the second Monday in October.

In Morrison County, on the second Monday in May, and the first Monday in December.

In Otter Tail County, on the second Monday in April, and the second Monday in November.

In Stearns County, on the second Monday in April, and the second Monday in November.

In Todd County, on the third Monday in March, and the second Monday in October.

In Wadena County, on the first Monday in March, and the second Monday in September. (R. L. '05, §97; '09, c. 244, §1; '13, c. 9, §1; '15, c. 90; '17, c. 37, §1; '25, c. 9, §1; Apr. 6, 1931, c. 117, §1; Feb. 15, 1933, c. 28, §1; Mar. 23, 1933, c. 108, §1; Mar. 15, 1935, c. 46, §1.)

Act Mar. 15, 1935, cited, provides that the act shall take effect from its passage.

Eighth Judicial District

The general terms of the District Court to be held each year in the several counties constituting the Eighth Judicial District of the State of Minnesota shall be held commencing on the days hereinafter set forth, as follows, to-wit:

In Carver County on the first Monday in March and on the second Monday in October.

In Le Sueur County on the third Monday in April and the third Monday in September.

In McLeod County on the second Monday in May and the second Monday in November.

In Scott County on the fourth Monday in March and the fourth Monday in October.

In Sibley County on the first Monday in June and the first Monday in December. (Mar. 31, 1937, c. 127, §1.)

Sec. 2 of Act Mar. 31, 1937, repeals inconsistent acts, and §3 provides that the act shall take effect July 1, 1937.

Ninth Judicial District

The general terms of the district court in the several counties constituting the Ninth Judicial District of the State of Minnesota shall be held at the time herein prescribed, as follows:

Brown County: On the third Monday in May and the fourth Monday in November.

Lincoln County: On the fourth Monday in March and the fourth Monday in September.

Lyon County: On the fourth Monday in April and the third Monday in November.

Nicollet County: On the first Tuesday in May and the second Tuesday in October.

Redwood County: On the second Monday in April and the fourth Monday in October.

Sec. 2. Effective March 1, 1931.—This act shall take effect and be in force from and after March 1, 1931. (R. L. '05, §97; '09, c. 244, §1; '15, c. 67, §1; superseded '25, c. 102, §1; Mar. 9, 1931, c. 50, §1.)

Tenth Judicial District

That the General Terms of the District Court shall be held each year in the several counties constituting the Tenth Judicial District of the State of Minnesota at the time herein prescribed as follows:

Freeborn County: First Monday in February; second Monday in May, and third Monday in September;

Mower County: Second Monday in March and second Monday in October;

Fillmore County: Third Monday in April and second Monday in November. ('17, c. 367, §1; '19, c. 29; Apr. 15, 1935, c. 182, §1.)

Sec. 2. Effective July 1, 1935.—This Act shall take effect and be in force from and after July 1, 1935. (Act Apr. 15, 1935, c. 182, §2.)

Section 3 repeals inconsistent acts.

Eleventh Judicial District

The general terms of the District Court of the Eleventh Judicial District in the State of Minnesota shall be held as follows:

In Carlton County: On the first Tuesday after the first day in January, on the second Tuesday in June and on the third Tuesday in October.

Cook County: On the fourth Monday in June.

Lake County: On the second Wednesday in June and second Wednesday in December.

St. Louis County: On the first Wednesday after the first day in January, on the first Wednesday in March, on the first Wednesday in May, on the first Wednesday after the first Monday in September, and on the first Wednesday in November. (Mar. 2, 1937, c. 48, §1.)

Sec. 2 of Act Mar. 2, 1937, is set forth as §164, post.
 Sec. 3 of said act repeals inconsistent laws.
 Sec. 4 of said act provides that the act shall take effect from its passage.
 Superseding Act Jan. 27, 1936, Ex. Ses., c. 111.
 [Special provisions as to places for holding court, see §164 et seq.]

Twelfth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Twelfth Judicial District of the State of Minnesota at the same time herein prescribed as follows:

- Chippewa County: First Monday in June; fourth Monday in November;
- Kandiyohi County: Third Monday in March; first Monday in October;
- Meeker County: Second Monday in March; third Monday in December;
- Renville County: Second Monday in May; second Monday in November;
- Swift County: Third Monday in May; second Monday in November;
- Yellow Medicine County: First Monday in April; third Monday in September;
- Lac qui Parle County: First Monday in May; second Monday in December. (R. L. '05, §97; '09, c. 244, §1; '23, c. 290, §1; '27, c. 55, §1; Feb. 2, 1933, c. 11, §1; Apr. 29, 1935, c. 356, §1; Feb. 9, 1939, c. 11.)

Thirteenth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Thirteenth Judicial District of the State of Minnesota at the times herein prescribed as follows: In Cottonwood County on the second Tuesday in May and the second Tuesday in November; in Murray County on the second Tuesday in April and the first Tuesday in December; in Nobles County on the second Tuesday in February and the second Tuesday in October; in Pipestone County on the second Tuesday in January and the first Tuesday in June; and in Rock County on the second Tuesday in March and the second Tuesday in September. (R. L. '05, §97; '09, c. 244, §1; '13, c. 52, §1; '21, c. 57, §1; Jan. 22, 1929, c. 3; Feb. 11, 1933, c. 22; Mar. 1, 1939, c. 36.)

Fourteenth Judicial District

The general terms of the District Court in the several counties constituting the Fourteenth Judicial District of the State of Minnesota shall be held, each year, at the times herein prescribed as follows:

- Pennington County: On the fourth Monday in February and the first Monday in October.
- Mahnomen County: On the fourth Monday in May.
- Kittson County: On the fourth Monday in March, and the second Monday in November.
- Roseau County: On the second Monday in April, and the fourth Monday in October.
- Marshall County: On the first Monday in May, and the fourth Monday in November.
- Norman County: On the fourth Monday in April, and the third Monday in October.
- Polk County: On the third Monday in May, and the third Monday in November.
- Red Lake County: On the second Monday in April, and the second Monday in October. (R. L. '05, §97; '09, c. 244, §1; '15, c. 43, §1; '17, c. 67, §1; '21, c. 135, §1; '25, c. 8, §1; '25, c. 34, §1; '27, c. 67, §1; Jan. 17, 1929, c. 2; Apr. 21, 1931, c. 285, §1; Mar. 3, 1933, c. 51, §1; Apr. 24, 1937, c. 448, §1.)

Sec. 2 of Act Mar. 3, 1933, repeals inconsistent acts. Sec. 3 provides that the act shall take effect from and after Apr. 1, 1933.

Sec. 2 of Act Apr. 24, 1937, cited, repeals inconsistent laws. Sec. 3 provides that the act shall take effect from and after June 1, 1937.

Fifteenth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Fifteenth Judicial District of Minnesota at the times herein prescribed, as follows:

- Aitkin County, on the second Tuesday in May and the first Tuesday in December.
 - Beltrami County, on the third Tuesday in February and the second Tuesday in September.
 - Cass County, on the first Tuesday in March and the first Tuesday in October.
 - Clearwater County, on the third Tuesday in April and the first Tuesday in November.
 - Crow Wing County, on the first Tuesday in April and the first Tuesday in November.
 - Hubbard County, on the first Tuesday in February and the first Tuesday in September.
 - Itasca County, on the third Tuesday in February and the second Tuesday in September.
 - Koochiching County, on the second Tuesday in May and the first Tuesday in December.
 - Lake of the Woods County, on the third Tuesday in April and the first Tuesday in November.
- In years when the first Tuesday in November is general election day the November terms shall be held on the first Wednesday of that month.
- All Acts and parts of Acts inconsistent herewith are hereby repealed.
- This Act shall take effect and be in force from and after July 1, 1937. (R. L. '05, §97; '09, c. 244, §1; '21, c. 143, §1; '23, c. 222, §2; '25, c. 344; '27, c. 197, §1; Dec. 23, 1933, Ex. Sess. c. 15; Apr. 17, 1937, c. 261, §§1-4.)

Seventeenth Judicial District

The general terms of the district court, to be held each year in the several counties constituting the Seventeenth Judicial District, of the State of Minnesota, shall be held commencing on the day hereinafter described, as follows, to-wit:

- In Jackson county on the second Monday in February and the second Monday in September.
- In Martin county, on the second Monday in March and the second Monday in October.
- In Faribault county, on the second Monday in April and the second Monday in November. (R. L. '05, §97; '09, c. 244, §1; '21, c. 174, §1; Feb. 13, 1929, c. 16, §1.)

Sec. 2 of Act Feb. 13, 1929, c. 16, repeals Laws 1921, c. 174, and all inconsistent acts. Sec. 3 provides that the act shall be in force on and after June 1, 1929.

Eighteenth Judicial District

The general terms of the District Court to be held each year in the several counties constituting the Eighteenth Judicial District of the State of Minnesota shall be held at the times herein prescribed as follows:

- Anoka County, third Monday in March; fourth Monday in September.
 - Wright County, first Monday in May and third Monday in November.
 - Sherburne County, fourth Monday in February and fourth Monday in October.
- The general terms of the District Court shall be held in the County of Isanti in each year at the times herein prescribed as follows: the general terms on the second Monday in February and the second Monday in September. (Apr. 17, 1937, c. 267, §1; June 14, 1937, Sp. Ses., c. 18, §1.)

Nineteenth Judicial District

The general terms of the District Court shall be held in the Counties of Chisago and Pine in the

Nineteenth Judicial District as follows:

In the County of Chisago on the fourth Tuesday in April and on the first Monday in October of each year.

In the County of Pine on the first Monday in April and on the fourth Tuesday in October of each year.

All acts and parts of acts inconsistent with this act are hereby repealed.

This act shall take effect and be in force from and after July 1, 1923. ('19, c. 70; '23, c. 56, §1.)

The general terms of the District Court shall be held in the County of Kanabec in each year at the times herein prescribed as follows:

The general term on the third Tuesday in August.

In addition thereto general terms of court shall be held in Kanabec county on the fourth Tuesday in January, on the fourth Tuesday in March and the third Monday in June, for the trial and determination of both criminal and civil cases, but no grand or petit jury shall be drawn or summoned unless the court shall so direct by a written order made and filed with the Clerk of Court of the County, at least twenty days before the dates herein fixed for holding said court. ('17, c. 9, §2; '25, c. 345, §2; Mar. 2, 1937, c. 49.)

163. Nineteenth Judicial District—Special terms in Washington County.—That in addition to the general terms of the District Court in Washington County, special terms of said court shall be held in said county on the second and fourth Mondays of each month for the trial of issues of fact by the Court, the trial of issues of law, the hearing of motions and applications, and all matters except the trial of issues of fact by a jury. That during the months of June, July, August, and September such special terms shall be held only on the fourth Monday of each said month. ('09, c. 21, §1 [162]; Mar. 2, 1937, c. 50, §1.)

164. Eleventh Judicial District—St. Louis County.—In addition to the general terms of the District Court in St. Louis County to be held at the County Seat, general terms of the Court are hereby established to be held in the city of Virginia in that county on the first Tuesday in April, on the first Tuesday after the first Monday in September and on the fourth Tuesday in November; and in the village of Hibbing in that county on the second Tuesday in February, on the second Tuesday in May and on the third Tuesday in October in each year; and in the city of Ely in said county on the third Tuesday in March and on the second Tuesday in October in each year, for the trial, hearing and determination of all actions, civil and criminal, and with the same force and effect as though held at the county seat of said county; and all proceedings of whatsoever kind, that can be heard or determined in the District Court of this State, may be tried, heard and determined at the said city of Virginia, the said village of Hibbing or the said city of Ely with the same force and effect as though heard and determined at the county seat of said county, except that all proceedings for the registration of title to real estate shall be tried at the county seat of said county as now provided by law, and all other actions to determine title to real estate shall be tried at the county seat, except that by written consent of all the parties thereto any such action may be tried at said city of Virginia, at the village of Hibbing or the city of Ely in accordance with such written consent; but no officer having in his custody any of the public records of St. Louis County shall be required to produce such record at the trial of any action not on trial at the county seat, save upon the order of the Court providing for the production of such record and its immediate return to the officer producing it, upon its introduction as evidence in such cause. ('09, c. 126; '11, c. 368, §1; G. S. '13, §176; '15, c. 93, §1; '21, c. 302, §1; '25, c. 218; Mar. 30, 1929, c. 118; Mar. 2, 1937, c. 48, §2.)

Sec. 3 of Act Mar. 2, 1937, repeals inconsistent acts and §4 provides that the act shall take effect from its passage.

A party who goes to trial at Virginia in a case involving title to real estate without objection, cannot complain that there was no written consent to trial of a case involving title to real estate. 171M475, 214NW469.

166. Same—deputy sheriff and clerk.—There shall be at all times a chief deputy sheriff of said county and a chief deputy clerk of said district court and such other deputies as may be necessary, resident at said city of Virginia, or said city of Ely or the village of Hibbing and their appointment shall be made in the same manner as other deputy sheriffs and deputy clerks of the district court in said counties. The salaries of such deputies shall be fixed and paid in the same manner as other such deputies. The office of said deputy sheriff at Virginia, Hibbing and Ely shall not in any sense be considered or deemed the office of the sheriff for any purpose except the performance of his duties relating solely to proceedings tried or to be tried at said places; but the office of said deputy clerk at said places shall be equally deemed the office of the Clerk of Court for all purposes except the filing of papers in actions or proceedings to be tried at Duluth. Marriage licenses and naturalization papers may be issued by said deputy clerk. ('09, c. 126; '11, c. 368, §1; '15, c. 93, 371; '17, c. 225; '21, c. 284, §1; Apr. 15, 1931, c. 160, §1.)

Where contestant filed notice of contest in office of deputy clerk at Hibbing within 10-day limitation, but failed to state in his notice of contest, "to be tried at the Village of Hibbing," court did not acquire jurisdiction. Strom v. L., 201M226, 275NW833. See Dun. Dig. 7805, 8947, 8954.

171. Same—Trial of actions.

Denial of motion for change of venue held not abuse of discretion. Desjardins v. E., 139M356, 249NW576.

172. Same—Summons—Place of trial.—Any party wishing to have any appeal from an order of the Railroad and Warehouse Commission, any election contest, a lien foreclosure, or any civil cause or proceeding of any kind commenced or appealed by him in said Court, tried in said City of Virginia, shall in the summons, Notice of Appeal in such matters, or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the City of Virginia," and any party wishing any such matter commenced or appealed by him in said Court tried at the Village of Hibbing, shall in the summons, Notice of Appeal in such matters or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the Village of Hibbing," and any party wishing any such matter commenced or appealed by him in said Court tried at the City of Ely, shall in the summons, Notice of Appeal in such matters, or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the City of Ely," and in all cases where any summons, Notice of Appeal in such matters, or other jurisdictional instrument contains any such specifications, the case shall be tried at said City of Virginia or the Village of Hibbing or City of Ely, as the case may be, unless the defendant shall have the place of trial fixed in the manner hereinafter set out.

If the place of trial designated is not the proper place of trial, as specified in this act, the cause shall nevertheless be tried in such place, unless the defendant, in this answer in addition to the other allegations of defense, shall plead the location of his residence, and demand that such action be tried at the place of holding said court nearest his residence as herein provided; and in any case where the answer of the defendant pleads such place of residence and makes such demand of place of trial, the plaintiff in his reply, may admit or deny such allegations of residence, and if such allegations of residence be not

expressly denied, such case shall be tried at the place so demanded by the defendant, and if the allegations of residence be so denied, then, the place of trial shall be determined by the Court on motion.

If there are several defendants, residing at different places in said county, the trial shall be at the place which the majority of such defendants unite in demanding, or if the numbers are equal, at the place nearest the residence of the majority.

Provided, that the venue of any such action may be changed from any one of said places to any other, by order of the Court, in the following cases:

1. Upon written consent of the parties.
2. When it is made to appear, on motion, that any party has been made a defendant for the purpose of preventing a change of venue as provided in this section.
3. When an impartial trial cannot be had in the place where the action is pending; or
4. When the convenience of witnesses and the ends of justice would be promoted by the change.

Application for such change under subdivisions 2, 3, or 4, shall be made by motion which shall be returnable and heard at the place of commencement of the action. ('09, c. 126; '11, c. 368, §1; G. S. '13, §184; '15, c. 93; '21, c. 302, §6; Apr. 18, 1931, c. 195, §1.)

Desjardins v. E., 189M356, 249NW576; note under §171. Where contestant filed notice of contest in office of deputy clerk at Hibbing within 10-day limitation, but failed to state in his notice of contest, "to be tried at the Village of Hibbing," court did not acquire jurisdiction. *Strom v. L.*, 201M226, 275NW333. See Dun. Dig. 7805, 8947, 8954.

177. Absence of judge—who may act.

Where trial judge has become incapacitated and motion for new trial is heard by another judge, the latter has no power to amend findings of fact but he may amend the conclusions of law and may grant a new trial for the same causes which the trial judge may grant it. 175M346, 221NW424.

Motion for new trial must be heard before judge who tried action unless he is out of office or disabled. *State v. Qvale*, 187M546, 246NW30. See Dun. Dig. 7085.

Successor of an incapacitated judge is empowered to determine a motion for new trial on its merits. *Great Northern Ry. Co. v. B.*, 200M258, 274NW522. See Dun. Dig. 4961.

178. Adjourned and special terms.

Sections 161 and 178 are not inconsistent but merely provide two different methods of calling special grand juries. Op. Atty. Gen. (494a-3), June 15, 1934.

Where county attorney more than 15 days before regular term obtained order from judge of district court for grand jury, but did not file order with clerk of court until less than 15 days before term, no grand jury could be called for such term. Op. Atty. Gen. (494a-3), Sept. 30, 1937.

182. Rules of practice.

District court rule permitting objections to language of closing arguments to be seasonably taken at close thereof, is reasonable. *Jovaag v. O.*, 189M315, 249NW676. See Dun. Dig. 2773.

183. Several judges—division of business.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. The business of the court may be divided between the judges, and otherwise regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. In districts composed of not less than ten counties, the senior judge, at least 30 days before the time appointed by law for the holding of a general term of the court in each county, by order filed in the office of the clerk of the court in that county, shall designate and assign one or more of the judges of such district to preside at the term so appointed, and the clerk forthwith shall mail a copy

of such order to each judge of the district. If any judge assigned to hold a term of court as herein provided is incapacitated by illness or otherwise to preside at such term, another judge shall be designated and assigned in like manner to take his place. The same judge shall not be designated or assigned to hold two consecutive general terms in the same county. (R. L. '05, §105; G. S. '13, §168; Mar. 9, 1931, c. 51.)

Where presiding judge has made an order designating a qualified judge of his district to hold a term of court within a county of such district, governor may not designate an outside judge to preside thereat, it appearing that regular and properly designated judge is competent to act, that there is no accumulation of business before court, and that delay of trial is not probable. *State v. Montague*, 195M278, 262NW684. See Dun. Dig. 4961.

CLERK

191. Election—bond—duties.

Clerk of the district court may practice in the probate court and may transact other legal business so long as it is not necessary for him to transact any business in the district court. Op. Atty. Gen., Feb. 15, 1932.

Exhibits in criminal cases should only be released or disposed of on order of court. Op. Atty. Gen. (815g), Mar. 6, 1936.

192. Money paid into court—Fees.—Where money is paid into court to abide the result of any legal proceedings, the judge, by order, may cause the same to be deposited in some duly incorporated bank, to be designated by him, or such judge, on application of any person paying such money into court, may require the clerk to give an additional bond, with like condition as the bond provided for in Section 191, in such sum as said judge shall order. For receiving and paying over any money deposited with him, the clerk shall be entitled to a commission of one per cent, on the amount deposited, one-half of such commission for receiving, the other for paying, the same to be paid by the party depositing such money, provided, that where the money is paid or deposited in any court by or for a city of the first class or the State of Minnesota, no fee or commission shall be paid to or for the clerk for any service performed by him in receiving or paying over any such money deposited with him. (R. L. '05, §107; G. S. '13, §220; '21 c. 178; Apr. 12, 1937, c. 188, §1.)

Sec. 2 of Act Apr. 12, 1937, provides that the act shall take effect from its passage.

A clerk of court depositing money in national bank and taking certificate of deposit therefor is personally liable for loss sustained by failure of bank. Op. Atty. Gen., Apr. 28, 1932.

District Court clerk is not entitled to commission for receiving and paying back cash balance. Op. Atty. Gen. (144b-15), Apr. 19, 1934.

There is no statute prohibiting banks from placing floating charges on out of town checks deposited by clerk of court. Op. Atty. Gen. (532a-2), Oct. 30, 1935.

Clerk of district court is not entitled to fees where moneys are paid over by state in condemnation case. Op. Atty. Gen. (144b-18), May 4, 1937.

193. Deputies.

Appointment of deputy continues only during original term of appointing officer, and upon reelection deputy must be reappointed. Op. Atty. Gen. (144a-1), Jan. 28, 1937.

193-4. Deputy clerks in certain counties.—In all counties in the state, now or hereafter having a population of more than 150,000 and wherein regular terms of the District Court are held in three or more places, the Clerk of the District Court therein by an instrument in writing, under his hand and seal, and with the approval of the District Judge of the Judicial District in which said county is situated, or if there be more than one such District Judge with the approval of a majority thereof, may appoint deputies for whose acts he shall be responsible, such deputies to hold office as such until they shall be removed therefrom, which removal shall not be made except with the approval of the said District Judge or Judges. The appointment and oath of every such deputy shall be filed with the Register of Deeds. (Act Apr. 15, 1935, c. 179.)

193-5. Salary of Clerk of the District Court and deputies in certain counties.—The salary of the clerk of the district court of each county in this state having or which may hereafter have a population of not less than 240,000 and not more than 330,000 inhabitants shall be the sum of \$4,500.00 per annum.

Such clerk of the district court may appoint and employ one chief deputy who shall be paid the sum of \$2,800.00 per annum; one deputy clerk who shall be paid the sum of \$2,150.00 per annum; one deputy clerk who shall be paid the sum of \$1,950.00 per annum; one deputy clerk who shall be paid the sum of \$1,920.00 per annum, provided, however, that one of such deputy clerks shall be designated as assignment clerk; and nine deputy clerks who shall each be paid the sum of \$1,620.00 per annum to be increased to \$1,800.00 per annum after having completed five years of employment as such deputy clerk. (Laws 1937, c. 157; Apr. 17, 1939, c. 297.)

194. To search records—Certificate—Public inspection.

Judgment confessed under §2176-11 is not a judgment to which abstractor or clerk of court must certify as a judgment. Op. Atty. Gen. (520b), Apr. 20, 1936.

196. Index of records.

Act Mar. 25, 1939, c. 87, provides that the clerk of the district court in counties having a population of at least 250,000, and an area of over 6,000 square miles, may use a flexible plaintiff's and defendant's index to court records, instead of the index provided by the above section.

197. Return in criminal cases to county attorney.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

198. To enter unregistered cases.

A decree in equity may create a lien independently of this section, and this is true with respect to a decree for the separate maintenance of a wife justifiably living apart from her husband. 178M531, 227NW895.

200. Vacancy.

SALARIES OF CLERKS AND DEPUTIES AND CLERK HIRE IN CERTAIN COUNTIES

Act Apr. 19, 1937, c. 290, effective May 1, 1937, amends Laws 1921, c. §133, §14, as amended, to provide for chief deputy at \$3700; head counter deputy at \$2300; assignment deputy at \$2800; two deputies at \$1970; one deputy at \$2160; six deputies at \$1800; 12 deputies at \$1900; two deputies at \$1800; one deputy at \$1800; one deputy at \$2300; one deputy at \$2300; two deputies at \$2100; three deputies at \$1800; two deputies at \$1600.

Act Feb. 3, 1937, c. 11, amends '21, c. 351, §1, to apply to counties with 70 to 75 townships, assessed valuation of \$1,000,000 to \$5,000,000, and population of 7000 to 7500, but makes no change in amounts of salaries.

Act Apr. 12, 1937, c. 193, amends Laws 1921, c. 437, as amended, and provides that in counties having 44 to 45 townships, assessed value of \$8,000,000 to \$14,000,000, and population of 25,500 to 26,000, the clerk of the district court shall receive \$1620 for services in the respective counties, except real estate tax proceedings, and also fees not exceeding \$3200.

Act Apr. 26, 1937, c. 491, amends Laws 1921, c. 437, as amended, to fix salary of clerk at \$1620, in full for services except in real estate tax proceedings, and in addition fees collected.

Laws 1929, c. 69, fixes salary of Clerk of Court at \$2,400 in counties of more than 60 and less than 80 townships with population between 45,000 and 75,000. Sp. Laws 1891, c. 423, is repealed.

Laws 1929, c. 152, Amended, Apr. 17, 1937, c. 247.

Laws 1929, c. 306, §1, Amended, Apr. 6, 1937, c. 157.

Laws 1929, c. 359, Amended, Apr. 19, 1937, c. 290.

Act Feb. 9, 1933, c. 16, provides that in counties having 31 to 85 congressional townships and 18,000 to 30,000 population, the county board shall fix the clerk hire in the office of the clerk of the district court. Laws 1925, c. 7, repealed. See §§997-4a to 997-4h.

Laws 1933, c. 16, Amended, Mar. 19, 1937, c. 69.

Act Mar. 1933, c. 76, §4, effective Jan. 1, 1933, provides that in counties having area of 35 to 55, inclusive, congressional townships, with assessed valuation of \$2,000,000, exclusive of moneys and credits, the clerk of the district court shall receive \$1,200 out of fees, county to make up deficiency, and a salary of \$600 per annum, to be considered a portion of his fees. Salary payable monthly. County board to fix clerk hire. See §§997-4a to 997-4h.

Act Apr. 17, 1937, c. 278, §2, amends Laws 1933, c. 76, §4, to provide that the clerk's salary shall be \$1500, all fees to be paid into the county treasury.

Act Mar. 19, 1937, c. 70, §4, effective July 1, 1937, amends Laws 1933, c. 76, to make salary of clerk \$900 and fees, county to pay deficiency of fees under \$1500, but salary to be considered as portion of fees.

Act Mar. 20, 1933, c. 96, provides that in counties having 55,000 to 70,000 population and 35 to 45 congressional townships, the county board may fix the salary of clerk of district court at not to exceed \$3,500, and require that fees be paid into the general fund. See §§997-4a to 997-4h.

Act Jan. 15, 1936, Sp. Ses., 1935-36, c. 27, amends Laws 1933, c. 96.

Act Apr. 1, 1933, c. 143, amends Laws 1929, c. 69, §1, to provide that the clerk of district court shall receive \$2,000 per annum. See §§997-4a to 997-4h.

Act Apr. 10, 1933, c. 166, §5, provides that in counties having 76 to 80 congressional townships and assessed valuation of \$3,000,000 to \$5,000,000, clerk of district court shall receive \$1,500 per annum and clerk hire of not over \$100 per annum, all fees and revenue to be paid into county treasury. See §§997-4a to 997-4h.

Act Apr. 11, 1933, c. 212, effective May 1, 1933, authorizes county board in counties having 50 to 70 congressional townships and assessed valuation, exclusive of moneys and credits of less than \$1,500,000, to fix salaries of county officers and require their fees to be paid into the county treasury.

Act Apr. 13, 1933, c. 219, §1, provides that in counties having assessed valuation of not more than \$6,000,000 and population of not more than 12,500 the county board shall fix the salaries of subordinate county employees. This section seems to be invalid as not expressed in the title of the act. Section 2 authorizes the county board, in counties having assessed valuation, excluding moneys and credits, of \$2,500,000 to \$3,000,000, population of 9,000 to 10,000, and area of 29 to 31 congressional townships, to fix the salaries of all subordinate county employees.

Act Apr. 15, 1933, c. 281, provides that in counties having 100 or more townships and assessed valuation, including moneys and credits, the clerk of the district court shall receive \$990 per annum and clerk hire to be fixed by the county board. See §§997-4a to 997-4h.

Act Mar. 23, 1937, c. 91, repeals Laws 1933, c. 281, and provides that in counties having 100 to 105 townships and population of 12,000 to 16,000 the 1931 salary rate shall apply, regardless of decrease in valuation or change in population or other factor. Salary to be governed by general law, except as to minimum fixed. County board to fix clerk hire.

Act Apr. 15, 1933, c. 284, §10, amending Laws 1921, c. 437, Laws 1927, c. 225, and Laws 1931, c. 192, provides that in counties having 24 or 25 congressional townships and assessed valuation, exclusive of moneys and credits, of \$9,000,000 to \$12,000,000, the clerk of the district court shall receive \$1,263 per year and fees, with maximum of \$2,880, except in real estate tax proceedings. See §§997-4a to 997-4h.

Laws 1933, c. 284, Amended, Apr. 12, 1937, c. 193, amends §7 of Laws 1925, c. 91, by making the salary of the clerk \$1,281 per year, with not exceeding \$400 for clerk hire; 18% of fees to be paid into county treasury; total compensation not to exceed \$2,800 per year. See §§997-4a to 997-4h.

Laws 1933, c. 432, Amended, Apr. 14, 1937, c. 230.

Act does not affect right of Clerk of Court to receive and retain the per diem allowed for services on board of audit. Op. Atty. Gen., May 23, 1929.

Duties and compensation in counties of over 380,000 population. See Laws 1923, c. 419, as amended by Laws 1927, c. 125, and Laws 1929, c. 152.

Additional fees allowed clerks for completing records neglected by prior incumbent of office. See Laws 1929, c. 207.

In counties with population between 240,000 and 330,000, clerk's salary is \$4,500; chief deputy, \$2,800; one deputy clerk, \$2,150; one deputy, \$2,050; one deputy, \$1,950; nine deputies, \$1,620, to be increased to \$1,300 after 10 years' service; one assignment clerk, \$1,920. See Laws 1929, c. 306, which amends prior statutes.

Laws 1929, c. 341, §2, fixes salary at \$6,500 in counties of 415,000 population or over, but only at \$4,000 if act cannot be held to apply to fees received from federal government.

Counties having population of 380,000 or over, Laws 1929, c. 359, §1 (amending Laws 1925, c. 398, §2, which amended Laws 1923, c. 419, §14, which amended Laws 1921, c. 133, §14), fixes salaries as follows: Chief deputy, \$3,500; head counter deputy, \$2,205; assignment deputy, \$2,700; two deputies, each, \$1,870; one deputy, \$2,060; six deputies, \$1,700 each; 12 deputies, \$1,300 each; two deputies, \$1,600 each; one deputy, \$1,700; one deputy, \$2,200; one deputy, \$2,205; two deputies, \$2,000 each; three deputies, \$1,600 each.

Counties with 41 to 43 congressional townships and population of 25,000 to 30,000, Laws 1929, c. 161, §4, amends §15, c. 91, Laws 1925, and authorizes additional clerk with salary not to exceed \$80 per month.

Counties having area of not more than 23 and not less than 20 congressional townships, and assessed valuation

of not more than \$6,000,000, Laws 1931, c. 15, §3, permits clerk to retain \$1,500 out of fees, any deficiency to be paid to him by the county, and fixes his salary at \$800 to be considered as portion of fees. He is also allowed \$200 per annum for clerk hire. Effective Jan. 1, 1931.

Counties of 44 to 45 congressional townships and assessed valuation of \$12,000,000 to \$18,000,000, Laws 1931, c. 192, amends Laws 1921, c. 437, §1, to make amended act applicable to counties as above.

Act Feb. 27, 1935, c. 23, amends Laws 1933, c. 96, by adding thereto §3-1, empowering county board to fix clerk hire of clerk of district court at not more than \$3,300 per year.

Laws 1935, c. 81. Amended. Mar. 19, 1937, c. 70; Apr. 17, 1937, c. 278.

Laws 1935, c. 284. Amended. Apr. 26, 1937, c. 491. Act July 14, 1937, Sp. Ses., c. 14, amends Act Apr. 14, 1937, c. 226, to make the act apply to counties having 7500 to 9000 inhabitants, and makes the minimum salary of the clerk \$1320, existing statutes to govern salary above that figure, and act not to apply to counties for which other provision has been made by the 1937 legislature.

Act Feb. 9, 1937, c. 19, effective Jan. 1, 1937, provides that in counties with population of 8,000 to 11,000 with 18 to 22 townships, assessed value of \$4,000,000 to \$5,700,000, exclusive of monies and credits and homestead exemptions, the clerk shall receive his fees, county to pay deficiency in fees up to \$1500, and also \$800 in addition, and \$500 for clerk hire.

Act Mar. 19, 1937, c. 76, provides that in counties having assessed valuation of \$5,000,000 to \$6,000,000, population of 10,000 to 11,000, and 15 to 17 townships, the clerk shall receive \$480 per year for clerk hire.

Act Apr. 6, 1937, c. 156, provides that in counties having 16 to 20 townships, 7500 to 8500 inhabitants, assessed valuation of \$4,500,000 to \$8,000,000, and for which no other provision has been made by the 1937 legislature, the salary of the clerk shall be that provided by law, except that the minimum provided by 1931 law shall apply, irrespective of change of valuation or population.

Act Apr. 6, 1937, c. 157, provides that in counties having 240,000 to 330,000, the clerk shall receive \$4500, and clerk hire as follows: chief deputy \$2800; one deputy \$2150; one deputy \$2050; one deputy \$1950; 9 deputies \$1620 each, to be increased to \$1800 after 5 years' service; assignment clerk \$1920. Amended, Laws 1939, c. 297.

Act Apr. 14, 1937, c. 226, provides that in counties having 12 to 17 townships, 7000 to 9000 inhabitants, assessed valuation, exclusive of moneys and credits, of \$1,800,000 to \$2,500,000, the clerk of court shall receive a minimum salary of \$900, regardless of change in classification factors, county auditor to pay deficiency under \$1700 of salary and fees, general law to apply except as to minimum, and except as to other provisions made by 1937 legislature.

Act Mar. 31, 1939, c. 99, fixes the salary and expenses of clerks of district courts and their deputies and clerks in counties having 41 to 43 congressional townships, assessed valuation, exclusive of money and credits, of \$6,000,000.00 to \$12,000,000.00, and population of 25,000 to 30,000, and repeals Laws 1921, c. 437; Laws 1925, c. 91; Laws 1929, cc. 20, 161; Laws 1933, c. 432; Laws 1937, c. 230; Laws Sp. Ses. 1937, c. 54.

Salaries and clerk hire in counties having 50 to 70 townships and a valuation of \$500,000 to \$1,500,000 and population of 2,000 to 3,000. Laws 1939, c. 168.

Where clerk of district court was elected for four year term in 1930 and died after June primary in 1932, one appointed to fill vacancy will hold office only until November 1932 election, and nominations may be made by petition, in which candidate need not state his political party or affiliation. Op. Atty. Gen., July 16, 1932.

Legislature possesses right to change salaries of county officers at any time. Op. Atty. Gen., Feb. 21, 1933.

Clerk of Court is not entitled to additional compensation for indexing and keeping vital statistic records pursuant to Section 5365. Op. Atty. Gen., Mar. 24, 1933.

County officers whose terms expire on first Monday of January are entitled to compensation for days of service rendered in month of January up to time that their successors qualify and take office. Op. Atty. Gen. (104a-9), Dec. 1, 1934.

Salary of clerk of district court is determined in accordance with classification provided for in Laws 1909, c. 335, as amended by Laws 1919, c. 229, while clerk hire is controlled by classification found in Laws 1917, c. 476, and if Goodhue County comes within classification F as to clerk's compensation but within classification E as to clerk hire, judge of district court may allow such additional sum for deputy clerk hire as may be reasonable and necessary. Op. Atty. Gen. (144a-1), Dec. 13, 1934.

Laws 1933, c. 219, does not apply to Clearwater County and §1 thereof is not within title of act. Op. Atty. Gen. (104a-3), Feb. 5, 1935.

Clerk of court in county governed by Laws 1933, c. 166, §12, must turn naturalization fees into county treasury. Op. Atty. Gen. (144b-15), July 19, 1935.

Informations are to be considered as indictments within meaning of Laws 1919, ch. 229, so as to entitle clerk to salary specified in that act. Op. Atty. Gen. (144a-4), Jan. 3, 1936.

Under Laws 1919, ch. 229, district court clerks' salaries may be predicated upon "informations" in lieu of "indictments." Op. Atty. Gen. (144a-4), Feb. 10, 1936.

Where clerk of district court is paid under Laws 1919, c. 229, he is not entitled to any fees for services rendered to county, in any suit in which county is a party, whether such suits be criminal or civil, and he is not entitled to fee when county recovers fees against opposing party in suit. Op. Atty. Gen. (144b-15), Aug. 25, 1937.

Vacancy in office of clerk of district court is to be filled by district judge, under §200, not by county board under §822. Op. Atty. Gen., (144a-5), Nov. 25, 1938.

Clerk of court operating under Laws 1931, c. 15, and Laws 1937, c. 19, is personally entitled to fees for issuing personal property tax citations and perfecting judgments, but he must wait until judgment is paid. Op. Atty. Gen. (421a-5), Jan. 30, 1939.

Fees received by clerk of court for services rendered on board of audit, in connection with naturalization matter, and for taking passport applications go to him personally in county governed by Laws 1919, c. 229, and probably in all other counties other than Cass County. Op. Atty. Gen. (144B-1), July 24, 1939.

Laws 1925, c. 5, §3. The additional compensation of the clerk cannot be paid until allowance by the county board. Op. Atty. Gen., Jan. 15, 1930.

This act insofar as it relates to salary and clerk hire of clerk of district court of Clearwater county is unconstitutional pursuant to decision of district court, in absence of an appeal. Op. Atty. Gen. (82f), June 1, 1937.

STENOGRAPHIC REPORTERS

201. Appointment—Duties—Bond.

Laws 1929, c. 385, amends Laws 1921, c. 460, §5, and fixes salary of court reporters in St. Louis county at \$4,000 and \$10 per day while attending sessions of district court in other counties of the Eleventh Judicial District.

Act Apr. 17, 1937, c. 266, effective May 1, 1937, provides that in judicial district containing one judge and three counties containing two cities of over 10,000 inhabitants, and aggregate population of over 75,000, a court reporter may be appointed by the judge at a salary of not over \$3,000.

202. Duties as to reports.

Provision of District Court Rule 27, requiring party requesting reporting, as distinguished from transcribing argument, to pay reporter therefor, is invalid. Jovaag v. O., 189M315, 249NW676. See Dun. Dig. 2773. Court reporter is entitled to charge against county cost of notebook paper. Op. Atty. Gen., Feb. 23, 1933.

205. Compensation of court reporters in certain districts.—The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1939, and on or before the first Monday in January, annually thereafter, shall fix and establish the salary of the court reporter at an amount not exceeding \$2700.00 per year, but in judicial districts comprised or hereafter comprised of not less than ten counties the salary shall be fixed and established at \$3000.00 per year, and in such order shall apportion the salaries of the reporters in their respective districts among the several counties, and each county shall be required by such order to pay a specified amount thereof in monthly installments which amount shall be such proportion of the whole salary as the number of days work actually done by the reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Each reporter shall have and maintain his residence in the district in which he is appointed, but if any reporter be appointed in two or more districts he may reside in either or any of them.

The reporter, in addition to his salary, shall be paid such sums as he shall pay out as necessary railway, traveling and hotel expenses while absent from the city or village in which he resides in the discharge of his official duties, such expenses to be paid by the county for which the same were incurred upon presentation of a verified, itemized statement thereof approved by the judge; and the county auditor of such county, upon presentation of such approved statement, shall issue his warrant in payment thereof. As amended Apr. 17, 1939, c. 289.)

Editorial note.—Act Mar. 17, 1939, c. 67, authorizes judges in any judicial district having three judges, composed of nine counties, area of 15,000 square miles, and not containing a city of the first class, to fix salary of court reporters at \$3,000 per annum.

Court reporter is entitled to charge 5c per mile for use of automobile, but not for week-end trips home. Op. Atty. Gen., May 2, 1933.

206. Fees.

Reporter is entitled to fees for transcripts of proceedings in criminal cases. Op. Atty. Gen., (129), June 18, 1938.

PROBATION AND INVESTIGATION DEPARTMENT

208-1. Probation and investigation department established.—There is hereby established in all counties of this state now or hereafter having a population of more than 415,000 inhabitants and constituting a single judicial district a probation and investigation department in connection with the district court of any such county. (Act Apr. 24, 1929, c. 326, §1.)

208-2. Officers and employees.—Such department shall consist of one chief probation officer and such other probation officers, investigators, clerical help and other employees as the judges of said court shall from time to time appoint.

Such probation officers, investigators, clerical help and other employees shall be appointed and removed by the judges of the district court in any such county. They may be appointed either for a definite period of time or for an indeterminate period in the discretion of the court. The salaries of all such persons shall be fixed by the judges of said court.

The said judges may by order determine the necessary qualifications of applicants for positions in said department and may in their discretion provide that applicants shall undergo certain tests as to their qualifications.

The chief probation officer shall have general supervision of such department, subject to the direction of the judges of said court. The court may divide the duties of said department into branches or divisions, and appoint from such probation officers or investigators the heads of such branches or divisions. A juvenile division may be established distinct from all other divisions of such department. (Act Apr. 24, 1929, c. 326, §2; Apr. 10, 1939, c. 183.)

208-3. Duties.—The duties of such department shall be:

(a) To undertake the supervision of all persons placed on probation or parole by any of the judges of said court, to keep accurate records of such supervision, and to report to the court as to such probation or parole as directed by any of the judges of the court.

(b) To be present when court is in session and so directed by any one of said judges.

(c) To perform the duties required of probation officers by the juvenile court act, as contained in Chapter 73A, Mason's Minnesota Statutes 1927.

(d) To assist in administering the law providing for all allowances to mothers of dependent children, and to perform the duties of investigation and supervision, as found in Sections 8671, to 8689, Mason's Minnesota Statutes 1927.

(e) To provide for mental and physical examination of persons coming under the juvenile court law, and to provide for necessary mental, dental, surgical and nursing care for such persons.

(f) To make such investigation as the court may direct concerning the circumstances of the offense, criminal record and social history of any person convicted of crime, and when deemed appropriate to obtain a physical and mental examination of such defendant and report thereon.

(g) To make collections of support money in divorce actions when ordered by a judge of said court for the benefit of children or indigent mothers and children jointly; to collect money ordered to be paid in desertion and abandonment cases; and to make collections of money or property when ordered to be paid as restitution or reimbursement and to turn over

such money or property to the person or persons entitled thereto.

(h) To make investigations in divorce cases of children and home conditions when directed by a judge of said court, and also to exercise supervision over children in such divorce cases as the court may direct.

(i) When directed by a judge of said court and when the person having custody of children is indigent, to take such steps as may be necessary to compel persons ordered to pay money for the support of children when in default; to take such steps as may be necessary to compel persons to make reimbursement to comply with the order of court when in default; to institute, if necessary, contempt proceedings in behalf of such person or persons to whom money or property is ordered to be paid or delivered. It shall be the duty of the county attorney to conduct such contempt proceedings when directed by one of the judges of said court.

(j) To perform such other duties for the protection of children and indigent mothers and children as may be directed by the court. (Act Apr. 24, 1929, c. 326, §3.)

208-4. County Board to furnish office room.—The county commissioners of such county shall provide said department with suitably furnished office rooms, record books, stationery, postage, expenses of investigation and transportation, and such other actual expenses as are required for the proper execution of the purposes of this act. (Act Apr. 24, 1929, c. 326, §4.)

208-5. Probation officers—Powers.—Probation officers shall have the power of peace officers in the execution of their duties. Each probation officer, before entering on the duties of his office shall take an oath of office to be administered by one of the judges making the appointment. Each probation officer or employee who collects or has the custody of money shall execute a bond with appropriate sureties in a penal sum to be fixed by said judges, at the expense of the county, conditioned for the true accounting of all money received by him as probation officer. (Act Apr. 24, 1929, c. 326, §5.)

208-6. Records to be in custody of the court.—The records of all cases in said office may be withheld from indiscriminate public inspection at the discretion of the judges of said court. (Act Apr. 24, 1929, c. 326, §6.)

208-7. Action by majority of judges.—Any act, order or thing required or permitted to be done by the judges of said court by the provisions hereof may be done by a majority of said judges. (Act Apr. 24, 1929, c. 326, §7.)

208-8. Census governing.—For the purpose of determining what counties in the state come under the classification contained in this act reference shall be made to the last complete state or national census. (Act Apr. 24, 1929, c. 326, §8.)

208-9. Repeal; municipal court.—All acts or parts of act inconsistent herewith are hereby repealed, in so far as they apply to counties affected by this act. In counties in which there is a separate municipal court probation officer, the probation department established by this act is hereby relieved of any of the duties specified in Sections 10910, 10911 and 10912, Mason's Statutes of Minnesota 1927, with references to attendance in municipal courts and with references to representing the interests of minors in said courts. (Act Apr. 24, 1929, c. 326, §9.)

SALARIES

211. Retirement of Supreme Court Justices and District Court Judges.—When a Justice of the Supreme Court or a Judge of the District Court shall

be retired under the provision of Mason's Minnesota Statutes of 1927, Section 210, he shall receive the compensation allotted to his office for the remainder of his said term, or, if a Justice of the Supreme Court is then past 70 years of age, and has served as a Justice of the Supreme Court, or as such Justice and as a Commissioner of the Supreme Court or a Judge of the District Court of this State, or either continuously for 25 years or more or if a Judge of the District Court is then past 70 years of age, and has served as a Judge of the District Court, or as such Judge and as a judge of a Municipal Court or a Probate Court of this State, or either, continuously for 25 years or more, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time, and the manner provided by law.

When a Justice of the Supreme Court has served continuously for 25 years or more, either as a Justice of the Supreme Court, or as a Justice of the Supreme Court and a Judge of the District Court or a Commissioner of the Supreme Court, and is then past the age of 70 years, or when a Judge of the District Court has served continuously for 25 years or more, either as a Judge of the District Court, or as a Judge of the District Court, or as a Judge of the District Court and a Judge of a Municipal Court or a Probate Court of this State, and is then past 70 years of age, and has not been retired under the provisions of existing law, he may retire from further service as such judge, and shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid in the manner provided by law for the payment of the salary of such Justice or Judge. (G. S. '13, §255; '13, c. 269, §2; '23, c. 79; '27c, 337, §1; Apr. 16, 1929, c. 201; Apr. 26, 1929, c. 408; Apr. 26, 1937, c. 475, §1.)

Where judge presented to governor his petition for retirement on Sept. 30, 1936, and requested that his retirement, if granted, be made effective prior to Nov. 15, 1936, and he found facts required by retirement act and made an order directing retirement to become effective at close of Nov. 15, 1936, no vacancy existed until Nov. 15, which governor could fill by appointment, and no new judge was elected at general election held on Nov. 3, where no notice was given and only a negligible number of electors exercised right to vote for that office. *State v. Holm*, 202M500, 279NW218. See Dun. Dig. 4954.

Eligibility for other office as affected by membership in legislative body providing retirement benefits. 23 MinnLawRev376.

211-7. Same—compensation of retired judge.

Laws 1931, c. 228, provides for retirement pay of supreme court and district judges under certain circumstances. The act is omitted as special and temporary.

211-7a. Same—Retirement prior to January 1, 1937.—Justices and Commissioners of the Supreme Court and Judges of the District Court who retired prior to January 1, 1937, under the statutes in force at the time of their retirement, shall from the date of their retirement receive retirement compensation at the rate and for the time provided in the statutes in force at the time each of them retired. (July 23, 1937, Sp. Ses. c. 83.)

211-8. Retirement of judges of probate court.—Whenever a probate judge shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable and if he shall thereby determine that such disability exists, and the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon by written order, to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in said office, which shall be filled by ap-

pointment, as provided by law. (Act Apr. 20, 1931, c. 253, §1.)

211-9. To receive half pay.—When a judge shall be retired under the provisions of section 1 of this act, he shall receive the compensation allotted to his office for the remainder of his term, or, if then past 70 years of age, having served as such probate judge continually for more than forty years, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law. (Act Apr. 20, 1931, c. 253, §2.)

MUNICIPAL COURTS

212. Existing courts confirmed.

This section supersedes any inconsistent home rule charter provision. *Op. Atty. Gen.*, Jan. 25, 1934.

213. Oaths and bonds.

Oath and bond of municipal judge of a city of fourth class are to be filed in office of secretary of state. *State v. City of Waseca*, 195M266, 262NW633. See Dun. Dig. 4953.

Penalty clause in bond of municipal judge should run in favor of state and not city. *Op. Atty. Gen.* (307a), Apr. 12, 1937.

Oath of office and bonds of a judge of municipal court of Brainerd is to be filed with secretary of state upon approval by attorney general. *Op. Atty. Gen.* (306a-3), Apr. 26, 1937.

Clerk of municipal court of Brainerd should furnish a bond in addition to that furnished by the judge, in amount required by statute, approved by judge, and filed with secretary of state. *Op. Atty. Gen.* (307i), May 13, 1937.

214-1. Rules of practice in Municipal Court.—The Judges of the Municipal Courts of the State may assemble annually at such time and place as may be designated by the President of the Minnesota Municipal Judges Association. When so assembled the Judges may formulate and revise the general rules of practice in such Courts as they deem expedient, conformable to law which rules shall not be inconsistent with any general or special law now applicable to Municipal Courts of this State. Any other proper business pertaining to such Municipal Courts may also be transacted. Any City or Village or Borough of this State, whether organized under the general laws or a special or home rule charter may appropriate through its governing body out of its general fund money to pay the actual and necessary expenses of such Judges in attending such assembly. (Apr. 17, 1937, c. 268, §1.)

Sec. 2 of Act Apr. 17, 1937, cited, provides that the Act shall take effect from its passage.

The rules of the municipal courts of Duluth, Minneapolis, and St. Paul, are set out in Appendix 4, post.

MUNICIPAL COURTS IN CITIES AND VILLAGES

215. Municipal courts.

The rules of the municipal courts of Duluth, Minneapolis, and St. Paul are set out in Appendix 4, post.

Municipal Court of Tower, Laws 1937, c. 144, amends Laws 1929, c. 4, §§1-3.

Municipal Court of Minneapolis. Laws 1919, c. 331, §1, relating to salaries of stenographic reporters, is amended by Laws 1929, c. 128. Laws 1929, c. 129, amends Sp. Laws 1889, c. 34, §18, as amended, relating to salaries of judges and clerks. Laws 1937, c. 273, effective Apr. 17, 1937, amends Sp. Laws 1889, c. 34, §18, and Laws 1913, c. 424, §§1, 2, 4, 5.

Municipal Court of Ely. Sp. Laws 1891, c. 59, §19, as amended by Laws 1916, c. 66, is amended by Laws 1929, c. 134. Laws 1931, c. 251, amends Sp. Laws 1891, c. 59, §1.

Municipal Court of Hibbing. Establishment, etc., by Laws 1929, c. 253.

Municipal Court of Duluth. Laws 1923, c. 238, §§20, 48, is amended by Laws 1929, c. 241. Laws 1923, c. 238, §52, as amended by Laws 1925, c. 85, §7, is further amended by Laws 1929, c. 45. Laws 1923, c. 238, §§9, 17, 35, 43, as amended by Laws 1925, c. 85, §5, is further amended by Laws 1931, c. 57 and Laws 1937, c. 143.

Duluth conciliation court: Act July 15, 1937, Sp. Ses. c. 67, amends Laws 1927, c. 17, §§4, 6, 7, 14, 15, 18, 19.

Municipal Court of Village of Hibbing. Laws 1931, c. 13 amends §§8, 22, 24 of c. 253, Laws 1929.

Act Feb. 17, 1933, c. 32, amends Laws 1925, c. 120, as amended by Laws 1927, c. 81, §4a.

Act Ex. Ses., Dec. 31, 1933, c. 35, establishes a municipal court in the village of Perham, Otter Tail County. Omitted as local.

Laws 1935, c. 253. Municipal court for village of New York Mills.

Municipal Court of the City of St. Cloud. Laws Sp. Ses. 1935-36, c. 88.

Municipal Court of St. Paul. Jurisdiction of forcible entry and detainer action under Sp. Laws 1889, c. 351.

Municipal court of Mahanomen: Act July 16, 1937, Sp. Ses., c. 72.

Act Apr. 21, 1939, c. 368, amends §§1, 4, 6 of Laws 1937, Ex. Ses., c. 72, §§1, 4, 6, relating to municipal court of Mahanomen.

A decree in equity may create a lien independently of this section, and this is true with respect to a decree for the separate maintenance of a wife justifiably living apart from her husband. 178M531, 227NW895.

In suit brought on a check, given as cash or earnest money, upon delivery of a contract to convey land, evidence did not involve or raise any issue as to title of land so as to deprive municipal court of city of Minneapolis of jurisdiction. Little v. D., 181M487, 233NW7, See Dun. Dig. 6906.

Municipal court organized under this section, as it read in 1916, cannot be abolished by the municipality. Op. Atty. Gen., Dec. 10, 1929.

Where municipal court exceeded its jurisdiction and convicted one of unlawfully killing a deer, and on his failing to pay fine confined him in jail, and conviction was held void on habeas corpus, he could be tried again for the offense with which he was charged. Op. Atty. Gen., Feb. 20, 1931.

Municipal court established under general act is a state court and judge thereof a state officer, and judge cannot be legislated out of office nor his term of office shortened by municipality. Op. Atty. Gen. (307d), Sept. 28, 1934.

It is optional with governing body of municipality at time of establishment of municipal court whether or not provision shall be made for a special municipal judge. Op. Atty. Gen. (213f), May 1, 1935.

Fees of municipal court of village of Perham established by Laws 1933, Ex. Sess., ch. 35, are fixed by §239, Op. Atty. Gen. (196j), Jan. 16, 1936.

Fees in municipal court of village of New York Mills, established by Laws 1935, ch. 233, are fixed by §239. *Id.* City of International Falls by adoption of home rule charter without providing for election of justice of the peace abolished that office. Op. Atty. Gen. (306a), Apr. 9, 1936.

Word "each" was inadvertently omitted, and clerks are each entitled to salary of \$2200. Op. Atty. Gen. (36a-14), Apr. 21, 1937.

Laws 1935, Ex. Sess., c. 88, creating municipal court for St. Cloud and Benton and Sherburne Counties, is constitutional, except in so far as it requires judges to be persons learned in the law and duly admitted to practice as attorneys. Op. Atty. Gen. (306a-4), April 21, 1939.

Laws 1935, c. 253, creating municipal court at New York Mills, is constitutional so far as creation of courts is involved, but is unconstitutional in so far as it requires judge to be an attorney at law. Op. Atty. Gen. (307g), March 17, 1939.

216. Application to existing courts.

City council of Owatonna passed resolution on March 28, 1938, to come under uniform municipal court act. Op. Atty. Gen. (121B-14), Feb. 23, 1939.

217. Municipal judges—election—term—salary.—

The judges of such courts shall be elected at the regular city or village elections, for the term of four years, beginning on the first Monday of the month next following their election, and until their successors qualify. When a new court is organized more than 90 days prior to a regular election, the Governor shall appoint a judge or judges thereof to serve until they are elected and qualified, and vacancies shall be filled by like appointment for the unexpired term. Provided, that in the absence or disability of the municipal judge and special municipal judge of such court, if there be one, the mayor or president of the council may designate a practicing attorney to sit in place of such municipal judge from day to day. All municipal judges and special municipal judges shall be men learned in the law and residents of the city or village. The salary of each shall be paid monthly by the city or village and shall be fixed by resolution adopted by a majority of the council of such city or village, and approved by the mayor or president, and shall not be diminished during his term. Provided, however, that where there shall be a municipal judge and a special municipal judge, the special municipal judge shall act only in the absence or disability of the municipal judge, and receive as compensation therefor an amount per

diem to be fixed and paid by the council of such city or village; and provided further, that any such special municipal judge shall not be prohibited from practicing in said municipal court or in any other court, but he shall not sit in the trial of any cause or proceeding wherein he may be interested, directly or indirectly, as counsel or attorney, or otherwise. Provided that in all cities over 7,000 population and having an assessed valuation of more than \$10,000,000, the city council may pay the special municipal judge a salary of \$50.00 per month in lieu of compensation on a per diem basis. (R. L. '05, §127; G. S. '13, §261; '13, c. 104, §1; '27, c. 276, §1; Apr. 18, 1929, c. 223; Apr. 15, 1933, c. 269; Apr. 6, 1937, c. 154, §1.)

Sec. 2 of Act Apr. 18, 1929, c. 223, repeals inconsistent acts.

Cities having population of 400,000 or more shall pay to the estate of any municipal judge dying in office, his full salary for the month of his death. Laws 1939, c. 232.

Judges of municipal court are state officers and not officers of the municipality electing them, and where a municipal judge was elected to a term commencing on the first secular day of February, 1928, his term of office did not expire until four years thereafter, and his term of office could not be changed by adoption of home rule charter changing dates of election, and where the only proper general election of a city next preceding first secular day of February, 1932, was in November, 1930, at which the same judge was elected, his four-year term of office under the second election began the first secular day of February, 1932. State v. Bensel, 194M55, 259NW389. See Dun. Dig. 6900a.

A municipal judge in a city of fourth class is elected for a term of four years and until his successor is elected and qualifies. State v. City of Waseca, 195M266, 262NW639. See Dun. Dig. 4953.

A resolution of city council adopted in May, 1933, enacted with same formalities as an ordinance, fixing salary of municipal judge, had same force as an ordinance, was not a temporary enactment, and did not expire with expiration of term of office of members of city council then in office. *Id.*

Statutes governing municipal courts in cities of fourth class, as they stood in 1934, did not authorize city council to discontinue salary of municipal judge of city or to place compensation of judge back on a fee basis. *Id.* See Dun. Dig. 4957.

Section 9221, relating to affidavits of prejudice, does not appear to cover judgments of municipal courts. City of Duluth v. L., 199M470, 272NW389. See Dun. Dig. 4962.

Where trial was set for June 18, and continued to June 19, affidavit of prejudice filed June 19 was too late. *Id.*

Provision authorizing Governor to fill vacancies by appointment "for the unexpired term" conflicts with Const., art. 6, §10. Vacancy cannot be filed at special election. Op. Atty. Gen., May 23, 1929.

Since amendment by Laws 1929, c. 223, municipal judge of Buhl may act as secretary or treasurer of the school board and be paid a salary for such service. Op. Atty. Gen., July 30, 1930.

Neither a municipal judge nor special municipal judge elected or appointed need be admitted to practice law. Op. Atty. Gen., Feb. 13, 1932.

Statute is valid in so far as it requires that a person designated by the mayor to act in place of a judge shall be a practicing attorney. Op. Atty. Gen., Feb. 13, 1932.

This section is not applicable to judge of municipal court of Stillwater. Op. Atty. Gen., Jan. 23, 1933.

Municipal judges need not be attorneys. Op. Atty. Gen., Feb. 9, 1933.

Offices of special municipal judge and school director are not incompatible. Op. Atty. Gen., Aug. 1, 1933.

In view of Const., art. 6, §10, appointee to fill vacancy would hold only until next general election and not for the full unexpired term of the predecessor. Op. Atty. Gen., Oct. 14, 1933.

Village council has authority to pay salary of municipal judge, although he has been inactive and unable to perform the duties of his office due to illness. Op. Atty. Gen., Mar. 16, 1934.

Term of village municipal judge may not be changed by electors in incorporating as a city of fourth class. Op. Atty. Gen. (307k), Sept. 13, 1934.

Term of office of one appointed to fill vacancy in office of municipal judge expires at first annual village election, and not with expiration of term of former judge. Op. Atty. Gen. (307L), Sept. 27, 1934.

Municipal judge holds over until his successor is elected and qualified at the next regular city election, and a judge may not be elected at a special election. Op. Atty. Gen. (307d), Sept. 28, 1934.

Term of municipal judge may not be changed by home rule charter, and salaries are to be fixed in accordance with this section. Op. Atty. Gen. (307k), Dec. 1, 1934.

Where no special municipal judge was elected at last municipal election, it cannot be said that there is a

vacancy which may be filled by the governor. Op. Atty. Gen. (213f), May 1, 1935.

Where regular judge is disqualified or is absent from city or ill, a practicing attorney may be appointed by the mayor or president of council to sit in place of the regular judge from day to day. Op. Atty. Gen. (307j), May 14, 1935.

Municipal judge appointed to fill vacancy in office, holds office only until next annual election. Op. Atty. Gen. (307k), July 30, 1935.

Salary of municipal judge appointed to fill vacancy can neither be increased or diminished during term for which deceased judge was elected. Id.

Offices of municipal court judge and director of independent school district are not incompatible. Op. Atty. Gen. (358-2), Aug. 28, 1935.

Municipal judges need not be attorneys. Op. Atty. Gen. (307g), Oct. 12, 1935.

City may not fix salaries for city matters, and permit court to select from county all fees for actions brought by county or work done for it. Op. Atty. Gen. (307i), Jan. 3, 1936.

Where vacancy occurs on account of death of judge, new appointee must be given same rate of salary as deceased. Op. Atty. Gen. (307l), Jan. 27, 1936.

Salary of municipal judge of Sauk Center may not be diminished during term. Op. Atty. Gen. (307i), Apr. 23, 1936.

Councils of cities of at least fourth class have power to provide for compensation of municipal judges either by salary, or by fees or by both, and as their legislative discretion might fix it. Op. Atty. Gen. (307i), May 13, 1936.

City council of Faribault may increase salary of judge of municipal court during term of office. Op. Atty. Gen. (307i), May 11, 1937.

Brainerd city council may by majority vote increase salary of municipal judge during his term of office. Op. Atty. Gen. (307i), May 13, 1937.

Practicing attorney appointed to act in place of municipal judge is not entitled to compensation in absence of city ordinance providing for such. Op. Atty. Gen. (307i), Jan. 19, 1938.

Council may provide that all fees which judge is by law authorized to collect shall be paid into city treasury. Op. Atty. Gen. (307i), Feb. 1, 1938.

Judges should be paid a salary and not part salary and part fees. Op. Atty. Gen. (307i), Feb. 1, 1938.

Compensation of judge of court operating under revised laws of 1905, as amended, is governed by this section, and not by §237. Op. Atty. Gen. (307i), Feb. 1, 1938.

Statute requiring municipal judge to be an attorney at law, would be unconstitutional. Op. Atty. Gen. (307g), Jan. 20, 1939.

217-1. Salaries of municipal judges in certain cities.

—Whenever a judge of the municipal court in any city of this state having a population in excess of 400,000 has died subsequent to January 1, 1935, the governing body of said city is authorized and empowered to pay to the estate of such deceased judge the full salary of such judge at the rate provided by law at the time of his death for the calendar month in which such death occurred. (Act Apr. 13, 1939, c. 232.)

218. Jurisdiction.

Removal of forcible entry case to district court not warranted by answer putting in issue the title, but there must be evidence putting title in issue. 178M282, 226NW 847.

Municipal court of Minneapolis had jurisdiction of an action against an investment company for money had and received. Goodell v. A., 185M213, 240NW534. See Dun. Dig. 6906.

Municipal courts organized under Laws 1895, ch. 229, or Mason's Minn. St. 1927, §§215 to 228, while courts of record are of special and limited jurisdiction and possess only such authority as is conferred by the particular statute under which organized, and such courts, like courts of justice of the peace, have no authority to grant new trials. Untiedt v. V., 195M239, 262NW568. See Dun. Dig. 6900b.

In forcible entry and unlawful detainer cases, municipal court of Minneapolis has no power to entertain a motion for a new trial or a motion for judgment in favor of defendant notwithstanding decision for plaintiff. Olson v. L., 196M352, 265NW25. See Dun. Dig. 6900b, 6906.

County attorney need not prosecute ordinary misdemeanors and city attorney is under no duty to prosecute misdemeanors arising outside of corporate limits. Op. Atty. Gen. (121b-7), May 8, 1935.

Municipal court has no authority to commit inebriates to or to release them from state hospital. Op. Atty. Gen. (306b-12), July 7, 1937.

(5).

Municipal court of Minneapolis had jurisdiction of unlawful detainer action, though title was involved. Cook v. L., 191M6, 252NW649. See Dun. Dig. 6906.

An appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v. L., 285NW932. See Dun. Dig. 309.

219. Jurisdiction withheld.

Conversion action arising out of partnership between two attorneys held properly dismissed on pleadings by municipal court, since rights of parties must be determined by an accounting action and conversion will not lie until termination of partnership. Grimes v. T., 273 NW816. See Dun. Dig. 6900b.

221. Criminal jurisdiction, etc.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100, or by imprisonment in excess of three months. State ex rel. v. Morical, 182M159, 234N W453. See Dun. Dig. 6900b(63).

Municipal judge could modify sentence to workhouse any time before execution of sentence had begun, and could change it to a jail sentence. State v. Municipal Court, 197M141, 266NW433. See Dun. Dig. 2487.

Municipal court of St. Paul may dispose of cases involving violations of a city ordinance without a jury trial. State v. Parks, 199M622, 273NW233. See Dun. Dig. 5235, 6907.

Legislature has power to determine how many justices of the peace there shall be in any county and what shall be their duties, and that there shall be no justice of the peace in any given county or portion thereof and may restrict constitutional jurisdiction, and may establish inferior courts and confer exclusive jurisdiction upon them and abolish jurisdiction of justices conferred upon such inferior courts, but Laws 1921, c. 362, in so far as it provides that the municipal court of city of St. Paul shall have exclusive jurisdiction of misdemeanors and to conduct preliminary examinations in criminal cases in Ramsey county, is unconstitutional, as local or special legislation. State v. Gibbons, 202M421, 278NW578. See Dun. Dig. 5270.

A municipal judge has practically unlimited authority in the exercise of his duties as regards sentencing of defendant, suspending sentences and imposing fines. Op. Atty. Gen., June 26, 1933.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

Municipal court having jurisdiction of a justice court has no jurisdiction of a prosecution under §3200-51, relating to sale of liquors in dry county, but can only bind defendant over to district court. Op. Atty. Gen. (218f), August 7, 1939.

223. Clerks and deputies—Process.—

The clerk of each municipal court, and his deputies, shall be appointed by the judge thereof, who may remove any of them at pleasure. If there be two judges, the senior in office shall exercise such power. Every clerk and deputy shall give bond to the state, in at least the sum of \$1,000.00 to be approved by the appointing judge, conditioned for the faithful discharge of his official duties, and for the payment as required by law or by order of the court of all moneys coming into his hands. All process shall be tested in the name of the judge, or the senior in office if there are two, be signed by the clerk, issued under the seal of the court, and be directed for service to any police officer, court officer, marshal or constable of any town, city or village, in the county, to the sheriff of the county, or all of them. No judge or other officer of such municipal court, excepting the special municipal judge, if any, shall prepare or draw any pleadings or other papers in any civil actions in said municipal court, nor shall they institute, for another, any civil action in such court. (R. L. '05, §133; G. S. '13, §267; '13, c. 104, §1; Feb. 21, 1931, c. 23, §1.)

It would be unethical for municipal judge to prepare proceedings or to advise in connection with civil action in his court. Op. Atty. Gen., May 25, 1932.

Clerk of municipal court does not come within provisions of Soldiers' Preference Law. Op. Atty. Gen., Mar. 13, 1933.

Appointment of municipal court clerk need not be approved by village council. Op. Atty. Gen., Apr. 8, 1933.

Court officer of municipal court of Virginia may serve papers any place in county, even where issued out of another municipal court in county. Op. Atty. Gen., May 17, 1933.

224. Clerk to receive and pay over fines, etc.

Fines and cost in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

Fines traceable to prosecutions by highway patrolman may be remitted by judge to municipal treasurer and by treasurer remitted to state. Op. Atty. Gen. (199b-4), Aug. 12, 1936.

Word "each" was inadvertently omitted in Laws 1937, ch. 273, §18(a), the municipal court of Minneapolis salary bill, and each clerk is entitled to \$2200. Op. Atty. Gen. (86a-14), Apr. 21, 1937.

226. Court officers.

Not applicable to municipal court of St. Cloud. See Laws Sp. Ses. 1935-36, c. 88, §5.
Op. Atty. Gen. (273d-1), Aug. 25, 1934; note under §6996.

A municipal court officer is not a policeman and so is not under civil service; and in cities of over 5,000 population mayor has power to appoint such officer without approval of city council; city council's only power in premises being to reject as legally insufficient or to approve bond put up by such officer. State v. City of Eveleth, 194M44, 260NW223. See Dun. Dig. 6900a.

Position of municipal court officer is subject to soldiers' and sailors' preference law. Id. See Dun. Dig. 7986.

Bond of city officer held sufficient to require its acceptance by city council though it contained no provision "for the use of all persons interested" and was executed for surety by "attorney" instead of "attorney-in-fact." State v. City of Eveleth, 196M307, 265NW30, See Dun. Dig. 8019.

Salaried officer of municipal court of Virginia is entitled to collect fees for serving papers, but is not entitled to retain them. Op. Atty. Gen., May 17, 1933.

This action supersedes any inconsistent home rule charter provision. Op. Atty. Gen., Jan. 25, 1934.

227. Reporters—Duties—Fees, etc.

Applicability to municipal court of St. Cloud. See Laws Sp. Ses. 1935-36, c. 88, §6.

228. Powers and duties—Practice—Rules—Fees.

Granting of continuance in prosecution for violation of a city ordinance is largely a matter within discretion of court, and granting a continuance of only one day was not abuse of discretion to a defendant who had more than a week to prepare for trial and to find alleged witness. City of Duluth v. L., 199M470, 272NW339. See Dun. Dig. 1715.

Municipal court had jurisdiction to make findings upon transcript of evidence adduced at a former trial before a judge since resigned, and it was error to grant a new trial, and it was error to decline to hear on merits defendant's motion for amended findings of fact or a new trial. Great Northern Ry. Co. v. B., 200M258, 274NW522. See Dun. Dig. 4961.

Whether or not district court practice applies to municipal court of Minneapolis on filing of affidavit of prejudice against judge, judicial propriety dictates that upon filing of such an affidavit or without it, in case of a criminal contempt, another judge should be called in to try case. State v. Laughlin, 204M291, 283NW395. See Dun. Dig. 4962.

Right of defendant to appeal after plea of guilty in municipal court. Op. Atty. Gen., Dec. 9, 1930.

This section does not apply to constables, marshals and village officers in cities and villages of less than 5,000 population, but rather to court officers appointed in cities and villages of 5,000 population or more under §226. Op. Atty. Gen. (273d-1), Aug. 25, 1934.

Municipal court has jurisdiction to dismiss a criminal action for failure of state to make out a case. Op. Atty. Gen. (307c), Jan. 23, 1936.

Municipal courts may suspend payment of fine, and are not responsible for fines not collected. Op. Atty. Gen. (306b-6), June 1, 1937.

Except in villages governed by special statutory provisions it is optional with village council to allow clerks to receive statutory fees or to provide for compensation on a salary basis in lieu of fees. Op. Atty. Gen. (308c), Feb. 15, 1938.

Clerk of court may be paid a salary in an amount to be determined by village council. Op. Atty. Gen. (308c), Feb. 21, 1938.

City council has power to provide that there be no collections of fees in criminal cases under ordinances. Op. Atty. Gen. (196j), Dec. 31, 1938.

On trial of violations of state laws municipal court may not tax costs of arrest, attendance and mileage against defendant or county, where officer making arrest and attending trial is a salaried police officer. Op. Atty. Gen. (199a-3), May 9, 1939.

Municipal court of Worthington organized under Laws 1895, c. 229, has right to issue an order to show cause, thereby shortening time for hearing on motion to vacate a writ of attachment. Op. Atty. Gen. (361a), July 19, 1939.

Where judge of municipal court allows offender to pay fine in installments or in one payment at some future date, judge can have offender picked up on a warrant and committed to jail for failure to pay fine, but only in event alternative sentence is imposed in first instance. Op. Atty. Gen. (199B-8), August 17, 1939.

228-1. Compensation of municipal court clerks in certain villages.

In villages coming within this section, it is mandatory on part of village council to fix compensation of clerk, whereas in villages not governed by this section, or by other sections, it is optional with council to allow clerk

to receive fees, or to fix compensation on salary basis in lieu of such fees. Op. Atty. Gen. (308c), Feb. 15, 1938.

229. Costs and disbursements.

Where defendant prevailed on his counter claim in amount equal to plaintiff's recovery, defendant was entitled to costs. 179M461, 229NW579(2d).

"Costs" refers to disbursements where no statutory costs are involved. Id.

230. Notices, etc.—Unlawful detainer.

In forcible entry and unlawful detainer cases, municipal court of Minneapolis has no power to entertain a motion for a new trial or a motion for judgment in favor of defendant notwithstanding decision for plaintiff. Olson v. L., 196M352, 265NW25. See Dun. Dig. 6900b, 6906.

231. Jury trials.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. Op. Atty. Gen. (260a-13), Feb. 5, 1935.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. Op. Atty. Gen. (605a-11), Feb. 25, 1935.

One charged with an offense under municipal ordinance is not entitled to a jury trial, unless it is expressly provided in such ordinance, or by charter or law under which city or village is operating. Op. Atty. Gen. (477a), Mar. 2, 1938.

233. Fees in criminal cases, etc.

It is not the duty of a city attorney to prosecute violators of state laws within the city limits in justice court, and in assisting in such a prosecution he is not entitled to compensation from the city, but county attorney might allow compensation out of his contingent fund. Op. Atty. Gen., Feb. 18, 1931.

This section refers to prosecutions in municipal courts and does not apply to justice courts. Op. Atty. Gen., Sept. 26, 1932.

Neither village nor city attorneys are under any obligation to prosecute violators of state laws in justice court. Op. Atty. Gen., Sept. 26, 1932.

City of So. St. Paul must pay expense trial in municipal court of criminal cases arising outside city limits. Op. Atty. Gen., July 14, 1933.

If misdemeanor case is not one which county attorney is specifically directed by law to prosecute, it is duty of city attorney to conduct prosecution. Op. Atty. Gen., Dec. 21, 1933.

Op. Atty. Gen. (306b-6), Apr. 6, 1934; note under § 224.

Where instituted in municipal court, all misdemeanors and violation of ordinances shall be prosecuted by the city or village attorney, except where statute for particular crimes imposes such duty upon the county attorney and even in such cases these prosecutions should be carried on by city or village attorney where complaint is made directly to him. Op. Atty. Gen. (121b-7), July 17, 1934.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. Op. Atty. Gen. (260a-13), Feb. 5, 1935.

County attorney need not prosecute ordinary misdemeanors and city attorney is under no duty to prosecute misdemeanors arising outside of corporate limits. Op. Atty. Gen. (121b-7), May 8, 1936.

It is the duty of a village attorney to conduct all prosecution for violation of ordinances, rules, or by-laws of village. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

It is duty of village attorney to prosecute appeals taken to district court from conviction for violation of ordinances. Id.

County attorney has no duties in relation to prosecutions under village ordinances or appeals therefrom. Id.

Obligation to prosecute misdemeanors under §126-4 rests on city attorney and not county attorney. Op. Atty. Gen. (121b-7), Mar. 19, 1937.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace, except where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

It is duty of city attorney and not county attorney to prosecute statutory misdemeanors committed within city limits, and it is neither the duty of the county attorney or city attorney to prosecute in municipal court or justice court misdemeanors committed without the city limits, except that law specifically requires county attorney to prosecute certain misdemeanors, such as violations of game and fish laws, otherwise his duties are limited to preliminary hearings in justice courts and municipal courts. Op. Atty. Gen. (121B-14), Feb. 23, 1939.

Whether judge of municipal court in Waseca may include fees paid jurors as part of costs in a criminal case discussed but not determined because it involved a pending case. Op. Atty. Gen. (306B), June 27, 1939.

It is duty of village attorney to prosecute all violations of ordinances, rules and by-laws of village. *Op. Atty. Gen.* (358d-5), August 4, 1939.

236. Appeals to district court.

The district court is not required to make findings of fact in an appeal upon questions of law alone from judgments of the municipal courts in cities of the class of Worthington. *Iowa Mortgage Corp. v. K.* 181M477, 233NW18. See *Dun. Dig.* 6905.

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. *Pandolfo v. S.*, 183M336, 236NW483. See *Dun. Dig.* 486(74).

An appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. *Doyle v. L.*, 285NW932. See *Dun. Dig.* 309.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. *Op. Atty. Gen.* (260a-13), Feb. 5, 1935.

Where city charter is silent on appeals from convictions of violation of city ordinance, appeals may be taken under §9129. *Op. Atty. Gen.* (6h), June 11, 1937.

237. Courts in cities of third and fourth class, etc.

Whenever the common council of any city of the third or fourth class, where any municipal court heretofore has been or hereafter shall be organized, shall fail to fix the salary of the municipal judge, as provided for by law, or the mayor shall not approve the salary fixed by the council, such judge shall receive as his compensation until such salary shall be so fixed and approved the same fees as is provided for in Laws 1895, Chapter 229, Section 32, and shall, in addition to his duties as such judge perform the duties incumbent on the clerk of such municipal court, and jurors in such municipal court may by resolution adopted by its common council or governing body and approved by its mayor, be compensated in the same manner as in justice court.

The common council in cities of the fourth class, having a population of less than 5,000 inhabitants, which heretofore has been or hereafter may be incorporated under the laws of this state, and which have not organized a municipal court at the time of the passage of this act, may by resolution adopted by its common council or governing body and approved by its mayor, organize such a court under and by virtue of and with such jurisdiction and powers as are conferred by Laws 1895, Chapter 229 and amendments thereto, and the judge of any court so organized shall, in addition to his duties as judge, perform the duties otherwise incumbent or imposed by law on the clerk of such municipal court.

In addition to the other powers now granted to the common council of any city of the third or fourth class by law, which powers are not abridged or impaired by anything herein contained, such common council shall have the power to fix the salary of and such judge, which salary may be fixed by resolution adopted by such council and approved by the mayor and shall not be diminished during his term.

Any municipal court to which the provisions of this act shall apply shall be governed as near as may be under and pursuant to the provisions of law applicable to municipal courts, and contained in Revised Laws 1905, and the jurisdiction thereof, the practice and procedure therein shall conform as near as may be to the provisions of law applicable to municipal courts contained in the Revised Laws 1905, provided, however, that any municipal court in any city of the third or fourth class may adopt and follow the practice and procedure prescribed by Laws 1895, Chapter 229, and all proceedings, order and judgments of such municipal courts which have followed the procedure prescribed by Laws 1895, Chapter 229, and which are otherwise jurisdictional are hereby legalized and validated.

Any common council of any city of the third or fourth class having a municipal court now organized, or which shall hereafter organize a municipal court to which the provisions of this act may apply, shall have power to fix such reasonable sum, in lieu of all judges' and clerks' fees, to be charged to litigants in

civil actions therein, and provide for the collection thereof and the payment of the sum so fixed into the city treasury of such city, and may provide for the collection of fees and the payment thereof into the city treasury, or shall have power to determine that the fees provided for in this act shall be in lieu of and in place of all salary, and shall have power to and may require in cases where salary is paid by the city that such judges collect such fees and pay same into the city treasury and be responsible for such collection.

When fees shall be taxed they shall be taxed and paid as in ordinary cases in courts of justices of the peace and shall be the same in amount as are provided in Laws 1895, Chapter 229, as hereinbefore stated. ('09, c. 306, §1; '11, c. 10, §1; G. S. '13, §281; Apr. 5, 1935, c. 114.)

The rules of the municipal courts of Duluth, Minneapolis, and St. Paul are set out in Appendix 4, post.

Statutes governing municipal courts in cities of fourth class, as they stood in 1934, did not authorize city council to discontinue salary of municipal judge of city or to place compensation of judge back on a fee basis. *State v. City of Waseca*, 195M266, 262NW633. See *Dun. Dig.* 4957.

There being here a valid resolution in force fixing salary of municipal judge, attempt of city council to discontinue such salary was not effective and did not operate as a failure to fix salary, which was already fixed. *Id.*

Where terms of office of municipal judge and members of city council commence on same day and a resolution of city council is adopted on evening of that day after commencement of term of office of municipal judge, it is ineffective to reduce or discontinue salary of such judge for his term of office already commenced. *Id.*

A resolution of city council adopted in May, 1933, enacted with same formalities as an ordinance, fixing salary of municipal judge, had same force as an ordinance, was not a temporary enactment, and did not expire with expiration of term of office of members of city council then in office. *Id.*

Judge of municipal court, organized under this section, may also hold the office of member of school board of an independent school district. *Op. Atty. Gen.*, Apr. 15, 1931.

If there is no special act of the legislature requiring justices, a particular city may abolish the office on drafting a home rule charter. *Op. Atty. Gen.*, Oct. 3, 1931.

Judge of municipal court, also discharging duties of clerk of court on failure of council to appoint clerk, must give bond. *Op. Atty. Gen.*, Mar. 1, 1933.

Fees of judge of municipal court are the same as those of a justice of the peace under §6998. *Op. Atty. Gen.* (306b-4), Feb. 16, 1935.

Special Laws 1891, c. 59, §19, as amended by Laws 1915, c. 66, and Laws 1929, c. 134, governs the matter of reduction of salary of municipal court judge in the city of Ely, and judge in such city may have his salary reduced during his term. *Op. Atty. Gen.* (307i), Mar. 23, 1935.

Salary of municipal judge of Sauk Center may not be diminished during term. *Op. Atty. Gen.* (307i), Apr. 23, 1936.

Councils of cities of at least fourth class have power to provide for compensation of municipal judges either by salary, or by fees or by both, and as their legislative discretion might fix it. *Op. Atty. Gen.* (307i), May 13, 1936.

Compensation of judge of court operating under Revised Laws of 1905, as amended, is governed by §217, rather than this section. *Op. Atty. Gen.* (307i), Feb. 1, 1938.

Judges should be paid a salary and not part salary and part fees. *Op. Atty. Gen.* (307i), Feb. 1, 1938.

Council may provide that all fees which judge is by law authorized to collect shall be paid into city treasury. *Op. Atty. Gen.* (307i), Feb. 1, 1938.

City of Northfield, having a population of 4153 in 1930, is a city of the fourth class and may adopt practice and procedure prescribed by laws 1895, c. 229. *Op. Atty. Gen.* (306a), July 27, 1938.

City council has power to provide that there be no collections of fees in criminal cases under ordinances. *Op. Atty. Gen.* (196j), Dec. 31, 1938.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. *Op. Atty. Gen.* (266B-11), April 14, 1939.

On trial of violations of state laws municipal court may not tax costs of arrest, attendance and mileage against defendant or county, where officer making arrest and attending trial is a salaried police officer. *Op. Atty. Gen.* (199a-3), May 9, 1939.

Laws 1895, c. 229.
Municipal courts organized under Laws 1895, ch. 229, or Mason's Minn. St. 1927, §§215 to 228, while courts of record, are of special and limited jurisdiction and possess only such authority as is conferred by the particular

statute under which organized, and such courts, like courts of justice of the peace, have no authority to grant new trials. *Untiedt v. V.*, 195M239, 262NW568. See *Dun. Dig.* 6900b.

Council of city of Waterville cannot abolish municipal court created by legislative act, though organized by resolution of council. *Op. Atty. Gen.*, July 13, 1933.

Municipal judge of Sauk Center held not entitled to receive fees in addition to salary fixed by council after he took office. *Op. Atty. Gen.* (307e), Apr. 21, 1937.

Whether judge of municipal court in Waseca may include fees paid jurors as part of costs in a criminal case discussed but not determined because it involved a pending case. *Op. Atty. Gen.* (306B), June 27, 1939.

Laws 1895, c. 200, §6.

Where city council of Marshall adopted provisions of *Mason's Stats.*, §§215 to 240, summons in actions in municipal court should be subscribed by plaintiff, or his attorney, and such summons may be served by any disinterested person. *Op. Atty. Gen.*, Mar. 28, 1932.

Municipal court of Worthington, organized under this act may issue an order to show cause, thereby shortening time for hearing on motion to vacate a writ of attachment. *Op. Atty. Gen.* (361a), July 19, 1939.

Laws 1895, c. 200 * * * * *

Sec. 30. Lien not to attach unless judgment is filed in District Court.—No judgment rendered in said municipal court shall attach as a lien upon real estate until a transcript thereof shall have been filed in the district court, as hereinafter provided; but writs of execution thereon may issue against the goods and chattels of the judgment debtor, at any time after the entry of judgment, returnable within 30 days. The provisions for renewals of executions in district court shall apply to this court, except that such renewal shall extend the life of the execution for only 30 days from the date of such renewal, and except that no renewal of such execution shall be made by the clerk until the fee of 25c therefor shall have been paid.

Every person in whose favor a judgment is rendered, in said municipal court for an amount exceeding \$5.00 besides costs, may, at any time after the entry of such judgment, upon paying the fee therefor, demand and shall receive from such clerk a transcript of the docket entries of such judgment, duly certified, and may file the same in the office of the clerk of the district court in and for the county in which said city is situated, who shall file and docket the same, as in the case of transcripts of judgments from other district courts in the state.

And every such judgment, after being so transcribed and docketed in the district court, shall become a lien upon the real estate of the debtor from the time of filing such transcripts to the same extent as a judgment of said district court, and shall thereafter be exclusively under the control of said district court and carried into execution by its process as if said judgment had been rendered in district court, the clerk of said municipal court shall not issue such transcript while a writ of execution is outstanding, in the hands of an officer, or otherwise, and shall note on the record of said judgment the fact that such transcript has been given; and shall not thereafter, issue any writ of execution on the same judgment, but may, at any time after the first transcript is issued, give to any party applying therefor, upon such party paying the clerk's fee therefor, a new transcript, and the clerk shall note the record of each transcript given upon such judgment. (As amended Mar. 27, 1933, c. 119.) * * * * *

239. Fees to be charged by municipal courts.

Fees in municipal court of village of Perham established by Laws 1933, Ex. Sess., ch. 35, and municipal court for village of New York Mills established by Laws 1935, ch. 253, are fixed by this section. *Op. Atty. Gen.* (196j), Jan. 16, 1936.

Councils of cities of at least fourth class have power to provide for compensation of municipal judges either by salary, or by fees or by both, and as their legislative discretion might fix it. *Op. Atty. Gen.* (307i), May 13, 1936.

Where person was convicted of violation of ordinance in municipal court and appealed and was found not guilty in district court, clerk of district court is entitled to his fees from city. *Op. Atty. Gen.* (144b-15), Apr. 14, 1938.

240. Form of summons in municipal court.

Where city council of Marshall adopted provisions of *Mason's Stats.*, §§215 to 240, summons in actions in municipal court should be subscribed by plaintiff, or his attorney, and such summons may be served by any disinterested person. *Op. Atty. Gen.*, Mar. 28, 1932.

241. Courts in cities of first class—Probation officer.—In each city of the first class not operating under a home rule charter pursuant to the state constitution Article IV, Section 36, a probation officer shall be appointed by the Judges of the Municipal Court in said city. Such officer may appoint an assistant probation officer and one or more deputies, subject to approval by said Judges. Each shall serve four years, unless sooner removed by said

Judges for cause. ('13, c. 424, §1.) [283.]; Apr. 17, 1937, c. 273, §2.)

242. Same—Powers and duties.—Such probation officer, or assistant probation officer or a deputy, shall be present at every session of said Court. He shall receive all persons placed on probation by said Court and committed to his care during such probation period and perform such acts with reference to them as the judgment of the Court may direct. He shall not be a regular member of the police force, but in the execution of his official duties shall have all the power of a police officer. ('13, c. 424, §2. [284.]; Apr. 17, 1937, c. 273, §3.)

244. Same—Offices, etc.—The city council of any such city shall provide such probation officer and his assistant and deputies with suitable furnished offices in the building where such courts are held, with record books, blanks, stationery, postage and other expenses required for the proper execution of the purposes of this act. ('13, c. 424, §4.) [286.]; Apr. 17, 1937, c. 273, §4.)

245. Salary of probation officer and assistants.—Such probation officer shall receive as full compensation for his services \$2,970 per annum; the assistant probation officer, \$2,420 per annum; and each deputy such amount as shall be fixed by the judges of said court not exceeding \$2,200 per annum; such salary shall be payable in equal semi-monthly installments out of the city treasury. ('13, c. 424, §5; Amended '19, c. 303, §2; '21, c. 201, §2; '23 c. 413, §2; '27, c. 424, §5; '37, c. 273, §5.)

Sec. 6 of Act Apr. 17, 1937, cited, provides the act shall be severable and an invalidation of any part does not affect the remainder.

COURT COMMISSIONER

246. Election—Term of office.

Laws 1929, c. 341, §2 (§997-4), fixes salary at \$3,500 and marriage fees in counties of 415,000 population.

Act Apr. 17, 1937, c. 269, provides that in counties having over 400,000 population the salary of the court commissioner shall be \$3740.

Where court commissioner was elected in 1926 and office became vacant in 1929, and vacancy was not filled by appointment and in 1932 election there was an election to that office and in 1934 blank space was left following words "for court commissioner" and incumbent was again voted for, and same thing occurred in 1936, and same blank space was left in 1938 but a different person was voted for, person receiving most votes in 1938 was entitled to certificate of election. *Op. Atty. Gen.* (128e), April 17, 1939.

247. Qualification and powers.

A district judge, exercising power of court itself, has jurisdiction to vacate an order of court commissioner for a writ of habeas corpus and to quash writ if issued, merits of matter not having been decided by commissioner. *State v. Hemenway*, 194M124, 259NW687. See *Dun. Dig.* 2331.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. *Op. Atty. Gen.* (128b), June 21, 1935.

Only power given to a court commissioner by Laws 1935, c. 246, amending §2150, is power to issue an attachment for rent, and he does not have authority to pass upon leasing of tax delinquent lands. *Op. Atty. Gen.* (128b), Aug. 2, 1937.

250. Vacancy.

Section 250, and not Section 822, governs an appointment to fill a vacancy in the office of court commissioner. *Op. Atty. Gen.*, Jan. 26, 1931.

Where court commissioner was elected in 1926 and office became vacant in 1929, and vacancy was not filled by appointment and in 1932 election there was an election to that office and in 1934 blank space was left following words "for court commissioner" and incumbent was again voted for, and same thing occurred in 1936, and same blank space was left in 1938 but a different person was voted for, person receiving most votes in 1938 was entitled to certificate of election. *Op. Atty. Gen.* (128e), April 17, 1939.

PROBATE AND JUSTICE COURTS

251. Jurisdiction.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace except

where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

JUDICIAL COUNCIL

251-1. Judicial Council created.—A Judicial Council is hereby created for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, and of all matters relating to the administration of said system and its several departments. (Apr. 26, 1937, c. 467, §1.)

251-2. Membership in Judicial Council.—The Judicial Council shall consist of the Chief Justice of the Supreme Court, or some other Justice or former Justice, appointed from time to time by the Chief Justice for such service; two Judges or former Judges of the District Court, to be designated, or who shall have been designated by the Judges of the District Court in annual meeting assembled; one Judge or former Judge of Probate, similarly designated by the Judges of Probate; and seven other persons appointed by the Governor, one of whom shall be a Judge of a Municipal Court, and not less than four of the others shall be attorneys at law of wide practical experience. Of the seven members first appointed by the Governor, two shall be appointed for a period of one year, two for a period of two years, and three for a period of three years. All appointments made thereafter shall be for a term of three years and until their successors shall qualify, except that in the case of a vacancy, the appointment shall be made to fill the unexpired term. (Apr. 26, 1937, c. 467, §2.)

251-3. Shall report to Governor.—The Judicial Council shall report annually on or before December 1st, to the Governor, upon the work of the various branches of the judicial system. It may also from time to time submit, for the consideration of the several courts and judges, such suggestions in regard to rules of practice and in regard to procedure as it may deem advisable. (Apr. 26, 1937, c. 467, §3.)

251-4. Expenses of Judicial Council.—No member of the Judicial Council shall receive any compensation for his services, but the Judicial Council shall be allowed, out of any appropriations made for the purpose, expenses for clerical and other services, and the members of the Judicial Council shall be allowed such expenses as the Governor shall approve. (Apr. 26, 1937, c. 467, §4.)

251-5. Appropriation.—There is hereby appropriated from any moneys in the State Treasury, not otherwise appropriated, the sum of \$1,000.00 for each of the fiscal years ending June 30, 1938, and June 30, 1939, for the purpose of carrying out the provisions of this Act. (Apr. 26, 1937, c. 467, §5.)

251-6. Effective July 1, 1937.—This Act shall take effect on July 1, 1937. (Apr. 26, 1937, c. 467, §6.)

REVISOR OF STATUTES

251-11. Office created.—There is hereby created the office of Revisor of Statutes. (Act Apr. 22, 1939, c. 442, §1.)

251-12. Supreme Court to appoint—Salary.—The Supreme Court shall appoint to the office of Revisor of Statutes a person qualified to perform the duties hereinafter described, at an annual salary of \$5,000, who shall hold his office at the pleasure of the Supreme Court. (Act Apr. 22, 1939, c. 442, §2.)

251-13. May employ assistants.—Subject to the approval of the Supreme Court the Revisor of Statutes

shall employ such assistants, clerks and stenographers as may be necessary and shall procure necessary office furniture, stationery, books, postage and other supplies and shall be furnished with suitable office rooms convenient to the state library. Such assistants, clerks and stenographers shall be employed during the pleasure of the Revisor of Statutes. (Act Apr. 22, 1939, c. 442, §3.)

251-14. Duties.—It shall be the duty of the Revisor of Statutes:

(a) To formulate and prepare a definite plan for the order, classification, arrangement, printing and binding of the Minnesota Statutes and to prepare and at the beginning of each session of the legislature to present to the judiciary committees of the senate and house, in such bill or bills as he may deem best, such consolidation, revision and other matter relating to the statutes or any portion thereof as he shall deem proper or as he may be instructed by the Supreme Court.

(b) To renumber any chapter or section of the statutes for the purpose of revision, and to change and supply reference numbers to agree with any renumbered chapter or section in any compilation of the statutes hereafter made.

(c) As soon as may be after the close of each regular session of the legislature, to prepare and deliver to the commission of administration and finance printer's copy for a volume to be called "Minnesota Statutes," appending to that name the year of the last regular session of the legislature, which volume shall contain the constitution of the United States, the constitution, organic act, enabling act and act of admission of the state of Minnesota, all general statutes in force, a table of the statutes which have been revised by the Revisor of Statutes, an alphabetical index, a table showing the terms of district courts, and such other useful information as the Revisor of Statutes shall determine to be desirable and practicable.

To one copy of such volume the Revisor of Statutes shall append his certificate to the effect that he has compared each printed section therein with the original section of the statutes, or, as the case may be, with the original section in the enrolled act from which the section was derived, together with all amendments, if any, of such original section, and that all the sections therein appear to be correctly printed. Such copy shall be filed in the office of the Secretary of State as a public record and all other copies of such volume shall contain a printed copy of such certificate.

(d) To prepare and biennially to revise annotations of the constitution and statutes of Minnesota by reference to the decisions of the Supreme Court of Minnesota and of the courts of the United States. As soon as may be after the close of each regular session of the legislature the Revisor of Statutes shall prepare and deliver to the commission of administration and finance printer's copy of these annotations, which shall also contain such other and useful matter as the Revisor of Statutes shall determine to be desirable and practicable. (Act Apr. 22, 1939, c. 442, §4.)

251-15. Commission of administration and finance to make publication.—Upon receipt of the printer's copy described in Section 4, paragraphs (c) and (d) herein, the commission of administration and finance shall enter into a contract for the publication of said "Minnesota Statutes" and annotations. Said contract shall specify the price at which they shall be sold to the state, subdivisions of the state, and the public. (Act Apr. 22, 1939, c. 442, §5.)

251-16. Copies of laws to be delivered to revisor of statutes by Secretary of State.—Immediately upon the enrollment of any law or passage of any memorial or resolution three copies thereof shall be delivered to the Revisor of Statutes by the Secretary of State. (Act Apr. 22, 1939, c. 442, §6.)

251-17. Appropriation.—There is hereby appropriated from any moneys in the state treasury not otherwise appropriated the sum of \$10,000 for each of the fiscal years ending June 30, 1940, and June 30, 1941,

for the purpose of carrying out the provisions of this act. (Act Apr. 22, 1939, c. 442, §7.)

251-18. Effective date.—This act shall take effect on July 1, 1939. (Act Apr. 22, 1939, c. 442, §8.)

CHAPTER 5A

Salaries of Certain State Officers and Employees

Act limiting amount which may be paid state officer or employee for use of automobile. Laws 1931, c. 331, §§254-47, 254-48.

252. Amount—Payment.

2. Judicial Department.

Salary of chief justice, associate justices and commissioners.—The annual salary of the chief justice of the supreme court shall be \$9,000.00 and that of each associate justice and each commissioner of the supreme court \$8,500.00. (G. S. '13, §294; '13, c. 400, §1; Ex. Sess. '19, c. 30; '21, c. 504; '23, c. 377; '25, c. 268; Apr. 24, 1929, c. 322, §1.)

The above provision amends this paragraph with respect to the salaries of the chief justice, associate justices, and the commissioners.

6. Office of Attorney General.

Salary of attorney general and assistants.—The annual salary of the attorney general is hereby fixed at \$7,000.00 and of the deputy attorney general at \$6,000.00, and of the several assistant attorneys general, other than the assistant attorney general who is a member of the rural credit bureau, at \$5,000.00. (G. S. '13, §294; '13, c. 400, §1; '21, c. 324; Apr. 25, 1929, c. 382, §1.)

The above provision amends this subdivision "so as to read as" above. As to whether it amends the provisions of the former law which are not embraced in the amendatory act may be open to question.

8. Office of State Librarian.

The salary of the assistant state librarian is hereby fixed at twenty-one hundred dollars annually, payable in semi-monthly installments. (G. S. '13, §294; '13, c. 400, §1; Ex. Sess. '19, cc. 30, 31, §1.)

Explanatory note.—Laws Ex. Sess. 1919, c. 31, §1, impliedly amended Laws Ex. Sess. 1919, c. 30, by increasing the salary of the assistant librarian to the amount above stated.

9. Office of Commissioner of Banks.

Commissioner of Banks, forty-five hundred dollars; one deputy commissioner of banks, four thousand dollars; one bank examiner assigned to examination in cities of the first class, thirty-seven hundred fifty

dollars; ten bank examiners thirty thousand dollars; eleven assistant examiners, twenty-seven thousand five hundred dollars; three second assistant examiners fifty-four hundred dollars; three examiners' clerks, forty-five hundred dollars; four examiners' clerks, at an amount not to exceed fifty-six hundred dollars; one chief clerk, twenty-four hundred dollars; one first assistant clerk, fifteen hundred dollars; seven stenographers and clerks, eighty-two hundred eighty dollars; one extra clerk hire for contingencies, one thousand dollars. (As amended '21, c. 499; '23, c. 252; Apr. 13, 1933, c. 232, §1.)

Commissioner to fix salary of Examiner in charge of Liquidation.—The Commissioner of Banks shall fix the salary of the Examiner in Charge of Liquidation appointed by him, but not to exceed four thousand dollars, and the same shall be paid out of funds of banks in the hands of the Commissioner of Banks for liquidation. (Act Apr. '13, 1933, c. 252, §2.)

19. Office of Board of Control.

* * *

Salary increases for certain employees.—That the salaries of all employees of the various institutions of the state under the jurisdiction of the State Board of Control amounting to \$20 to \$50 a month exclusive of maintenance they may receive, be increased \$5 to \$10 per month, and the said State Board of Control is hereby authorized and directed to increase such salaries in said manner, using their own discretion as to the rate of increase in the individual case. (Act Apr. 15, 1935, c. 183, §1.)

Sec. 3 of Act Apr. 15, 1935, cited, provides that the act shall take effect from its passage. Sec. 2 of such act is set forth as §10834-1.

22. District Court Judges.

Governor attempted to veto this bill but did not return it in time. See State v. Holm. 172M162, 215NW200.

254. Fees.

Laws 1935, c. 391, §37, reducing salaries 10%, is changed by Act Apr. 24, 1937, c. 457, §37, which reinstates pre-existing salaries.

CHAPTER 5B

Public Officers and Employees in General

STATE EMPLOYEES' RETIREMENT ASSOCIATION

254-1. Definitions.—The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meaning:

(a). "State Employee" shall mean any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid, either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting elective state officers, court commissioners, district judges, the members of the Tax Appeal Board, the Civil Service Board, and the members of any other State Board or Commission who serve the state intermittently and are paid on a per diem basis, and the president, deans, professors, and in-

structors in the state university and in the state teachers' colleges, and teachers in state institutions who are eligible to membership in the Teachers' Retirement Fund but shall not include temporary employees or students who secure employment with the state or a state institution, incidental to and in furtherance of their education. Any employee who has been employed for a period of over six months continuously shall become a member, any classification of employees as temporary, permanent, or otherwise, by the head of any department, or any commission or agency of the state notwithstanding.

Employees of the department of education who are eligible to membership in the Teachers' Retirement Fund shall have the option of electing whether to be a member of the State Employees Retirement Association or the Teachers' Retirement Fund, and any em-