

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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time outstanding shall be included in computing the net debt of the city, village, town, or county issuing the same for the purpose of computing any limitation of its indebtedness prescribed by law or by its charter. (Act Apr. 17, 1929, c. 217, §8.)

5494-45. Acts legalized.—The acquisition of property within or without the limits of any such city, village, or town for airports or landing fields, by purchase or gift, heretofore made by any such municipality, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. (Act Apr. 17, 1929, c. 217, §9.)

5494-46. May acquire air rights.—Where necessary in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this Act, the legislative bodies of counties, municipalities, and other political subdivisions of this State are hereby granted authority to acquire such air rights over private property as are necessary to insure safe approaches to the landing

areas of said airports and landing fields. Such air rights may be acquired by grant, purchase, lease, or condemnation in the same manner as is provided by law for the acquisition of the airport or landing field itself or the expansion thereof. (Act Apr. 20, 1931, c. 214, §1.)

5494-47. May acquire for any term.—The legislative bodies of counties, municipalities, and other political subdivisions of this State are hereby authorized to acquire the right or easement for a term of years or perpetually to place and maintain suitable marks for the daytime, and to place, operate, and maintain suitable lights for the nighttime marking of buildings, or other structures or obstructions interfering with the safe operation of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this Act. Such rights or easements may be acquired by grant, purchase, lease, or condemnation in the same manner as is provided by law for the acquisition of the airport or landing field itself or the expansion thereof. (Act Apr. 20, 1931, c. 214, §2.)

CHAPTER 32

Preservation of Game and Fish

Laws 1931, c. 186, ante, §§53-23a to 53-231, creates a new department of conservation, to which is transferred the powers of the commissioner of game and fish.

PART I.—TITLE TO WILD ANIMALS: TAKING: TRANSPORTATION

5495. Title to wild animals—Taking.

The provisions of the game law are to be construed according to the fair import of their terms, viewed in the light of the purpose of the law. 177M483, 225NW430.

5496. Ownership in state.

172M469, 215NW837; note under 55647.

Where a full-blood Chippewa Indian received a patent in fee from United States government to 160 acres of land on White Earth Indian Reservation, and trust period having expired thereon, sold land and removed therefrom, court had jurisdiction of prosecuting for violation of state game laws. State v. Bush, 196M413, 263NW300. See Dun. Dig. 4348.

5497. Taking of wild animals restricted.

Op. Atty. Gen., May 24, 1933; note under 55625-1.

The game law does not permit the taking of waterfowl from an artificial blind constructed in public waters of a lake upon an artificial embankment. 177M483, 225NW430.

Frogs cannot be imported into Minnesota for breeding purposes but may be imported for food purposes. Op. Atty. Gen., June 8, 1933.

Sturgeon cannot be taken except in waters forming a common boundary between this state and the state of Wisconsin. Op. Atty. Gen. (211c-12), Sept. 12, 1934.

5498. Manner of taking game.—Birds and quadrupeds protected by law shall be taken only in the daytime with a gun not larger in bore than a ten gauge fired from the shoulder, or with a bow and arrow, except that upland game birds and quadrupeds may be taken with a rifle or pistol. It shall be unlawful to use any kind or type of silencer on any firearm, or to own or possess any kind or type of silencer for a firearm, or to own or possess any firearm equipped or designed to have a silencer attached thereto. No person while in a motor vehicle shall take game, nor discharge any firearm therefrom at any wild animal, nor carry a gun or other firearm, except a pistol or revolver, in a motor vehicle unless the same be unloaded in both barrels and magazine and taken apart or contained in a case. Traps for the purpose of taking fur bearing animals protected by law may be used as herein provided but traps shall not be staked or set in any manner during the closed season for the same. A person may take game birds during the open season with the aid of a dog, unless specifically

prohibited herein. ('19, c. 400, §4; '25, c. 380, §1; 1929, c. 170; Apr. 25, 1931, c. 399, §1.)

It is illegal to set traps in the evening before the day on which season opens. Op. Atty. Gen., Feb. 14, 1929.

"Day time" as applied to birds and quadrupeds which cannot be classed as migratory game birds is the period between sunrise and sunset. Op. Atty. Gen., Dec. 23, 1931.

"Day time" so far as migratory game birds are concerned is determined by section 6554. Op. Atty. Gen., Dec. 23, 1931.

There is no provision of law providing for permit to motor express service to carry guns for protection of cargo. Op. Atty. Gen. (201a-1), Aug. 2, 1934.

Bill absolutely prohibiting carrying firearms immediately preceding the opening of deer season would be unconstitutional, but a law requiring that firearms be sealed when carried would be valid. Op. Atty. Gen. (82p), Feb. 26, 1935.

Officers of the law can carry a loaded rifle in an automobile while engaged in duties of office, otherwise they cannot. Op. Atty. Gen. (201a-1), July 1, 1936.

A single hunter may not use two guns in a duck blind. Op. Atty. Gen. (210a-1), Oct. 4, 1937.

5499. Manner of taking fish.—Fish, unless otherwise specifically permitted by law, shall be taken only by angling. It shall be unlawful to take fish of any kind in any manner by the use or with the aid of artificial lights of any kind. ('19, c. 400, §5; '23, c. 426, §1; '25, c. 380, §1; Apr. 27, 1929, c. 417, §1.)

1. No person shall set, place or use any snag line or snag pole, snag hook, or parts thereof, or cluster of fishhooks that might be attached to same, designed to be placed in or drawn through the water for the purpose of catching or drawing such hooks into the body of fish, provided that the use of one trolling spoon or one artificial bait is permitted.

2. Violation of this chapter shall be a misdemeanor. (Added Apr. 21, 1933, c. 392, §23.)

The title to Act Apr. 21, 1933, c. 392, does not enumerate §5499 as one of the sections amended. See note under 55505.

It is legal for a person to use a floating fish house in spearing fish. Op. Atty. Gen., Apr. 16, 1931.

This section is subject to the proviso of Laws 1931, c. 323 [55574, herein], permitting the use of lights in spearing rough fish under a permit from the commissioner of game and fish. Op. Atty. Gen., May 1, 1931.

One may not lawfully make use of an artificial light permanently fixed upon a dock for the convenience of persons using the lake during the night. Op. Atty. Gen., Oct. 26, 1931.

Laws 1933, c. 49, does not repeal this section as amended by Laws 1929, c. 417, except as to counties enumerated in section 2. Op. Atty. Gen., Apr. 10, 1933.

Artificial lights may not be used as an aid in spearing rough fish except in counties enumerated in Laws 1933, c. 49, §2. Op. Atty. Gen., Apr. 10, 1933.

A plug lighted by bulb and battery from within may not be used. Op. Atty. Gen., June 14, 1933.

One with commercial fisherman's license must have angling license before he can legally troll for lake trout, and he can only use one line in trolling. Op. Atty. Gen. (12c-1), Sept. 4, 1935.

Holder of fur breeder's permit using otters for taking fish violates the law, and otters so used may be confiscated and license revoked. Op. Atty. Gen. (211a-7), Sept. 1, 1937.

5500. Limits of game and fish—Wanton waste—No person shall wantonly waste or destroy wild animals except as otherwise expressly permitted by law. The catching, taking or killing of more than fifteen game birds by any one person in any one day, or the catching, taking or killing of more than twenty-five fish by any one person in any one day, except fish lawfully caught, taken or killed with licensed nets, as by this chapter permitted, shall be deemed a wanton waste. No person shall, after taking or killing any protected wild animal, abandon or permit the edible part of the carcass thereof to waste or decay, provided this shall not prevent the manufacture of fish meal or other animal food out of lawyer burbot or eelpout or carp lawfully taken, or the sale or transportation of such fish meal or food. ('19, c. 400, §6; '25, c. 380, §1; Apr. 27, 1929, c. 417, §2.)

Section 5579 governs over §5500 as to limits on fish. Op. Atty. Gen., Aug. 22, 1933.

5501. Entering growing grain—trespassing.

Entry on privately owned land with intent to take or kill wild animals after notice not to do so is a violation, though mere act of crossing flooded privately owned land without intent to take or kill animals would not violate this section. Op. Atty. Gen. (210a-5), Apr. 18, 1936.

5502. Cold storage in warehouses of animals prohibited—Exceptions.—No person except the director of game and fish shall place or store, or receive or accept for storage in a cold storage warehouse, any protected wild animal, except fish or furs lawfully taken. This shall not prohibit the placing of carcasses of wild animals or game birds legally taken under hunting license in refrigerators or cooling rooms in butcher shops or other places not classified as commercial cold storage warehouses when done to prevent wanton waste; provided, however, all such wild animals or game birds so placed shall have attached thereto tags plainly marked, in ink, to indicate the name of owner and number of license under which such wild animals or game birds were taken and be held subject to inspection by the director of game and fish and his duly authorized agents. (As amended Apr. 21, 1939, c. 351.)

A creamery may not build and rent out cold storage lockers for storage of pheasants, ducks, deer or perishable game. Op. Atty. Gen. (645b-25), Dec. 8, 1936.

5503. Possession of imported game during closed season.—Except as expressly permitted by law, no person shall have in possession in this state any wild animal or part thereof which has been caught, taken or killed outside of this state at a time when it is unlawful to have such wild animals in possession if caught, taken or killed in this state or which has been unlawfully caught, taken or killed outside of this state, or unlawfully shipped therefrom into this state. ('19, c. 400, §9; '21, c. 44, §2; Apr. 27, 1929, c. 417, §3.)

Op. Atty. Gen., May 24, 1933; note under §5625-1.

A fisherman with licenses from both Minnesota and Wisconsin violated no law in catching seven bass on the Wisconsin side of the Mississippi River, and three more on the Minnesota side. Op. Atty. Gen., Aug. 18, 1930.

Sale of Canadian fish during closed season is illegal. Op. Atty. Gen., June 2, 1933.

Limits fixed by Minnesota laws include fish caught in adjoining states. Op. Atty. Gen. (211a-6), Sept. 30, 1938.

5504. Transportation of unlawfully killed game.—No person shall transport, ship or convey, or attempt so to do, any wild animal or any part thereof, taken, caught, killed or possessed in violation of law, and no common carrier or employee of such carrier shall, while engaged in such business, knowingly ship, or receive for shipment, or aid or abet in the shipment of any wild animals, or any part thereof, caught, taken,

killed or possessed in violation of law. ('19, c. 400, §10; Apr. 27, 1929, c. 417, §4.)

5505. Transportation and exportation of salable fish and game.—(1) Any person may transport within this state or from a point within to a point without this state during the open season any wild animals or parts thereof, which may be lawfully sold, except as specifically prohibited by this chapter.

(2) Any person, except agents or employees of a common carrier while engaged in the performance of their duties, may transport in a vehicle, boat, or other means of transportation otherwise than by common carrier, or may carry with him as baggage on a common carrier to any place within the state any wild animals, including fish, which may be legally in his possession, and common carriers are hereby permitted to carry such wild animals as baggage within the limits herein prescribed. If any such wild animal is carried as baggage and is contained in any package, sack, crate or other container there shall be attached to the outside thereof a tag signed by the licensee, written or printed, showing the name and address and license number of such licensee and the number and kind of wild animals or parts thereof contained in the same.

(3) Any resident of this state may ship or transport by common carrier to any point in the county in which he resides, consigned to himself only, during any one open season not more than 45 game birds, of which not more than 36 may be water fowl, rails, or shore birds, and not more than 9 may be upland game birds; provided, that not more than 3 shipments may be made in any one season and no shipment shall contain more than 12 waterfowl, rails, or shore birds of all kinds in the aggregate, nor more than 3 upland game birds of all kinds in the aggregate; and any such resident may so ship or transport during any one open season one deer lawfully taken and lawfully in his possession, and may so ship or transport the head or hide of any deer lawfully taken and lawfully in his possession for mounting or tanning purposes to a point within or without this state; all subject to the provisions of General Statutes 1923, Section 5506, as amended.

(4) Any non-resident, except agents and employees of a carrier while engaged in the performance of his duties, may ship or transport in a vehicle, boat or other means of transportation or may carry with him as baggage on a common carrier or may ship or transport by common carrier consigned to himself only to any point within or without this state, in the manner provided by Mason's Minnesota Statutes of 1927, Section 5506, any wild animals including fish lawfully taken or killed and possessed by him in this state but not to exceed during any one open season 25 game birds and one deer. Common carriers are hereby permitted to carry such wild animals as baggage.

(5) Except as otherwise expressly provided by law, no person shall ship or transport any fish outside of this state except those which may lawfully be sold within the state.

(6) Any variety of fish lawfully taken in commercial fishing operations in interstate or international waters may be shipped outside of this state.

(7) A non-resident duly licensed to fish in this state, may, however, ship by common carrier as provided by this Act to a point outside this state in any one season not to exceed 24 pounds of fish of any variety or one fish lawfully caught by him in this state, and as provided by this act; but not more than 12 pounds may be shipped on one coupon.

Such non-resident shall further be authorized to transport or carry with him to any point beyond the boundaries of the state, not to exceed one daily limit of fish of any variety.

Only undressed fish may be shipped.

Such shipment shall be made by the licensee to himself only.

(8) A resident may ship fish lawfully taken and possessed by him from one point in the state to another provided such shipment must be made to the person taking such fish.

(9) No person shall at any time ship or transport a greater number of any kind of wild animals than he is permitted by law to have in possession at such time. All wild animals under the control of any person, whether actually in his personal custody or in transit or at their destination after shipment, or otherwise, shall be deemed to be in the possession of such person for the purposes of this section and of any other law relating to wild animals. ('19, c. 400, §11; '25, c. 380, §1; Apr. 27, 1929, c. 417, §5; Apr. 21, 1933, c. 392, §1; Mar. 24, 1939, c. 76, §2; Apr. 21, 1939, c. 354, §§1, 2.)

Act Apr. 21, 1933, cited, amends subdivisions (2) and (4). Act Mar. 24, 1939, cited, amends subdivision (7).

The title of Act Apr. 21, 1933, c. 392, reads: "An act relating to wild animals and to the preservation, protection and propagation thereof, amending the following sections of Mason's Minnesota Statutes of 1927, and acts amendatory thereof: 5505, 5509, 5510, 5536-1, 5536-2, 5536-8, 5539, 5542, 5543, 5546, 5547, 5548, 5550, 5551, 5556, 5586, 5648, Laws 1927, chapter 423, Laws 1929, chapter 366, adding certain new sections and repealing Mason's Minnesota Statutes of 1927, section 5594-1; amending Mason's Minnesota Statutes of 1927, sections 5568 and 5574 as amended by Laws 1931, chapter 323, and Mason's Minnesota Statutes of 1927, section 5585."

The sections included in the body of the act do not in all respects correspond with those enumerated in the title.

Wall-eyed pike may not be shipped out of the state except, not to exceed 25 pounds, caught and shipped by non-resident licensed to fish in this state. Op. Atty. Gen., Mar. 22, 1933.

A non-resident may ship fish out of state only in the "round." Op. Atty. Gen., June 17, 1933.

A license is required to legally ship fish by a non-resident regardless of age. Op. Atty. Gen., Aug. 29, 1933.

Diversion of funds. Op. Atty. Gen., Sept. 27, 1933.

Citizen of Wisconsin may shoot ducks in that state and bring them into Minnesota for sole purpose of transporting them by automobile back into Wisconsin. Op. Atty. Gen., Oct. 3, 1933.

Resident of Minnesota shooting ducks in Wisconsin under non-resident license may bring them into Minnesota, though he does not hold a Minnesota license. Id.

Each hunter must accompany his deer except when shipped by common carrier. Op. Atty. Gen., Oct. 30, 1933. (a).

Act must be torn off license and affixed to receptacle containing fish and not be kept on person. Op. Atty. Gen. (211a-10), June 12, 1935.

5506. Manner of transportation of game birds or deer.—No common carriers shall transport, and no person shall offer to a common carrier for transportation to a point within or without this state, any game birds or any deer or parts thereof except as expressly permitted by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 5505, and in the following manner: The person offering game birds or deer or parts thereof for shipment shall exhibit his license to an agent of the carrier, and shall sign his name to each section of one of the coupons attached to his license in the presence of such agent.

In case of game birds being shipped by a resident of this state, section "B" of a game bird coupon shall be attached by the licensee to the game birds offered for shipment.

Thereupon said agent shall detach section "A" of said coupon from the license and shall immediately forward the same by mail to the commissioner.

In the case of deer or parts thereof being shipped by a resident of this state, section "B" of a deer coupon shall be attached by the licensee to any deer, and section "C" thereof to any deer hide, and section "D" to any deer head, offered for shipment. Thereupon said agent shall detach section "A" of said coupon from said license and immediately forward the same by mail to the commissioner.

In the case of game birds or deer or parts thereof, being shipped by a non-resident, sections "B" and "C" of a game bird coupon, or a deer coupon, shall be attached by the licensee to any game birds or deer or parts thereof, offered for shipment. Thereupon said agent shall detach section "A" of said coupon from said license and shall immediately forward the

same by mail to the commissioner. Section "C" shall be removed from said game birds or deer by the carrier at the last stop made by it in this state and shall be immediately forwarded by it by mail to the commissioner. (As amended Apr. 21, 1939, c. 354, §3.)

5509. Hunting within two miles of certain cities.—No person shall hunt or have in possession for the purpose of hunting, within two miles of the corporate limits of any city having a population of 50,000 or more, any gun, rifle, or other firearm; except in a city having a population of 50,000 or more, and bordering on interstate waters, a person may be permitted to hunt migratory waterfowl. Target practice on duly established and properly guarded rifle ranges, and trap shooting or gun practice by members of duly organized gun clubs on lands owned or leased or occupied for that purpose by such clubs, are excepted from the operation of this section. ('19, c. 400, §15; Apr. 21, 1933, c. 392, §2; Apr. 14, 1939, c. 244; Apr. 21, 1939, c. 348.)

Center of channel of boundary waters between states of Minnesota and Wisconsin is boundary line between two states and those waters lying west of center of channel of such boundary waters within two miles of limits of city of Duluth are subject to provisions of this section. Op. Atty. Gen. (273d-5), Oct. 14, 1937.

5510. Penalties for violation.—(1) Unless a different penalty or punishment is specifically prescribed, a person who buys, offers to buy, sells, offers for sale, takes, possesses, or transports any wild animal or part thereof in violation of this chapter or of any of the laws of this state relating to wild animals, or to the preservation, protection, or propagation thereof, or who violates any of the provisions of, or who fails to perform any duty imposed by this chapter, or who violates any duly adopted regulation of the commissioner, or any person who attempts to do so, is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than \$10.00 nor more than \$100.00 for the first offense nor less than \$25.00 nor more than \$100.00 for subsequent offenses or by imprisonment in the county jail for not less than 30 days nor more than three months, and each wild animal bought, sold, offered for sale, taken, possessed or transported in violation of law shall constitute a separate offense.

(2) The minimum punishment for violating any of the provisions of Part VI hereof, relating to commercial fishing, shall be a fine of \$50.00 or imprisonment in the county jail for 60 days.

(3) A person who buys, offers to buy, sells, offers for sale, takes, possesses or transports any of the following wild game or game birds or any part thereof, in violation of this chapter, shall be punished as follows:

(a) Deer, by a fine of not less than \$25.00 nor more than \$100.00 or by imprisonment in the county jail for not less than 30 days nor more than 90 days.

(b) Moose, elk and caribou, by a fine of not less than \$75.00 nor more than \$100.00 or by imprisonment in the county jail for not less than 30 days nor more than 90 days.

(c) Game birds, by a fine of not less than \$10.00 and not to exceed \$100.00 for each bird, or by imprisonment in the county jail for not less than 10 days nor more than 90 days.

(d) The use of an artificial light in hunting shall be punished by a fine of not less than \$25.00 nor more than \$100.00, or by imprisonment in the county jail for not less than 30 days nor more than 90 days.

(e) The placing of a set gun shall be a gross misdemeanor. (As amended Apr. 27, 1929, c. 417, §6; Apr. 25, 1931, c. 399, §2; Apr. 21, 1933, c. 392, §3.)

(4) Every person who shall falsely impersonate a game warden or game refuge patrolman or other officer acting by or under the authority of the laws relating to wild animals, or a private individual having special authority under said laws to perform any act affecting the rights or interests of another, or who, without authority, shall assume any uniform or

badge by which such an officer or person is lawfully distinguished and in such assumed character shall do an act purporting to be official, whereby another is injured or defrauded, shall be guilty of a gross misdemeanor, and punished by a fine of not less than \$100.00 nor more than \$1000.00 or by imprisonment in the county jail for not less than 30 days nor more than one year, or by both such fine and imprisonment. ('19, c. 400, §16; '21, c. 44, §3; '23, c. 426, §1; Apr. 27, 1929, c. 417, §6; Apr. 25, 1931, c. 399, §2.)

Wild animals raised without fur breeder's license may be seized but it is more expeditious procedure to cause arrest of offenders for not having license. Op. Atty. Gen., Mar. 16, 1934.

(3).

This section as amended overrides section 5539 and makes the use of an artificial light in hunting deer a misdemeanor instead of a gross misdemeanor. Op. Atty. Gen., Dec. 2, 1931.

5512. Presumptive evidence.

177M398, 225NW435.

172M469, 215NW837; note under §5547.

Whether or not origin of raw beaver skins was legal held for jury. Hudson-Duluth Furrriers, Inc., v. M., 182 M581, 235NW537. See Dun. Dig. 3940.

5513. Witnesses.—The testimony of a person given in behalf of the state in a prosecution for the violation of this chapter shall not be received as evidence in a prosecution for the same offense against the person so testifying. ('19, c. 400, §19; Apr. 27, 1929, c. 417, §7.)

PART II—LICENSES

5514. Hunting—Licenses.—Any person who is a resident of this state, and any member of such person's immediate family, may during the open season, hunt, pursue or kill in any manner permitted by law any wild bird or quadruped, except deer, moose, elk or caribou, which may legally be taken and may trap such fur bearing animals, as may legally be taken, on land owned or leased and occupied as a permanent abode by such person, without procuring a license so to do.

This shall not permit hunting without a license on land not occupied by a person as a permanent abode, or on land so occupied by a person who is not a bona fide owner or lessee thereof, or the taking of any wild animals for which a special permit is required, nor shall it relieve any person from complying with any provision of the laws relating to wild animals except as to obtaining a license. A license to trap beaver may be obtained in the manner prescribed by Section 5543 of this chapter. ('19, c. 400, §20; '25, c. 380, §1; Apr. 12, 1929, c. 170, §2; Apr. 27, 1929, c. 417, §8.)

One whose license has been revoked on conviction for violating the game laws is in no different position under this section than one who had never obtained a license. Op. Atty. Gen., Oct. 28, 1929.

Since a minor under fourteen can hunt protected game only on home premises of his parent or guardian, he can have a bag limit of game only if it was taken on such premises. Op. Atty. Gen. (209g), Sept. 19, 1934.

Owner may hunt on any part of his farm without a license, though it is separated into three parts by roads and other lands. Op. Atty. Gen. (209i), Oct. 26, 1934.

5515. Hunting, trapping or fishing licenses—Of whom required.

It was not legislative intent to provide license fee for trapping obnoxious rodents of which fur or body is of no commercial value. Op. Atty. Gen., Mar. 16, 1933.

Red fox cubs may be taken by a resident in any manner, but he must obtain appropriate licenses if he intends to retain them or sell them. Op. Atty. Gen. (210b-3), July 2, 1934.

5529. Restriction.

One, who gave age of boy as 14 in error, but before license was issued, informed party issuing license that he remembered boy was just past 12, but license was issued with statement that age was immaterial, was not guilty of any offense. Op. Atty. Gen., Dec. 13, 1933.

Since a minor under fourteen can hunt protected game only on home premises of his parent or guardian, he can have a bag limit of game only if it was taken on such premises. Op. Atty. Gen. (209g), Sept. 19, 1934.

5530. Revocation of licenses—Fur buyers licenses.

One having pheasants in his possession during closed season without having procured a small game hunting

license forfeited his right to obtain a license for the year. Op. Atty. Gen., Oct. 6, 1931.

Classification of state land as under authority of conservation department—public parks. Op. Atty. Gen. (330c-1), June 9, 1936.

5533. Possession of deer, moose and game birds—When lawful.

Possession of game during closed season acquired from Indian allottee by gift is unlawful. Op. Atty. Gen. (240d), Jan. 6, 1936.

5534. Permits to retain game after close of season

—Procedure.—Any person desiring to retain possession of deer, moose or game birds or game fish, after the close of the season therefor, shall surrender the license under which such deer, moose or game birds or game fish were taken, to the commissioner or game warden, and he, if satisfied that such application and surrender is made in good faith, and that the applicant is a resident of this state, shall cause distinctive tags or seals to be affixed to each deer, moose, game birds, or game fish or parts thereof lawfully in possession of the applicant, or he shall issue a written permit to such applicant to keep and use such deer, moose, game birds, game fish or part thereof, and thereupon the applicant shall be entitled to retain possession of the game until consumed; provided, no such wild animals may be retained under a permit after the last day of April in the year following that in which they were taken or killed. Wild animals, lawfully taken and had in possession outside this state, may be brought or shipped into this state and had in possession at any time upon proof that they have been so lawfully taken, provided retaining tags herein provided for are attached thereto. (As amended Apr. 21, 1939, c. 360.)

Op. Atty. Gen., Oct. 3, 1933; note under §5505.

A Canadian license would cover a fisherman leaving from a Minnesota camp to Canadian waters on other side of boundary and returning to Minnesota camp with his catch. Op. Atty. Gen. (209h), Aug. 19, 1934.

Not more than 10 ducks taken legally in Canada may be transported into Minnesota during closed season each calendar week, and no canvas-back, redhead, ruddy duck, buffle head duck or wood duck can be brought into the United States at any time. Op. Atty. Gen. (210d-7), Sept. 13, 1937.

5536-1. Game and fish license act—of whom required.—No person shall kill, take or attempt to take in any manner any protected wild animal, or engage in hunting, pursuing, or trapping for the purpose of taking any protected wild quadruped or bird, or engage in fishing for the purpose of taking any game fish, or engage in selling bait to be used for fishing, without first obtaining a license from the director of game and fish so to do, as provided by this act unless otherwise specifically permitted by law. Residents of the state shall be required to procure hunting licenses at the age of 16 years for the purpose of hunting protected wild animals or game birds and a resident of the state shall be required to procure a fishing license at the age of 18 years for the purpose of fishing. Non-residents of the state under 16 years of age may take fish without procuring a license, but may not transport or ship any fish out of the state without procuring a license, provided, that no non-resident under 16 years of age may fish without a non-resident fishing license unless his or her parent or guardian shall have obtained and have in his or her possession such non-resident fishing license. No trapping license, whitefish netting or inland herring netting license shall be issued to any non-resident of the state. All licenses shall be issued for the calendar year, and no reduction in fees shall be made for fractions of a year. Only one license of each kind shall be issued to any one person in any calendar year. No license shall be transferable. ('27, c. 438, §1; Apr. 24, 1929, c. 332, §1; Apr. 21, 1933, c. 392, §4; Apr. 24, 1937, c. 447, §1.)

In re Newman, (USDC-Minn), 47F(2d)1073.

A license is necessary for spearing of rough fish. Op. Atty. Gen., May 31, 1933.

Commissioner of conservation cannot issue individual resident license at 50c to non-resident persons at conservation camps. Op. Atty. Gen., June 21, 1933.

No license or identification tag is required of any resident person below 18 years of age. Op. Atty. Gen., Aug. 29, 1933.

A Minnesota fishing license should be required from a Canadian guide who crosses border and takes Minnesota fishing parties into Minnesota waters even though he does not fish himself. Op. Atty. Gen. (209h), Aug. 19, 1934.

Since a minor under fourteen can hunt protected game only on home premises of his parent or guardian, he can have a bag limit of game only if it was taken on such premises. Op. Atty. Gen. (209g), Sept. 19, 1934.

5536-2. Kind of licenses and fees therefor.—(A)

The kinds of licenses, the fees to be paid therefor, and the kinds of animals which may be taken thereunder, respectively, subject to all other provisions of law relating to the taking of wild animals, as stated in Section 5536-1, shall be as follows:

(1) Resident small game hunting license, \$1.00, to take all small game;

(2) Non-resident small game hunting license, \$25.00 to take all small game;

(3) Resident big game hunting license, \$2.00, to take all big game;

(4) Non-resident big game hunting license, \$50.00, to take all big game;

(5) Resident trapping license, \$1.00 to trap all fur-bearing animals;

(6) Resident fishing license, \$.50 to take fish;

(7) Non-resident season fishing license, \$3.00, to take fish; Provided, a combination fishing license may be issued to a non-resident husband and wife for which a fee of \$4.50 shall be charged, and a charge of \$1.00 shall be made for two shipping coupons one of which is required to be attached to each shipment of fish made by common carrier by any non-resident, in accordance with the provisions of the 1933 Supplement to Mason's Minnesota Statutes of 1927; Section 5505, Subdivision 7, as amended by this act. Provided, however, that no more than two shipping coupons may be issued to any licensee, combination or otherwise, in one season; provided, however, that such shipping coupons shall be cancelled by the shipping clerk to whom said shipment is first delivered; and provided, further, that the director of game and fish may issue to non-residents licenses to take fish by angling in and upon the waters of Big Stone Lake and Lake Superior upon the same terms and conditions as those granted and enjoyed under and by virtue of the Laws of the States of South Dakota and Wisconsin respectively;

(8) Bait dealers' license, \$2.50, but operators of summer resorts and tourist camps who sell to their guests only, shall not be subject to the payment of such license fee;

(9) Whitefish netting and inland herring netting licenses to take fish for private use, but not for sale, under Mason's Minnesota Statutes of 1927, Section 5586, one net per applicant not exceeding 100 feet in length, license \$1.00;

(10) Dark house, fish house or other shelters for use thereof in winter fishing, license \$1.00.

(B) The term "big game" as used herein shall include deer, moose, elk, caribou and bear, and the term "small game" as used herein shall include all other protected wild quadrupeds and wild birds.

(C) Every license shall have printed thereon the kind thereof and the name of all wild animals which may lawfully be taken thereunder, and shall entitle the person to whom issued to take the wild animals therein specified in such manner and at such times and places as may be permitted by law. Protected wild animals may be taken under a hunting license only by hunting with a firearm or other lawful weapon. Protected fur-bearing animals may be taken under a trapping license only with lawful traps. Fish may be taken under fishing license only by angling or by spearing, or netting by residents only, when possessing the required additional license so to do.

(D) All persons who engage in selling bait to be used for fishing shall be designated as bait dealers. ('27, c. 438, §2; Apr. 24, 1929, c. 332, §2; Apr.

21, 1933, c. 392, §5; Apr. 24, 1937, c. 447, §2; Mar. 24, 1939, c. 76, §1.)

Identification cards issued to persons over 18 prior to passage of Laws 1933, c. 392, should be taken up and holders required to take out licenses. Op. Atty. Gen., May 17, 1933.

Words "commissioner" and "director" as used in fish and game laws are synonymous. Op. Atty. Gen., May 23, 1933.

One who does not rent a cottage or room but who parks his automobile upon property of a resort owner and rents a boat from him is a "guest," as affecting bait dealers' license. Op. Atty. Gen. (290k), June 8, 1937.

(A) (6). Children over 18 years of age must obtain individual license, and family license only covers husband and wife. Op. Atty. Gen., May 9, 1933.

(A) (8). Word "guest" is broad enough to cover anyone making use for compensation of any of facilities of summer resorts and tourist camps such as rental of boats without necessity of obtaining lodging or meals. Op. Atty. Gen. (209-K), June 1, 1933.

5536-3. Hunting and trapping licenses.—Licenses shall be issued as follows:

Hunting or trapping licenses for residents of the state, by the county auditor of the county in which the applicant resides or by any agent of such auditor.

Hunting licenses for non-residents of the state, by the commissioner or any agent of the commissioner outside of the state, or by any county auditor in the state, or his agent.

Angling licenses for residents of the state, by the county auditor of the county in which the applicant resides, or by any agent of such auditor.

Angling licenses for non-residents of the state, by the commissioner or any agent of the commissioner outside the state, or by any county auditor of the state, or his agent.

The commissioner may appoint agents to issue non-resident licenses of any kind outside of the state. Such appointments shall be in writing and a record thereof shall be kept by the commissioner. The commissioner may revoke any such appointment at any time. The commissioner may require any agent appointed by him to furnish a bond to the state, to be approved by the commissioner and filed in his office, in such sum as the commissioner may prescribe, at least equal to the total estimated amount of license fees and unsold licenses which will be in the hands of such agent at any one time, conditioned to secure the accounting by such agent for all license blanks furnished to and licenses issued by him and the payment by him according to law of all moneys received by him as fees for such licenses and the compliance by him with all the provisions of law relating to the issuance of such licenses. The commissioner may require a like bond of any county auditor if, in the opinion of the commissioner, his official bond is not sufficient for the purposes hereinbefore specified.

Every county auditor may appoint agents to issue within his county such licenses as such agents are authorized to issue. He shall if possible appoint at least one such agent in every city and village of his county outside of the county seat and at any other place in the county which may be designated by the commissioner and may appoint such other agents anywhere in the county as he deems necessary for the convenience of the public in obtaining licenses. Such appointments shall be in writing and a record thereof shall be kept by the auditor. Upon making any such appointment the auditor shall forthwith notify the commissioner of the name and address of the appointee. The auditor may revoke any such appointment at any time, and shall revoke any such appointment upon his own motion or when demanded by the Game and Fish Commissioner whenever such agent shall violate any provision of the laws relating to the issuance of such licenses, or shall fail to give proper attention to the issuance thereof, or shall fail to account promptly for unsold licenses or license fees. The county auditor shall be responsible for all license blanks issued to and license fees received by his agents, and such agents shall be responsible to

the auditor therefor. The auditor may require any such agent to furnish a bond to the auditor, in such sum as the auditor may prescribe, to be approved by the auditor and filed in his office, conditioned in like manner as the bonds to be furnished by agents of the commissioner as hereinbefore provided. All license fees received by such agents shall be deemed public moneys of the state, and such agents shall be amenable to all penalties provided by law relating to such moneys or to the issuance of such licenses. ('27, c. 438, §3; Apr. 17, 1933, c. 309, §1.)

Auditor cannot pay clerk hire or other expenses out of license money, except commissions to agents. Op. Atty. Gen., May 21, 1929.

5536-7. County auditor to deposit money with county treasurer.—Every county auditor shall promptly deposit with the county treasurer all moneys received by the auditor either directly or through his agents for license fees, and the treasurer shall make a record thereof and keep the same as other public funds. On or before the fifteenth of each month the county auditor shall make a written report to the commissioner for the preceding calendar month, stating the total number and the serial numbers of each kind of licenses sold, the amount of fees received for each kind of license, and the total amount received. He shall transmit to the commissioner with such report his warrant on the county treasurer in favor of the commissioner, or the county treasurer's check in payment of such warrant, for 90 per cent of all license fees received during such preceding calendar month by direct sale to licensees and all of the money received by sale to agents. Thereupon the County Auditor shall be entitled to 10% of the fees derived from sale of licenses sold by him or his agents; or 2% of the fees for licenses sold for cash and resale, as hereinafter provided, as his compensation and may draw his warrant to himself upon the County Treasurer in payment thereof. The County Auditor shall pay his agents 5% of the value of the licenses sold by such agent, as his compensation. On or before the tenth of each month every agent of the commissioner shall make a written report to the commissioner for the preceding calendar month, containing the same information as hereinbefore prescribed for reports by county auditors, and shall with such report transmit to the commissioner 90 per cent of all license fees received during the preceding calendar month whereupon such agent shall be entitled to retain the remaining ten per cent of such fees as his compensation. The commissioner may also require any agent appointed by him to account to him for licenses and license fees at such other times as he shall direct. All moneys received by the commissioner for license fees, either directly or through county auditors or agents, shall be promptly remitted by the commissioner to the state treasurer, who shall credit the same to a special fund known as the game and fish fund, and all of said moneys are hereby appropriated for the maintenance and conduct of the activities of the office of commissioner of game and fish, as provided by law.

Any resident of a county who shall apply to the county auditor of his county for hunting or fishing license blanks for resale may purchase such license blanks from such county auditor, and if such license blanks shall be purchased in groups of not less than 10 non-resident license blanks and 25 resident license blanks which he is authorized to sell he shall be entitled to a discount of 8 per cent from the price established by law. All such license blanks shall be paid for at the time of purchase. In selling such licenses, such person shall be deemed to act in the capacity of agent of the county auditor, and shall at the end of each calendar month make a report to such county auditor stating the serial number of each license sold and the name and address of the purchaser thereof. Any such resident of a county who shall purchase for resale not less than 10 non-resident license blanks and 25 resident license blanks

may at any time within ninety days of the date of purchase but not later than December first of the same year return any such blanks to the county auditor, and shall thereupon be reimbursed for such unused license blanks at the price established by law, less 8 per cent. All moneys received by the county auditor where cash payment has been made in advance by such persons shall be deposited by the county auditor with the county treasurer and such treasurer shall deposit such amounts in a fund known as a "Game and Fish Reserve Fund." On or before the 15th day of each month the county auditor shall transfer from the "Game and Fish Reserve Fund" to the regular Game and Fish Fund, moneys sufficient to cover licenses sold by said agents during the preceding calendar month. The County Auditor may draw his warrant upon the County Treasurer in an amount or amounts necessary to reimburse any purchaser of licenses for resale, for all unsold license blanks returned to him in accordance with the provisions of this act. Said warrant or warrants shall be drawn upon the fund known as the Game and Fish Reserve Fund.

Provided, however, the provisions of this act shall not be construed to in any way alter or repeal the provisions of Chapter 69, Laws of 1929, and Chapter 341, Laws of 1929 [§§997-3, 997-4], nor any law now or hereafter enacted wherein provision is made that all fees collected by county officials in certain counties be paid into the county treasury. ('27, c. 438, §7; Apr. 17, 1933, c. 309, §2.)

License fees go to general county fund and cannot be segregated. No clerk hire or expenses other than commissions to agents may be paid out of license moneys. Op. Atty. Gen., May 21, 1929.

Any person has legal right to purchase fishing and hunting licenses for resale. Op. Atty. Gen., May 1, 1933. This section is constitutional. Op. Atty. Gen., Oct. 19, 1933.

Agents are entitled to receive commission on sale of big game licenses. Op. Atty. Gen., Dec. 20, 1933.

5536-8. Violations of law by licensees.—Upon conviction of any person for any violation of any provision of law relating to any license issued to such person or relating to the wild animals covered by such license, such license shall immediately become null and void and no license of the same kind shall be issued to such person for a period of one year after the date of commission of the offense. Upon conviction of any person for hunting, fishing, or trapping without a license or doing without a license any other act for which a license is required as hereinbefore provided, no license of the kind required for the doing of such act shall be issued to such person for one year after the date of conviction of the offense. Provided, that this section shall not apply to resident fishing licenses or to the taking of fish by residents by angling or spearing with or without license and provided that this exemption shall not apply to residents using dark houses with or without licenses. ('27, c. 438, §8; Apr. 24, 1929, c. 332, §4; Apr. 21, 1933, c. 392, §6.)

Where appeal is taken from conviction in justice court, revocation of license does not become effective until conviction in the appellate court. Op. Atty. Gen., Dec. 19, 1929.

In computing the time within which a license may be issued to one who has been convicted for violation of the game laws the date of conviction is immaterial under this section as amended by Laws 1929, c. 332, §4. Op. Atty. Gen., June 7, 1930.

One having pheasants in his possession during closed season without having procured a small game hunting license forfeited his right to obtain a license for the year. Op. Atty. Gen., Oct. 6, 1931.

A hunter does not forfeit his right to a license when he is arrested and found guilty of carrying a loaded gun in a motor vehicle, but statute only requires such forfeiture as to those kinds of animals involved in the offense. Op. Atty. Gen., Oct. 26, 1931.

Game warden has no authority to take up license before conviction of licensee. Op. Atty. Gen., Nov. 4, 1933.

A person who violates a law, either with or without a license, relating to big game, small game, trapping or any other activity for which a license is provided, shall not be entitled to license relating to taking of class of wild animals or particular activity involved in such vio-

lation for a period of one year. Op. Atty. Gen. (210a-5), Apr. 4, 1933.

5536-11. Same—Loaning, transferring, etc., of licenses—Penalty.

Helper's license is not transferable. Op. Atty. Gen., Sept. 13, 1933.

5536-12. Reports to Game and Fish Commissioner.

(A) For the purpose of enabling the commissioner to prepare statistics relating to the number of wild animals in the state, every person who has taken any protected wild quadruped or game bird, whether with or without a license, shall on or before the last day of January in each year, mail or deliver to the commissioner a written report on a form prepared by the commissioner and furnished on application made to the commissioner or to any game warden, county auditor, or agent of the commissioner authorized to issue licenses, stating the number of each kind of protected quadrupeds and game birds taken by such person during the preceding calendar year.

(B) No person who is required to make such a report shall be entitled to hunt, trap, or take any protected wild quadruped or game bird until such report has been made. No person to whom a hunting or trapping license has been issued who wilfully fails or neglects to make such a report shall be granted a license of the same kind for the year succeeding the year for which his license was issued, and if a new license of the same kind has been issued to such person it shall be null and void and shall be surrendered upon demand to the commissioner or to any game warden.

(C) As soon as practicable in each year the commissioner shall furnish to each county auditor, game warden, and agent authorized to issue licenses a list of the names of all persons to whom licenses were issued by or within the county or territory of such auditor, game warden or agent during the preceding year and who have failed to make the report hereby required. No such county auditor, game warden, or agent shall issue a license of the same kind for the current year to any person whose name appears upon such list as delinquent in this regard. ('27, c. 433, §12; Apr. 24, 1929, c. 332, §5.)

5536-13. Fees set aside for use of Game and Fish Commissioner.—Appropriations.—All moneys received from fees for licenses of any kind issued by the commissioner of game and fish shall be credited by the state treasurer to a special fund known as the game and fish fund, and all of said moneys are hereby appropriated for the maintenance and conduct of the activities of the office of commissioner of game and fish as provided by law, and for the payment of the cost of acquiring any property or right which the commissioner is authorized by law to acquire, and for the payment and the cost of any construction, improvement, or other project which the commissioner is authorized by law to undertake; provided, that this shall not apply to any such moneys otherwise expressly appropriated by law for a specific purpose under the direction or authority of the commissioner; provided, that the following sums from the game and fish fund are hereby appropriated for the activities and purposes enumerated as follows:

- a. St. Paul Hatchery:
Maintenance and improvements \$ 14,150.00
for each of the two fiscal years
1930 and 1931.
- b. Glenwood Hatchery:
Maintenance and Improvements 10,000.00
for each of the two fiscal years
1930 and 1931.
- c. Detroit Hatchery:
Maintenance and Improvements 8,000.00
for each of the two fiscal years
1930 and 1931.

- d. French River Hatchery:
Maintenance and Improvements 10,150.00
for each of the two fiscal years
1930 and 1931.
- e. Southern Minnesota Hatchery:
Maintenance and Improvements 8,000.00
for each of the two fiscal years
1930 and 1931.
- f. Lanesboro Hatchery:
Maintenance and Improvements 10,000.00
for each of the two fiscal years
1930 and 1931.
- g. Tower Field Station:
Maintenance 3,000.00
for each of the two fiscal years
1930 and 1931.
- h. Ranier Field Station:
Maintenance 2,000.00
for each of the two fiscal year:
1930 and 1931.
- i. Bemidji Field Station:
Maintenance 3,000.00
for each of the two fiscal years
1930 and 1931.
- j. Park Rapids Field Station:
Maintenance 3,000.00
for each of the two fiscal years
1930 and 1931.
- k. Jenkins Field Station:
Maintenance 3,000.00
for each of the two fiscal years
1930 and 1931.
- l. Game Farm:
Maintenance and Improvements 12,000.00
for each of the two fiscal years
1930 and 1931.
- m. Cut Foot Sioux Field Station:
Maintenance and Improvements 2,500.00
for each of the two fiscal years
1930 and 1931.

and provided, that a sum equivalent to the amount of money in said fund on December 31, 1928, and not necessary for the maintenance and conduct of the department and not set apart for any other specific purpose, and not less than one-half of all fees thereafter and hereafter received from the sale of hunting licenses, are hereby appropriated and shall be used for the acquisition and maintenance of public hunting grounds, game farms and game refuges by the commissioner as provided by General Statutes 1923, Section 5630, and acts amendatory thereof and supplementary thereto. (Act Apr. 24, 1929, c. 332, §6.)

Diversion of funds. Op. Atty. Gen., Sept. 27, 1933.

Where land is owned by one person and timber by another, state may make out separate checks to landowner and timber owner. Op. Atty. Gen., Nov. 15, 1933.

Purchase of birds and eggs is part of maintenance of public hunting grounds, game farms and game refuges, and should properly come out of Public Shooting Grounds Fund whenever there are moneys available for such purpose. Op. Atty. Gen., Dec. 19, 1933.

Where game wardens perform work within confines of hunting grounds, game farms and game refuges, such as feeding game birds therein, their salaries and expenses can be charged to Public Hunting Ground and Game Refuge Involving Fund. Op. Atty. Gen., Dec. 28, 1933.

Classification of state land as under authority of conservation department—public parks. Op. Atty. Gen. (330c-1), June 9, 1936.

Moneys from this fund, not otherwise appropriated or encumbered, may be allocated to commissioner of conservation for construction of a fish hatchery as a federal aid or PWA project. Op. Atty. Gen. (211a-5), Aug. 3, 1938.

5536-14. Game and Fish Commissioner to use unexpended balances.—If any of the sums of money appropriated under Section 6 are not sufficient to properly maintain and improve said hatcheries and game farm, the game and fish commissioner is authorized to use such further funds from said game and fish fund as may be necessary, and any unexpended balance in each fiscal year may be transferred and used by the game and fish commissioner in such manner and for such purposes of the department as the

commissioner shall determine. (Act Apr. 24, 1929, c. 332, §7.)

5536-15. Fees reappropriated.—Any and all other moneys paid into the state treasury through the game and fish department, including the income from the sale of confiscated game and parts thereof and all other articles, are hereby appropriated for the maintenance and conduct of the activities of the office of the commissioner of game and fish, as authorized by law, except such moneys as are otherwise expressly appropriated by law for a specific purpose. All expenditures of the department of game and fish are subject to the provisions of Chapter 426, General Laws 1925 [§§53-1 to 53-52] and subject to audit by the state auditor. (Act Apr. 24, 1929, c. 332, §8.)

Licensee fees for bullhead fishing in Itasca County provided for by Laws 1939, c. 380, should be credited to the game and fish fund. Op. Atty. Gen. (208B-3), May 12, 1939.

5536-21. Field dog trials authorized.—Licenses.—Whenever any responsible association duly organized for the purpose of holding field dog trials under the rules and regulations of The American Kennel Club and/or the American Field and/or any other bona fide organization shall make written application to the Director of the Division of Game and Fish for a license to hold a field dog trial, which application shall state the names and addresses of the officers and members of the governing body of such association, the exact location and character of the land, including a plat thereof, upon which it is proposed to hold such field trial, the dates on which said field trial is proposed to be held, an outline of the plan of operation thereof, the approximate number and the variety of game to be used, which application shall be accompanied by a certificate from the breeders or owners of such game certifying that the same is being held subject to the orders of the applicant association for use at said field trial, the Director of the Division of Game and Fish shall cause an investigation to be made, and upon finding that the proposed plan of operation of said field trial is such as will permit full, complete and adequate supervision thereof by the Division of Game and Fish, and that the holding of said field trial will not in any way be injurious to the conservation of any of the state's property or natural resources, the Director of the Division of Game and Fish, with the approval of the Commissioner of Conservation, may issue to such association a license to hold such field trial subject to such rules and regulations as the Director of the Division of Game and Fish may promulgate. (Apr. 6, 1937, c. 140, §1.)

There is no violation of this act where a county rod and gun club holds a picnic for purpose of promoting conservation entertainment and education, one of features of entertaining being a coon hunt provided by making a coon trail to be followed by coon dogs brought by persons attending the picnic. Op. Atty. Gen. (210d), Aug. 12, 1938.

5536-22. Licenses for field trial.—Such license shall only be issued upon the posting of a sufficient sum of money with the director of game and fish to assure the payment by the applicant association of all necessary expenses for warden supervision at such field trial. (Apr. 6, 1937, c. 140, §1; Apr. 12, 1939, c. 203.)

5536-23. Inconsistent acts superseded or repealed.—This act shall take effect and be in force from and after its passage and approval, and all acts and parts of any acts and laws inconsistent herewith are hereby superseded and modified so far as may be necessary to give full force and effect to the intent and purposes of this act. (Apr. 6, 1937, c. 140, §3.)

PART III.—QUADRUPEDS

5537. Open season for deer.—Hunting with bow and arrow.—Deer may be taken from November 15 to November 25, both inclusive; in even numbered years

only, but nothing in this chapter shall be construed to permit the taking or killing of moose, elk or caribou at any time; provided, however, that in any county of this state containing not less than 90 and not more than 100 full and fractional congressional townships, in addition to the open season for deer hereinbefore provided, deer may be taken with bow and arrow only from November 1 to November 5, inclusive, in even numbered years only. Except that one antlered moose may be taken within the northwest angle state forest during such open season as may be provided in any year between October 10 to October 20, inclusive, through the issuance of orders therefor by the director of the division of game and fish, who with the approval of the commissioner of conservation shall promulgate and publish rules and regulations in keeping with the minutes and resolutions of the conservation commission prescribing the manner of taking and transporting such big game and all further provisions which are deemed necessary and pertinent thereto. The license fee for the hunting of such game in the northwest angle state forest shall be \$5.25 for residents and \$50.25 for non-residents. Each such licensee may take one antlered moose during such season as may be provided. (As amended Apr. 27, 1929, c. 418, §1; Apr. 17, 1937, c. 236, §1; Apr. 14, 1939, c. 256.)

Editorial note.—The proviso introduced by Act Apr. 14, 1939, is probably unconstitutional as local and special.

Governor has no power to open deer season at any time than that provided by statute but may shorten any time under certain conditions. Op. Atty. Gen., June 10, 1933.

Executive order opening deer season does not alter open season for bear. Op. Atty. Gen., Oct. 24, 1933.

Governor may permit shooting of buck deer during closed season for protection of does and immature animals. Op. Atty. Gen., Oct. 7, 1933.

5537-1. Penalties for violations.—Any person found guilty of the violation of the above act shall be punishable by a fine of not less than \$75.00 nor more than \$100.00, or by imprisonment in the County Jail not less than 30 days nor more than 90 days. (Apr. 17, 1937, c. 236, §2.)

5537-2. Inconsistent acts modified.—Any acts and parts of acts inconsistent herewith are hereby modified and amended so far as may be necessary to give full force and effect to the provisions of this act. (Apr. 17, 1937, c. 236, §3.)

5539. Manner of taking big game.—(1) No artificial light, including automobile and motorcycle headlights and spot lights, snare, trap, set gun, swivel gun, salt lick or other device to entrap or entice deer shall be used, made or set, nor shall deer be taken by aid or use thereof. No snare for wolves or other wild quadrupeds shall be set in any runway used by deer. No such snare shall be set with a loop of greater maximum diameter than 12 inches, nor with the top of the loop higher than 24 inches above the ground. No spring pole shall be set or used with any such snare. Deer shall not be shot from any artificial scaffold, platform, or other construction higher than 6 feet above the ground. Deer shall not be hunted or pursued or killed with dogs. Violation of any provision of this Subdivision relating to set guns or swivel guns shall be a gross misdemeanor. Violation of any provision of this Subdivision relating to artificial lights shall be a misdemeanor, and shall be punishable by a fine of not less than \$25, nor more than \$100; or by imprisonment in the county jail for not less than 30 days nor more than 90 days. Violation of any other provision of this Subdivision shall be a misdemeanor.

(2) The licensee shall, after killing a deer, immediately affix to the carcass thereof, coupon tag "B" of his license. Immediately after a deer has been killed there shall be affixed to each carcass of deer before the same is transported or offered for transportation, a metal locking seal bearing the license number of the owner thereof and the year issued in figures, said seal to be furnished by the director of game and fish through the county auditors when

licenses are sold and for which a fee of 25 cents shall be paid. ('19, c. 400, §45; '21, c. 450, §21; '25, c. 380, §1; Apr. 27, 1929, c. 418, §2; Apr. 21, 1933, c. 392, §7.)

Section 5510(3), as amended by Laws 1931, c. 399, overrides this section and makes the use of an artificial light in hunting deer a misdemeanor instead of a gross misdemeanor. Op. Atty. Gen., Dec. 2, 1931.

Commissioner may authorize hunting of deer by bow and arrow, but cannot limit such taking to certain area and exclude use of rifle therein. Op. Atty. Gen., July 28, 1933.

5541. Open season for certain animals; tanning licenses.—(1) Gray and fox squirrels may be taken and possessed between October 15 and December 31 following, both inclusive. No person shall hunt, molest or take any gray, black, red, fox, flying or other squirrel at any time within the corporate limits of any city or village or within one-quarter of a mile thereof. A person may take, during the open season, not to exceed 7 gray or fox squirrels in the aggregate of all kinds in any one day and may have not to exceed 14 gray or fox squirrels in the aggregate in possession at any time.

(2) Bear may be taken during any open season for taking deer, and between April 15 and May 15, both inclusive, next following any such open season for deer; provided, however, that in areas in which bear becomes a nuisance to agriculture, or a menace to persons or property, bear may be taken at any time by securing a permit from a game warden familiar with the area, which permit shall be issued for the taking of bear in the township or the adjoining township to the township in which applicant for a permit resides. No charge shall be made for such permit but a copy thereof shall be filed with the director of the division of game and fish, and such permit may be revoked at any time by the director of the division of game and fish upon recommendation of the game warden from the district where it was issued. Steel traps may be used for the purpose of taking or catching bear only upon permission of the game and fish commissioner to do so. Rules and regulations for the safe use thereof shall be prescribed by the commissioner and anyone setting them so as to become a danger to persons walking in the woods shall be guilty of a gross misdemeanor.

(3) Raccoon may be taken between November 1 and December 1, following, both inclusive. Raccoon may be taken at any time of day or night. Dogs may be used in taking raccoon, except in territory inhabited or frequented by deer. No person shall molest or take any raccoon in any manner in a den or hollow tree or cut down any tree inhabited or occupied by a raccoon. No trap for raccoon shall be set in or under water or in any muskrat runway.

(4) Any person desiring to retain in possession during the closed season the skins of protected fur bearing animals shall apply to the commissioner with five days after the close of the season for a permit so to do, and the commissioner or a game warden shall issue to the licensee a distinctive tag for each pelt to be retained in possession; and upon receipt thereof, the licensee shall affix one such tag to each pelt retained in possession. Such pelts lawfully tagged may be bought and sold at any time. This shall also apply to furs taken from animals trapped or killed on land owned or occupied by the trapper. ('19, c. 400, §47; '23, c. 342, §1; '25, c. 380, §1; Apr. 27, 1929, c. 418, §3; Apr. 24, 1931, c. 311.)

(5) 1. Every person engaging in the business of tanning and dressing of raw furs, hides or pelts of beaver, otter, fisher, marten, muskrat, mink, skunk, deer or bear shall procure a license so to do from the director of game and fish, and for which he shall pay a fee of (\$2.00).

2. All licenses issued hereunder shall be for the calendar year and shall expire on the 31st day of December of each year. Licenses may be revoked at any time by the director of game and fish for any violation of the law relating to wild animals.

3. Every person engaged in the business of tanning and dressing of raw furs under license issued by the director of game and fish, shall report to the director of game and fish the number and kinds of raw hides or pelts of beaver and muskrat received for tanning and dressing purposes, when received and from whom, and shall keep a register of such transactions which register shall be open for inspection by the director of game and fish or his duly authorized representatives. Upon reporting to the director of game and fish of the receipt of any shipment of raw beaver or muskrat hides or pelts for the purpose of tanning and dressing, the director of game and fish or his duly authorized representative shall cause to be attached to each individual hide or pelt, an identification tag or seal, which tag or seal shall remain on such hide or pelt during all of the time such hide or pelt is in the process of tanning and dressing. The tag or seal attached by the director of game and fish or his representative shall be of such a nature as not to interfere in any way with the tanning and dressing process and shall be attached so as not to materially damage the hide or pelt to which attached. Such tags or seals shall be procured from the director of game and fish by the licensee and for which he shall pay one cent each, which tags or seals shall remain attached to such hides or pelts during all times such hides or pelts are in the possession of such tanner. All raw hides and pelts of beaver and muskrat found in any tannery, whether in the process of tanning or dressing, without having attached thereto such tags or seals as authorized by this chapter, shall be deemed contraband and subject to seizure by the director of game and fish or his duly authorized representative, and no action for damages shall be maintained against the director of game and fish or his representative for such seizure.

4. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (As amended Apr. 27, 1929, c. 418, §3; Apr. 24, 1931, c. 311; Apr. 21, 1933, c. 392, §21; Mar. 31, 1939, c. 121; Apr. 22, 1939, c. 424, §1.)

Editorial note.—The title and enacting part of §1 of Act Apr. 22, 1939, cited, purport to amend subdivisions (1) and (2), but the body of the act amends only subdivision (1).

Act Apr. 21, 1933, cited, adds subdivision (5).

Act Mar. 31, 1939, cited, amends subdivision (2).

Act Apr. 22, 1939, cited, amends subdivision (1).

The title of Act Apr. 21, 1933, c. 392, does not enumerate §5541 as one of the sections amended. See note under §5505.

Sections 5541, 5547, 5631, 5633, should be read together. 177M298, 225NW435.

(2).

Executive order opening deer season does not alter open season for bear. Op. Atty. Gen., Oct. 24, 1933.

5542. Open season for fur bearing animals.—(1) Mink may be taken by trapping between November 1st and January 31 following, both dates inclusive, and bought, sold and possessed at any time; provided no traps for mink shall be set in any muskrat house or runway and provided that mink may not be dug from their dens or taken with the aid of dogs. Provided, however, that mink may be taken or killed in any manner at any time by the actual occupant of any lands to which the mink so killed or taken are causing any damage or injury. Upon the killing of any such mink at any time other than during the regular season as hereinabove provided therefor, the entire carcass including hide shall be turned over and surrendered to the nearest warden or employee of the Division of Game and Fish within 24 hours of the time such animal was killed.

(2) Muskrats may be taken only by trapping in such counties of the state and in such numbers and during such times in the several counties, not exceeding 30 days between March 1 and April 30, both inclusive, in any year in any county, and subject to such other provisions not inconsistent with law, as the commissioner may by regulation from time to time prescribe according to conditions existing in the

respective counties. No person shall set or use more than 50 traps for muskrats at any one time. No person shall set, visit, or remove any trap for muskrats between the hours of 8 P. M. and 6 A. M.

(3) Skunk may be taken in any manner between October 20 and March 1 following, both inclusive. Provided, however, that skunk may be taken or killed in any manner at any time by the actual occupant of any lands to which the skunk so killed or taken are causing any damage or injury. Upon the killing of any such skunk at any time other than during the regular season as hereinabove provided therefor, the entire carcass including hide shall be turned over and surrendered to the nearest warden or employee of the Division of Game and Fish within 24 hours of the time such animal was killed.

(4) Such animals, legally taken, may be possessed, bought and sold at any time upon compliance with all applicable provisions of law relating thereto. ('19, c. 400, §48; '23, c. 342, §1; '25, c. 380, §1; Apr. 27, 1929, c. 418, §4; and Apr. 25, 1931, c. 379; Apr. 17, 1933, c. 305; Apr. 21, 1933, c. 392, §8; Apr. 22, 1939, c. 424, §2.)

Act Apr. 27, 1929, c. 418, §8, repeals Laws 1925, c. 129.

Act Apr. 22, 1939, cited, amends subdivisions (1) and (3).

Chippewa Indian held not subject to prosecution under state law for taking muskrat on Chippewa Indian Reservation. 179M180, 228NW511.

Where a full-blood Chippewa Indian received a patent in fee from United States government to 160 acres of land on White Earth Indian Reservation, and trust period having expired thereon, sold land and removed therefrom, court had jurisdiction of prosecuting for violation of state game laws. State v. Bush, 195M413, 263NW300. See Dun, Dig. 4348.

(1).

This subdivision, as amended by Laws 1932, c. 305, was superseded by Laws 1933, c. 392, §8. Op. Atty. Gen., June 15, 1933.

5543. Open season for badger, marten, fisher, otter or beaver.—(1) No person shall take or possess badger, marten, fisher, otter or beaver at any time, or molest or disturb any badger, marten, fisher, otter or beaver, except as hereinafter provided.

(2) Beaver may be taken only by trapping in such counties or portions of counties of the state as the commissioner shall designate for a period not exceeding 15 days between April 20th and May 20th following, both days inclusive. The commissioner of conservation, upon receipt of a license fee of \$2.50 shall issue to any person a license to take beaver, specifying therein the number of beaver that may be taken, provided that no more than ten beaver may be taken in any one season under such license.

(3) The licensee shall report, within 10 days after the close of the season for the taking of any beaver and the number of beaver so taken by him, to the commissioner, or to the game warden or wardens designated by the commissioner, and shall submit the skins of all such beaver to the inspection of the commissioner or warden, whereupon the commissioner or warden shall issue and affix to each skin a distinctive tag, stamp, or seal. The licensee shall pay the commissioner a fee of \$1.00 for each tag, stamp, or seal, so issued. Beaver skins so taken and tagged, stamped or sealed may be bought, sold and transported at any time upon compliance with all applicable provisions of law relating thereto. The commissioner shall keep a record of each such tag, stamp, or seal, the number issued, to whom issued and the date of issue. Provided, however, that beaver may be taken or killed in any manner at any time by the actual occupant of any lands to which the beaver so killed or taken are causing any substantial damage or injury. Upon the killing of any such beaver at any time other than during the regular season as hereinabove provided therefor, the entire carcass including hide shall be turned over and surrendered to the nearest warden or employee of the Division of Game and Fish within 24 hours of the time such animal was killed.

(4) Beaver may be trapped in a game refuge only by the Division of Game and Fish by persons em-

ployed so to do by the Director of the Division of Game and Fish under conditions and regulations to be prescribed by the director.

(5) Any person who shall unlawfully take, possess, transport, sell, or otherwise dispose of any beaver or any part thereof shall be guilty of a gross misdemeanor and shall, upon conviction be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment. (As amended Apr. 27, 1929, c. 418, §5; Apr. 22, 1939, c. 424, §3.)

Trapping on land occupied as a permanent abode, see §5514.

172M469, 215NW837; note under §5547.

(5).

Beaver may be taken when doing damage and may be taken by department in ditch lands or tax delinquent lands on state owned lands which are not designated as game refuges. Op. Atty. Gen., Mar. 8, 1934.

5545. Weasels, etc.—Weasels, wild cat, lynx, wolves, foxes, gophers, porcupines and all other quadrupeds for which a closed season is not provided by law, may be taken either in the day time or at night and in any manner, except that poison may be used to aid in the taking thereof only by permission of the game and fish commissioner and in a manner prescribed by him. No person shall place any poison in any place inhabited or frequented by wild animals otherwise than as so permitted. (As amended Apr. 27, 1929, c. 418, §6; Apr. 22, 1939, c. 424, §4.)

A person may not obtain foxes or fox cubs in any manner without obtaining a trapper's license. Op. Atty. Gen. (210b-3), July 2, 1934.

5546. Snowshoe rabbits and mink.—Varying hare or snow shoe rabbit may be taken either in the day time or at night and in any manner except that poison may not be used and as provided in subdivision 1 of Section 4 of this act. (Act Apr. 27, 1929, c. 418, §7; as amended Apr. 21, 1933, c. 392, §10.)

Sec. 8 of Laws 1929, c. 418, repeals Laws 1925, c. 129. See §5542 and note thereunder.

5546-1. Open season for rabbits and hare.—The open season for the taking of varying hare or snow shoe rabbit and cotton tail rabbit shall fall between September 16th and March 1st, both inclusive, subject however to such further restrictions as to time as shall be provided by order of the Director of Game and Fish with the approval of the Commissioner of Conservation. Provided, however, that the said varying hare or snow shoe rabbit and cotton tail rabbit may be taken or killed in any manner, at any time, by the actual occupant of any lands upon which the above named animals are causing any damage or injury whether said lands are located within a game refuge or otherwise. (Act Apr. 21, 1939, c. 381, §1.)

5546-2. Violation a misdemeanor.—Any violation of this act or any order of the Director of Game and Fish promulgated hereunder, shall be a misdemeanor. (Act Apr. 21, 1939, c. 381, §2.)

5547. Traffic in furs.—Nothing in this act shall be construed as prohibiting the buying, shipping or having in possession at any time, of the skins of furbearing animals legally killed within or without the state, and of the hides of moose or deer legally killed within or without the state, upon proof that such furs and hides were legally taken. No person shall engage in the business of buying furs until he shall have procured a license so to do from the director of game and fish. Fees, payable to the director of game and fish for such license shall be as follows: For a local resident fur buyer's license, \$1.00; for a resident traveling fur buyer's license, \$10.00; for a non-resident local or traveling fur buyer's license, \$25.00; for a resident wholesale fur buyer's license, \$1.00. Such fur buyer's licenses shall be issued for the calendar year and may be revoked by the director of game and fish for any violation of the law relating to wild animals or for fraudulent practices employed

in connection with the buying of furs under such license. All fur buyers shall furnish to the director of game and fish such reports as he may require for statistical purposes on blanks furnished them for this purpose. Any person applying for a fur buyer's license shall at the time of his application furnish a bond, either personal or corporate surety in favor of the state in the penal sum of \$1,000.00 conditioned upon the observance of all laws of this state relating to wild animals. No beaver trapping license shall be issued to any person to whom a fur buyer's license shall have been issued and in force. For the purpose of this act a local resident fur buyer shall be defined as a person who buys or purchases furs at definitely established place of business as distinguished from an itinerant or traveling buyer. ('19, c. 400, §53; '23, c. 342, §1; '25, c. 380, §1; Apr. 21, 1933, c. 392, §11.)

The burden of proof of lawful possession is placed upon the party in possession and claiming it to be lawful. 172M469, 215NW837.

This section does not violate Const., art. 4, §27; art. 1, §56, 7; nor impose a burden on interstate commerce, in view of Mason's U. S. Code, title 18, §395. 177M 398, 225NW435.

Sections 5541, 5547, 5631, 5633, should be read together. 177M398, 225NW435.

Whether or not origin of raw beaver skins was legal, held for jury. Hudson-Duluth Furrier, Inc. v. M., 182M 581, 235NW537. See Dun. Dig. 3933(98).

A delay of three years in producing the required proof is, as a matter of law, such an unreasonable delay as to be fatal to plaintiff's right of recovery. Hudson-Duluth Furrier, Inc. v. M., 182M581, 235NW537. See Dun. Dig. 3940.

Requires the possessor in the absence of official retaining tags, to have the proof of the lawful origin of such skins accompany the skins or at hand and available as soon as the owner learns of the seizure of the skins, he being allowed time to get the required proof from his office or other place where he reasonably has it available. Hudson-Duluth Furrier, Inc. v. M., 182M581, 235NW537. See Dun. Dig. 3940.

Words "commissioner" and "director" as used in fish and game laws are synonymous. Op. Atty. Gen., May 23, 1933.

Statute requires a license of a traveling representative submitting prices on firm's stationery for furs shown him which will be paid by firm if furs are shipped to it. Op. Atty. Gen., Dec. 30, 1933.

One purchase may be sufficient to constitute an offense. Op. Atty. Gen. (209e), Apr. 3, 1935.

Whether an auction company maintaining a warehouse is engaged in fur buying is a question of fact. Op. Atty. Gen. (203e), Aug. 22, 1935.

5547-1. Pet raccoons may be kept.—It shall be lawful for any person, with the written permission of the Commissioner of Game and Fish, to keep and have in possession a raccoon and to use the same for the purpose of training dogs for the hunting of raccoons. (Act Apr. 25, 1931, c. 378.)

PART IV.—BIRDS

5548. Open season for game birds. [Repealed.]
Amended Apr. 25, 1931, c. 399, §3; Apr. 21, 1933, c. 392, §12.

Repealed Apr. 22, 1939, c. 424, §13.
Op. Atty. Gen., May 23, 1933; note under §5547.

It is not violation to fire gun in county highways or town roads and cart ways, nor is it violation to fire at migratory game birds from state trunk highways. Op. Atty. Gen., Sept. 23, 1933.

5548-1. Open season for migratory game birds.—All migratory game birds may be taken and possessed at any time between September 16th and December 15th following, both inclusive, whenever and so long as the taking thereof is not prohibited by Federal Laws or Regulations provided that it shall be unlawful to take any of the aforesaid kinds of birds or other migratory game birds at any time in violation of any Federal Law or Regulation. Provided, further, that the daily bag limits and the possession bag limits permitted to be taken shall not exceed the limits provided by any Federal Law or Regulation. (Act Apr. 22, 1939, c. 424, §14.)

5549. Limit. [Repealed.]

Repealed Apr. 22, 1939, c. 424, §13.

5550. Bird dogs.—Game birds may be taken during the open season with the aid of dogs. The owner or

trainer of a dog may take the same afield for the purpose of training said dog, from August 15th to February 1st following, both inclusive, provided that such owner or trainer shall carry no firearms of more than 22 caliber, and the use of firearms of 22 caliber with blank cartridges in training dogs is hereby permitted when done so as not to inflict upon any game birds or quadrupeds contrary to law. The use or training of dogs between February 1st and August 14th following, both inclusive, in fields inhabited or frequented by game birds is prohibited. Any dog so used is hereby declared to be a public nuisance and may be summarily killed by any person. ('19, c. 400, §56; '21, c. 242, §3; '23, c. 426, §1; '25, c. 380, §1; Apr. 21, 1933, c. 392, §13.)

5551. Open season for certain game birds.—Quail, partridges or ruffed grouse, and Chinese ringneck or English pheasants may be taken and possessed in such counties of the state and in such numbers and during such times in the several counties not exceeding 23 days between September 16th and November 30th both inclusive and in any year in any county and subject to such other provisions not inconsistent with law as the Commissioner may by regulations from time to time prescribe according to the conditions existing in the respective counties, but nothing in this chapter shall be construed to permit the taking or killing of Canada spruce grouse, or of wild turkeys. Prairie chicken (also called pinneated grouse), white breasted (also called sharptailed grouse), Hungarian partridge or chukar partridge may be taken and possessed only in such counties of the State and during such times in the several counties, not exceeding any 15 days, between September 16th and November 30th following, both days inclusive, in any year in any county and subject to such other provisions not inconsistent with law, as the director of game and fish may by regulation from time to time prescribe so as properly to protect any of said species of game birds and prevent the undue depletion thereof, according to the conditions in the respective counties; provided, that no new regulation or amendment of any existing regulation shall become effective in any season unless promulgated and published according to law on or before the first day of September next preceding such season. No hunter shall discharge any firearm at any game birds which are within the limits of any state trunk highway, except migratory game birds. (As amended Mar. 18, 1931, c. 69, §1; Apr. 21, 1933, c. 392, §14; Apr. 22, 1939, c. 424, §5.)

Laws 1931, c. 399, in its title, purports to amend this section, but there is no amendment of the section in the body of the act.

Op. Atty. Gen., May 23, 1933; note under §5547.
Op. Atty. Gen., Sept. 23, 1933; note under §5548.

5552. Limit on number of birds which may be taken.—A person may take during the open season not to exceed 10 quail, and not to exceed 5 partridge or ruffed grouse, and not to exceed 3 Chinese ringneck or English pheasants in the aggregate of both kinds, only one of which may be a female, and not to exceed 5 prairie chickens or pinneated grouse, white breasted or sharp-tailed grouse in one day. No person shall have more than 15 quail or 15 partridge or ruffed grouse, or more than 12 Chinese ringneck or English pheasants in the aggregate, of both kinds or more than 10 prairie chickens or sharp-tailed grouse in the aggregate of both kinds in possession at any one time. Not more than 18 Chinese ringneck or English pheasants in the aggregate of both kinds and not more than 30 in the aggregate of all kinds of game birds enumerated in this section may be taken in any one open season. (As amended Mar. 18, 1931, c. 69, §2; Apr. 22, 1939, c. 424, §6.)

5553, 5554, 5555. [Repealed Apr. 22, 1939, c. 424, §13.]

ANNOTATIONS UNDER REPEALED SECTIONS

5553. Open season for water fowl.

Amended Apr. 25, 1931, c. 399, §4.

Not more than 10 ducks taken legally in Canada may be transported into Minnesota during closed season each calendar week, and no canvas-back, redhead, ruddy duck, buffle head duck or wood duck can be brought into the United States at any time. Op. Atty. Gen. (210d-7), Sept. 13, 1937.

5554. Hours for taking migratory game birds.

Amended Apr. 25, 1931, c. 399, §5; Apr. 19, 1937, c. 284, §1. Sec. 2 of Act Apr. 19, 1937, cited, provides that the Act shall take effect from its passage.

5555. Limit on number of water fowls.

Amended Apr. 25, 1931, c. 399, §6.

5556. Manner of taking water fowl:

(a) Waterfowl and rails may be taken during the open season from any place on land from a stationary or permanent artificial blind used to conceal the hunter when located on land, but not from a permanent artificial blind placed anywhere in public waters and may also be taken from a temporary but stationary blind or from a boat or canoe propelled by paddle, oar or pole (other than a sail or power boat) when the same is within a natural growth of weeds, rushes, flags or other vegetation sufficient to partially conceal the hunter, but may not be taken from power or sail boats or upon the open water or from aeroplanes, or from sink boxes built in public waters. It shall be unlawful to hunt or attempt to hunt any migratory waterfowl, or to molest, harry or worry such waterfowl by discharging any firearms or other noise-producing devices, within 300 yards of any area in which has been placed any natural or prepared grains for the purpose of attracting migratory waterfowl, and which practice is commonly known as "baiting." (As amended Apr. 25, 1931, c. 399, §7; Apr. 21, 1933, c. 392, §15.)

(b) Rifles may not be used in taking waterfowl, or rails. Artificial decoys or live decoys may be used.

(c) The pursuing or shooting of wounded birds in the open water in a boat or canoe propelled by oar, paddle or pole is permitted.

(d) Entering open water in a boat or canoe for the purpose and with the intention of causing a flight of birds resting thereon is forbidden.

(e) Not more than six live decoys may be used to any one blind. The placing of decoys, or the erection of temporary blinds in public waters during the closed season for waterfowl is forbidden. ('19, c. 400, §62; '23, c. 426, §1; '25, c. 380, §1; Apr. 25, 1931, c. 399, §7.)

The game law does not permit the taking of waterfowl from an artificial blind constructed in public waters of a lake upon an artificial embankment. 177M483, 225 NW430.

Going from place to place along the shore of a lake in a motorboat is an offense under this section though the motor is stopped during the act of shooting. Op. Atty. Gen., Jan. 3, 1930.

So long as a bar or reef remains exposed by reason of low water, it is lawful to take waterfowl therefrom, even though the height thereof has been artificially produced, but it will be different when the lake waters again reach their usual level. Op. Atty. Gen., Oct. 26, 1931.

Shot gun used in shooting at ducks in open water is subject to seizure. Op. Atty. Gen., May 25, 1933.

Section does not prohibit planting crops of aquatic vegetation, though purpose is that such crops will eventually encourage or attract migratory waterfowl to remain in vicinity. Op. Atty. Gen., June 2, 1933.

Wading in open water for purpose of taking water fowl directly, or indirectly, by causing a flight of birds resting therein, is prohibited. Op. Atty. Gen. (210a-5), Aug. 13, 1937.

It is unlawful to use a boat with a motor, though motor is removed from its fastenings and placed in boat. Op. Atty. Gen. (210d-7), Oct. 1, 1937.

5556-1 to 5556-4. Wild rice harvesting. [Repealed Apr. 13, 1939, c. 231, §18, post §6131-21.]

ANNOTATIONS UNDER REPEALED SECTIONS

The repealed sections consisted of Act Apr. 25, 1931, c. 373, §§1-4.

See §§6131-1 to 6131-21.

5556-1. Wild rice not to be harvested with machinery. Wild rice growing on a lake bed, where water has receded, is in public waters until the lake in question is

permanently dry. Op. Atty. Gen. (211d-18), Sept. 12, 1934.

5560. Certain wild birds protected.

It is illegal to bring birds into state which have been legally imported from outside of United States and are not native to United States but belong to same family as protected birds native to Minnesota. Op. Atty. Gen. (210d-7), Sept. 1, 1937.

PART V.—FISH

5563. Bait.—Minnows for bait may be taken at any time with a net, trap or seine; provided, that immature game fish and carp shall be carefully sorted out at the time of taking and the game fish at once returned to the water and the said carp at once destroyed; provided further, that no net or seine used for the taking of minnows shall be more than 25 feet in length or more than 3 feet in depth. Minnows as defined in Paragraph 12, Section 5649, may be bought and sold. Provided, however, no minnows shall be taken with a net, trap or seine in waters inhabited by trout. The use of game fish except yellow perch for bait is prohibited. The sale, or transportation of live or preserved minnows imported from other states is prohibited for any purpose. ('19, c. 400, §68; '23, c. 426, §1; '25, c. 380, §1; Apr. 25, 1931, c. 399, §8.)

The public has no right to use an artificial channel constructed from a public lake to a private lake over land of the owner of the private lake, nor to fish in the private lake simply because fish go there through the channel or otherwise. Op. Atty. Gen., Sept. 26, 1929.

5564. Open season for bass.—Large mouthed black bass and small mouthed black bass or yellow bass may be taken by angling, and thereafter possessed between May 29 and December 1 following, both inclusive, in that section of the state to be known as the southern zone lying south of a line commencing at the west boundary of the state, running easterly along state trunk highway number 28 to a point where said highway intersects state trunk highway number 52 at or near Sauk Centre, then easterly along number 52 to a point where said highway intersects state trunk highway number 95 at or near St. Cloud, then easterly along number 95 to a point where said highway intersects Trunk Highway No. 8, thence easterly to the boundary of the state and between June 21 and December 1 following, both inclusive, in that section of the state to be known as the northern zone lying north of the above described lines. A person may take not to exceed 6 such bass in one day and may have not to exceed 12 such bass in his possession at one time. All such fish taken, regardless of size, may be retained in possession and counted. The use of three artificial flies in fishing is permitted. Such bass may not be bought or sold at any time. (As amended Apr. 24, 1929, c. 323, §1; Apr. 22, 1939, c. 424, §7.)

Under this section as amended by Laws 1929, c. 323, §1, a fisherman with licenses from both Minnesota and Wisconsin violated no law in catching seven bass on the Wisconsin side of the Mississippi River and three more on the Minnesota side. Op. Atty. Gen., Aug. 18, 1930.

The use of three artificial flies is permitted in any kind of fishing. Op. Atty. Gen., Jan. 18, 1932.

Operator of boathouse who serves meals, lunches and beer violates law by catching game fish and serving them free at a fish fry held each week, where customers are expected to buy beer. Op. Atty. Gen. (211a-9), Aug. 30, 1937.

5565. Open season for trout.—Trout (except lake trout) may be taken by angling and thereafter possessed between May 1st and September 1st following, both days inclusive. All trout caught by angling regardless of size shall be retained in possession. A person may not take to exceed 15 such trout in one day, nor have in possession more than 25 such trout or twenty pounds thereof at any one time. The use of three artificial flies in trout fishing is permitted. Such trout may not be bought or sold at any time. No such trout may be taken by the use or with the aid of artificial light of any kind, including bonfires, automobile headlights and spot lights. No such trout may be taken between the hours of 9 P. M. and one

hour before sunrise. ('19, c. 400, §70; '25, c. 380, §1; '27, c. 64; Laws 1929, c. 17; Apr. 25, 1931, c. 409, §1; Apr. 6, 1937, c. 166, §1; Apr. 22, 1939, c. 424, §8.)

Sec. 2 of Act Apr. 25, 1931, c. 409, provides that the act shall take effect May 15, 1931.

Act prohibiting or restricting taking of brook trout in forest areas during forest fire hazards. Laws 1931, c. 372, set forth ante as §§4031-35½j, 4031-35½k.

A blind on posts driven into lake bottom in open water is illegal, as is a movable blind. A blind on posts which could be used from year to year would also be illegal though within a natural growth of weeds. Op. Atty. Gen. (Biennial Report 1934, No. 430), Oct. 13, 1933.

5567. Open season for lake trout and salmon.—Lake trout or land locked salmon may be taken by angling and thereafter possessed between December 1st and September 15th following, both inclusive except on Lake Superior where the same may be taken by angling and thereafter possessed between December 1st and October 1st following, both inclusive. A person may take not to exceed five such lake trout or salmon in one day, nor have in possession more than ten such trout or salmon at any one time. All such fish taken, regardless of size, may be retained in possession and counted. Such lake trout or salmon may not be bought or sold at any time. (Laws 1929, c. 323, §2; Apr. 25, 1931, c. 371; Apr. 22, 1939, c. 424, §9.)

Lake trout taken by angling or trolling cannot be sold. Op. Atty. Gen. (12c-1), Sept. 4, 1935.

5568. Open season for certain fish.—Wall-eyed pike, saugars or sand pike, Great Northern pike or pickerel, and muskellunge may be taken by angling and thereafter possessed between May 15th and February 15th following, both inclusive. Provided, however, there shall be no authority to change by executive order or order of the Commissioner of Conservation the closing date above specified.

A person may take not to exceed eight such pike, saugars or sand pike, Great Northern pike or pickerel, or two such muskellunge in a day, and may have not to exceed 16 such pike, saugars or sand pike or 20 Great Northern pike or pickerel in his possession at one time. Yellow perch may be taken and possessed without limit as to number; provided, that the commissioner may, whenever he deems it necessary to prevent the undue depletion of perch in any water, fix by regulation a limit of twenty-five (25) perch per day therein. All such fish taken, regardless of size, may be retained in possession and counted.

Wall-eyed pike, saugars and sand pike, Great Northern pike or pickerel, and muskellunge, except those taken from waters which may be open for the sale thereof by the commissioner, may not be bought or sold at any time. Great Northern pike or pickerel may be taken by spearing through the ice between December 1st and March 1st following, both inclusive, and such fish so speared may be possessed during said time. (As amended Apr. 24, 1929, c. 323, §3; Apr. 24, 1931, c. 323, §1; Mar. 16, 1933, c. 81; Apr. 21, 1933, c. 392, §25; Apr. 22, 1939, c. 424, §10.)

See §§5572-1, 5572-2.

It is legal for a person to use a floating fish house in spearing fish. Op. Atty. Gen., Apr. 16, 1931.

In view of §5499, artificial lights cannot be used in the taking of fish except as herein provided. Op. Atty. Gen., May 1, 1931.

Laws 1933, c. 81, and Laws 1933, c. 392, §25, are in irreconcilable conflict, and season for taking wall-eyed pike, Great Northern pike or pickerel and yellow perch is from May 15 to March 1 in all parts of state. Op. Atty. Gen., May 8, 1933.

Laws 1933, c. 392, §25, governs as to spearing Great Northern pike or pickerel through ice, and Laws 1933, c. 81, governs as to spearing such fish in ways other than through ice. Op. Atty. Gen., May 10, 1933.

Laws 1933, c. 392, §25, insofar as inconsistent with Laws 1933, c. 81, is controlling. Op. Atty. Gen., Jan. 11, 1934.

5569. Closed season for certain fish.—Rock sturgeon or lake sturgeon and shovelnose sturgeon or hackleback and spoonbill or paddlefish may not be taken or possessed at any time, provided, that hackleback or sand sturgeon may be taken by angling or by

licensed set lines in any waters forming a common boundary between this state and the state of Wisconsin, subject to compliance with all applicable provisions of law. ('19, c. 400, §74; '25, c. 380, §1; Apr. 25, 1931, c. 374, §1.)

The effect of Laws 1931, c. 374, amending this section, is to permit the taking of hackleback or sand sturgeon in waters forming boundary between this state and Wisconsin under set line licenses issued pursuant to §5595, or other statute providing for issuing of set line licenses for those waters, notwithstanding such statutes did not authorize the taking of sturgeon. Op. Atty. Gen., Aug. 3, 1931.

Since Laws 1931, c. 374, amending this section prescribes no season for taking sturgeon by angling, the season will be governed by §5573 as amended. Op. Atty. Gen., Aug. 3, 1931.

§§5630, 5640, do not authorize modification of this section so as to permit the taking of sturgeon in certain inland waters of the state. Op. Atty. Gen., Oct. 26, 1931.

Sturgeon cannot be taken except in waters forming a common boundary between this state and the state of Wisconsin. Op. Atty. Gen. (211c-12), Sept. 12, 1934.

5570. Open season for crappies.—Black and white crappies may be taken by angling and thereafter possessed between May 29th and February 15th following, both inclusive, in the southern zone described in General Statutes 1923, Section 5564, as amended, and between June 21st and February 15th following, both inclusive, in the northern zone described in said section. Provided, however, there shall be no authority to change by executive order or order of the Commissioner of Conservation the closing date above specified. A person may take not to exceed 15 crappies in one day, and not more than 25 crappies may be had in possession at any one time. All such fish taken, regardless of size, may be retained in possession and counted. Such crappies may not be bought or sold at any time. (As amended Apr. 24, 1929, c. 323, §4; Apr. 22, 1939, c. 424, §11.)

See §§5572-1, 5572-2.

5571. Open season for sand pike. [Repealed.]

Amended Apr. 24, 1929, c. 323, §5.

Repealed Apr. 22, 1939, c. 424, §13.

See §§5572-1, 5572-2.

5572. Open season for muskellunge. [Repealed.]

Amended Apr. 24, 1929, c. 323, §6.

Repealed Apr. 22, 1939, c. 424, §13.

See §§5572-1, 5572-2.

5572-1. Fishing in boundary waters.—In all cases where it is now provided by Mason's Minnesota Statutes of 1927, Sections 5568, 5570, 5571, and 5572 and acts amendatory thereof, that certain kinds of fish therein enumerated may be taken during open seasons now extending from a time prior to the 15th day of January to a time after said date, the open seasons for the taking of such fish in all waters forming a common boundary between this state and the state of South Dakota shall hereafter close at the end of the 15th day of January, after which date no such fish may be taken in said waters until the beginning of the next open season as provided by the statutes aforesaid, except as may be permitted under the provisions of Mason's Minnesota Statutes of 1927, Section 5648, and acts amendatory thereof. (Act Apr. 25, 1931, c. 393, §1.)

5572-2. Inconsistent acts modified.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, and amended so far as may be necessary to give full force and effect to the provisions of this act. No act hereafter enacted which might be applicable to the taking of such fish in said waters shall be construed to be inconsistent herewith unless it shall be expressly provided therein that this act shall be superseded, modified, amended, or repealed, in whole or in part, or unless such future act shall specifically relate to the taking of such fish in said waters or some part thereof. (Act Apr. 25, 1931, c. 393, §2.)

5573. Open season for sunfish, rock bass, etc.—Sunfish and rock bass and all other varieties of fish for which a different season is not provided by this chapter may be taken by angling and thereafter pos-

essed between May 29th and December 31st following, both inclusive, in the southern zone described in General Statutes 1923, Section 5564, as amended, and between June 21st and December 31st following, both inclusive, in the northern zone described in said section. A person may take not to exceed 15 such sunfish or rock bass or such other fish in the aggregate of all kinds in one day; not more than 30 in the aggregate of all kinds may be had in possession at any time. All such fish taken, regardless of size may be retained in possession and counted. Such sunfish and rock bass may not be bought or sold at any time. (As amended Apr. 24, 1929, c. 323, §7; Apr. 22, 1939, c. 424, §12.)

See §§5573-1, 5573-2.

Since Laws 1931, c. 374, amending §5569, prescribes no season for taking sturgeon by angling, the season will be governed by this section as amended. Op. Atty. Gen., Aug. 3, 1931.

5573-1. Open season for sunfish in Goodhue County.—The open season for the taking of sunfish in Goodhue County is hereby extended from the closing date of said season as now provided by Mason's Minnesota Statutes of 1927, Section 5573, as amended, to and including February 1 following. (Act Apr. 24, 1931, c. 334, §1.)

5573-2. Law modified.—Mason's Minnesota Statutes of 1927, Section 5573, as amended, is hereby superseded, modified, and amended so far as may be necessary to give full force and effect to the provisions of this act. (Act Apr. 24, 1931, c. 334, §2.)

5574. Carp and suckers—open season.—Carp, dogfish, redhorse, sheephead, catfish, suckers, eelpout, garfish, bullheads of any size, whitefish not less than 16 inches in length, and buffalo fish of not less than 15 inches in length may be taken by angling, except during March and April, or by spearing through the ice between December 1st and March 1st following, both inclusive, and possessed, without limit, unless otherwise specially provided except that it shall be unlawful for any person to have in his possession more than 50 bullheads so taken at any given time. Such fish may be bought or sold in any quantity at any time. Provided however that the Director of Game and Fish may allow the use of artificial lights in spearing rough fish in such waters as he may deem proper. Provided further that the Director of Game and Fish may allow the taking of suckers, redhorse and carp, by angling at any time in the Root River from the east city limits of the City of Rushford in Fillmore County, Minnesota, to the Mississippi River. Provided that the provisions of this act with reference to the possession limits of bullheads, shall not apply to bullheads taken from the waters of Lake Traverse by angling only. (As amended Apr. 24, 1931, c. 323, §2; Apr. 21, 1933, c. 392, §26; Apr. 15, 1935, c. 188; Apr. 21, 1939, c. 380, §1.)

Penalty for violation, see §5574-6.

This section was repealed by Act Mar. 3, 1933, c. 49, §4, but was later amended by Act Apr. 21, 1933, c. 392, §26.

It is legal for a person to use a floating fish house in spearing fish. Op. Atty. Gen., Apr. 16, 1931.

In view of §6499, artificial lights cannot be used in the taking of fish except as herein provided. Op. Atty. Gen., May 1, 1931.

Carp, dogfish, buffalo fish, redhorse, sheephead, suckers, eelpout, garfish, and whitefish not less than 16 inches in length may be taken by spearing at any time except in waters closed by proclamation under Laws 1933, c. 49, §2. Op. Atty. Gen., Apr. 10, 1933.

Laws 1933, c. 49, applies to rough fish therein enumerated while Laws 1933, c. 392, §26, applies to same fish and in addition to catfish and bullheads, and first act governs as to spearing in general and latter governs as to spearing through ice. Op. Atty. Gen., Apr. 29, 1933.

Laws 1933, c. 49, and Laws 1933, c. 392, §26, are both in effect notwithstanding that the former repealed this section and the latter amended it. Op. Atty. Gen., Apr. 29, 1933.

A license is necessary for spearing of rough fish. Op. Atty. Gen., May 31, 1933.

5574-1. Open season for certain fish.—Carp, dogfish, buffalo fish, redhorse, sheephead, suckers, eelpout, and garfish of any size, and whitefish not less than 16 inches in length may be taken by angling,

except during March and April; or by spearing at any time, and possessed, without limit, unless otherwise specially provided.

Carp, buffalo fish, dogfish and sheephead may be bought and sold in any quantity at any time. (Act Mar. 3, 1933, c. 49, §1.)

Laws 1933, c. 49, applies to rough fish therein enumerated while Laws 1933, c. 392, §26 [§5574], applies to same fish and in addition to catfish and bullheads, and first act governs as to spearing in general and latter governs as to spearing through ice. Op. Atty. Gen., Apr. 29, 1933.

Not affected by Laws 1933, c. 114, post, §5592-12. Op. Atty. Gen., May 17, 1933.

This act applies to the rough fish herein enumerated while Laws 1933, c. 392, §26, applies to such fish and in addition to catfish and bullheads and this act governs as to spearing in general and the latter governs as to spearing through the ice. Op. Atty. Gen., Apr. 29, 1933.

A license is necessary for spearing of rough fish. Op. Atty. Gen., May 31, 1933.

5574-2. Artificial lights may be used, when.—Artificial lights may be used in spearing carp, dogfish, buffalo fish, redhorse, sheephead, suckers, eelpout and garfish of any size, and whitefish not less than 16 inches in length, in the counties of Houston, Fillmore, Mower, Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Steele, Dodge, Olmsted, Winona, Wabasha, Goodhue, Rice, LeSueur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Renville, Sibley, McLeod, Carver, Scott and Dakota from April 15th to June 15th, both dates inclusive, and in the counties of Washington, Ramsey, Hennepin, Wright, Meeker, Kandiyohi, Chippewa, Swift, LacQueParle, Big Stone, Traverse, Stevens, Pope, Stearns, Benton, Sheburne, Anoka, Chisago, Isanti, Pine, Kanabec, Mille Lacs, Morrison, Todd, Douglas, Grant, Wilkin, Otter Tail, Wadena, Cass, Crow Wing, Aitkin, Carlton, Hubbard, Becker, Clay, Norman, Mahanomen, Clearwater, Polk, Beltrami, Koochiching, Red Lake, Pennington, Marshall, Itasca, Roseau and Lake of the Woods from May 1st to June 15th both dates inclusive, in all streams or portions of streams, except such streams or parts thereof as the commissioner of game and fish may close by proclamation. (Act Mar. 3, 1933, c. 49, §2; Apr. 14, 1939, c. 252.)

Carp, dogfish, buffalo fish, redhorse, sheephead, suckers, eelpout, and garfish of any size, and whitefish, not less than 16 inches in length, may be taken by spearing at any time in all waters of this state except in streams or portions of streams located in the counties enumerated in this section, closed by proclamation by the commissioner of game and fish. Op. Atty. Gen., Apr. 10, 1933.

In the counties named in this section artificial lights may be used as an aid in taking fish enumerated in Laws 1933, c. 49, §2, only in those streams which the Commissioner of Game and Fish has not closed by proclamation. Op. Atty. Gen., Apr. 10, 1933.

Artificial lights may be used as aid in spearing rough fish only in counties enumerated herein. Op. Atty. Gen., Apr. 10, 1933.

Carp, dogfish, buffalo fish, redhorse, sheephead, suckers, eelpout, garfish, and whitefish not less than 16 inches in length may be taken by spearing at any time except in waters closed by proclamation. Id.

5574-3. Construction.—Nothing in this Act shall be construed as repealing any statute permitting the spearing of fish without the use of artificial lights. (Act Mar. 3, 1933, c. 49, §3.)

Sec. 4 of Act Mar. 3, 1933, repeals Mason's Minn. St. 1927, §5574, as amended.

5574-4. Violation a misdemeanor.—Violation hereof shall constitute a misdemeanor. (Act Mar. 3, 1933, c. 49, §5.)

5574-5. Open season for bullheads in Itasca County.—Bullheads may be taken in Itasca County under the following restrictions:

(a) Licenses to take such bullheads by the use of fyke or hoop nets with hoops not to exceed four feet shall be issued for a fee of five dollars, provided each net shall be marked with a metal tag furnished by the Director of Game and Fish, and not more than four tags may be issued to any one licensee.

(b) No fishing under such licenses shall be permitted from the 15th day of June to the 15th day of August of any year.

(c) Upon the effective date of this act, the director of game and fish shall by order declare a group of not less than four lakes nor more than six and such rivers or portions thereof as may be deemed advisable in said territory open to the fishing herein provided for, which waters shall remain open for such fishing until closed by a further order of the director of game and fish. Upon the closing of any group as above provided for, the director may open another group for such fishing.

(d) No licenses shall be granted to any non-resident of the state of Minnesota nor to any person except that he be able to satisfy the director of game and fish that he has sufficient knowledge of the lakes proposed to be fished to enable him to operate in said lakes without causing harm to game fish.

(e) Nets tagged pursuant to this section shall not be set or raised hereunder except after sunrise and before sunset of each day.

(f) The director of game and fish shall establish a checking and weighing station where required and where all bullheads taken under this section shall be brought and weighed. One cent per pound dressed weight on all bullheads taken hereunder shall be paid to the director of game and fish to be by him paid into the state treasury, to be credited in turn to the Fish Lakes Improvement Revolving Fund.

(g) The director of game and fish is hereby authorized to promulgate such rules and regulations as may be necessary or desirable in carrying out the purposes of this act and is authorized to impose such further restrictions and regulations as may be necessary to prevent the undue depletion of the species hereby affected: (Act Apr. 21, 1939, c. 380, §2.)

License fee for nets should be credited to game and fish fund in view of §5536-15. Op. Atty. Gen. (208B-3), May 12, 1939.

5574-6. Violation a gross misdemeanor.—Any person who violates any of the provisions of this act [§§5574, 5574-5, 5574-6] or any rules or regulations promulgated under the authority hereof, shall be guilty of a gross misdemeanor; and, upon conviction thereof, his license shall become null and void and no similar license shall be issued to him for a period of one year following the date of said conviction. (Act Apr. 21, 1939, c. 380, §3.)

5579. Limit of catch.—Except as otherwise expressly permitted by law, no person shall take more than 15 fish of protected varieties in the aggregate of all kinds in any one day, or have in possession more than 20 such fish at any time, but this shall not extend any limit otherwise expressly fixed by law. ('19, c. 400, §84; '25, c. 380, §1; Apr. 24, 1929, c. 323, §8.)

Section 5579 governs over §5500 as to limits on fish. Op. Atty. Gen., Aug. 22, 1933.

Limits fixed by Minnesota laws include fish caught in adjoining states. Op. Atty. Gen. (211a-6), Sept. 30, 1938.

5580. Sale of fish caught in certain counties, etc.—Rock bass caught in Canadian waters under legal commercial fishing operations may be sold in Minnesota. Op. Atty. Gen., Sept. 8, 1933.

Governor's Order No. 3 of July 12, 1933, prohibiting the taking of bullheads from waters of Ottertail and Becker Counties for commercial purposes and limiting possession to 30 bullheads, one would be entitled to possess 30 bullheads in addition to other limits on other game fish. Op. Atty. Gen. (211c-2), July 2, 1934.

5581. Use of explosives prohibited.—Fish shall not be taken by means of explosives, drugs, poisons, lime, medicated bait, fish berries, or other deleterious substances, or by nets, traps, tipups, trot lines, wire springs, ropes or cables, except where otherwise expressly provided by this chapter. Possession of any of such substances or contrivances by any person on the waters, shores, or islands of this state, shall be presumptive evidence that the same are possessed for use in violation of this section. It shall be unlawful to have in possession fish nets, except minnow nets, land-

ing nets and dip nets and all nets held in stock for sale by dealers, unless tagged and licensed by the game and fish commissioner. Such tags and licenses shall be for the current year. Provided that nets in the possession of licensed commercial fishermen shall not be subject to this regulation. Whoever violates the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty (\$50.00) dollars nor more than one hundred (\$100.00) dollars or by imprisonment in the county jail for not less than thirty (30) days. ('19, c. 400, §86; '23, c. 426, §1; Apr. 24, 1929, c. 331, §1.)

Discussion as to what constitutes proof of possession of unlicensed net. Op. Atty. Gen. (208e-5), Apr. 16, 1935.

5584. [Repealed].

Repealed Apr. 25, 1931, c. 399, §9.

5584-1. Method of taking fish in certain waters.—Tip-ups or telltales may be used for fishing through ice to take carp, dogfish, redhorse, sheepshead, buffalohead, pickerel, suckers, eelpout, garfish, bullheads and catfish, from December 15th to April 1st following, and sunfish and crappies during the season provided by law for taking such fish in other sections of the state, in the Mississippi River between the Falls of St. Anthony and the mouth of the St. Croix River, and in lakes emptying into said river between said points, only under license and permit from the commissioner, for which a fee of \$1.00 shall be paid. No person shall operate or control at the same time more than six tip-ups. Not more than 25 fish shall be caught in one day under a tip-up license. Not more than one tip-up license shall be issued to members of the same household. Such licenses may be cancelled in the discretion of the commissioner. (Act Feb. 21, 1935, c. 20.)

5585. Open season for fish houses.—Fish houses or shelters to protect a person fishing through the ice to take by spearing or angling, pickerel, carp, dogfish, buffalohead, whitefish, tullibees, sheepshead, bullheads, catfish, eelpout, garfish, suckers and redhorse, may be used from December 1st to March 1st, following, both inclusive, in all waters of this state, including those over which Minnesota has concurrent jurisdiction with other states, only under license from the commissioner for which a fee of \$1.00 shall be paid. Such license shall be granted by the commissioner only on satisfactory evidence that such fish house will be used by the applicant for taking fish for domestic or personal use, and not for commercial purposes, provided, that carp so caught may be bought and sold at any time. Not more than one fish house shall be used by any one person, and every licensee shall have his license on his person while fishing in a fish house. The number of the license shall be plainly marked on the exterior of the fish house. Licenses to erect fish houses on certain lakes may be denied by the commissioner when in his opinion conditions justify such denial. ('19, c. 400, §90; '21, c. 212, §90; '25, c. 380, §1; Apr. 15, 1933, c. 261, §1; Apr. 21, 1933, c. 392, §27.)

It is legal for a person to use a floating fish house in spearing fish. Op. Atty. Gen., Apr. 16, 1931.

In order to use a fish house for both spearing and angling, it is necessary to have both a fish house license and a fishing license. Op. Atty. Gen., Jan. 18, 1932.

There is no objection to placing a hook or hooks upon a decoy used in a fish house, providing the decoy is attached to a line which is held in the hand, or providing the line is attached to a rod which is held in the hand. Op. Atty. Gen., Jan. 18, 1932.

It was intention in Laws 1933, c. 392, §27, to change date of season for use of dark houses and to make no other change in law as it appears in Laws 1933, c. 261. Op. Atty. Gen., May 8, 1933.

5585-1. Definition.—A dark house, as used in Section 1, is a structure set on the ice and so darkened as to permit the discernment of the fish in the water beneath such structure. (Act Apr. 15, 1933, c. 261, §2.)

5586. Open season for whitefish and herring.—Whitefish and tullibees may be taken by means of gill nets of the sizes herein specified between October 15 and December 25 following, both inclusive, unless the Director of Game and Fish shall set the date of opening at a later date in certain lakes, and fresh water herring may be taken by means of gill nets of the sizes herein specified between November 1 and January 10 following, both inclusive, in inland lakes of the State, for private use or consumption, but not for sale, provided a license to do so shall be first obtained from the commissioner. ('19, c. 400, §71; '21, c. 44, §8; Apr. 21, 1933, c. 361.)

5587. Open season for frogs.—Native frogs, not to exceed six inches in length, measuring from tip of nose to tip of hind toes, legs fully extended, may be taken and possessed, bought, sold, and transported for angling purposes only in any manner and at any time, except during the months of April and the first 15 days in May, and may be taken for scientific purposes at any time under written permit from the Director of the Division of Game and Fish. Provided that native frogs of any size raised on regularly and duly licensed frog farms may be possessed, bought and sold at any time, for angling purposes only, except that neither live nor dressed native frogs shall be transported outside the state of Minnesota for commercial, angling, or any other purposes. Provided further, that it shall be unlawful to use cloth screens or other similar contrivances and pitfalls in the catching of frogs, except when used in connection with regularly and duly licensed frog farms on the premises thereof. Bull frogs or parts thereof lawfully taken outside of the state may be imported into this state, and when raised under proper license in this state, may be used for food purposes and may be possessed, sold, and transported within or without the state for such purposes at any time. ('19, c. 400, §92; '23, c. 426, §1; '25, c. 380, §1; Apr. 25, 1931, c. 399, §10; Apr. 1, 1935, c. 89, §1.)

5587-1. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby modified and amended so far as may be necessary to give full force and effect to the provisions of this act. (Act Apr. 1, 1935, c. 89, §2.)

Frogs cannot be imported into Minnesota for breeding purposes but may be imported for food purposes. Op. Atty. Gen., June 8, 1933.

5588. Turtles.—Turtles and tortoises may be taken, possessed, bought, sold and transported in any manner at any time, provided, that every net, trap, or other device used in the taking of turtles or tortoises in any of the public waters of this state shall be so constructed as freely to permit the escape of fishes through openings having at least diameter of not less than three and one-half inches, or, in case of a net, having a mesh of not less than three and one-half inches bar measure or seven inches extension measure; provided further, that any fish which may be caught in any such net, trap, or other device shall be promptly released and returned to the water unharmed. ('19, c. 400, §93; Apr. 25, 1931, c. 399, §11.)

5588-1. Game and fish commissioner to control level of lakes.—That upon petition of 25% of the owners of property abutting on any public lake in this state, describing the nature of such lake and its location, setting forth the reasons why the water level therein should be established and controlled, the State Game and Fish Commissioner, if he deems it to be beneficial to and in the public interest that the water level in such lake be controlled, may establish the ordinary high water mark of such lake and cause to be erected and maintained all necessary dikes, dams, sluiceways and such other structures and devices deemed necessary and essential to establish and maintain the water level at such height of water as may be fixed, not, however, exceeding the ordinary high water mark. Provided that for lakes more than ten miles in length, in lieu of the petition of 25% of the abutting property

owners, the petition to the commissioner may be signed by thirty-five per cent of the bona fide residents living along the shores of said lakes.

Before any such mark is established at which the water level in such lake is to be maintained as aforesaid, he shall cause a careful survey of such lake to be made by a competent civil engineer, showing if possible the government meander line thereof and the levels of the adjacent lands together with the ordinary high water mark.

Where it appears advisable to the Commissioner to establish a screen in connection with such other construction, in order to keep the game fish in such lake from leaving the same and carp from entering the same, he shall establish the same and provide for means of keeping the same clean so that the water above the level established may flow from such lake. (Act Apr. 25, 1931, c. 338, §1.)
See §§6602-11 to 6602-30.

5588-2. Cost to be paid by game and fish commissioner.—The cost of all proceedings in connection with such survey and construction shall be paid out of state funds available to the State Game and Fish Commission for any purpose whatsoever except from funds provided for public hunting grounds and game refuges. Nothing in this act shall be construed to affect any lake lying wholly within any one county. (Act Apr. 25, 1931, c. 338, §2.)

5592-1. Fish may be taken and sold from certain lakes.—Whenever the commissioner of game and fish shall find after investigation that any kind or kinds of fish may be taken from Upper Red Lake in Beltrami County or from Lower Red Lake in Beltrami and Clearwater counties, or from any part of said lakes, without unduly depleting such fish therein, he may, so long as such condition shall continue, permit such fish to be taken in said lakes or in such part thereof as he may designate, in such manner as he may deem proper, and may permit such fish to be possessed, transported, sold, or otherwise disposed of; such taking, possession, transportation, sale, or other disposition to be under the supervision of the commissioner and subject to such regulations as he may prescribe, and subject to suspension or termination at any time as to any kind of fish whenever the commissioner shall find that such fish cannot be taken without unduly depleting the same. (Act Mar. 22, 1929, c. 84, §1.)

5592-2. Commissioner to make regulations.—The Commissioner is hereby empowered to make all needful and proper regulations for the purposes of this act, and to require persons taking, possessing, transporting, selling, or otherwise disposing of such fish to obtain licenses and to pay such license fees or other charges as he deems proper to defray the cost of administration and enforcement of this act and to contribute toward the expense of conservation and propagation of fish in said lakes. (Act Mar. 22, 1929, c. 84, §2.)

5592-3. Violation a misdemeanor.—Violation of any regulation prescribed by the commissioner under this act shall be deemed a violation of this act, and shall be a misdemeanor. (Act Mar. 22, 1929, c. 84, §3.)

5592-4. Restriction.—No fish shall be taken from the portions of said lakes within the Red Lake Indian reservation in violation of any law or regulation relating thereto prescribed by or under the authority of the United States, and all regulations made by the commissioner of game and fish under this act relating to the taking of fish from said Indian reservation waters shall be made subject to compliance with such federal laws and regulations. (Act Mar. 22, 1929, c. 84, §4.)

5592-5. Commissioner may lease plant and equipment.—The commissioner of game and fish is hereby authorized to lease the state fisheries plant and equip-

ment at Redby to the United States or to any proper authorized agency thereof for such term or terms from time to time and upon such conditions as to rental and otherwise as he shall deem reasonable, subject to termination by direction of the legislature at any time, provided, that such plant and equipment shall be used only for the benefit of the Indians and other persons taking fish from said lake in accordance with the provisions of this act. The commissioner is also authorized to lease the state fish hatchery and equipment at Redby to the United States or to any proper authorized agency thereof upon like terms and conditions and subject to termination in like manner provided that said hatchery shall be operated only for the propagation of fish in said lakes or such other waters of the state of Minnesota as the commissioner may designate; or the commissioner may, in his discretion, continue to operate said hatchery. (Act Mar. 22, 1929, c. 84, §5.)

5592-6. Disposition of fees.—All fees and rentals under this act shall be paid to the commissioner of game and fish and shall be by him transmitted to the state treasurer, who shall credit the same to the state fish revolving fund constituted under the provisions of General Statutes 1923, Section 5604, and acts amendatory thereof and supplementary thereto. In addition to the purposes prescribed by said section 5604, all moneys in said fund shall hereafter be available to pay the cost of administration and enforcement of this act and the cost of propagation and conservation of fish in said lakes, and said moneys are hereby appropriated therefor so far as may be necessary. Said section 5604 is hereby modified and amended, so far as inconsistent herewith, so as to conform herewith. (Act Mar. 22, 1929, c. 84, §6.)

5592-7. Acts subject to penalty and forfeitures of other acts.—This act shall be part of the laws relating to wild animals, and violations thereof shall be subject to the same penalties and forfeitures as prescribed for violations of such laws. (Act Mar. 22, 1929, c. 84, §7.)

5592-8. Acts supplementary.—This act shall be supplementary to all other laws applicable to the taking or disposition of fish from said lakes, and shall not be deemed to repeal or supersede any such other law except so far as directly inconsistent herewith. (Act Mar. 22, 1929, c. 84, §8.)

5592-9. Disposition of dead fish.—Whenever fish which have died from any cause accumulated in any public waters which are accessible to the public or upon the shores of such waters so as to constitute a public nuisance or so as to be detrimental to game fish in such waters, it shall be the duty of the commissioner of game and fish, upon discovering the same or being informed thereof, to cause such fish to be removed and buried or otherwise disposed of. (Act Apr. 17, 1929, c. 213, §1.)

5592-10. Appropriation.—As much as may be necessary of any moneys in the Fish Lakes Improvement Revolving Fund created by Laws 1925, Chapter 408, as amended by Laws 1927, Chapter 437 [§§5609-1 to 5609-7] and acts amendatory thereof or supplementary thereto, not required for any other purpose for which the moneys of said fund are appropriated by said laws governing the same, is hereby appropriated for the purposes of this act in addition to the purposes for which said moneys are already appropriated as aforesaid, and said laws are hereby modified and amended so far as may be necessary to conform herewith. (Act Apr. 17, 1929, c. 213, §2.)

5592-11. Open season for fish in Lake of the Woods.—The Commissioner of Conservation may open the season for taking fish by hook and line from the waters of Lake of the Woods on the international border, and the rivers tributary thereto, during all or any part of the Canadian open season upon such

waters. This open season shall be in addition to the seasons now fixed by law. (Act Mar. 20, 1933, c. 94.)

5592-12. Open season for certain fish in Lake of the Woods.—That the spearing of suckers and other rough fish in the waters of the Lake of the Woods on the international border and the rivers tributary thereto is hereby made lawful at any time and such fish may be so taken and possessed in any quantity. (Act Mar. 27, 1933, c. 114.)

Provisions of this act are not in conflict with Laws 1933, c. 49, and add nothing thereto except to restate such law with reference to spearing rough fish in waters of Lake of the Woods. Op. Atty. Gen., May 17, 1933.

5592-13. Fishing from towed boats prohibited.—No person shall tow, by motor boat, more than one boat for the purpose of taking, catching, killing or fishing for fish, of any variety, while said motor boat is in motion, providing, however, this act shall not be construed to prevent towing of boats to and from fishing grounds; provided, however, that this section shall not apply to any lake having an area greater than 100 square miles. (Act Apr. 21, 1933, c. 369, §1.)

Except on certain lakes fishing may be had from only one towed boat, but more than one boat may be towed to fishing grounds. Op. Atty. Gen., May 13, 1933.

5592-14. Violation a misdemeanor.—Violation of this chapter shall be a misdemeanor punishable by a fine of not less than ten dollars nor more than twenty-five dollars, or by imprisonment in the county jail not less than ten days nor more than twenty days. (Act Apr. 21, 1933, c. 369, §2.)

PART VI.—COMMERCIAL FISHING

5594-1. [Repealed].

Repealed Apr. 21, 1933, c. 392, §24.

5594-2 to 5594-9.

These sections were repealed by implication by Laws 1933, c. 392, §24. Op. Atty. Gen. (211c-2), July 19, 1936.

5595. Netting in certain interstate waters.—Fish, other than trout, pike, bass, pickerel, sunfish, yellow perch, crappies, sturgeon and catfish under 15 inches in length, bullheads under seven inches in length, may be taken in Lake St. Croix, and in the flowing waters of the Mississippi River beyond the mouth of the St. Croix River, including Lake Pepin, where said waters form a common boundary between this and other states, between June 15th and April 15th following, both inclusive, by means of seines, fyke or hoop nets, gill nets, bait nets, set lines and turtle nets, provided a license to do so shall be first obtained from the commissioner. Provided, that no fishing for commercial purposes under license shall be done in any of the waters described in this section except under the personal supervision of a duly commissioned game warden, one-half of the salary and expense of said supervising warden to be paid by licensee, and, provided that the total amount for salary and expense for said supervising warden to be paid by the licensee shall not exceed the sum of two dollars (\$2.00) per day, such supervising warden to be paid only for such time as he is actually employed, and more than one licensee may be supervised by the said supervising warden during the same day, and the said licensee, so joining, may join in the payment for such services. The provisions herein contained requiring supervision of commercial fishing by game wardens shall not apply to fishing with licensed set lines and shall not take effect and be in force as to the boundary waters between the State of Minnesota and the State of Wisconsin until the State of Wisconsin shall have enacted a similar law. Provided, further, that restrictions of this section as to open seasons for fishing and size of mesh nets, shall not apply to lakes or streams on interstate boundaries, where the laws of the adjoining state are more favorable or less restrictive in these respects than are the laws of this state, but on such interstate waters the open season for fishing and the size of mesh of

nets shall be the same as provided by the laws of the adjoining state where such laws are more favorable or less restrictive than the laws of this state. (As amended Apr. 25, 1931, c. 399, §12.)

Subdivision 1. Such license shall be procured from the commissioner. The applicant shall make a verified application in writing to the commissioner stating (a) his name and residence, (b) the kind, size and number of seines or nets he proposes to use in such waters, and shall pay the following license fees: For each 100 feet of seine not exceeding 500 feet in length, the sum of \$1.00; for each 100 feet of seine in excess of 500 feet and not over 1,000 feet, the sum of \$2.00; for each 100 feet in excess of 1,000 feet and not over 1,500 feet, the sum of \$3.00; for each 100 feet of seine in excess of 1,500 feet and not over 2,000 feet, the sum of \$4.00; for each 100 feet of seine in excess of 2,000 feet and not over 2,500 feet, the sum of \$5.00; for each 100 feet of seine in excess of 2,500 feet and not over 4,000 feet, the sum of \$6.00; for each gill net not exceeding 500 feet in length the sum of \$2.50; for each gill net exceeding 500 feet in length and not over 1,000 feet, the sum of \$5.00; for each fyke or hoop net the sum of \$5.00; for each bait or turtle net, the sum of \$1.00; for each set line, the sum of \$1.00; and for each metal tag furnished by the commissioner, the sum of 25 cents. (As amended Apr. 25, 1931, c. 399, §13.)

Subdivision 2. No seine shall be over 4,000 feet long and no gill net shall be over 1,000 feet long and no two seines or gill nets shall be joined together in the water. The size of the mesh of nets, stretched measure, shall be as follows:

Seines—Not less than 5 inches mesh on wings and not less than 4 inches mesh in the center of the pot, such pot not to exceed 150 feet in length.

Hoop nets—Not less than 6 inches mesh for the leaders and not less than 5 inches net for the hearts and not less than 3 inches mesh in the hoops or pounds.

Bait nets—Not less than 3 inches mesh. Such nets shall be used without leads and shall have not more than a 4-foot front.

Gill nets—Not less than 7 inches mesh.

The use of floating or drift nets is hereby forbidden. (As amended Apr. 25, 1931, c. 399, §14.)

Subdivision 3. No person shall use or set more than one set line. No set line shall have more than 300 hooks. Frogs, live minnows or other live bait shall not be used on the same, but dead minnows or other dead bait, except frogs, may be used. (As amended Apr. 25, 1931, c. 374, §2.)

Subdivision 4. No license shall be issued to any person who has been convicted of a violation of the laws of this state relating to wild animals within five years of his application nor to any person not a resident of this state. No such license shall be transferable. Before any such license is issued for the calendar year of 1932, or for any subsequent year, the applicant shall furnish a bond to the state, approved by the commissioner, in the sum of two hundred dollars, with two sureties, conditioned upon compliance with all the provisions of this chapter, provided, however, that applicants for Minnesota set line licenses need not furnish such bond until the state of Wisconsin shall require by law or regulation, the furnishing of bonds by Wisconsin set line fishermen. Any license for a net of any kind hereunder shall become void unless the licensee devotes his personal attention to fishing thereunder. Personal attention to fishing is hereby defined to mean that the licensee shall, in person, attend to the drawing, setting, and lifting of each such net, sorting, caring for, and packing of fish caught therein at the station to which such fish are first brought, and to the marketing thereof. (As amended Apr. 25, 1931, c. 399, §15; Apr. 8, 1939, c. 158.)

Subdivision 5. Metal tags shall be furnished by the commissioner to each person to whom a license is issued. One such tag shall be attached by the licensee to each set line, one to each 500 feet or fraction of gill net, one to each 500 feet or fraction of seine, one to each fyke, hoop, bait or turtle net so licensed, and shall be kept thereon during all the time the same are in use or in storage. (As amended Apr. 25, 1931, c. 399, §16.)

The effect of Laws 1931, c. 374, amending §5569, is to permit the taking of hackleback or sand sturgeon in waters forming boundary between this state and Wisconsin under set line licenses issued pursuant to §5595, or other statute providing for issuing of set line licenses for those waters, notwithstanding such statutes did not authorize the taking of sturgeon. Op. Atty. Gen., Aug. 3, 1931.

Amendment of this section did not require licensed person to obtain a new license, but did require that such licensee comply with provisions as to length of boat and kinds of nets. Op. Atty. Gen. (211b-5), May 13, 1935.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

5596. **Mussels—Open season—Size—Sale.**—Mussels, not less than 1¼ inches in greatest dimensions, including the pearly fresh water mussel or clam, or Naiad and the shells thereof, may be taken and possessed in any quantity at any time, except between March 1st and May 15th, both dates inclusive, subject to such other provisions of laws or rules, regulations or orders provided thereby, relating to the taking thereof, in the manner hereafter described, in any of the waters of this state except those duly closed by the director of game and fish, provided a license so to do shall first be obtained from the director. Such mussels may be bought, sold or transported at any time. (As amended Apr. 23, 1937, c. 373, §1; Mar. 28, 1939, c. 94.)

5597. **Netting in Mississippi River—license.**—Subdivision 1. Pound nets with leaders not exceeding 75 feet in length; seines not exceeding 300 feet in length, dip nets and set lines having not more than 300 hooks, may be used in the flowing waters of the Mississippi River, from the Falls of St. Anthony to a point 1,000 feet below the St. Croix River, and in the flowing waters of the Minnesota River from its mouth to Mankato, to take sheephead, redhorse, dogfish, buffalofish, catfish, carp and suckers, except from April 15th to June 16th, both dates inclusive, provided a license shall be first procured for that purpose from the commissioner. Seines so used shall have meshes of not less than 2½ inches on the bar and not less than 5 inches when extended, and shall not be used within 500 feet of the mouth of any stream. The applicant shall make a written application to the commissioner stating (a) his name and residence and (b) the place where it is proposed to use nets or seines and shall pay a license fee of five dollars for each pound or dip net licensed to be used, the sum of ten dollars for each seine net licensed to be used, and the sum of one dollar for each set line so licensed. The licensee shall not change the location of his net or seine from the place specified in his application without notifying the commissioner to that effect. No person shall use more than one set line.

Subdivision 2. No such license shall be issued to any person who has been convicted of a violation of the laws of this state relating to wild animals within one year preceding his application nor to any person not a resident of this state. No such license shall be transferable.

Subdivision 3. Before any such license is issued, the applicant shall furnish a bond to the state, approved by the commissioner, in the sum of two hundred dollars, with two sureties, conditioned upon compliance with all the provisions of this chapter.

Subdivision 4. Nets shall not be raised or laid out or landed between one hour after sunset and sunrise the following morning. Every pound net must be

raised at least once in seven days. Temporary fish ponds may be erected to keep fish lawfully caught under such license until the same be marketed. Fish so taken may be shipped to points within or without this state at any time and in any quantity.

Subdivision 5. No two seines shall be joined together in the water. Every seine when placed in the water shall be hauled to a landing immediately. The placing of any seine so as to obstruct the passage of fish either up or down any stream is hereby prohibited. ('19, c. 400, §101; '21, c. 71, §1; Apr. 25, 1931, c. 399, §17.)

5598. Open season for fishing.—Any variety of fish, except black bass, rockbass, muskellunge, and sunfish, may be taken by residents of Minnesota who are citizens of the United States, by means of pound nets, gill nets and fyke nets, except during the months of April, May and November, in Lake of the Woods, and during the month of November, April and the first 15 days in May in Rainy Lake and Namekan Lake, provided a license to do so shall first be obtained from the commissioner; provided that if the season for the commercial taking of any such fish shall be open in the Canadian portion of any of said waters during any time when the season is closed in the Minnesota portion thereof, as herein provided, the commissioner may, in his discretion, open the season in the Minnesota portion of said waters during all or any part of such Canadian open season. (As amended Apr. 1, 1929, c. 123, §1.)

Subdivision 1. Such license shall be procured from the commissioner. The applicant shall make a written application to the commissioner, stating the location in which he desires to fish, size, and kind of each net he proposes to use, and shall pay the following license fees:

(a) For each pound net, the sum of \$35.00.

(b) For fyke nets with four foot hoop or less, the sum of \$5.00, over four to six foot hoop the sum of \$10.00, over six to eight foot hoop, the sum of \$15.00;

(c) Provided, that in Lake of the Woods the fees for fyke nets shall be as follows, according to the height of the wings and lead, based on whichever thereof is the highest; four feet or less \$5.00, and an additional \$5.00 for each additional two feet or fraction thereof, but not exceeding \$25.00 for any one net.

(d) For each 100 feet of gill net, the sum of \$1.50.

If a license is revoked or cancelled, it shall not be issued to any other applicant during the year for which it was originally issued. No license herein provided for shall be granted an applicant until the commissioner is satisfied that such applicant has equipped himself in accordance with the requirements of this section as hereinafter provided. (As amended Apr. 16, 1931, c. 180, §1.)

Subdivision 2. The size of * * *

Gill Nets: Not less than four inches stretched measure for taking pickerel and pike-perch, not less than five inches for taking whitefish. There shall be no limitation on the length of any gill net excepting the limit provided in the license of the user. No gill net shall be set within 2,500 feet of a duly licensed pound net provided the pound net is in its rightful location under license, and is in operation. No person who is not himself the holder of a gill net license under this act shall in any manner assist any holder of such license in setting, lifting, or otherwise operating any gill net for taking fish under this act, provided, however, that in the event of the holder of a gill net license becoming incapacitated the local game warden may authorize some person to lift any net that may have been set by the holder of such license. (As amended Apr. 1, 1929, c. 123, §2.)

FYKE NETS: Not less than two inches extension measure. The hoop of such nets shall not be more than eight feet in height. The wings leading from

the hoop shall not be more than 100 feet in length and said wings shall not be any higher than the hoop. It shall be optional with the user of fyke nets to use either wings or one lead, or both, but said lead shall not be more than 300 feet in length and no higher than the hoop, provided, that in waters of Lake of the Woods there shall be no restrictions as to height of leads or wings on fyke nets, and leads may be not more than 400 feet in length. (As amended Apr. 16, 1931, c. 180, §2.)

Subdivision 3. Licenses for more than six pound nets, or for more than 4,000 feet of gill nets or for more than ten fyke nets shall not be issued to any one applicant, provided that license for only 1,000 feet of gill net shall be issued to anyone having a license for 10 fyke nets; provided, however, that a license for only six fyke nets shall be issued to anyone having a license for more than 1,000 feet of gill nets. No licensee shall operate more than one pound net station, nor shall such licensee be interested directly or indirectly, either by contract, lease or otherwise, in the ownership, control or operation of any other station than his own. A pound net station is the buildings, where and in which a pound net licensee keeps his fishing equipment, nets and boats, and sorts or preserves his fish. No pound net license shall be granted until the applicant shall have satisfied the commissioner that he has equipped himself with a pound net station. An applicant may lease a station and equipment from anyone who is not a pound net licensee. No pound net licensee shall use or permit to be used his fishing equipment, nets or boats at any such station other than his own or the one he operates under a lease, except in cases of emergency. Each licensee shall designate in his application the approximate location at which he intends to set gill, pound or fyke nets and he shall not set the same elsewhere, except with the consent of the commissioner. Licenses shall not be issued in excess of the following for each body of water named:

LAKE OF THE WOODS: 60 pound nets, 90,000 feet of gill nets, 100 fyke nets.

RAINY LAKE: 20 pound nets, 20,000 feet of gill nets.

KABETOGAMA LAKE: 10 pound nets, 10,000 feet of gill nets.

NAMEKAN LAKE: 5 pounds nets, 12,000 feet of gill nets.

No person shall be granted licenses to fish both pound and gill nets, or pound and fyke nets, but holders of gill net licenses may be licensed to fish fyke nets. All licenses for pound, gill, or fyke nets shall become void and nets used under such license shall be subject to seizure and confiscation, and license revert to the state, except as hereinafter specified unless the licensee devotes his personal attention to fishing under such licenses. Unless a licensee begins fishing his nets within 30 days after the opening of the season, his license shall be cancelled by the commissioner. Personal attention to fishing is hereby defined to mean that the licensee shall, in person, attend to the sorting, caring for, and packing of fish caught in his nets in the station to which said fish are first brought, and to the marketing thereof, with such assistance as he may need to carry on his fishing enterprise. The provisions of this paragraph relating to the holding of both pound, gill and fyke nets by the same licensee, shall not apply to Rainy Lake, and tributary waters thereof.

No license issued hereunder shall be transferable, and an assignment or attempted transfer of any rights under such license shall subject it to cancellation. No licensee shall assign, transfer, or attempt so to do, any license or any rights therein issued to him. A commercial fisherman holding a license to fish shall not sell in his own name any fish caught by another such licensee, or caught by anyone not holding such

a license. (As amended Apr. 16, 1931, c. 180, §3.)

Treaty of July 1, 1908, between United States and Great Britain did not supersede state fish laws prior to promulgation of regulations by the International Fisheries Commission. Ex parte Dove, (USDC-Minn), 49F (2d)816. See, also, State v. Dove, 183M272, 236NW322.

A licensed "fish peddler" may sell his fish to hotels and restaurants without a wholesaler's license. Op. Atty. Gen. (290j-2), Apr. 10, 1935.

Commercial fishing licenses are not revocable by conservation department unless for cause. Op. Atty. Gen. (211b-5), June 27, 1935.

Where game warden received 5,000 feet of gill netting from one having a license for 4,000 feet, and fisherman was acquitted of charge of having excessive gill netting in his possession, it is duty of division of game and fish to ascertain actual amount defendant has in his possession and return to him such additional netting as will keep him within provisions of statute. Op. Atty. Gen. (211a-8), July 22, 1936.

Possession by commercial fishermen on island in Lake of the Woods of gill nets of less than four-inch stretch measure is a criminal offense and net may be confiscated. Op. Atty. Gen. (211a-8), June 21, 1937.

(10). Provision is subject to general opening and closing of seasons. Op. Atty. Gen., Mar. 12, 1934.

(11). Sections 5598(11), 5599(8), 6240-181½a are not inconsistent. Op. Atty. Gen., Jan. 13, 1934.

5599. Lake Superior fishing—Herring and trout—Open season.—(A). Herring, except as hereinafter provided, lake trout, ciscoes, and whitefish may be taken by residents of Minnesota, who have been residents for at least one year and who are citizens of the United States, and who have resided at least 90 days in the county in which they desire to fish, prior to the date of making application for license, by means of gill nets of the sizes herein specified and by the aid of skiffs and power boats at any time as hereinafter provided in that part of Lake Superior under the jurisdiction of Minnesota; Provided a license to do so shall be first obtained from the director of game and fish. Residents of the States of Wisconsin and Michigan, who are citizens of the United States, may procure a commercial fishing license, upon payment of a fee of \$50.00, to take such fish as herein enumerated, according to law, in waters of Lake Superior lying within the jurisdiction of Minnesota; Provided, however, that a non-resident commercial fishing license for the purpose of taking herring only, from November 5, to April 15, next following, may be issued upon payment of a fee of \$25.00. Herring, except as herein provided, may not be taken hereunder between November 16th and November 30th, both inclusive, provided this restriction as to the taking of herring shall not apply until the State of Wisconsin shall by law provide for a similar restriction. Ciscoes may not be taken hereunder during the month of November. Lake trout may not be taken hereunder between October 1 and November 10 following, both inclusive. Lake trout may also be taken by set lines. Herring, lake trout or ciscoes, pickerel and whitefish so taken may be had in possession, bought, sold and transported within or without the state during open season and for a period of one week thereafter. This restriction shall not apply to fish in frozen, salted or smoked condition caught during the open season, or fish legally caught in waters outside the jurisdiction of the State of Minnesota; Provided, however, that no skiff or power boat exceeding 35 feet in length measured from tip of stem to tip of stern shall be used in taking any fish authorized by the provisions of this act. (As amended Apr. 24, 1935, c. 291, §1.)

Subdivision 1. Size of mesh.—The size of mesh of nets shall be fixed as follows:

(a) Gill nets for taking herring of not less than 2 ¾-inch mesh, extension measure, when in possession and measured from center of knot to center of knot, on and after July 1st 1935.

(b) Gill nets for taking lake trout, pickerel and whitefish, not less than 4 ½ inches mesh, extension measure, when in possession, and measured from center of knot to center of knot.

(c) Gill nets for taking ciscoes, not less than 2 ¾ inches mesh, extension measure, when in possession

and measured from center of knot to center of knot; Providing, that whenever nets set for the purpose of taking ciscoes shall catch more than 10% of lake trout less than 17 inches in length, or whitefish less than 16 inches in length, such nets shall be deemed illegally set and shall be moved from the waters in which they were set, upon notice from the director of game and fish or his representative. Nets for taking ciscoes shall be set in water not less than 50 fathoms in depth.

(d) All nets permitted to be used under the provisions of this chapter, shall, when set for fishing purposes be properly marked at the ends of such nets with proper buoys, and the licensee's number shall be plainly marked on any buoy indicating the location of any net set for taking of fish. All nets set in Lake Superior waters under the jurisdiction of this state having a mesh less than permitted by this chapter and all nets having a mesh less than permitted by this chapter found on or within premises commonly used for the receiving and marketing of fish from Lake Superior waters, and including fish receiving stations, sheds, warehouses and docks, are hereby declared illegal and subject to confiscation by the director of game and fish or his representative and may summarily be destroyed. (As amended Apr. 24, 1935, c. 291, §2.)

Subdivision 2. Such license shall be procured from the director of game and fish. The applicant shall make a verified written application to the director of game and fish on a form prepared by him, stating: (a) His name and residence; (b) The period of time the applicant has resided in the county in which he desires to fish, and whether a citizen of the United States. Such license shall be designated as a "Master's License" and for which he shall pay the sum of \$2.50. Every person assisting the holder of a "Master's License" in going to and from the fishing locations or who assists in the setting and lifting of nets or in the removal of fish from such nets, shall have a license so to do which license shall be designated as a "Helper's License," which shall be procured by the holder of a "Master's License" and for which there shall be paid the sum of \$2.50; such licenses may be transferable; and shall be transferred upon application made by the holder of a "Master's License" without any additional charge. Application for "Helper's License" shall be made to the director of game and fish and shall give: (a) The name and residence of the applicant; (b) Name of person holding "Master's License" employing him; (c) Whether a resident of Minnesota and (d) Whether a citizen of the United States. "Master's Licenses" shall not be transferable and shall be issued for one fishing season only, and provided that aliens who have duly declared their intention of becoming citizens of the United States and who have not failed to qualify as citizens within the length of time in which they may legally do so, shall be entitled to "Helper's Licenses;" Provided, however, that no person shall be entitled to receive a "Master's License" unless such person has been a bona fide resident of the State of Minnesota for at least one year and a resident of the county where he desires to fish for at least 90 days. The holder of a "Master's License" shall be entitled to fish in any waters under the jurisdiction of the State of Minnesota. (As amended Apr. 24, 1935, c. 291, §3.)

Subdivision 3. The name and license number of the person licensed to take fish under this section shall be legibly marked by stencil or otherwise, on each package of fresh or salted fish caught by such license [sic]. It shall be unlawful to ship, sell or offer for sale any spoiled or unwholesome fish. Any package containing spoiled or unwholesome fish shall be contraband and the same may be confiscated; Provided, however, that all frozen herring shall be packed and shipped in boxes only, and all herring sold for any purposes other than human consumption shall

be cut or broken into approximately equal parts. (As amended Apr. 24, 1935, c. 291, §4.)

Subdivision 4. No net shall be set within one-fourth mile of the mouth of any stream flowing into Lake Superior.

Subdivision 5. No person, other than the licensee, or his agent, shall take or remove any fish from nets set by persons licensed under this Act, nor shall any person knowingly injure, disturb or interfere with such nets.

Subdivision 6. Written reports shall be made to the director of game and fish on forms prepared by him for that purpose, by each licensee at the close of the season, stating in detail the amount and kind of fish caught, the amount for which the same were sold, and the total value of each kind. Failure to make a report within three months after the close of the fishing season shall forfeit the right of the licensee to receive another fishing license for a period of one year.

Subdivision 7. No person shall deposit, or allow to run into Lake Superior or any of the waters tributary thereto, any fish gurry, or fish offal, or other deleterious substance.

Subdivision 8. No person, company or corporation shall engage in the business of buying fish taken under commercial fishing licenses in Lake Superior waters under the jurisdiction of this state, for the purpose of resale, until he, or it as the case may be, shall have procured a license to do so from the director of game and fish. Fees payable to the director of game and fish for such license shall be \$25.00, and the licensee shall, upon demand by the director of game and fish or any of his representatives, produce evidence of the legality of the fish purchased for resale by him, such evidence to include invoices or memoranda showing pounds and kinds of fish purchased for resale and from whom purchased. Such invoices or memoranda shall be signed by the selling licensee; Provided, however, that no license nor the payment of any license fee shall be required, by persons buying or selling fish or [sic] roadside fish stands. (As amended Apr. 24, 1935, c. 291, §5.)

Subdivision 9. Any person violating any of the provisions of this chapter relating to taking of fish or the transportation thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$25.00 nor more than \$50.00 or by imprisonment in the county jail for not less than 30 days nor more than 60 days.

Subdivision 10. The various provisions of this Act shall be severable and if any part, provision or subdivision shall be held to be invalid it shall not be held to invalidate any other part, provision or subdivision. ('19, c. 400, §103; Apr. 26, 1929, c. 404; Apr. 15, 1933, c. 263.)

Laws 1929, c. 404, amended the unnumbered paragraph preceding subdivision 1.

Nets of licensed Wisconsin fishermen may be seized if illegal under Minnesota law, though placed in state for purpose of drying and repair. Op. Atty. Gen., June 9, 1933.

Helper's license is not transferable. Op. Atty. Gen., Sept. 13, 1933.

Assistants of persons who have procured nonresident commercial fishing licenses must have helper's licenses. Op. Atty. Gen., Sept. 14, 1933.

A duly licensed fisherman having a commercial fisherman's license must have an angling license before he can legally troll for lake trout. Op. Atty. Gen. (12c-1), Sept. 4, 1935.

Lake trout taken by angling or trolling cannot be sold. Id.

A person licensed as a fisherman pursuant to §5599 is not a dealer at wholesale within meaning of §6240-18½. Op. Atty. Gen. (196g), Mar. 31, 1937.

A resident of Wisconsin and a licensed commercial fisherman on Lake Superior, who also holds a government fishing license, and docks his fishing boat at a wharf in Duluth and brings his catch to a Minnesota dock where he cleans it and turns it over to a licensed Minnesota buyer for market, catch being taken within waters of Lake Superior in Wisconsin, or in waters over which states have concurrent jurisdiction, is not "taking" fish within meaning of this section, and he need not have a Minnesota nonresident and commercial fishing license,

though he is subject to Minnesota laws relating to inspection, sale and disposition of fish. Op. Atty. Gen. (209b), Apr. 29, 1937.

(1). Law is violated by use of net with mesh smaller than statutory requirement by reason of shrinking from preservation or being placed in water, though of proper size when made. Op. Atty. Gen., June 3, 1933.

(3). Inspectors have power to open boxes already packed for shipment and delivered to a common carrier for transportation in interstate commerce. Op. Atty. Gen. (196g), Feb. 15, 1937.

Inspecting officers cannot charge fee for inspection. Id.

(8). Commercial fisherman fishing in Lake Superior cannot peddle from house to house without a license nor can commercial fish dealers purchasing from licensed fisherman in that lake peddle without license. Op. Atty. Gen., July 6, 1933.

Sections 5598(11), 5599(8), 6240-18½a are not inconsistent. Op. Atty. Gen., Jan. 13, 1934.

Men who are transporting fish they have bought from north shore commercial fishermen and are selling direct to stores in wholesale lots are not required to secure a license under this subdivision. Op. Atty. Gen. (290j-2), Jan. 28, 1935.

Persons who occasionally go into business of buying fish must procure a license. Op. Atty. Gen. (211b-5), June 19, 1935.

Meat markets, butchers, hotels, restaurants and others who are engaged in duly licensed commercial enterprises, but who buy fish for sale to ultimate consumer as an incident of their business need not have license under this section. Id.

"Or roadside fish stands" should read "at roadside fish stands." Id.

5604. Revolving fund for conducting state fishing operations.

See §5592-6.

The moneys appropriated to the state fish revolving fund are public funds. 173M559, 218NW123.

5605. Game and fish commissioner authorized to remove fish.

Commissioner was not acting as agent of commission of Public Safety, and abolishing that commission did not terminate his authority to conduct operations under this section. 173M559, 218NW123.

Laws 1919, c. 341, as amended by Laws 1921, c. 109, does not contravene the constitutional provision forbidding the state to engage in works of internal improvement. 173M559, 218NW123.

5606. Surplus sold—Proceeds to revolving fund.

The commissioner is not authorized to buy fish for the purpose of reselling them. 173M559, 218NW123.

5609-1. Removal by director of rough fish and turtles from public waters, etc.—Whenever, after an investigation, by the Director of the Division of Game and Fish, he finds that any of the following conditions exist:

(1) That carp, buffalofish, perch, suckers, sheepshead, dogfish, eelpout, garfish, tullibees and turtles inhabit any of the public waters of this state in such numbers as to interfere with or prevent the natural propagation of game fish therein, or that such fish inhabit any of the public waters of this state in such numbers as to destroy or substantially injure wild celery, wild rice or other aquatic plant life growing therein, or

(2) That the removal of the fish above designated and turtles will result in an improvement in the quality of such fish remaining therein and will increase the quantity thereof, or will prevent the destruction of wild celery, wild rice and other aquatic plant life in such waters; then, and in such case he may provide by contract, or by day labor, under his supervision or both, for the taking and removal of the fish designated and turtles, by means of seines, nets, or by any other devices, at any time.

Provided, however, that in all counties of this state lying southerly of the St. Croix river and tributary to the Mississippi river and having a population of 28,000 or over, according to the last federal census, respective boards of county commissioners shall have power to prohibit seining or fishing in any of the waters lying within the boundaries of their respective counties by a resolution adopted at their July meeting, and not otherwise. Waters so closed shall not be opened at any subsequent meeting of the board

during the ensuing year. No county board shall enter into any contract for such fishing, or seining, nor shall the board or any member thereof solicit, or receive any commission or payment of money for that purpose and, provided further, that the game and fish director shall not conduct any operations in any body of water lying wholly within the corporate limits of any city of the fourth class, unless with the consent of the city council thereof. Contracts for the taking and removal of the designated fish and turtles shall be awarded to residents of the State of Minnesota by the director, and each resident applicant shall when submitting his application to the director for the taking of the designated fish and turtles file a sworn statement with the director giving his name and legal voting address, occupation, list of fishing equipment actually owned by him, value of such equipment and the nature and years of his experience in the taking and removal of the designated fish and turtles, and what particular knowledge he possesses of the body of water he desires to fish; and the director may award contracts for each body of water on the basis of the experience, qualifications and equipment of the several applicants. Each application shall be separately made for each body of water to be fished. No contract shall be entered into with any person who has been convicted of violating the laws of this state relating to wild animals within a period of one year, nor to any person who is not fully equipped and experienced to undertake successfully the taking and removal of the designated fish and turtles. No contract shall be transferable nor shall any transfer or assignment thereof be valid. Based upon the size, quantity and quality of the designated fish and turtles to be taken and removed, size of lake or stream to be fished, depth of water therein, topography of bed, and kinds and sizes of nets which may be successfully used therein, the commissioner may award fishing contracts on a percentage basis, based on the gross proceeds received from the sale of the designated fish and turtles provided, however, that no more than 85 per cent of the gross proceeds from the sale of such fish shall be paid to any contractor covering any body of water. (As amended Apr. 20, 1939, c. 323.)

Department of conservation may remove rough fish and sell them and need not issue contracts to private individuals. Op. Atty. Gen., June 13, 1933.

Commercial fisherman's license bond held intended to be limited to provisions of §§9700 to 9705 and governed by such sections rather than §9191 with respect to service of notice within 90 days and suit within one year. Op. Atty. Gen., Aug. 28, 1933.

5609-7. Same—Fish lakes improvement revolving fund, etc.

Game and fish department owes no duty to reconstruct county drainage ditch. Op. Atty. Gen., Feb. 20, 1933.

Diversion of funds. Op. Atty. Gen., Sept. 27, 1933.

Conservation commissioner had authority to purchase fish hatchery from lake improvement fund without approval of executive council. Op. Atty. Gen. (928c), Feb. 13, 1939.

PART VII.—GAME REFUGES AND FARMS, AND STATE PARKS

5610. State game refuges—Establishment, etc.

Village within limits of game refuge is not to be considered part thereof as regards carrying of arms. Op. Atty. Gen., Feb. 7, 1933.

No authority exists to create interstate game refuges. Op. Atty. Gen. (983g), Dec. 31, 1935.

5611. Same—Partially closed to hunting, etc.

Establishment of Ramsey County Game Refuge operated to cancel small refuges established within county. Op. Atty. Gen., Jan. 18, 1933.

5612. Same—Restrictions on establishing—Refuges for waterfowl.—No game refuge shall be established of less than 640 acres of contiguous lands, provided that refuges of less than 640 acres in area may be established for the protection of waterfowl. Refuges for waterfowl shall be established only on lakes and may include land adjacent thereto to a distance not exceeding one-fourth of a mile from the high water mark. (As amended Mar. 4, 1939, c. 39.)

5615. State Parks—Game.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

5620-1. Red Lake Game Preserve created.—For the purpose of vesting and revesting the State with title to lands in the area hereinafter described which are suitable primarily for state use and development for the purpose of preserving, protecting, propagating and breeding wild life of all suitable kinds, including all species of game and fish and fur-bearing animals and birds of rare and useful species, and for the development of forests and prevention of forest fires, and the preservation and development of rare and distinctive species of flora native in such area, there is hereby located, established and created a state wild life preserve and hunting ground comprising all lands and waters in Lake of the Woods county lying south of Rainy River, and south of Lake of the Woods and all full and fractional townships in Beltrami county lying north of the north line of Township 151, excluding, however, all of the lands and waters lying within Red Lake Indian Reservation, and including also all that part of Koochiching county lying west and northwesterly of the following described line, viz.:

Beginning at a point where the range line between Ranges twenty-six (26) and twenty-seven (27) west of the fifth principal meridian intersects the southerly bank of Rainy River; thence south on said range line to the point formed by the intersection of said range line with the easterly boundary line of the original Red Lake Indian Reservation; thence southwesterly along said easterly boundary line of the original Red Lake Indian Reservation to a point formed by the intersection of such boundary line with range line between Ranges twenty-nine (29) and thirty (30) west of the fifth principal meridian; to be known as the "Red Lake Game Preserve," hereinafter sometimes called "Preserve and Hunting Ground." (Act Apr. 19, 1929, c. 258, §1.)

This act does not contravene constitution, art. 9, §§1, 5, 6 or 10. 178M244, 226NW633.

5620-2. Preserve to be under management of Department of Conservation.—Said Red Lake Game Preserve shall be under the management and control of the Department of Conservation, which shall have, and is hereby given full power and authority to make, establish, promulgate and enforce all necessary rules and regulations not inconsistent with the laws of the state for the care, preservation, protection, breeding, propagation and disposition of any and all species of wild life therein and the regulation, issuance, sale and revocation of special licenses or special permits for hunting, fishing, camping and other uses of said area not inconsistent with the terms of this act, or other laws of the state now or hereafter applicable thereto. Such department shall have power and authority by means of rules and regulations to declare the terms and conditions of such licenses and permits and the charges to be made therefor. Such regulations may specify and control the terms under and by which wild life may be taken, captured, or killed therein, and under and by which fur-bearing animals, or animals and fish otherwise having commercial value, may be taken, captured, trapped, killed, sold and removed therefrom. Such rules and regulations may also provide for the afforestation and reforestation of lands now or hereafter owned by the state in said Game Preserve and Hunting Grounds, and for the sale of merchantable timber from such lands when and where, in the opinion of such department, the same can be sold and removed without damage or injury to the further use and development of said land for a habitat of wild life and game in said Game Preserve and Hunting Grounds and for the purposes for which said preserve and hunting ground is established by this act. The department may provide for the policing of said preserve and hunting ground

in such manner as may be needful for the proper development and use of said preserve and hunting ground for the purposes herein specified, and all supervisors, guards, custodians and caretakers assigned to duty in said preserve and hunting ground shall have and possess the authority and powers of peace officers while in their employment. The department shall also make and enforce such rules and regulations not inconsistent with the laws of the state concerning the burning of grass, timber slashings and other inflammable matter, and the clearing, development and use of lands in said preserve and hunting ground as may be necessary and advisable to prevent destructive forest fires and grass fires which would injure the use and development of said area for the preservation and propagation of wild life therein and for the proper protection of the forest and wooded areas thereof. All lands within the boundaries of said preserve and hunting ground shall be subject to such rules and regulations, whether owned by the state or privately, consistent with the rights of such private owners and with the laws of this state now or hereafter applicable thereto. By such rules and regulations there may be established areas and zones within such preserve and hunting ground where hunting, fishing, trapping or camping may be prohibited or specially regulated, for the purpose of protection and propagation of particular wild life therein.

All the rules and regulations adopted and promulgated under the provisions of this act shall be published in the manner now required by law under the provisions of Section 5643, General Statutes of 1923, and shall be, in addition thereto, posted on the boundaries of said preserve and hunting grounds. (Act Apr. 19, 1929, c. 258, §2.)

Counties have no authority to permit cutting of timber upon tax delinquent lands within boundaries of state forests or game refuges, even though contract is let for purpose of obtaining money for relief of poor. Op. Atty. Gen. (27g), Dec. 10, 1936.

Authority is vested in department of conservation to lease hay and agricultural lands in Red Lake Game Preserve, reserving to state right to sell such leased lands after classification as provided by law. Op. Atty. Gen. (700d-18), Mar. 15, 1937.

Department of Conservation may make sales of dead and down timber on tax reverted lands within the Red Lake game reserve and other conservation areas, but sales of such timber on other tax reverted lands are made by county auditor subject to certain rights of former owners. Op. Atty. Gen. (700d-31), Aug. 16, 1937.

5620-3. Red Lake Game Preserve fund created.—The proceeds of all certificates of indebtedness issued under the provisions hereof, all moneys received from redemption as hereinafter provided, all moneys received as gifts to the state for the purpose of care, preservation, improvement and maintenance of said preserve and hunting ground and all income which may be received from the operation, development, management and use of said preserve and hunting ground, including such fees as may be received for such licenses and permits, all income which may be received from the sale of birds, animals, fish and flora therefrom, and from the sale of lands and timber thereon owned by the state within such area other than university school and swamp lands, state forest lands set apart pursuant to Section 7 of Article 8 of the Constitution and state lands acquired under the system of rural credits, and all moneys of the state which may hereafter be transferred thereto under any law of the state shall be paid into the state treasury and credited to the Red Lake Game Preserve Fund, which is hereby created and same are hereby annually appropriated for the purpose of this act. (Act Apr. 19, 1929, c. 258, §3.)

Department of conservation may not withhold from revenues collected from sales or leases of land in Red Lake game reserve funds to cover cost of publication of notices, transportation and other expenses incident to conducting of sale or those incident to management of property leased, but it is duty of comptroller to formulate and prescribe an accounting system relative to administration of funds after revenues have been paid into state treasury. Op. Atty. Gen. (9a-9), May 7, 1937.

5620-4. County auditor to prepare list of lands.—As soon as practicable after the passage of this act and not later than September 1, 1929, the county auditor of each county in which a portion of said preserve and hunting ground is situated shall certify to the state auditor a list of all the lands within the boundaries of said preserve and hunting grounds, except lands lying within the boundaries of any incorporated city or village, which have been bid in for the state at the delinquent tax sale held in the year of 1928 for the nonpayment of taxes or special drainage assessments and not redeemed or assigned to an actual purchaser, which certificate shall contain the following information:

a. The legal description of each parcel of such lands.

b. The amount of principal and interest of delinquent drainage assessments, if any, or installments thereof, for all years prior to the date of such report, against each such parcel of land.

c. The amount of drainage assessments thereof assessed against each such parcel of land which have been or are to be extended upon the tax rolls of such county for collection with the taxes for the year of 1927 and subsequent years.

On or before June 15th of each year thereafter such county auditor shall certify to the state auditor a supplemental report giving the information contained in said original report covering such lands within said preserve and hunting ground bid in for the state at the annual tax sale of that year and not included in the previous reports.

When redemption is made of any parcel of such land within the preserve and hunting ground which has been bid in for the state at any tax sale for taxes heretofore levied or when the tax liens on such land are assigned to an actual purchaser, the county auditor shall report the same forthwith to the state auditor, and the county treasurer shall transmit forthwith the proceeds of such redemption to the state treasurer.

Forthwith upon the passage and approval of this act, and thereafter, after each distribution has been made of the tax collections on the June and November tax settlements such county auditor shall certify to the state auditor the following information relating to bonds issued to finance or refinance public drainage ditches lying wholly or partly within said preserve and hunting ground and the collection of assessments levied on account of such ditches.

a. The amount of principal and interest to become due on such bonds prior to the next ensuing tax settlement and distribution.

b. The amount of moneys collected from such drainage assessments and credited to the funds of said ditches.

c. The amount of the deficit in the ditch fund of said county chargeable to such ditches.

Upon the approval of said certificate by the state auditor he shall draw a warrant or warrants on the state treasurer payable out of said Red Lake Game Preserve Fund for the amount of said deficit in favor of such county.

As to all public drainage ditches which lie wholly within said preserve and hunting ground the maximum amount of money which shall be paid to or for the benefit of such county in the manner above provided shall never exceed the principal and interest of the bonds issued to finance and refinance such ditches outstanding at the time of the passage and approval of this act, less moneys on hand in the county ditch fund to the credit of such ditches, and such liability shall be reduced from time to time by the amount of any and all payments of assessments hereafter extended, made by the owners of lands heretofore assessed for benefits on account of such ditches. As to all public drainage ditches which lie partly within and partly without the boundaries of said preserve and hunting ground the maximum amount which shall be

paid to or for the benefit of such county shall never exceed the percentage of bonds issued to finance and refinance such ditches so outstanding, less moneys on hand in the county ditch fund to the credit of such ditches at the time of the passage and approval of this act, which bears the same proportion to the whole amount of such bonds as the original benefits assessed against lands within the game preserve bear to the original total benefits assessed to the entire system of such ditches, and such liability shall be reduced from time to time by the payments of all assessments hereafter extended, made by the owners of lands in said preserve and hunting ground, of assessments for benefits heretofore assessed on account of any such ditch. The State Auditor shall have authority to provide and prescribe the forms for any reports required by this act to be made to him and to require any further and additional information from any officials of said counties which he deems necessary for the proper administration of this act. (Act Apr. 19, 1929, c. 258, §4.)

The county auditor must report and the county treasurer transmit the redemption and assignment moneys from all taxes levied prior to the passage of this act up to and including the 1928 taxes, whether the sale takes place before or after the passage of the act. Op. Atty. Gen., Nov. 26, 1929.

5620-5. State to issue certificates of indebtedness.—For the purpose of anticipating the annual revenues of said Red Lake Game Preserve Fund, the State Auditor is hereby authorized and directed to issue and sell certificates of indebtedness in an aggregate sum not to exceed \$3,951,206.86 payable from said fund, such certificates to be numbered serially and to be of such denominations and to bear such dates of issue and of maturity and bear interest at such rate, not exceeding 5% per annum, as the State Auditor shall determine; provided that none of such certificates of indebtedness shall run beyond the tax settlement dates for the next annual tax levy thereafter to be made by such Auditor as hereinafter required, in anticipation of the collection of which such certificates of indebtedness are issued. Such certificates shall be so issued from time to time as the proceeds thereof are needed for the demands upon said fund. The interest on such certificates of indebtedness shall be payable with the principal thereof. Said certificates shall be in such form and upon such terms and conditions, not inconsistent with the terms of this act, as the State Auditor shall determine, shall be signed by the Governor and attested by the State Auditor and shall be sold for not less than par. Such certificates may be purchased by the State Board of Investment for the Permanent School Fund, Swamp Land Fund, Internal Improvement Land Fund, or any other trust fund of the State of Minnesota, and shall be deemed "Authorized securities" within the provisions of Mason's Minnesota Statutes of 1927, Section 7714, and laws amendatory thereof and supplemental thereto. (Act Apr. 19, 1929, c. 258, §5; Apr. 24, 1935, c. 242.)

5620-6. Tax Levy.—Whenever the state auditor shall approve a deficiency certificate of county auditor as specified in Section 4 hereof he shall compute the portion thereof which will exceed cash on hand in said Red Lake Game Preserve Fund available for its payment, and shall make an entry in his records that such excess, plus the amount required to pay interest on certificates on indebtedness to be issued to provide money for the payment thereof, is to be extended upon the tax rolls for the next succeeding tax levy, and there is hereby levied for the year 1929 the aggregate of the sums so entered for collection up to the time of the certification of state taxes for the year 1929, and for each year thereafter, until the maximum state liability prescribed by Section 4 hereof has been exhausted, the aggregate of such entries made since the last preceding certification of state taxes, which taxes shall be extended and collected in the same manner as other state taxes, and the proceeds of such levies

are hereby appropriated and pledged to the payment of the principal and interest of the certificates of indebtedness issued pursuant to this act. (Act Apr. 19, 1929, c. 258, §6.)

5620-7. Title of land to be in state.—The title of all parcels of land lying within said preserve and hunting ground, except lands lying within the boundaries of any incorporated city or village, which shall be acquired by the state under the provisions of Chapter 119, Laws 1927 [§§2139 to 2139-5], or any amendments thereof, shall be held by the state, free from the trust in favor of the taxing districts specified in said Chapter, and shall be held and used, or disposed of, in accordance with the provisions hereof. (Act Apr. 19, 1929, c. 258, §7.)

5620-8. Department of Conservation to classify lands.—Upon receipt by the state auditor of the reports of county auditor specified in Section 4 [§5620-4] hereof, he shall certify a copy thereof to the department of conservation, which shall classify all such lands as to their suitability for agriculture or for afforestation or reforestation or for ownership and use by the state for preserving, propagating, breeding and hunting of wild life of the kinds specified in Section 1 hereof, and after the title to any such lands has been acquired by the state in the manner herein provided such lands may be reclassified from time to time. All such lands which shall become the absolute property of the state under the provisions of this act, which have been classified as suitable for agriculture and timber, from any lands so acquired shall be subject to sale by the state as provided by law. (Act Apr. 19, 1929, c. 258, §8.)

5620-9. Department may receive gifts.—The department of conservation is hereby authorized and empowered to receive for and in behalf of the state, and to make suitable acknowledgments of, any gifts, bequests, devises or grants of land or interests in lands in said preserve and hunting ground, or of money or personal property of any kind, which it may deem suitable for use in connection with the operation, control, development or use of said preserve and hunting ground. (Act Apr. 19, 1929, c. 258, §9.)

5620-10. May acquire property by right of eminent domain.—The department of conservation is hereby authorized and empowered to acquire, by exercise of the right of eminent domain, which right is hereby given it, to be exercised in the manner provided in Chapter 41, General Statutes 1928, as amended, or by purchase, any lands or interests in lands in said preserve and hunting ground which such department shall deem necessary for state ownership, use or development for the purposes of this act, provided; however, that no moneys shall be used for the purposes specified in this section until and unless such department shall have determined that such moneys will not be required to meet the requisitions of the counties authorized under Section 4 [§5620-4] of this act or for payment of certificates of indebtedness and interest thereon herein provided for. (Act Apr. 19, 1929, c. 258, §10.)

5620-11. Counties may pay part of bonds in certain cases.—Any county wherein a portion of said preserve and hunting grounds is located may voluntarily assume, in the manner hereinafter specified, the obligation to pay that portion of the principal and interest of the bonds, heretofore issued and which may remain unpaid at maturity, of any school district or township situated in said county and wholly or partly lying within said preserve and hunting ground which portion bears the same proportion to the whole of such unpaid principal and interest as the 1928 assessed valuation of lands then acquired by the state pursuant to this act in such school district or township bears to the total 1928 assessed valuation of such school district or township. Such assumption shall be evidenced by a resolution of the county board of such

county, a copy of which shall be certified to the state auditor within one year after the passage of this act and thereafter if any of such bonds shall remain unpaid at maturity the county board shall, upon demand of the governing body of such school district or township or of the holder of any such bonds, provide for the payment of the portion thereof so assumed and such county board shall levy general taxes on all the taxable property of the county therefor, or shall issue its bonds to raise such sum as may be needed conforming to the provisions of law respecting the issuance of county refunding bonds. The proceeds of such taxes or bonds shall be paid over by the county treasurer to the treasurers of the respective school district or townships.

In the event that any such county shall fail or neglect so to adopt and certify such resolution the state auditor shall withhold from the payments to be made to such county under the provisions of Section 4 of this act a sum equal to that portion of the principal and interest of such outstanding bonds which bear the same proportion to the whole thereof as the 1928 assessed valuation of lands acquired by the state within the preserve and hunting ground bears to the total 1928 assessed valuation of such school district or township. Moneys so withheld from the county shall be set aside in the state treasury and shall not be paid to the county until the full principal and interest of such school district and township bonds shall have been paid.

In the event that any such bonds remain unpaid at maturity upon the demand of the governing body of such school district or township or the holder of any such bonds the state auditor shall issue to the treasurer of such school district or township a warrant on the state treasurer for that portion of such past due principal and interest computed as in the case of the county liability hereinbefore authorized to be voluntarily assumed. All moneys received by any school district or township pursuant to this section shall be applied to the payment of such past due bonds and interest. (Act Apr. 19, 1929, c. 258, §11.)

5620-12. Violation of rules to be a misdemeanor.—Any person, who, within the limits of said preserve and hunting ground, shall willfully violate or fail to comply with any rule or regulation of the department of conservation adopted and promulgated in accordance with the provision of this act shall be deemed guilty of a misdemeanor. (Act Apr. 19, 1929, c. 258, §12.)

5620-13. Provisions severable.—This act shall be held unconstitutional only in the event that some major provisions of the act are found unconstitutional and invalid that would make the act unworkable. If any minor provision of this act be held unconstitutional it shall in no way affect or invalidate any other provision or part hereof. (Act Apr. 19, 1929, c. 258, §13.)

5620-13 1/2. Classification and sale of forfeited lands.—All lands which have heretofore or shall hereafter become the absolute property of the state under the provisions of Laws 1929, Chapter 258, Section 7 [§5620-7], and are suitable for agricultural purposes shall be classified as such by the county board of the county wherein such lands are situated. No lands shall be offered for sale under the provisions of this act until their classification by the county board as agricultural lands shall have been approved by the department of conservation. (Act Apr. 17, 1935, c. 210, §1.)

Land belonging to U. S. in Red Lake Game Preserve upon which there are delinquent ditch assessments, may be sold subject to 43USC1025 and pursuant to this act. Op. Atty. Gen. (901c), Jan. 13, 1938.

Unentered public and ceded Indian lands, bid in for state on sales for delinquent charges, not classified as agricultural lands within Red Lake Game Preserve, are not required to be sold by state to homestead entrymen. Op. Atty. Gen. (700a-8), Jan. 26, 1938.

5620-13 1/2 a. Appraisal.—All lands which have heretofore or shall hereafter become the absolute property of the state under the provisions of said Chapter 258, Section 7, and are classified as agricultural lands shall be appraised by the county board of the county wherein such lands are situated, and such appraisal shall be filed in the office of the county auditor of such county. Such county board may reappraise any such lands whenever in its judgment such reappraisal is necessary in effectuating the provisions of this act, but no such lands shall be appraised more than once in any twelve-month period. (Act Apr. 17, 1935, c. 210, §2.)

5620-13 1/2 b. Sale—Notice—Parcels.—All lands so classified and appraised and remaining unsold shall be offered for sale at a public sale to be held by the county auditor [at the time determined by the county board in a resolution fixing the date of said sale. The auditor shall publish a notice of the intended sale by publication once a week for two weeks in an official newspaper of the county, the last publication to be not less than 10 days previous to the commencement of said sale. Notice of such sale [sic] be given in substantially the following form:]

"Notice of Sale of Agricultural Lands
"Notice is hereby given that on....., the
..... day of....., 19..... at ten
o'clock A. M. at my office in..... in the
county of..... I shall sell to the highest
bidder the following described parcels of land in said
county, which have been forfeited to the state for non-
payment of taxes, and which have been classified as
agricultural lands and appraised as provided by law.
Said sale will be governed by the provisions of Laws
1935, Chapter 210.

Section or Lot	Description Twp. or Block	Range	Appraised Value \$.....
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Auditor of.....County"

Such land shall be described in the notice and offered for sale in parcels not exceeding one-quarter section in area. (Act Apr. 17, 1935, c. 210, §3; Apr. 20, 1939, c. 328, §6.)

Editorial note.—The title of Act Apr. 20, 1939, cited, purports to amend section "5620-13 1/2 (b)," while the enacting clause and enactment amends section "5620-13 1/2 b." The words in brackets are introduced by the amendatory act. Prior to the amendment this part of the section read as follows: "on the third Monday in August in each year. Notice of such sale shall be given as provided in Mason's Minnesota Statutes of 1927, Section 2127, in substantially the following form:" In other respects the two enactments are identical.

Land becoming absolute property of state after third Monday in August cannot be sold until third Monday in August in following year. Op. Atty. Gen. (425c), Apr. 28, 1936.

5620-13 1/2 c. To be sold for not less than appraised value.—Said lands shall be sold to the highest bidder and at a price not less than the appraised value thereof. Any lands not sold at such public sale may at any time within four months following the opening of said sale be sold by the county auditor at a price not less than the appraised value thereof. All lands remaining unsold shall be included in the notice of sale and offered for sale by the county auditor in each following year until the same shall be sold. (Act Apr. 17, 1935, c. 210, §4.)

5620-13 1/2 d. May be purchased by federal entryman or patentee or by record owner.—Any parcel of land described in any such notice of sale may at any time not less than one week prior to the date of such sale be purchased at the appraised value thereof by the person who [is a bona fide Federal Entryman or Patentee of any such land or, by the person who] was the record owner of the fee title thereto at the time the state became the absolute owner thereof. (Act Apr. 17, 1935, c. 210, §5; Apr. 20, 1939, c. 328, §7.)

Editorial note.—The title of Act Apr. 20, 1939, cited, purports to amend section "5620-13 1/2 (d)," while the enacting clause and enactment amends section "5620-13 1/2 d."

The bracketed words are introduced by the amendment of Apr. 20, 1939, without changing the language of the 1935 act in other respects.

5620-13½e. Terms of sale.—All sales under this act shall be for cash or on the following terms: at least 15 per cent of the purchase price shall be paid in cash at the time of the sale, and the balance thereof shall be paid in equal annual instalments over a period of 20 years with interest at the rate of four per cent per annum payable annually on the portion from time to time remaining unpaid with privilege of prepayment of any installment on any interest date. Sales on terms shall be evidenced by a certificate issued by the county auditor in such form as the attorney general shall prescribe. The county auditor shall report all sales to the state auditor.

If the purchaser shall default in the payment of any instalment or of any interest when due, or shall fail to pay before they become delinquent all taxes that may be levied upon the land so purchased, the state auditor shall within six months thereafter cancel said certificate of sale. (Act Apr. 17, 1935, c. 210, §6.)

Minimum amount of down payment may be increased by county. Op. Atty. Gen. (425B-1), April 27, 1939.

5620-13½f. Taxes to be cancelled.—Whenever any lands shall be sold under this act, all public liens thereon for taxes, special assessments, and other charges, whether extended on the tax lists or not, shall forthwith be cancelled, and the county auditor and county treasurer and register of deeds shall note such cancellation upon the records of their respective offices. (Act Apr. 17, 1935, c. 210, §7.)

Form of certificate drawn by attorney general. Op. Atty. Gen. (425c-1), July 26, 1937.

5620-13½g. State auditor to convey property.—Upon payment in full of the purchase price, appropriate conveyance in fee in such form as may be prescribed by the attorney general shall be issued by the state auditor to the purchaser or his assignee, and said conveyance shall have the force and effect of a patent from the state. (Act Apr. 17, 1935, c. 210, §8.)

5620-13½h. Mineral rights reserved.—Every certificate of sale and instrument of conveyance issued under this act shall state that such sale or conveyance does not include any right, title or interest in or to any iron, coal, copper, gold or other valuable minerals which may be upon the land therein described, and that all such minerals are reserved by the state for its own use; but no instrument shall be effective to transfer any right, title, or interest in or to any such minerals notwithstanding the failure of the proper officer to insert such statement. (Act Apr. 17, 1935, c. 210, §9.)

5620-13½i. County treasurer to collect funds.—The county treasurer shall collect all payments of principal and interest made under this act and shall place the same in a special fund and shall report all collections to the state auditor. There shall be transferred from such special fund to the revenue fund of the county the cost of giving the notices herein required, and there shall be paid from such fund to the members of the county board upon warrant of the county auditor Three Dollars per day for each day necessarily consumed in the classification and appraisal of the lands under this act, and mileage at the rate of five cents per mile for necessary travel. The net amount remaining in said fund shall be transmitted by the county treasurer to the state auditor at the times provided for tax settlements, and shall be credited to the Red Lake game preserve fund created by said Chapter 258, Section 3. (Act Apr. 17, 1935, c. 210, §10.)

5620-13½j. Inconsistent acts repealed.—All acts and parts of acts inconsistent with the provisions hereof are hereby repealed. (Act Apr. 17, 1935, c. 210, §11.)

5620-14 to 5620-21. [Repealed].

Repealed by Laws 1933, c. 418, §13, ante, §4031-10½.

5620-22. Commissioner of conservation to acquire lands in Marshall county.—The commissioner of conservation of the state of Minnesota is hereby authorized to acquire for the state by the use of condemnation proceedings, to be brought under Mason's Minnesota Statutes of 1927, Chapter 41, and amendments thereto, and such specific provisions and additions thereto as are provided in this act, all lands in the Mud Lake area in Marshall County desirable for a migratory wild fowl refuge and such other lands within the state as the Federal government may desire to acquire for conservation purposes, the acquisition of which shall first have been approved by the state executive council. (Act Mar. 18, 1935, c. 52, §1.)

Preamble to Laws 1935, c. 52.

Whereas, under and pursuant to the provisions of the National Industrial Recovery Act, the United States of America has initiated a program providing for the general welfare, to conserve national resources and to rehabilitate people living on sub-marginal land, and to carry such program into effect, has created The Land Program of the Federal Emergency Relief Administration, and

Whereas, the Administrator of the Federal Emergency Relief Administration and the Director of the Land Program of the said Administration have approved a project for the acquisition and establishment of a migratory water fowl refuge in Marshall County, Minnesota, in the area known as Mud Lake, and

Whereas, the Bureau of Biological Survey, United States Department of Agriculture, has approved a program for the construction of certain public works thereon involving the expenditure of funds in excess of \$100,000, and

Whereas, the Director of said program has allocated for such purpose a sum not to exceed \$369,000 for the purchase of approximately 52,713 acres of land in said area in Marshall County, and

Whereas, the State of Minnesota is desirous of cooperating with the United States of America in its program providing for the general welfare, to conserve natural resources and to rehabilitate people living on sub-marginal lands and to expedite the purchase of the lands necessary for the creation of said migratory water fowl refuge, and

Whereas, the acquisition of said area in Marshall County by the Federal Government and the improving of said area will be of great benefit to the State of Minnesota in the rehabilitation of the occupants of said area and in furnishing needed work relief in that part of the State, and

Whereas, in order to enjoy the maximum benefit of the program as aforesaid it is necessary that such program be put into immediate force and effect and to that end it is desirable that the regular statutory procedure in eminent domain be modified in certain respects in order to expedite the acquisition and improvement of such lands and provide for the payment thereof.

See Act Apr. 17, 1937, c. 244.

This act is constitutional. Op. Atty. Gen. (817f), May 22, 1935.

5620-23. Mud lake acquisition revolving fund created.—There is hereby created a fund to be known as the Mud Lake Acquisition Revolving Fund. The sum of \$50,000, or so much thereof as may be necessary, is hereby appropriated for the purpose specified in this act from the fund created by Laws 1929, Chapter 332, Section 6 [§5536-13], and designated in the records of the state auditor as "Public Shooting Grounds Fund." Such appropriation shall be made available immediately and shall be credited to such Mud Lake acquisition Revolving Fund. The fund thus created shall be used to pay the expenses of condemnation, including publication fees, sheriffs' fees, commissioners' and witnesses' fees, and compensation and mileage of jurors in cases appealed from the awards of the commissioners, and all other expenses incidental to such proceedings, not to exceed a total of \$11,100, and to pay awards to the owners of the lands so taken. (Mar. 18, 1935, c. 52, §2; Jan. 24, 1936, Ex. Ses., c. 78, §1.)

5620-24. Lands to be conveyed to United States.—All lands acquired under the provisions of this act shall be sold and conveyed to the United States of America by the commissioner of conservation for the amount which has been paid out therefor, including the costs incidental to the proceedings for the condemnation thereof. All monies received from the United States of America in payment for such lands shall be deposited in such revolving fund. When the acquisition of land for such Mud Lake project shall

have been completed, and all the costs and expenses incidental thereto shall have been paid, and the United States shall have paid in full force for such land, monies in such fund shall be transferred back to said Public Shooting Grounds Fund from which it was appropriated and the Mud Lake acquisition revolving fund shall cease to exist: Provided, that such transfer shall not be made prior to January 1st, 1937; and provided, that in the event that the acquisition of lands for other federal projects authorized by the state executive council shall then be in progress, such Mud Lake Acquisition Revolving fund shall be maintained until such acquisitions have been completed. (Act Mar. 18, 1935, c. 52, §3.)

5620-25. Unexpended balances may be used for other projects.—In the event that additional funds are made available by the Federal government at any time prior to January 1st, 1937, for the acquisition of lands in projects other than the Mud Lake project, the provisions of this act shall apply to and govern such acquisition or acquisitions and any unexpended balance in the Mud Lake acquisition revolving fund may be used in furtherance of the acquisition of land involved in such project in the same manner and subject to the same limitations as monies in said Mud Lake acquisition revolving fund may be used in furtherance of the acquisition of land for the Mud Lake project: Provided, that each such project and the transfer of title to the land therein involved to the United States shall first receive the approval of the state executive council and the commissioner of conservation. (Act Mar. 18, 1935, c. 52, §4.)

This act is not applicable to proceedings for acquisition of land for Talcot Lake project in which federal government is providing money for construction purposes but not for acquisition of land. Op. Atty. Gen. (817h), Mar. 25, 1935.

5620-26. May exercise rights of eminent domain.—The eminent domain statutes of this state and all acts and amendments thereto and the provisions of this Act shall be liberally construed for the purpose of making possible an expeditious procedure in the condemnation proceedings authorized by this act. (Act Mar. 18, 1935, c. 52, §5.)

5620-27. Commissioners must be residents of state.—The commissioners provided for by Mason's Minnesota Statutes of 1927, Section 6543, shall be residents of the state but need not be residents of the county in which is located the land which the state is seeking to acquire. (Act Mar. 18, 1935, c. 52, §6.)

5620-28. Court to determine indebtedness—Distribution of tax collections.—The court shall determine the amount of the bonded and floating indebtedness of each township and school district, lying wholly or partly within the area covered by any condemnation proceedings under this act, and the amount of cash available, and to become available from the payment or settlement of delinquent and current taxes, for the liquidation thereof, and shall deduct from the award of damages made to each owner of lands taxable for the payment of such indebtedness his pro rata share of the remainder of such indebtedness, computed upon the basis of the relative assessed value of his land to the total assessed value of all land taxable for the payment thereof, and the total amount of such deductions shall be paid to such township or school district, and shall be applied in redemption of such indebtedness.

Provided, that the foregoing shall not apply to any county wherein there are more than forty-seven full or fractional townships, and whose population, according to the last census, is not less than 15,000 or more than 20,000 and whose assessed valuation, exclusive of monies and credits, is not less than \$5,000,000 or more than \$15,000,000, but in any such county, all money available or to become available from the payment or settlement of delinquent or current taxes from any of the land included within the entire area to be acquired by any condemnation

proceeding instituted and now pending for the acquisition of land under this act, shall be placed in a separate fund, and shall be used, apportioned and distributed as follows: The indebtedness of any school district or township lying wholly or partially within said area in such county above described shall be paid out of said fund to the extent that the assessed value of the land of such district or township lying within said project bears to the assessed value of all the land within such school district or township based upon the last assessment prior to the filing of the petition for the condemnation of said land and any balance remaining after the payment of such indebtedness shall be apportioned as follows: 10% to the state, 40% to the county, 20% to the townships and 30% to the school district. That part of the fund available or thus to become available to the several school districts and townships, after the payment of the indebtedness as provided for above, shall be proportioned among the respective school districts and townships located wholly or partially within the area in such county whether such school districts are unorganized or not in the same proportion as the assessed value of the land lying in each school district or township within the area of the project, bears to the assessed value of the land lying within the entire project, based upon the last assessment prior to the filing of the petition for the condemnation of said land, but the amount of indebtedness of any such school district or township which has been thus paid out of said fund shall be deducted from the amount that such school district or township would receive by such division and credited to the county revenue fund. Where the entire township within such county lies within the area of said project, or the township has become disorganized, or has ceased to function as a municipality, the money due or thus to become due the township and all the remaining balance of funds available or thus to become available to townships under the provisions hereof shall be paid into the general revenue fund of the county within which the township is located. Where the entire school district within such county lies within the area of the project or the school district has become disorganized prior to the distribution of the funds herein specified, the money thus becoming due the school district from the project, together with all the remaining balance available or thus to become available to unorganized school districts under the provision hereof shall be deposited with the County Treasurer to the credit of the unorganized school district. (Mar. 18, 1935, c. 52, §7; Feb. 5, 1937, c. 15, §1.)

5620-29. Procedure.—In lieu of the procedure authorized by Mason's Minnesota Statutes of 1927, Section 6552, the procedure under this act shall be as follows:

All damages allowed under this act, whether by the commissioners or upon appeal, shall start to bear interest thirty days after the time of the filing of the commissioners' report. Unless otherwise extended by the order of the court, if the award be not paid to the land owner or into court within 90 days after the filing of the commissioners' report or, in case of an appeal, be not paid within 90 days after final judgment has been entered on such appeal, the court, on motion of the owner of any tract of land included in the proceedings may vacate the award and dismiss the proceedings as to such land. In such event, the owner of the land may upon notice of motion before the court recover reasonable costs and expenses including reasonable attorney's fees. At any time prior to the payment of the award for the land into court or otherwise and, in the event that there is no appeal, less than 90 days after the filing of the commissioners' report and in case there is an appeal, less than 90 days after the final judgment has been entered on such appeal, the petitioner may dismiss the entire proceedings or any part thereof or any tract there-

from without liability for costs, expenses or attorney's fees: Provided, that in case the petitioner shall have taken possession of any parcel of land and shall thereafter dismiss the proceedings as to that parcel, damages shall be awarded for any damages resulting from such taking of possession. (Act Mar. 18, 1935, c. 52, §8.)

5620-30. Procedure.—In lieu of the procedure authorized by Mason's Minnesota Statutes of 1927, Section 6557-1, the procedure in condemnation proceedings under this act shall be as follows:

(a) The report of commissioners shall be filed with the clerk of district court within 90 days from the date of the order appointing such commissioners, unless the court at the request of the petitioner shall order an extension of the time for filing such report.

(b) At any time within ten days from the date of the filing of such report, any party to the proceedings may appeal from any award of damages embraced in said report, or from any omission to award damages, by filing with the clerk a notice of such appeal. Such notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and the grounds of the appeal. Upon appeal the prevailing party shall recover costs and disbursements. Upon request made by the petitioner such appeal shall be set for trial at either a general or special term of the court at a date as early as possible and in no event more than 30 days after the filing of notice of the appeal, except that the petitioner request an extension of time which shall be granted by order of the court.

(c) Payment of the damages awarded may be made or tendered at any time after the filing of said report. In all cases the petitioner may pay the amount of the award for any tract of land to the clerk of court to be by said clerk paid out under the direction of the court. Unless an appeal is taken within the time provided in this act from the award made by such commissioners for any tract of land the payment so made to the clerk shall be deemed a payment of the award for such tract of land and shall entitle the petitioner to present to the court for approval the certificate described in subsection (d) following.

(d) The notice of filing of report provided for in Section 6545, Mason's Minnesota Statutes of 1927, shall be dispensed with; as shall also the final decree provided for in Section 6553, Mason's Minnesota Statutes of 1927, provided the attorney for the petitioner make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of payment of all awards or judgments in relation thereto, which certificate upon approval thereof by the court shall establish the rights of the petitioner in the lands taken and shall be filed with the clerk and a certified copy thereof filed for record with the register of deeds. Such record shall be notice to all parties of the title of the state to the lands therein described. The awards of the commissioners may be filed severally upon any tract or number of tracts and after payment and expiration of the time for appeal thereon as hereinbefore provided, such certificate or certificates of titles may be presented for the approval of the court.

(e) The commissioner of conservation, unless they are lands already devoted to a public use, at any time after the filing of a petition for the condemnation of any lands under this act, may take possession of such lands.

(f) Whenever a condemnation proceeding shall have been commenced by the filing of a petition under this act, in order to expedite the acquisition of title to any parcel or parcels of land included in such proceeding, the commissioner of conservation may certify to the court the necessity of the immediate taking of title to such parcel or parcels of land and the court may thereupon approve an appropriate final certificate certifying that title to such parcel or parcels has vested in the state, provided that the state shall first have made adequate provision for the payment

of just compensation for such parcel or parcels by the deposit with the clerk of court of money, or a surety bond conditioned for the payment to the owner or owners of such parcel or parcels of the final award therefor, such deposit of money or of a surety bond to be in such amount and, as to the surety bond, in such form as the court shall deem adequate to insure payment to the land owners of the full amount of the final award. The court may direct the commissioners as to the order in which they shall view and appraise the lands taken or to be acquired. (Act Mar. 18, 1935, c. 52, §9.)

5620-31. Commissioners to forfeit pay when.—In case commissioners appointed under this act shall fail to file their awards within the time required they shall forfeit all right to reimbursement for their services. (Act Mar. 18, 1935, c. 52, §10.)

5620-32. Provisions severable.—The provisions of this act shall be held to be severable. In case any provision hereof shall be held unconstitutional no other provision hereof shall thereby become inoperative. (Act Mar. 18, 1935, c. 52, §11.)

5620-33. Inconsistent acts repealed.—All acts and parts inconsistent herewith are hereby superseded, amended or modified so far as may be necessary to give full force and effect to the provisions of this act. (Act Mar. 18, 1935, c. 52, §12.)

5620-34. Certain claims to be paid from delinquent tax funds.—In any county in this state wherein there now is or wherein there hereafter may be a county board of education for unorganized territory, and wherein condemnation proceedings are brought under Chapter 52, Laws of 1935, or where such proceedings are now pending, the county board of education by unanimous vote, with the written opinion of the county attorney, that such claim is a legal outstanding obligation of the territory formerly included in any dissolved school district, may audit, allow and pay any such incurred outstanding obligations of any dissolved school district within its territory out of funds received from the payment of delinquent taxes upon land within such condemnation proceedings, in the same manner as though said indebtedness had been originally incurred by said county board of education. (Apr. 17, 1937, c. 244, §1.)

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

PART VIII.—BREEDING WILD ANIMALS AND FISH

5621. Non-resident big game licenses—Coupons.

Department may set aside spawning beds and post them against fishing without consulting owners of adjoining property. Op. Atty. Gen. (208a), Jan. 6, 1938.

5625-1. Permits to engage in raising wild animals.

—The owner or lessee of any lands or private waters within the State of Minnesota, suitable for breeding and propagating wild animals, fur bearing animals and game birds shall have the right to establish, operate, and maintain thereon a farm or ranch for the purpose of breeding, propagating, and dealing in such animals or game birds and their pelts or products, upon enclosing said lands or private waters or portions thereof, as hereinafter provided, and upon complying with the provisions thereof of this act and obtaining a license therefor, as hereinafter provided: provided that the breeding or propagating of or dealing in deer shall not be permitted under this act. The term "private waters," as used herein, shall mean all bodies of water or streams, whether meandered or not, of a normally shallow, swampy, marshy or boggy character, not navigable in fact and no longer of any substantial beneficial use to the general public, and where all of the land immediately abutting upon, surrounding or bordering on said waters, together with all riparian rights incident thereto, are owned or held under written lease from the owner by the person, firm or corporation making application hereunder. Lands or private waters to be used as a farm

or ranch for raising wild animals, fur bearing animals or game birds shall have suitable enclosures approved by the Director of Game and Fish for confining the respective kinds of wild animals, fur bearing animals or birds to be raised thereon. ('27, c. 423, §1; Apr. 24, 1929, c. 366, §1; Apr. 4, 1935, c. 115, §1.)

Op. Atty. Gen. (210d-2), June 26, 1934; note under § 5625-13(2).

A person who has raised deer lawfully under a license issued prior to the passage of Laws 1929, c. 366, §1, may now lawfully dispose of the animals. Op. Atty. Gen., July 31, 1931.

Owner or lessee of land within state may buy or sell pheasants or other game birds (except Hungarian partridge) for stocking or breeding purposes, but cannot buy game birds without state for food purposes. Op. Atty. Gen., May 24, 1933.

English call ducks are not game birds and no license for breeding is required. Op. Atty. Gen., Sept. 26, 1933.

Licenses are necessary for the breeding of silver foxes, notwithstanding that federal government considers them domestic animals. Op. Atty. Gen., Dec. 30, 1933.

Permits may be issued for keeping and raising of wolves. Op. Atty. Gen. (210d-8), May 17, 1934.

Where persons admit having been engaged in breeding fur-bearing animals for a number of years without a license, it is necessary that department collect license fees for previous years before issuing license for current year. Op. Atty. Gen. (210b), June 28, 1934.

One desiring to keep a golden pheasant as pet should obtain a special permit from a director of game and fish. Op. Atty. Gen. (209f), Dec. 10, 1936.

Holder of fur breeder's permit using otters for taking fish violates the law, and otters so used may be confiscated and license revoked. Op. Atty. Gen. (211a-7), Sept. 1, 1937.

5625-2. Application must be made to Commissioner of Game and Fish.—(1) A verified application for such license in triplicate shall be filed by such owner or lessee with the director of Game and Fish, describing the lands or private waters which the applicant desires to use for the purposes specified, setting forth the title or leasehold of the applicant and the number of acres enclosed, stating the approximate acreage of land and water separately, and with a suitable map or diagram of the same, showing conditions therein, specifying the kinds of wild animals, fur bearing animals and game birds which the applicant desires to keep and raise, and stating the number and kind thereof already in his possession, if any, and that he obtained the same in lawful manner.

(2) If the applicant is a corporation, the application shall be made in the name of the corporation by the president or authorized managing officer thereof, and shall set forth the names and addresses of all the officers, directors, and stockholders of the corporation, stating the number and par value of the shares of stock owned by each. If the applicant is a partnership or unincorporated association, the application shall be made by an authorized partner, member, or managing officer, and shall set forth the names and addresses of the members of the partnership or association and their respective financial interests and other rights of ownership and control therein.

(3) Upon the filing of such application the director shall forthwith investigate the same, and may require the applicant to produce satisfactory evidence of the facts therein stated and of compliance by the applicant with the provisions of this act. If upon examination it shall appear that the applicant is the owner or lessee of such lands and of such waters and the riparian rights therein, as the case may be, and intends in good faith to establish, operate, and maintain a farm or ranch for the raising of such wild animals, fur bearing animals and game birds in accordance with this act, and has complied with all the provisions of this act, the director shall issue a license to the applicant, describing the lands and waters and certifying that the licensee is lawfully entitled to use the same for breeding, propagating, trapping, and dealing in the kind or kinds of wild animals, fur-bearing animals and the game birds therein specified.

(4) When such license has been granted the licensee shall become the owner of all protected fur

bearing animals of the kind or kinds specified in the license lawfully held in captivity on such lands or waters as provided by this act and of all their offspring remaining thereon; provided that as to muskrats and/or beaver, the provisions of Mason's Minnesota Statutes of 1927, Section 5625-3, shall be complied with; provided further, that the licensee shall not become the owner of any wild game birds found upon his premises, and no such game birds shall be confined or taken thereon except as otherwise expressly permitted by this act or other provisions of law.

(5) Such license or any interest therein shall be transferable with the title or leasehold of the lands for which the same was granted, or a corresponding interest therein, upon the conditions hereinafter prescribed. No such transfer shall be valid unless and until a verified written report thereof is made in triplicate to the director by the licensee making the transfer, accompanied by a copy of any deed, assignment, lease, or other instrument transferring the corresponding title or leasehold in the premises. No transfer of any interest in any license less than the whole thereof shall be valid except to a bona fide partner or associate in the ownership and operation of the farm or ranch for which the license was issued, and unless such transfer is accompanied by a deed, assignment, lease, or other proper instrument conveying to the transferee a corresponding undivided or joint interest in the title or leasehold of the entire farm or ranch.

(6) No grantee or lessee of any portion of the area of any such farm or ranch less than the whole thereof, or of any interest in such portion, shall acquire therewith any right or interest in any such license on such farm or ranch; provided, that in case of the transfer of the title or leasehold of a portion of such farm or ranch which complies with the original requirements for obtaining such license, the entire license may be transferred therewith. In case of any sale, lease, or other transfer of any portion of such farm or ranch where the entire license is not transferred therewith, the licensee shall immediately make a verified written report thereof in triplicate to the Director of the Division of Game and Fish, accompanied by a copy of the deed, lease, or other instrument evidencing the transaction. After any such sale, lease, or transfer the license for such farm or ranch shall be valid upon the remaining portion thereof only in so far as such remaining portion complies with the original requirements for obtaining such license, as herein provided, and in so far as such remaining portion fails to comply with such requirements, such license shall be void.

(7) One copy of every application for license and of every report of transfer filed with the Director of Game and Fish, as hereinbefore provided, shall be by him transmitted to the commissioner of securities.

(8) All licenses heretofore issued by the commissioner of game and fish under Chapter 423, General Laws 1927 [§§5625-1 to 5625-14], under which the licensees have fenced and enclosed lands and waters in accordance with such licenses, are hereby validated and they shall remain and be in full force and effect, provided the present holder of any such license and his successors and assigns shall comply with the provisions of this act and all amendments thereof. ('27, c. 423, §2; Apr. 24, 1929, c. 366, §2; Apr. 4, 1935, c. 115, §2.)

A game breeder operating under a license under this section may sell game birds raised by him to hotels and restaurants for food purposes. Op. Atty. Gen., Oct. 26, 1931.

Permit for breeding frogs issued before passage of Laws 1927, c. 423, may be renewed under this section. Op. Atty. Gen., Apr. 18, 1933.

5625-3. License to purchase animals on land.—Upon the filing with the commissioner of an application for a license for a muskrat and/or beaver farm or ranch, the commissioner shall appoint a qualified game warden, the applicant shall appoint one person,

and these two shall select a third person to act as a board to go upon the lands or waters embraced within the license and determine as nearly as possible the number of muskrats and/or beaver thereon at the time of the granting of the license. The necessary expenses of all members of such board shall be paid by the licensee. Within ten days after the date of such determination, the licensee shall pay to the commissioner of game and fish 50 cents for each muskrat, and \$10.00 for each beaver so found on said lands or waters. When such payment has been made, the licensee shall become the owner of all the muskrats and/or beaver on said lands or waters and all of their offspring. ('27, c. 423, §3; Apr. 24, 1929, c. 366, §3.)

This section as amended provides the only fees that may be charged for taking wild animals alive for breeding purposes. Op. Atty. Gen., June 25, 1929.

A resident catching fox cubs may not dispose of them for breeding purposes, except that they have been pen bred for two successive generations, and a license is needed to retain them for that purpose. Op. Atty. Gen. (210b-3), July 2, 1934.

5625-4. Licensee must manage and control land.—

(1) The holder of any license issued pursuant to this act shall have the right to manage and control the lands or waters described therein and all fur bearing animals or game birds of the kind or kinds specified in the license, lawfully enclosed or held in captivity thereon as provided by this act, and to take and trap the same at any time or in any manner which he sees fit and deems to the best advantage of his business, and to sell and transport the same or the pelts or products therefrom at any time. Such license shall be *prima facie* evidence in all courts and proceedings of the lawful right of the licensee therein named or his or its successors or assigns, for the term of the license, to establish and operate a farm or ranch for the raising of the kind or kinds of fur bearing animals or game birds specified in the license upon the premises described therein, and shall entitle the licensee therein named or his or its successors or assigns to the exclusive right for and during said term to breed, propagate, trap and deal in such fur bearing animals or game birds, their pelts and products and to the exclusive and sole ownership of any property and of such fur bearing animals or game birds caught or taken thereupon, all subject to the provisions hereof. ('27, c. 423, §4; Apr. 24, 1929, c. 366, §4.)

(2) No foxes or mink shall be sold in this state by licensed breeders for breeding or propagating purposes that have not been pen bred for two successive generations, according to law. ('27, c. 423, §4; Apr. 24, 1929, c. 366, §4(2), and Apr. 25, 1931, c. 389, §1.)

(3) No sale or contract for the sale of any such live fur bearing animals or birds by any such licensee shall be valid unless and until the particular animals or birds affected by such sale or contract are actually delivered to the purchaser, or, if not delivered, unless and until such animals or birds are segregated, identified, and kept separately, subject to the rights of the purchaser under the sale or contract, which sale or contract shall be in writing and one copy thereof shall be mailed to the commissioner of Game and Fish within 30 days thereafter. After such fur bearing animals shall have been segregated, and identified, they and their offsprings shall become domesticated animals and shall be assessed as personal property of the purchaser, and shall be kept under any contract or arrangement for ranching that the purchaser may deem to his best interest, and subject to the rights of the owner at all times under this act. Rancher must notify owner within fifteen days of the death of animal, and notify owner of number in increase before June 20th, each year. No animal being ranched in Minnesota can be removed to another State without permission from the owner. Officials must have the right to count and inspect at all times,

except during the mating and breeding seasons. ('27, c. 423, §4; Apr. 24, 1929, c. 366, §4(3), and Apr. 25, 1931, c. 389, §2.)

(4) No live beaver shall be transported for any purpose unless the person transporting the same shall first obtain a special permit therefor from the director of game and fish. Any person desiring such permit shall make a verified written application to the director of game and fish setting forth the number of such beaver, the place where the same are kept, how, where and from whom and under what authority the same were obtained, the date and place from which it is proposed to transport the same, the method and route of transportation, the place of destination, the name and address of the consignee, the purpose for which the beaver are intended and the authority of the consignee to receive, keep, and dispose of the beaver for such purpose. If all the provisions of the law relating to such beaver and to the proposed transportation and disposition thereof have been and will be complied with, the director of game and fish shall grant such special permit, and shall issue therewith suitable tags which shall be affixed to the cages or other containers by the director of game and fish or his duly authorized representative in which such beaver are transported. (As amended Apr. 24, 1929, c. 366, §4; Apr. 21, 1933, c. 392, §17.)

(5) No licensee under this act shall keep alive any beaver which has been permanently injured by trapping or otherwise, but all such beaver shall be promptly killed as soon as such injury is discovered, and disposed of according to the provisions of this act; provided, that this shall not apply to any injured beaver lawfully in possession of any such licensee at the time of the passage of this act, upon condition that such licensee shall within sixty days after the passage of this act report to the commissioner of game and fish the number and description of such injured beaver in his possession. ('27, c. 423, §4; Apr. 24, 1929, c. 366, §4.)

Game breeder operating under license may sell game birds raised by him to hotels and restaurants. Op. Atty. Gen., Oct. 26, 1931.

Dealer cannot sell wild mink imported from other states where not protected. Op. Atty. Gen., July 19, 1933.

5625-5. Shipment of pelts and eggs—tagging pelts, etc., sold or transported.—When any pelts or products of any protected animals or game birds raised by any licensee under the provisions of this act are sold or transported, a tag, in duplicate form, shall be attached thereto, to be furnished by the director of game and fish to the licensee at cost, not exceeding one cent each. Such tags shall be issued for each calendar year and shall expire on the thirty-first day of December in each year. Such tags so issued by the director shall be numbered consecutively and issued in duplicate and shall be executed in duplicate by the licensee, showing the date of shipment of such pelts or products of any such animals or game birds, the name and address of the person to whom shipped, the license number and the name and address of the licensee, and the kind of pelts, game birds or products so shipped. The duplicate of such tag so attached shall be mailed immediately to the Director of Game and Fish. Failure to attach such tags to any pelts or products of any protected animals or game birds raised under such license shall cause such pelts or products of any protected animals or game birds to be subject to confiscation. ('27, c. 423, §5, Apr. 21, 1933, c. 392, §16; Apr. 4, 1935, c. 115, §3.)

Op. Atty. Gen., May 23, 1933; note under §5547.

Silver fox pelts are still to be tagged by game warden and his representatives, notwithstanding federal government has decreed them to be domestic animals. Op. Atty. Gen., Dec. 30, 1933.

Animals are subject to confiscation when found away from fur farm without being properly tagged. Op. Atty. Gen. (211a-7), Sept. 1, 1937.

5625-6. Licenses—fees.—The holder of any such license for the raising of wild animals or fur bearing animals only shall pay an annual license fee of three dollars for any such farm or ranch of ten acres or

under, and an additional fee of 15 cents per acre for any additional land or waters actually devoted to the raising of wild animals or fur-bearing animals of any kind or kinds specified in the license: provided that such person may be licensed to raise both fur-bearing animals and game birds for an additional fee of \$2.00. The holder of any such license for the raising of game birds only shall pay an annual license fee of \$5.00, regardless of the acreage involved. Such license fees shall be paid on or before the first day of March of each year and shall expire on the thirty-first day of December of each year, but shall be renewed from year to year upon payment by the licensee of the annual license fee, subject to the provisions of this act. The operation of said game bird or fur farms and the raising and propagation of such wild animals, game birds and fur-bearing animals without having secured a license so to do, and failure to comply with the terms of this act and to pay the license fee designated herein, shall constitute a misdemeanor, and any animals found upon the premises of any such game bird or fur farm shall be subject to confiscation. ('27, c. 423, §6; Apr. 24, 1929, c. 366, §5; Apr. 4, 1935, c. 115, §4.)

5625-6a. Inconsistent acts superseded, modified or amended.—All acts and parts of acts inconsistent herewith are hereby superseded, modified or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 4, 1935, c. 115, §5.)

5625-7. Licensee to mark boundary of farm.—Within thirty days after the date of the issuance of any such license the licensee shall erect posts or stakes at intervals of not more than twenty rods within the boundary of the lands or waters embraced in said license, whenever the same are not already enclosed, and shall post and maintain upon said posts, stakes or other enclosures at intervals of not more than twenty rods, notices furnished by the commissioner of game and fish proclaiming the establishment of a farm or ranch of the kind specified in the license. For such notices the licensee shall pay to the commissioner of game and fish the sum of 25 cents each. ('27, c. 423, §7; Apr. 24, 1929, c. 366, §6.)

5625-8. Trespassers.—(1) Any person other than the licensee or his agents who shall hunt, trap, take or attempt to take fur bearing animals of any kind or kinds specified in the license upon any lands or waters described in any such license shall be liable to the licensee in the sum of twenty-five dollars (\$25.00) in addition to all damages which he may do to said farm or ranch or to such fur bearing animals or game birds and property thereon, to be recovered by such licensee in a civil action.

(2) All lands and water heretofore or hereafter enclosed and fenced under the provisions of this act shall become and be permanent waterfowl refuges on which hunting and shooting of waterfowl is prohibited. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor. ('27, c. 423, §8; Apr. 24, 1929, c. 366, §7.)

5625-9. Licensee to report annually.—(1) On or before the first day of March of each year such licensee shall make a report verified by affidavit to the commissioner of game and fish, covering the period from first day of January to the thirty-first day of December of the previous year, upon blanks furnished by the commissioner, stating the number of the license and the total number of fur bearing animals or game birds of each kind specified in his license killed, transported or sold from the farm or ranch operated under such license.

(2) The commissioner and any game warden expressly authorized by the commissioner, or any other officer so authorized, shall have authority at all reasonable times, with or without a warrant to enter, inspect and search the premises of any licensee under this act, including the premises described in the li-

cence and all other premises used by the licensee in any manner for taking, keeping, storing, buying, selling, transporting, shipping, or otherwise disposing of such wild animals or birds or their skins or other parts or products; provided, that such inspection or search shall not be made at such time or in such manner as to interfere with or disturb the breeding of any animals or birds kept or raised under such license on such premises. ('27, c. 423, §9; Apr. 24, 1929, c. 366, §8.)

5625-11. Additional license.—(1) Any person desiring to obtain a license for raising fur bearing animals or game birds of a kind specified in this act upon the same premises already licensed for raising such fur bearing animals or game birds of another kind specified in this act and for which a license fee has already been paid, shall be entitled to obtain a license for the raising of such additional kind or kinds of fur bearing animals or game birds upon such premises upon making application therefor and complying with the provisions of this act as hereinbefore provided, but no additional license fee shall be charged therefor, and the raising of different kinds of fur bearing animals or game birds on the same premises shall be permitted upon the payment of one license fee for said premises. ('27, c. 423, §11; Apr. 24, 1929, c. 366, §9.)

5625-12. Violations—Penalties.—Any holder of a license issued pursuant to this act who shall, during the term of such license, violate any of the provisions of this act, or who shall, during the term of such license, unlawfully take, buy, sell, transport, ship, or have in his possession any fur bearing animal or game bird of any kind of the kinds specified in his license, or any part thereof, and any person who shall sell, transport, or ship any such fur bearing animal or game bird or any part thereof, falsely pretending or representing the same to have been raised by any licensee under any such license, or who shall unlawfully use any tag issued by the commissioner of game and fish pursuant to this act upon or for any fur bearing animal or game bird or part thereof, or who shall unlawfully buy, sell, transport, ship or have in his possession upon the premises of any such licensee any such fur bearing animal or game bird, or who shall violate any provision of this act for which no penalty is expressly prescribed, shall be guilty of a misdemeanor, and shall be punished upon conviction by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or by imprisonment in the county jail, not exceeding ninety days. ('27, c. 423, §12; Apr. 24, 1929, c. 366, §10.)

Wild animals raised without fur breeder's license may be seized but it is more expeditious procedure to cause arrest of offenders for not having license. Op. Atty. Gen., Mar. 16, 1934.

5625-13. Permit to capture wild animals.—(1) Protected wild fur bearing animals may be taken alive only by licensed trappers during the open season therefor, or under special permit in the case of beaver or other animals for which such permit may be required by law. Any person so taking such animals alive may keep the same for breeding purposes only in case he is the holder of a license therefor as provided by this act, or may keep such live animals for sale, subject to compliance with all the provisions of law relating to the possession, sale, or other disposition of such protected wild animals; provided, that in so far as it is impracticable to apply to such live wild animals any requirements of law for tagging, stamping, or sealing wild animals or parts thereof, the commissioner may permit such requirements to be dispensed with upon compliance with such provisions for reporting, identifying and marking such live wild animals as he may by regulation prescribe. Subject to compliance with such laws, such live animals may be sold and transported, or otherwise disposed of, within or without the state; provided that within the

state the same may only be sold to and purchased or possessed by the holders of licenses under this act covering such animals or to persons otherwise authorized to possess such animals alive according to law.

(2) Protected wild animals of any kind may be taken for scientific, educational or exhibition purposes, or for use as pets and may be possessed, transported or otherwise disposed of by sale or in connection with such purposes only under special permits issued therefor by the director of game and fish and subject to such regulations and the payment of such fees as the director of game and fish may prescribe, provided, however, that the director of game and fish at his discretion may issue permits also for the slaughtering of such animals and the use by the owner, the sale or disposal by gift of the carcasses of such animals. (As amended Apr. 24, 1929, c. 366, §11; Apr. 21, 1933, c. 392, §18.)

(3) No person shall take, possess, transport, buy, sell, or otherwise dispose of any protected wild animal alive except as permitted by this act or as otherwise expressly permitted by law. ('27, c. 423, §13; Apr. 24, 1929, c. 366, §11.)

Laws 1933, c. 392, §18, purports to amend "Laws 1929, chapter 366, section 13, subdivision (2)." There is no section 13 in the amended act, but the subject-matter corresponds to paragraph 2 of section 11 of that act.

The only fees that may be charged for taking wild animals alive for breeding purposes are those prescribed by §5625-3, or §5543. Op. Atty. Gen., June 25, 1929.

A non-resident may be given a permit to keep a pet deer within the state. Op. Atty. Gen., Apr. 22, 1933.

One desiring to keep a golden pheasant as pet should obtain a special permit from a director of game and fish. Op. Atty. Gen. (209f), Dec. 10, 1936.

(2) Department of conservation may not dispose of or permit transportation of deer in exchange for game of other states, unless the disposal and transportation is done strictly for scientific, educational or exhibition purposes or for use as pets. Op. Atty. Gen. (210d-2), June 26, 1934.

A person securing a live fox taken from the wild may be granted a permit to keep it as a pet. Op. Atty. Gen. (210b-3), July 2, 1934.

PART IX.—COMMISSIONER AND WARDENS

5629. Superintendent of fisheries, wardens, game refuge patrolment, and office and scientific assistants—Etc.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

5630. Commissioner—General powers and duties—Statistics—Bulletins.

(3) To take fish or fish eggs, or to authorize such taking from any of the public waters of this state in any manner during the open or close season for the purpose of stocking other waters herein, and may sell such fish as are necessarily killed in taking fish eggs and may sell suckers, redbhorse, or mullets, taken in connection with such spawning, the proceeds of the sale of such fish to be paid into the state treasury as required of other receipts of the department, provided, however, that no fish or fish eggs shall be placed in any waters unless such waters are accessible to the public for fishing purposes. (As amended Apr. 25, 1931, c. 376, §1.)

(4) To collect, compile, disseminate and publish statistics and information germane to the purpose of this act and to the Department of Conservation, including the publication of a department journal or magazine for the publication of matter pertaining to conservation only, to fix and determine the name and the annual subscription price thereof, and to accept for publication therein appropriate advertising material. The money received for such subscriptions and advertising material shall be paid into the State Treasury by the Commissioner and the amount thereof is hereby annually appropriated to the Game and Fish Department for the purpose of defraying the cost of the editing, publication and mailing thereof, provided, however, that said journal or magazine shall be self sustaining; that no funds to defray the cost

thereof shall be diverted from the Game and Fish Department, or from the general revenue fund of the state. Such journal or magazine shall be distributed free of charge only to schools, libraries, daily and weekly newspapers and trade publications published in Minnesota, the heads of State Departments and Bureaus of Minnesota and to the heads of Game and Fish Departments of other states.

The said department journal or magazine or any other bulletin or publication now issued, or that may at any time hereafter be issued, by the Department of Game and Fish, shall not be known or designated as the official publication of any sportsmen's organizations.

All acts and parts of acts inconsistent herewith are hereby modified and amended so far as may be necessary to give full force and effect to the provisions of this Act. (Act Apr. 21, 1933, c. 376, §§1, 2.)

(6) To set aside and reserve any of the waters of this state for the purpose of fish propagation, to open the season for taking any kind of fish specified by him in any lake lying within thirteen miles north of the zone line fixed by Section 5564 at the same time fixed by law for taking such fish in the southern zone, and by order designate certain streams as trout streams. The taking of fish from any of the waters so reserved and set aside, except as may be permitted by the commissioner, is prohibited. (As amended Apr. 25, 1931, c. 391.)

(8) A. To select, set aside, and reserve from lands owned by the state, and to acquire by condemnation, gift, lease or purchase, lands, or easements, riparian rights, or other interests therein or thereon, suitable for the purposes of establishing and reforesting large and small game public hunting grounds and game refuges, subject to the approval of the executive council, and shall establish thereon public hunting grounds, and shall set aside a portion of each of said public hunting grounds, not exceeding one-third (1/3) thereof, as a state game refuge, said portion so set aside to be surrounded on all sides by the remainder thereof, and shall pay the compensation for property acquired or damaged for such public hunting grounds and game refuges and the cost of improving and maintaining the same out of any funds, available for the purpose of this act, and shall make such rules and regulations as he shall deem necessary governing the conduct of persons on said public hunting grounds and game refuges.

B. And for the purposes of this act, the game and fish commissioner may acquire lands in any drainage district in this state or in any portion thereof, and may alter the flow of water in said drainage district by dykes, dams, or otherwise as may be deemed by him to be expedient or necessary, subject to the provisions of this act.

C. Title to any lands or interests acquired for the purposes of this act shall be taken in the name of the state, and condemnation proceedings for the acquisition thereof shall be governed by the laws relating to the condemnation of property for the state, subject to the provisions of this act. In such condemnation proceedings, in addition to service of the notice of the objects and contents of the petition and of the time and place of presenting the same as otherwise required by law, three weeks' published notice thereof shall be given within the time prescribed by law for service of such notice, in a qualified legal newspaper published at the county seat of each county in which any lands affected by the proceedings are situated. Any person owning lands or interests affected by any such proceeding and not made a party thereto may intervene therein at any time up to the time of presentation of the petition.

D. In case it is necessary to acquire by condemnation for any project under this act any public or private property situated in more than one county,

the following provisions shall apply: Proceedings for the condemnation of all such property may be had in the district court of the county in which the larger portion of the lands affected by such proceedings lie, and such court shall have complete jurisdiction thereof. The court shall appoint the same number of commissioners as otherwise prescribed by law for such proceedings, but shall appoint at least one resident of the county in which the proceedings are commenced and at least one resident of each other county affected, as far as possible. A certified copy of every attorney's certificate, decree of the court, or other instrument provided by law for finally establishing or evidencing the rights of the petitioner in the lands affected shall be filed for record with the register of deeds of each county in which any lands affected by such certificate, decree, or other instrument are situated but describing only so much of the lands affected as are situated in the county in which it is so filed.

E. The commissioner of game and fish may at any time after the filing of the petition for the condemnation of any lands or interests in lands for the purposes of this act take possession thereof, except as hereinafter provided, and he may at any time enter upon any lands and make surveys and examinations thereof for the purpose of determining whether the same are suitable or necessary for the purposes of this act.

F. No public highway or public drainage ditch or system shall be obstructed or damaged so as materially to impair or interfere with the maintenance or use thereof by any project under this act, and no other public property shall be taken or damaged by any such project, and no waters in any ditch, stream, lake, or other body of water or water course shall be interfered with or affected in any manner so as to take or damage any public or private property by flowage, seepage, drainage, or otherwise, unless the necessity therefor shall first be determined by the court in condemnation proceedings as herein provided, to which proceedings each county, city, town, village and private property owner affected shall be made a party. In case the project involves or necessitates the changing of any water level so as to take or damage any public or private property by flowage, seepage, drainage, or otherwise, the proposed new level and the extent to which and the manner in which any lands will be affected thereby shall be specified and shown in the petition and by plans filed therewith in the condemnation proceedings. In case the project involves or necessitates any material extension, alteration, or relocation of a public drainage ditch or system or of a public highway, the proposed extension, alteration, or relocation shall be described in a supplemental petition filed by the commissioner of game and fish in the condemnation proceedings in like form as provided by law for a petition for such extension, alteration, or relocation of a judicial ditch or highway, as the case may be, but without bond, and thereupon the court in which such condemnation proceedings are pending, whether the ditch or drainage system or highway, as the case may be, was originally established by such court or not, shall have complete jurisdiction in the premises as if such drainage ditch or system or such highway were a judicial ditch or highway, as the case may be, established by such court, and such petition shall have the same effect as a petition for the alteration, extension, or relocation of such judicial ditch or highway, as the case may be, filed according to the laws applicable thereto, respectively. Thereupon the court shall cause notice to be given and proceedings to be had upon such petition to effect the proposed alteration, extension, or relocation as part of and supplemental to the condemnation proceedings in like manner and with like effect as provided by law for the alteration, extension, or relocation of a judicial ditch or highway, as the case may be; provided, that the commissioners appointed by the court in the condemnation proceedings shall

act as viewers or commissioners, as the case may be, in such supplemental alteration, extension, or relocation proceedings. The court shall make its final order in such supplemental proceedings determining and specifying the nature and extent of the alteration, extension, or relocation to be made, and also determining and specifying to what extent the original drainage ditch or system or highway, as the case may be, shall be vacated and abandoned, and upon the completion of the project in accordance with such order the original drainage ditch or system or highway shall be deemed to be vacated and abandoned to the extent specified in such order.

A certified copy of such order shall be filed with the court or with the proper officer of the body by which the drainage ditch or system or highway was originally established, and shall be binding upon all parties thereto as if made therein according to the laws relating thereto. All compensation awarded in such supplemental proceedings for property taken or damaged shall be paid out of the moneys appropriated for the purposes of this act.

G. Whenever any lands or interests acquired or damaged under this act are subject to any unpaid taxes or assessments, such taxes or assessments shall be paid by the commissioner of game and fish out of and shall be deducted from the compensation payable for such lands or interests or for damages thereto, as the case may be, as far as such compensation is sufficient therefor, and thereupon such lands or interests shall be discharged from the lien of such taxes or assessments, whether the full amount thereof has been paid or not; provided, that in any case where such compensation is paid otherwise than as determined in judicial proceedings as herein provided, such lands or interests shall be discharged from such lien only to the extent of the amount actually paid thereon; and provided, further, that such discharge shall not affect the lien of any unpaid taxes or assessments, or portion thereof, on any undivided or remainder or other interests not taken under this act.

H. No public drainage ditch or system hereafter established shall be constructed or maintained so as to affect in any manner public hunting grounds or game refuge established under this act or any waters thereon, nor shall any public highway be constructed over or across any such public hunting grounds or game refuge, unless the commissioner of game and fish shall, after having determined that the maintenance and use of such public hunting grounds or game refuge will not thereby be injuriously affected, consent thereto.

I. The commissioner of game and fish shall maintain all public hunting grounds and game refuges established under this act in such manner as he shall deem best for the benefit of the public and for the protection and propagation of wild game therein, and may erect such structures and make such other improvements thereon as he deems necessary or proper for the maintenance thereof. ('19, c. 400, §124; '25, c. 380, §1; '25, c. 419, §1; Apr. 24, 1929, c. 319.)

J. All income which may be received from the sale of timber, hay stumpage, right-of-way leases, homesite and resort leases or any other special use permits from lands acquired by the state in accordance with the provisions of Mason's Minnesota Statutes of 1927, Section 5630, as amended by Laws 1929, Chapter 319, and Laws 1931, Chapters 376 and 391, and which have been designated or will be designated as public hunting grounds and game refuges, shall be paid to the director of game and fish and by him transmitted to the State Treasurer who shall credit such funds to a "Public Hunting Grounds and Game Refuges Revolving Fund" which fund is hereby created and the same is hereby annually appropriated for the purpose of defraying expenses in the management of such public hunting grounds and game refuges; provided, that this act shall not apply to state trust lands and lands acquired under the system of

rural credits, and provided further that should the income received from such sale of timber, hay stumpage, right-of-way leases, homesite and resort leases or any special use permits, be insufficient to defray expenses in the management of such public hunting grounds and game refuges, then the director of game and fish may transfer from the "Public Shooting Grounds Fund" to the "Public Hunting Grounds and Game Refuges Revolving Fund" sufficient funds to defray such management expenses.

K. 1. The State of Minnesota shall hereafter pay annually to each county in which there are now, or hereafter shall be situated, any public shooting grounds and game refuges, authorized by Mason's Minnesota Statutes of 1927, Section 5630, as amended by Laws 1929, Chapter 319, the sum equal to 35 per cent of the gross receipts of aforesaid public hunting grounds and game refuges, located within such counties which payment shall be received and distributed by the County Treasurer among the various funds of the county, the respective towns and school districts therein and wherein such grounds and refuges lie, on the same basis as if the payment had been received as taxes on such lands payable in the current year; provided, however, that this act shall not apply to state trust lands.

2. The director of game and fish shall annually draw warrants in favor of the respective counties entitled thereto upon the State Auditor for the proper amounts, and the State Treasurer shall pay such warrants from the "Public Hunting Grounds and Game Refuges Revolving Fund."

L. 1. Any person, who shall engage in conducting a taxidermist business, as the term is commonly understood, to prepare or mount any skins or dead bodies of any game birds or animals in this state for profit, shall first procure a license so to do from the director of game and fish, which may be granted to any person in the discretion of the director and for which license a fee of \$2.00 shall be paid to the director by such person. Licenses shall expire on the 31st day of December of the year in which issued. Any person engaged in conducting a taxidermist business who fails to procure a license so to do shall be guilty of a misdemeanor.

2. Any taxidermist who shall mount specimens of game animals, birds or fish, shall keep a register in which a list of the names of all persons who furnish him with raw or unmounted specimens shall be kept, together with the species of bird or animal received, and when and where such bird or animal was killed, and such taxidermist shall be required to exhibit such register, together with all unmounted skins or specimens in his possession to the director or his authorized agent, upon demand. Any person failing to do so shall be guilty of a misdemeanor.

3. On proof that any holder of any taxidermist license has violated any of the provisions of this chapter, his license shall be revoked and no license of the same kind shall be issued to such person for a period of one year after the revocation of such license.

4. The provisions of this chapter shall not, however, apply to persons who have been issued permits by the director under the terms of Section 5626, Mason's Minnesota Statutes of 1927. (Added Apr. 21, 1933, c. 392, §22.)

The title to Act Apr. 21, 1933, c. 392, does not enumerate §5630 as one of the sections amended. See note under §5505.

Authority given to modify statutory requirements is limited to authority to increase rather than decrease protection, and §5569 cannot be modified so as to permit the taking of sturgeon in certain inland waters. Op. Atty. Gen., Oct. 26, 1931.

Diversion of funds. Op. Atty. Gen., Sept. 27, 1933. Department may set aside spawning beds and post them against fishing without consulting owners of adjoining property. Op. Atty. Gen. (208a), Jan. 6, 1933.

Commissioner of conservation has authority under §6602-51, et seq., to construct, reconstruct, repair, remove and abandon dams, reservoirs, and control structures in waters of Thief Lake conservation project area established in proceedings under §5030 pursuant to a district court order restoring Thief Lake to elevation 1163

ft. above sea level and abandoning judicial ditch No. 21. Op. Atty. Gen., (273b), May 25, 1933.

Fees set aside for use of game and fish commissioners may be allocated to the commissioner of conservation for construction of a fish hatchery as a federal aid project. Op. Atty. Gen. (211a-5), Aug. 3, 1933.

(4). Act took effect as of Apr. 22, 1932. Op. Atty. Gen., May 9, 1933.

New publication will be entitled to amount of all prepaid subscriptions. Id.

Word "commissioner" does not refer to head of game and fish division, as new magazine is to be publication for entire conservation department. Id.

Legislature intended that publication was to be journal for entire department of conservation and be self-sustaining. Op. Atty. Gen., June 1, 1933.

Any department of state is authorized to subscribe to Minnesota Conservationist as part of their educational work. Op. Atty. Gen., Aug. 5, 1933.

(5). Act authorizing conveyance to city of Granite Falls of state fish hatchery property there situated. Laws 1931, c. 236.

Conservation commissioner had authority to purchase fish hatchery from lake improvement fund without approval of executive council. Op. Atty. Gen. (928c), Feb. 13, 1933.

(6). This subdivision is valid. 172M179, 215NW215. Commissioner held not to have acted arbitrarily in setting aside certain waters for fish propagation. 172M 179, 215NW215.

Opening date 13 miles north of zone line must be as of opening date of southern zone and cannot be fixed at intermediate date. Op. Atty. Gen., June 12, 1933.

It would not be legal to issue an order extending the southern zone to the limits fixed under this subdivision for a period longer than the season just beginning. Op. Atty. Gen. (211d-20), July 2, 1934.

An order closing to commercial fishing waters lying entirely on Minnesota side of boundary would be valid, there being no reciprocal "arrangement" with Canadian province. Op. Atty. Gen. (211b-2), Jan. 15, 1935.

Commercial fishing licenses are not revocable by conservation department unless for cause. Op. Atty. Gen. (211b-5), June 27, 1935.

Statute provides remedy for possible depletion of fish in certain lakes resulting from tagging of fish and offering of cash prizes for their capture. Op. Atty. Gen. (211a-7), Mar. 31, 1933.

(8) A. Public land may be used for small game hunting ground and game refuges, unless use is otherwise prescribed or prohibited by law. Op. Atty. Gen. (700d-15), Apr. 13, 1933.

(8) J. Where game wardens perform work within confines of hunting grounds, game farms and game refuges, such as feeding game birds therein, their salaries and expenses can be charged to public hunting ground and game refuge involving fund. Op. Atty. Gen., Dec. 28, 1933.

Commissioner of conservation has power to co-operate with the United States Biological Survey in the acquisition of lands for the Mud Lake area by proceeding under Laws 1929, c. 391, amending this section, the expense of acquiring the lands to be paid from federal funds. Op. Atty. Gen. (817g), July 12, 1934.

5631. Police powers of commissioner, etc.

(4) To seize and confiscate in the name of the state any wild animal, including birds or fish or carcasses or parts thereof, caught, killed, taken or had in possession or under control, or sold or transported in violation of this chapter, and to seize, confiscate and dispose of all guns, firearms, nets, boats, lines, rods, poles, fishing tackle, lights, lanterns, snares, traps, spears or dark houses, unlawfully used or had in possession with intent to unlawfully use the same in pursuing, taking, attempting to take, conceal or dispose of, or transport such wild animals. Articles which have no lawful use may be summarily destroyed. All confiscated wild animals or carcasses or parts thereof, and all confiscated apparatus, appliances or devices, shall, if not destroyed as authorized by law, be retained by the director of game and fish for the use of the department or sold at the highest price obtainable by the director of game and fish or game wardens, or by an agent of the director of game and fish, under written authority and supervision of the director of game and fish. The net proceeds of such sales, after deducting the expense of seizure and sale, and any such commissions, shall be promptly remitted by the warden by whom and under whose authority and supervision the sales were made, to the director of game and fish, and by him paid into the state

treasury; the remittance to be accompanied by the complete and certified report of such sales, supported by proper vouchers covering all deductions made for expenses and commissions, to be filed for record in the office of the director of game and fish. (As amended Apr. 21, 1933, c. 392, §19.)

The title of Act Apr. 21, 1933, c. 392, does not enumerate §5631(4) as one of the sections amended. See note under §5505.

Stop lights and sirens may properly be placed on game wardens' private cars. Op. Atty. Gen. (2081), Sept. 1, 1937.

Holder of fur breeder's permit using otters for taking fish violates the law, and otters so used may be confiscated and license revoked. Op. Atty. Gen. (211a-7), Sept. 1, 1937.

Game wardens are authorized to participate in and supervise sale of rough fish and are not subject to municipal ordinances regulating transient merchants. Op. Atty. Gen. (2081), Dec. 2, 1937.

(1).

A game warden has authority to arrest a camper refusing to put out fire. Op. Atty. Gen., June 3, 1933.

(2).

Game warden has right to require settler to show his burning permit. Op. Atty. Gen., June 3, 1933.

(4).

Sections 5541, 5547, 5633, should be read together. 177M 398, 225NW435.

Where game warden seized rifle of one shooting deer out of season, and he was convicted by a municipal court and conviction was set aside as void, the warden could nevertheless keep possession of the rifle. Op. Atty. Gen., Feb. 20, 1931.

When Laws 1919, c. 400, sec. 125, subsec. (4), was amended by Laws 1921, c. 44, so as to read as subsec. 4 hereof, the following words were inadvertently omitted and should be inserted after the word "snare": "traps, spears, fish houses, or other means or instrumentalities unlawfully used or had in possession with intent." Op. Atty. Gen., Feb. 2, 1933.

One who pleads guilty to shooting at ducks in open water and pays fine and costs has no right to return of gun seized. Op. Atty. Gen., May 25, 1933.

Confiscated stolen gun stands on no different ground than confiscated borrowed gun used in violation of game laws. Op. Atty. Gen., Nov. 20, 1933.

(5).

Inspectors have power to open boxes already packed for shipment and delivered to a common carrier for transportation in interstate commerce. Op. Atty. Gen. (196g), Feb. 15, 1937.

5633. Commingled shipment.

177M398, 225NW435.

In a replevin case, the evidence of the legal taking in Wisconsin of muskrat skins seized by the Minnesota game and fish department is not sufficient to go to the jury. 181M585, 233NW585. See Dun. Dig. 3940(10).

5636. Disposition of fines.—All fines collected for violation of any law relating to wild animals, game birds and fish shall be paid to the county treasurer of the county where the conviction was had and one-half of said fines shall be by that officer transmitted to the commissioner, who shall pay the same into the state treasury. The remaining half of said fines shall be credited to the general revenue fund of the county. ('19, c. 400, §130; '25, c. 380, §1; Feb. 8, 1929, c. 11.)

Amendment by Laws 1929, c. 11, applied to all fines collected on or after Feb. 9, 1929, even though imposed before that date. Op. Atty. Gen., Apr. 9, 1929.

A city ordinance requiring fines be retained by city must give way to this section. Op. Atty. Gen., Dec. 5, 1933.

5637. Removal of fish from shallow lakes.

Any contracts made pursuant to this section anticipate that money will be placed in fish fry fund and used accordingly. Op. Atty. Gen., Dec. 22, 1933.

5640. Additional protection—Commissioner's orders.—Whenever the Commissioner of Conservation, after investigation by the Director of the Division of Game and Fish, finds that any species of wild animals, as defined herein, for which an open season is provided, is in danger of undue depletion or extinction, or when necessary for the proper protection or propagation of any protected wild animals, the Commissioner of Conservation may by an order giving 30 days public notice provide protection for such species, additional to that provided by law, and to that end, may prescribe restrictions as to in what numbers, and in what places the same may be taken and reduce in part or close in its entirety any open

season provided for the taking of any protected wild animals. Provided, that no open season for the taking of any protected wild animals shall be declared otherwise than by legislative action. Any order issued by the Commissioner of Conservation pursuant to this section shall have the force of law and the penalties prescribed for violations of this chapter shall follow and be applicable to violations of any such order to same effect and extent respectively, as though such order had been enacted as a part of this chapter. No such order shall be valid after the close of the season affected by or for which such order was issued. Provided, however, the Commissioner of Conservation is authorized and shall have the power to make any and all regulations for the taking of fish from boundary waters between the State of Minnesota and the State of Wisconsin, and such regulations, when made, shall supersede any previously existing provisions. (As amended Apr. 15, 1939, c. 269.)

Authority given to modify statutory requirements is limited to authority to increase rather than decrease protection, and §5669 cannot be modified so as to permit the taking of sturgeon in certain inland waters. Op. Atty. Gen., Oct. 26, 1931.

Governor has no power to open deer season at any time than that provided by statute but may shorten season under certain conditions. Op. Atty. Gen., June 10, 1933.

There is no other law limiting duration of governor's order. Op. Atty. Gen. (211a), Apr. 30, 1934.

It is possible to promulgate and publish an order which will set season on mourning doves, prairie chickens and other upland birds to conform with dates of season for taking of Chinese ringneck or English pheasants, ruffed grouse and quail. Op. Atty. Gen. (605b-26), July 23, 1934.

Sturgeon cannot be taken except in waters forming a common boundary between this state and the state of Wisconsin. Op. Atty. Gen. (211c-12), Sept. 12, 1934.

Governor has power to change by amendment terms of an executive order issued under this section. Op. Atty. Gen. (213E), Nov. 14, 1934.

Conservation commission has no power to make regulations concerning taking of migratory waterfowl. Op. Atty. Gen. (983f), Nov. 4, 1935.

Governor may order additional protection for migratory waterfowl. Id.

Governor may permit shooting of buck deer during closed season for protection of does and immature deer from starvation. Op. Atty. Gen., Oct. 7, 1933.

Statute provides remedy for possible depletion of fish in certain lakes resulting from tagging of fish and offering of cash prizes for their capture. Op. Atty. Gen. (211a-7), Mar. 31, 1938.

PART X.—CONCURRENT JURISDICTION

5645. Common boundary waters.—The taking of wild animals of any kind, including game birds, quadrupeds, and in any manner in or upon any of the waters which form a common boundary between Minnesota and any other state of the United States, contrary to the laws of such state, is hereby prohibited, provided, the commission may license or otherwise provide for the taking or removal of rough or non-game fish in said waters as otherwise authorized by law. ('19, c. 400, §136; Apr. 21, 1931, c. 298, §1.)

The taking of muskrats in the waters of a lake forming the boundary between Minnesota and South Dakota within the closed season established by the laws of Minnesota is an offense against the laws of Minnesota irrespective of the location of the boundary line. Op. Atty. Gen., Jan. 6, 1930.

Minnesota and South Dakota each have concurrent jurisdiction over entire boundary waters, and a Minnesota hunter can hunt on the South Dakota side, but not on the South Dakota shore. Op. Atty. Gen. (983f), Nov. 4, 1935.

Center of channel of boundary waters between states of Minnesota and Wisconsin is boundary line between two states, and those waters lying west of center of channel of such boundary waters within two miles of limits of city of Duluth is subject to provisions of Mason's Stats., §5509, and it may be enforced against all persons violating its provisions regardless of place from which they enter. Op. Atty. Gen. (273d-5), Oct. 14, 1937.

5646. Reciprocal jurisdiction—Courts and wardens.

The taking of muskrats in the waters of a lake forming the boundary between Minnesota and South Dakota within the closed season established by the laws of Minnesota is an offense against the laws of Minnesota, irrespective of the location of the boundary line. Op. Atty. Gen., Jan. 6, 1930.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

5647. Reciprocity in licenses.—Whenever, so long as, and in so far as the state of South Dakota, confers upon the licensees of this state reciprocal rights, privileges, and immunities, any license to take water fowl, any license to take fish by angling or spearing, and any commercial fishing or clamming license issued by such state shall entitle the licensee to all the rights, privileges, and immunities in and upon the waters of Big Stone Lake and this state, enjoyed by the holders of equivalent licenses issued by this state; subject, however, to the duties, responsibilities, and liabilities imposed on its own licensees by the laws of this state. ('19, c. 400, §139; Apr. 21, 1931, c. 298, §2.)

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

5648. Open season for fishing in boundary waters.—In all cases where the date for the opening of the season for taking fish in waters forming a common boundary between this and other states and the Province of Ontario, is later, or where the day for the closing of the season for taking fish in such waters is earlier in Minnesota than it is in any other state or states or Province of Ontario bounded by such waters, then and in such case the director of game and fish may promulgate and publish an order fixing the days for the opening and the closing of the season for taking fish in such waters coincident with the opening and closing days of the season of such other state or Province of Ontario for taking fish in such waters, and thereafter and until said order is amended or repealed such open season for taking fish in such water shall be as in said order provided. Provided, further, that those waters lying within the State of Minnesota and forming a common boundary between the state of Minnesota and the Province of Ontario and/or Manitoba, not already closed, shall be closed to commercial fishing when the proper authorities of the province of Ontario and/or Manitoba shall close to commercial fishing that portion of such boundary waters forming a common boundary between the State of Minnesota and the province of Ontario and/or Manitoba as lie within the province of Ontario and/or Manitoba. It is provided further that these

waters may be closed separately in the event that the proper authorities of the province of Ontario and/or Manitoba close one or more body or bodies of water and not all such boundary waters. The director of game and fish is hereby authorized and empowered to enter into arrangements jointly with the proper authorities of such other state or Province of Ontario bounded by such waters for the supervision of fishing therein, for the closing thereof, for the stocking thereof, for the enforcement of fishing laws of both states or Province of Ontario in such water, and for locating the boundary line. ('21, c. 193, §1; Apr. 21, 1933, c. 392, §20; Apr. 29, 1935, c. 388, §1.)

Two states may contract for the removal of rough fish from waters forming part of common boundary and divide the proceeds. Op. Atty. Gen., Nov. 20, 1933.

An Iowa license cannot be recognized on Minnesota side of a lake constituting common boundary except under reciprocity arrangement. Op. Atty. Gen. Jan. 24, 1934.

A Minnesota fishing license should be required from a Canadian guide who crosses border and takes Minnesota fishing parties into Minnesota waters even though he does not fish himself. Op. Atty. Gen. (209h), Aug. 19, 1934.

An order closing to commercial fishing waters lying entirely on Minnesota side of boundary would be valid, there being no reciprocal "arrangement" with Canadian province. Op. Atty. Gen. (211b-2), Jan. 15, 1935.

5648-1. Inconsistent acts repealed.—That all acts and parts of acts inconsistent herewith are hereby modified and amended so far as may be necessary to give full force and effect to the provisions of this act. (Act Apr. 29, 1935, c. 388, §2.)

PART XI.—DEFINITIONS AND CONSTRUCTION

5649. Definitions.

Op. Atty. Gen., Jan. 18, 1932; note under §5585.

"Set line" defined. Op. Atty. Gen., June 15, 1933.

(7).

Commissioner may authorize hunting of deer by bow and arrow, but cannot limit such taking to certain area and exclude use of rifle therein. Op. Atty. Gen., July 28, 1933.

A Minnesota fishing license should be required from a Canadian guide who crosses border and takes Minnesota fishing parties into Minnesota waters even though he does not fish himself. Op. Atty. Gen. (209h), Aug. 19, 1934.

Discussion as to what constitutes proof of possession of unlicensed net. Id.

CHAPTER 33

Public Libraries

PUBLIC LIBRARIES AND READING ROOMS

5661. Establishment and maintenance.

Where library board has the funds for a building, the village council may set aside village land for the building without submission of matter to electors. Op. Atty. Gen., July 23, 1929.

Member of library board may not enter into contract of employment with such board. Op. Atty. Gen. (59a-26), May 8, 1934.

A library board may not be abolished in absence of statute permitting it, and it is immaterial that village has been incorporated as a city of the fourth class. Op. Atty. Gen. (624e-11), Oct. 4, 1934.

Village cannot contract with school district for establishment and maintenance of public library under supervision of school district, but village may place library books in school library and retain title. Op. Atty. Gen. (476a-6), Feb. 19, 1936.

A township or village should not appropriate money out of general fund for library purposes, but should make provision by a levy. Op. Atty. Gen. (285B), June 30, 1939.

5662. When established by vote—Existing libraries.

Manner of choosing library board for public library in a city of fourth class with commission form of government under home rule charter which does not describe manner of choosing the board, discussed. Op. Atty. Gen., Nov. 29, 1933.

5663. Directors—Term—Removal.

Positions of member of library board and member of school board are not incompatible. Op. Atty. Gen., Aug. 1, 1933.

Appointment or election of members of library board should be prescribed by terms of home rule charter. Op. Atty. Gen. (285a), Aug. 24, 1937.

All appointments to board of directors must be approved by council. Op. Atty. Gen., (69a-26), Aug. 25, 1938.

5665. Organization of board—Rules, etc.

Op. Atty. Gen., July 23, 1929; note under §5661.

No part of library fund may be used in remodeling village hall so as to correspond with library building to be attached to it. Op. Atty. Gen., May 7, 1929.

The Home Rule Charter of St. Cloud would indicate that the library board could not extend money in excess of actual cash received. Op. Atty. Gen., Jan. 5, 1931.

Member of library board may not appoint himself as librarian. Op. Atty. Gen., Jan. 10, 1934.

Part of library fund may be used to defray part of cost of building and furnishing village hall, a portion of which will be used by library board for library and reading room purposes. Op. Atty. Gen. (481b-2), June 12, 1935.

County may levy a tax for the purpose of assisting in maintenance of public library of a city. Op. Atty. Gen. (285B), March 25, 1939.

Library board members should not be employed and paid by same board of which he is a member. Op. Atty. Gen. (285B), June 30, 1939.

5669-1. Certain villages and towns to establish portable and circulating libraries.—The Board of Supervisors of any organized town containing 5 or more government townships, and having a total population including villages therein which are not separated from the town for election and assessment pur-