REPORT

of

REVISOR OF STATUTES

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CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

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Submitted to the Legislature of the State of Minnesota

JANUARY 1967

STATE OF MINNESOTA
REVISOR OF STATUTES
SAINT PAUL

JOSEPH J. BRIGHT
REVISOR

Report

January 3, 1967

The Honorable James B. Goetz
President of the Senate

and

The Honorable Lloyd L. Duxbury, Jr.
Speaker of the House of Representatives
State Capitol
St. Paul, Minnesota 55101

The Revisor of Statutes respectfully transmits herewith his Report to the Legislature of the State of Minnesota as required by Minnesota Statutes, Section 482.09 (9), concerning any statutory changes recommended or discussed or statutory deficiencies noted in any of the opinions of the Supreme Court of Minnesota for the period beginning September 30, 1964, and ending September 30, 1966, and including two opinions of November 18, 1966, and December 9, 1966.

Respectfully submitted,

Joseph J. Bright

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Revisor of Statutes

REPORT OF THE REVISOR OF STATUTES TO THE LEGISLATURE OF THE STATE OF MINNESOTA

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

The Revisor of Statutes respectfully reports to the Legislature of the State of Minnesota, in accordance with Minnesota Statutes, Section 482.09(9), which provides that the Revisor of Statutes shall:

> "Report to each regular biennial session of the legislature concerning any statutory changes recommended or discussed or statutory deficiencies noted in any opinion of the Supreme Court of Minnesota filed during the two-year period immediately preceding September 30 of the year preceding the year in which the session is held, together with such comment as may be necessary to outline clearly the legislative problem reported."

The opinions of the Supreme Court of Minnesota concerning statutory changes recommended or discussed, or statutory deficiencies noted during the period beginning September 30, 1964, and ending September 30, 1966, and including two opinions of November 18, 1966, and December 9, 1966, together with a statement of the cases and the comment of the court, are set forth on the following pages, in the order of their decision.

LUSTIK v. RANKILA
269 Minn. 515, 131 N.W. 2d 741
December 4, 1964

This case involved the difficulty encountered in cases of negligence arising out of the statutory presumption of decedent's due care under Minnesota Statutes, Section 602.04. This section reads as follows:

> "In any action to recover damages for negligently causing the death of a person, it shall be presumed that any person whose death resulted from the occurrence giving rise to the action was, at the time of the commission of the alleged negligent act or acts, in the exercise of due care for his own safety. The jury shall be instructed of the existence of such presumption, and shall determine whether the presumption is rebutted by the evidence in the action."

In this case an action was brought to recover damages for personal injuries sustained by appellant, Mary Jane Lustik, as a result of a head-on collision between vehicles driven by her and by decedent, Ruth Rankila. Previously an action was brought against Mrs. Lustik under Minnesota Statutes, Section 573.02 for the death of Mrs. Rankila. A motion to consolidate the two proceedings was denied on the authority of Lambach v. Northwestern Refining Co. Inc. 261 Minn. 115, 111 N.W. (2d) 345, which held that because of the statutory presumption of decedent's due care, section 602.04, it was improper to do so. The court ordered that the trustee's suit be given priority since it was first sued. The jury rendered a verdict awarding the trustee damages against Mrs. Lustik. In the above case Mrs. Rankila's

special administrator moved for summary judgment, claiming that the issue of Mrs. Lustik's contributory negligence was res judicata and that the verdict estopped her from asserting this claim. The trial court granted the motion and Mrs. Lustik appealed.

In essence it was the position of appellant that the doctrine of estoppel by verdict is not applicable because (1) the estoppel is not mutual; (2) the issues are not the same; (3) the parties are not identical and do not have privity; (4) the inability to counterclaim gives an arbitrary and unfair advantage to the first person suing; and (5) under Minn. Const. Art. 1, Sec. 8, there is no right without a remedy.

The court pointed out:

> "We have carefully considered all of appellant's contentions and acknowledge that the statutory presumption of decedent's due care may lead to an unseemly race to the courthouse, as Mr. Chief Justice Knutson predicted in the Lambach case. However, as long as Minn. St. 602.04 remains on the books, litigants will continue to find themselves burdened with duplicated litigation and with the necessity for maneuvering for the tactical advantage of being the first to trial."

and added as a footnote the following statement:

> "As a practical device to minimize the impact of submitting two different standards of negligence, and to avoid having damages presented by one side and not the other, it may be advisable hereafter to adopt a rule that under circumstances of this kind the surviving claimant's contributory negligence and decedent's own negligence shall first be tried in the survivor's action on the question of decedent's liability only. Such a procedure would achieve something approaching an equal footing

for the survivor, free from conflicting presumptions, but would not necessarily prevent successive lawsuits."

The appellant conceded that in the prior action for death by wrongful act the jury necessarily found she was negligent and that her negligence was a proximate cause of the accident. She sought to avoid the effect of this determination that in a subsequent action (this case) without decedent's presumption of due care as provided by section 602.04 that Mrs. Rankila's negligence might be found to have insulated prior negligence on the part of the appellant. The court pointed out that the conclusion is inescapable that whether or not Mrs. Rankila (the deceased) is now found to be negligent there has already been a judicial determination in the prior case that Mrs. Lustik was herself guilty of negligence which was a proximate cause of this collision and that the court's judgment in the instant case would be precisely the same as it was in the first action and that therefore appellant was barred from recovering and the supreme court affirmed the lower court.

Justice Murphy concurred specially and made these remarks:

"I agree with the result. I cannot agree with the views expressed in the majority opinion in so far as they might be interpreted to propose the repeal of Minn. St. 602.04. The legislature has the power in civil cases to establish a rule of law relating to presumptive evidence that is essentially a regulation of the burden of proof. (cases cited) There is a valid reason for the presumption. It may be

assumed that in adopting Sec. 602.04 the legislature had in mind that in the absence of the testimony of eyewitnesses to an accident or other evidence sufficient to dispell or rebut a presumption of due care, it is reasonable to assume that the decedent, acting on the instinct of self-preservation, was in the exercise of ordinary care."

Justice Thomas Gallagher in dissenting opinion, after discussing further the facts and procedure in the case, had this to say:

"The disadvantage to plaintiff by this procedure is obvious and is emphasized by the fact that she had no choice as to her position in the prior litigation. She did not choose the forum for it and could only appear defensively therein. She had there no opportunity to litigate her affirmative claims without the statutory presumption embodied in Sec. 602.04 against her. She was without authority to interpose a counterclaim or to present her claims for injuries in a consolidated trial of the two cases. She lacked completely the opportunity of establishing decedent's liability under evidentiary rules not 'stacked' against her. The instructions given in the prior action as to the presumption of decedent's due care pursuant to Sec. 602.04 would have been erroneous except for the statute which now gives evidentiary stature to the presumption. TePoel v. Larson, 236 Minn. 482, 53 N.W. (2d) 468."

Justice Sheran in his dissent concluded with these remarks:

"The unfairness of the situation which follows from the application of the statute in favor of the plaintiff only in an action for death by wrongful act seems evident. But until a change is made by legislative or judicial action, I believe that an adjudication of liability in an action for death by wrongful act should not bar subsequent assertion by the defendant of a claim for damages resulting from the occurrence."

DULTON REALTY INC., ET AL v. STATE OF MINNESOTA
270 Minn. 1, 132 N.W. 2d 394
December 24, 1964

In the above entitled case there was involved the validity of certain taxes on real property situate in the city of Duluth. It was the practice of the city assessor of Duluth in fixing the full and true value of real property therein to take a percentage of the market value of the real property instead of the full amount thereof. The percentage was not applied to all property but varied depending upon location and classification. The city assessor had, without statutory authority, classified real property as residential or commercial. The trial court held the tax invalid as excessive, unfair, discriminatory and illegal. The trial court further held that the county of St. Louis is the taxing district and not the city, and that petitioner's properties may not be taxed on an unequal or discriminatory basis in relation to other property within said county. The supreme court sustained the order of the trial court holding the tax excessive, unfair, discriminatory, illegal and invalid. However, the supreme court held that the city of Duluth, as the assessment district, constituted the taxing district or unit of the state.

The supreme court in its decision wrote the following:

"The legislature is soon to assemble and no doubt will take action with respect to the many problems

presently relating to equalization of taxation with a view toward eliminating the confusion and inequality now present. One suggestion is that it specify a definite number of years during which all assessors be required to use a fixed percentage of full and true value in determining the assessed value of property. Possibly the average percentage presently prevailing throughout the state, if it can be ascertained, would suffice for this. It might further provide that at the end of the prescribed period all assessors thereafter be required to take the true and full value of property as the sole basis for its assessment as required by the constitution. It would also seem essential that tax rates be adjusted so that this latter requirement would not increase taxes to the point of confiscation in areas where valuations have been low. Whatever formula is arrived at, it should be such that if its use is required uniformly throughout the state, equality in taxation will result.

"It has been suggested that real property might be classified by assessors as to type, i.e., farm, lakeshore, residential, commercial, etc.; and that when so classified by them, even though different percentages were applied to the market values of properties in different classifications, this would not invalidate taxes on properties within a classification to which the identical percentage had been applied. We are of the opinion that before such classifications could be undertaken by assessors some statutory enactment, delegating authority therefor to them, with standards for guidance, would be essential. At present Sec. 273.13, manifests a legislative intent to reserve any authority in this field to the legislature."

HONEYMEAD PRODUCTS COMPANY, et al, v.
AETNA CASUALTY AND SURETY COMPANY, et al
270 Minn. 147, 132 N.W. 2d 741
January 15, 1965

Before the court was a motion to dismiss an appeal from an order of the district court entered after the time to appeal from the judgment had expired.

The court explains the issue as follows:

> "The single issue for determination is whether Minn. St. 605.08 as amended by L. 1963, c. 806, § 7, was intended to overrule our decisions in Churchill v. Overend, 142 Minn. 102, 170 N.W. 919 (1919), and Independent School Dist. No. 857 v. Seem, 263 Minn. 170, 116 N.W. (2d) 395 (1962), which held that appeals from postjudgment orders denying a new trial may not be taken after the time to appeal from the judgment has expired. Harcum v. Benson, 135 Minn. 23, 160 N.W. 80 (1916), determined that under what is now § 605.08, subd. 1, this rule applied to prejudgment orders. The rationale of these decisions was the expressed policy of achieving finality and repose with respect to judgments.
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> "As amended by the addition of subd. 2 in 1963, § 605.08 now provides:
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> "'Subdivision 1. An appeal from a judgment may be taken within 90 days after the entry thereof, and from an order within 30 days after service of written notice of the filing thereof by the adverse party.
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> "'Subd. 2. No order made prior to the entry of of judgment shall be appealable after the expiration of time to appeal from the judgment. Time to appeal from the judgment under this section shall not be extended by the subsequent insertion therein of the costs and disbursements of the prevailing party.'"

The court held:

"In the final analysis, we are faced with the indisputable fact that in 1958, when the statute was drafted, neither prejudgment nor postjudgment orders were appealable after the time to appeal from the judgment had elapsed. Hence, there was no purpose in enacting subd. 2 unless a modification was contemplated. 'The adoption of an amendment raises a presumption that the legislature intended to make some change in the existing law.' Western Union Tel. Co. v. Spaeth, 232 Minn. 128, 132, 44 N.W. (2d) 440, 442. It is entirely possible that in 1963 the legislature added subd. 2 to ameliorate the harsh effect of the Seem doctrine, which in that case prevented the review of an order denying a new trial because of the dilatoriness of the trial court in ruling on appellant's motion. Since subd. 2 did not affect the then-existing rule as to prejudgment orders, we infer it must have been intended to change the law with respect to postjudgment orders. We therefore hold that the time within which to appeal the order denying a new trial in the instant case was limited only by subd. 1. Accordingly, the motion to dismiss the appeal is denied."

As a conclusion the court stated:

"While we believe the conclusion we reach is inescapable, nevertheless for reasons which were well stated in the Churchill and Seem decisions we are not in accord with the implications of the 1963 amendment and are of the opinion that the interests of justice will better be served if the legislature restores the previous limitations on appeals of this kind, at the same time requiring that the notice specified in Rule 77.04 be made mandatory."

GUSTAFSON v. RICHFIELD BANK AND TRUST COMPANY
270 Minn. 348, 133 N.W. 2d 843
February 26, 1965

This case came to the court on certiorari to review a decision of the Minnesota department of commerce granting a certificate authorizing a bank to transact business in the village of Richfield.

It was contended that such an order granting an application could not be reviewed by certiorari because Minnesota Statutes, Section 45.07, provides:

> "'*** In case of the denial of the application, the department of commerce shall specify the grounds for the denial and the supreme court, upon petition of any person aggrieved, may review by certiorari any such order or determination of the department of commerce.' (Italics supplied.)"

The court following the precedent of an earlier case decided the case on the merits, but pointed out:

> "We shall follow the precedent of the Duluth Clearing House case and consider this case on the merits. The absence in Minn. St. c. 45 of provision for review of an order granting an application appears to us to be a legislative oversight. A legislative clarification would be most helpful."

GINSBERG v. WILLIAMS
270 Minn. 474, 135 N.W. 2d 213
March 26, 1965

The court in this decision calls attention to the revision of the Civil Appeal Code by Laws 1963, Chapter 806, where section 8 thereof amended Minnesota Statutes 1961, Section 605.09, by, among other things, eliminating clause (3) thereof which permitted an appeal from an order involving the merits of the action or some part thereof.

The court pointed out as follows:

> "The legislature did not, however, reenact the language of § 605.09(3). The effect of this omission, whether through inadvertence or otherwise, is to again limit the statutory right to appeal from an order granting a new trial to orders based exclusively upon errors of law occurring at the trial, and also to abolish any right to appeal from an order vacating a judgment. While we firmly believe that the proposals urged by the Judicial Council would best serve the administration of justice, we feel constrained under the circumstances to hold that the statutory right to appeal from the order before us no longer exists."

Note: Laws 1965, Chapter 607, amended said section 605.09 by reinstating the language of clause (3) of said section.

STATE EX REL PHILIP D. HOLM v. RALPH H. TAHASH
272 Minn. 466, 139 N.W. 2d 161
December 17, 1965

The court in this case held that pending the enactment of a postconviction-procedure statute, habeas corpus is available to a convicted prisoner for the purpose of securing a hearing and determination of a claimed denial of Federal constitutional guarantees, and that where the time to appeal has expired, habeas corpus is available to collaterally attack the validity of a prior conviction employed to increase the sentence imposed upon the ground of a claimed denial of Federal constitutional rights.

The court points out the need in this state of a postconviction-procedure statute which will meet constitutional requirements. It stated:

> "Despite these procedural restrictions, and because of the absence of any statute providing a postconviction procedure, the scope of review and the relief available by habeas corpus has been extended by many recent decisions of this court. A brief review of only a fraction of these decisions will demonstrate that we have now found it necessary to regard habeas corpus as a postconviction procedure by which a convicted prisoner can obtain an evidentiary hearing and determination of any claimed violation of fundamental rights, including those guaranteed by the Federal Constitution."
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> ***
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> "As suggested above, once the time for appeal has passed, there does not exist in this state any procedure by which the constitutionality of criminal convictions can be adjudicated unless it be by habeas corpus, coram nobis, or a motion to vacate. We therefore conclude that, pending enactment of a

postconviction-procedure statute which will meet constitutional requirements, habeas corpus is available to a convicted prisoner for the purpose of securing a hearing and determination of any claim of denial of Federal constitutional guarantees."

STATE v. McKINNON
273 Minn. 210, 140 N.W. 2d 608
February 11, 1966

Defendant was tried and convicted in the municipal division of a probate court and appealed to the district court where for the first time he made a special appearance and moved that the proceedings be dismissed for lack of jurisdiction over his person. The motion was denied and the case came before the Supreme Court on a writ of prohibition.

The court stated the issue as follows:

> "The issue which we must resolve, and which is one of first impression in a criminal matter in this state, is whether a general appearance in an inferior court and an appeal for trial de novo on issues of law and fact confer jurisdiction over the defendant's person if there is a special appearance on appeal and the court is otherwise without jurisdiction."

The court held that as to criminal matters the defendant could in district court on appeal make such special appearance and object to jurisdiction over his person.

The court made certain comments concerning the law that on appeal to a district court from a lower court that the trial be de novo. It said:

> "In the past, both the legislature and the judiciary have favored a policy of according liberal review to decisions of probate courts, municipal courts, and justice courts. Trials in the district court are de novo and without reference to what transpired in the lower court. While we have on the one hand characterized prosecutions for violations of municipal ordinances as sui generis and have said they are designed to afford a speedy trial and prompt punishment,

it has been suggested on the other hand that 'the informality, speed, stress, error, and even injustice incident to proceedings before justices of the peace require that opportunity be afforded to correct the miscarriages of justice and to relieve parties from the harmful consequences thereof' by a trial de novo in the district court. It is apparent, however, that this criticism of judicial procedures reflected in the dissent of Mr. Justice Peterson stemmed largely from the fact that laymen have presided over courts of inferior judisdiction. These problems will ultimately be obviated by legislation which now requires newly appointed municipal and probate judges to be members of the bar and gives defendants in justice court the absolute right to a change of venue. In addition, a jury trial is now afforded defendants prosecuted for ordinance violations. In the light of these developments, the considerations which previously prompted the liberal granting of trials de novo in appeals from municipal courts and probate courts have lost much of their validity."

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"Although, as we have indicated, there seems little need for repetitious and successive criminal trials under present conditions, until the statute is amended we must give it effect."

STATE ex rel AHERN v. YOUNG
273 Minn. 240, 141 N.W. 2d 15
February 25, 1966

Petitioner on a plea of guilty to forgery was sentenced to a term of three years. The court entered an order staying execution of the sentence and placed petitioner on probation with certain conditions. After almost a year and a half the stay and probation were revoked and petitioner ordered committed to serve the sentence previously imposed. The petitioner alleged that he should receive credit for the time he was on probation inasmuch as Minnesota Statutes, Section 243.18 grants credit for parolees for time served on parole.

The court pointed out:

> "Determination of what conduct constitutes a criminal offense and the punishment that ought to be imposed (including the terms and conditions of probation, confinement, and parole) is peculiarly a legislative and not a judicial function. Contrary to petitioner's position, the pertinent statutory provisions make clear the legislative intent that no credit should be allowed for time served on probation. Section 609.14, subd. 3(2) (L. 1963, c. 753, § 609.14, subd. 3[2]), expressly provides that upon revocation of the stay of sentence and probation the court is authorized either to continue the probation or 'order execution of the sentence previously imposed.'"

The court concluded:

> "For that presumably small class of probationers who suffer the fate of losing probationary status on the evening of discharge without hope of just treatment by the Adult Corrections Commission, we offer the suggestion to the legislature that the sentencing court might properly be given discretionary

authority upon revocation of probation to modify the sentence previously imposed. Precedent is available for such an enactment in 62 Stat. 842, as amended by 63 Stat. 96, 18 USCA, § 3653, which provides in part that the court may revoke probation and require the prisoner to serve the sentence imposed 'or any lesser sentence ***.' (Italics supplied.) Such an amendment to our statute, while not compelling, may be a desirable additional safeguard to those now accorded probationers upon the revocation hearing."

HANLON v. TOWEY
142 N.W. 2d 741
May 20, 1966

This case concerns the effect of the "one man, one vote" principle of the reapportionment decisions of the United States Supreme Court upon the redistricting of county commissioner districts by population under the statutory form of county government in our state.

The constitutionality of a provision of Minnesota Statutes, Section 375.02, was before the court. Said section reads in part:

> "Each county shall be divided into as many districts numbered consecutively as it has members of the board. In all counties such districts shall be bounded by town, village, ward, or precinct lines, composed of contiguous territory, and contain as nearly as practicable an equal population. Counties may be redistricted by the county board after each state or federal census, except that no county shall after June 1, 1957, redistrict so that any city of the second, third or fourth class shall be in more than two commissioner districts in any one county. ***"

The court held:

> "The narrow question we decide is whether that part of § 375.02 which empowers the board to redistrict but which limits cities of the second, third, and fourth class to two commissioner districts violates the equal protection clause of the Federal Constitution and the equivalent provision in our state constitution. Stated another way, the question is whether Federal constitutional standards of equal representation under the principle of 'one man, one vote' apply to the apportionment of county commissioner districts. Upon the facts before us, we hold that the Federal standards apply and that the limitation provision of the statute violates the equal protection clause of the Federal Constitution."

STATE v. ANTON OLSON
143 N.W. 2d 69
May 31, 1966

Prohibition on the relation of Anton Olson, charged with first-degree murder, to require the District Court to desist from proceeding with a psychiatric examination of relator.

The state brought two identical motions before the Ramsey County district court for an order directing relator to submit to a psychiatric examination by a qualified psychiatrist for the purpose of determining whether relator was legally insane at the time of the commission of the alleged offenses. Relator's attorneys opposed the motions on the grounds that (1) such a compulsory examination would violate relator's constitutional rights against self-incrimination, and (2) there is no statutory or legal basis in the state of Minnesota for such an examination. The court granted the motions.

The court said:

> "The issues involved appear to be whether (1) it is a violation of relator's constitutional right against self-incrimination for the court to order a psychiatric examination against his will, and (2) whether it is within the inherent powers of the district court to order a psychiatric examination to determine criminal responsibility where the statutes of this state are silent as to any procedure concerning it.
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> "Research discloses that at least 30 states and the District of Columbia have statutes which authorize pretrial examination of an accused in order

to secure independent medical evidence of his responsibility at the time of the crime charged. Where tested, these statutes have been upheld as constitutional; but in these cases defendant had cooperated in the examination and had not asserted the privilege against self-incrimination."

The court discussed the decisions of other states as to laws of this nature and particularly the problem of compelling a witness to submit to an examination. It held the court could not issue an order directing such an examination without the defendant's consent. It suggested that legislation is needed in this state and stated:

> "We are convinced also that substantial questions as to the nature and scope of such an examination would be best solved by a legislative enactment setting down certain guidelines rather than by the courts on an ad hoc basis. There should be a uniform approach to these questions which we think only the legislative process can give, and there are many problems which the legislature could best resolve in such a statute -- for instance, how can the jury be prevented from applying the psychiatrist's testimony to the issue of guilt rather than the issue of insanity? These questions ought to be resolved by the legislative process although it remains clear that the Fifth Amendment of the United States Constitution and Minn. Const. art. 1, § 7, prohibit without question this kind of testimonial compulsion against defendant's will."

The court concluded:

> "We conclude that since there are no statutes in this state governing the procedure in cases where the accused pleads insanity as a defense and providing the necessary machinery and guidelines for the protection of the accused from self-incrimination, the courts have no legal basis, without the defendant's consent, for ordering an examination either to determine his mental condition at the time of the alleged criminal acts or to qualify an expert psychiatric witness by virtue of such examination to testify at trial."

G.E.M. OF ST. LOUIS, INC. v. CITY OF BLOOMINGTON
144 N.W. 2d 552
July 29, 1966

In this case an ordinance of the city of Bloomington prohibiting certain business activities on Sunday was held valid, as against claims of invalidity based upon asserted conflict and preemption of the subject matter by state legislation.

The court stated:

> "Our decision in Mangold Midwest Co. v. Village of Richfield, _____Minn._____, 143 N.W. (2d) 813, filed July 1, 1966, establishes the absence of invalidating conflict between the statute and such ordinances as the one before us and the lack of preemption of this field by state legislation. We recognize that variances between municipal regulations affecting commercial activity, particularly in a metropolitan area, create serious problems. The absence of preemption by the state legislature may lead in the end to the 'uninhibited commercial warfare, * * * disparate degrees of peace, repose and comfort in different communities and, in the metropolitan areas, * * * a checkerboard of conflicting regulations' envisioned by the trial judge. Nevertheless, for the reasons outlined in the Mangold case, we feel that the ordinance, if properly adopted, was within the corporate power of the city of Bloomington.
>
> "If the Minnesota legislature determines that local regulation of commercial activity by ordinances of this type is creating economic confusion, the problem can be corrected by a clear expression of the legislative will that regulation of such commercial activity be uniform throughout the state."

COMMISSIONER OF TAXATION v. CROW WING COUNTY
144 N.W. 2d 717
August 19, 1966

The commissioner of taxation, acting as the state board of equalization, made an order which so far as is relevant here increased by 10 percent the assessed valuations of all buildings except public utility property in a number of assessment districts in Crow Wing County. The county appealed to the Board of Tax Appeals (now designated Tax Court), contending that this increase in assessed valuation was arbitrary and capricious and resulted in an over-valuation.

The commissioner of taxation is authorized under Minnesota Statutes, Sections 270.11, Subdivision 1, and 270.12 to act as the state board of equalization. In so doing he performs some of the same functions that he has authority to perform as commissioner under section 270.11, subdivision 6.

The appeal of the county was dismissed by the Tax Court on motion of the commissioner.

The court said:

> "*** The motion was granted because of our decision in Village of Tonka Bay v. Commr. of Taxation, 242 Minn. 23, 64 N.W. (2d) 3.
>
> "There we said that an order of the commissioner, sitting as the board of equalization, increasing the valuation of all real estate located within the village was not an 'official order of the commissioner of taxation.' As a result we held the order was not

appealable to the Board of Tax Appeals, its jurisdiction being limited under § 271.06, subd. 1, to appeals --

> "'***from any official order of the commissioner of taxation respecting any tax, fee, or assessment, or any matter pertaining thereto, by any person directly interested therein or affected thereby, or by any political subdivision of the state, directly or indirectly, interested therein or affected thereby,***.'

"We recognized that this construction of the statute allowed the commissioner to determine subjectively the appealability of his order merely by deciding the capacity in which he would issue it, but said that this incongruity was a matter for legislative consideration and action.

"Since the legislature has not responded to this suggestion, Crow Wing County asks us to overrule the Village of Tonka Bay decision because of the inequity that results from the possession by a single administrator of the power to deny access to review of his own orders.

"We recognize that serious questions of due process and equal protection might be presented by the application of our Village of Tonka Bay decision to an appeal by taxpayers from an order such as the present one. In such a case it could be argued that the denial of an appeal to the Tax Court gives the commissioner the power for all practical purposes to prevent judicial review of his order merely by designating the capacity in which he made it."

The court did not decide the constitutional problems or reexamine the soundness of the Village of Tonka Bay decision as the case was disposed of on other grounds.

O'BRIEN v. JOHNSON
November 18, 1966

This action was brought to determine whether certain property was a homestead and as such exempt from claims of defendants who are judgment creditors.

The defendants in several tort actions had obtained substantial judgments against plaintiff and her husband. While these actions were pending the O'Briens sold thier homestead and moved to an apartment in a high value property which they owned which was commercial property consisting of stores and apartments. The court held by reason of Minnesota Statutes, Chapter 510, that this property was the homestead and therefor exempt from seizure and sale for the payment of the debt.

The court said:

> "Because the Juel Block is commercial property consisting of stores and apartments and has a value in excess of $100,000, yielding a gross income of $1,600 a month (which is also exempt), the defendants urge us to follow the rule adopted in Anderson v. Shannon, 146 Kan. 704, 73 P. (2d) 5, 114 A. L. R. 200. There the Kansas court refused to recognize a homestead exemption in a commercial building used primarily for a theater, a result we would find manifestly proper and reasonable but for our statute. In the Jacoby case Mr. Justice Mitchell said (41 Minn. 231, 43 N.W. 53):
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> > "'***Unfortunately our statute fixes no limit as to value upon a homestead exemption. It must be confessed that such a law may be greatly abused, and permit great moral frauds; but this is a question for the legislature, and not for the courts.'

"For over one hundred years we have deplored the injustices which have arisen from the application of our statutory exemptions. The purpose of the constitutional exemption as we see it is to render the family home secure, not to permit a debtor who already enjoys that protection to escape his just obligations by seeking refuge in valuable income-producing property of which his homestead is but a small part. Nevertheless, the law is so well settled that however distasteful it may be, we feel reluctantly compelled to apply it.

"4. Defendants protest what they assert is a double exemption resulting from the O'Briens' occupying the Juel Block as their homestead at a time when the proceeds of the Stiles Addition sale, amounting to $13,000, were also exempt. Under the provisions of Minn. St. 510.07, '[t]he owner may sell and convey the homestead without subjecting it, or the proceeds of such sale for the period of one year after sale, to any judgment or debt from which it was exempt in his hands.'

"In Donaldson v. Lamprey, 29 Minn. 18, 22, 11 N.W. 119, 121, we held that to permit a plurality of exemptions was 'a fraud upon the spirit of the statute.' We believe that § 510.07 was intended to conserve the proceeds realized from the sale of a homestead in order to make them available for the purchase or improvement of another dwelling, or to provide otherwise for a new residence. Where, as here, property already owned by the debtor is occupied as his homestead following the sale of a previous homestead, it strikes us as a perversion of the constitutional objective to permit concurrent and simultaneous exemptions in both the new homestead and the proceeds of the old, if the proceeds are diverted to wholly extraneous purposes and are not made available to creditors. We recognize that when both § 510.01 and § 510.07 are given effect they may operate as 'a vehicle for fraud and rank injustice.' For that reason we have been moved on this appeal to search for a rule which will minimize the inequities the statute has spawned. However, in attempting to reach a solution we have become enmeshed in such a maze of qualifications, conditions, and exceptions we find ourselves unequal to the task. We can therefore only echo what our predecessors have said in urging appropriate legislation to correct the problem, and hold that under existing law defendants are entitled to no relief."

The court appended the following note to the decision:

> "Of the 45 states which have some kind of homestead exemption, only 4 do not appear to impose any limit on value. Specifically, therefore, we recommend that a monetary limit be placed on exemptions, both as to the value of a homestead and the proceeds of its sale; that any part of a homestead which is used for commercial purposes be excluded from the exemption unless space which is actually a part of the owner's dwelling place is also used by him for his own business or professional purposes; that no exemption apply to income produced by a homestead; and that proceeds of the sale of a homestead which are not committed to the purchase or improvement of a new homestead lose their exemption. Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289, 1291; Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L. J. 355, 364; Rifkind, Archaic Exemption Laws, 39 Cal. State Bar J. 370, 374."

MINNEAPOLIS FEDERATION OF TEACHERS LOCAL 59, AFL-CIO
v. PETER OBERMEYER, STATE LABOR CONCILIATOR, et al
December 9, 1966

This case involved the legality of Laws 1965, Chapter 839, Section 7 (Minnesota Statutes, Section 179.572) which excepts teachers from the application of the act. Said chapter 839 amended and added new provisions to the so-called Public Employees Labor Relations Act (Minnesota Statutes, Sections 179.50 to 179.58). The trial court held said section 7 was unconstitutional as an unreasonable and arbitrary classification of teachers separate and apart from other state employees and that as the section was severable the act did apply to teachers.

The Supreme Court reversed this decision, holding the exception constitutional.

The court discussed the fact that the legislature passed a bill, H.F. No. 1504, concurrently with Laws 1965, Chapter 839, which applied to the teaching profession and the manner in which school teachers should treat with school boards with relation to questions growing out of their employment. This bill was vetoed by the governor.

The court in concluding its opinion said:

> "It would appear that even without express statutory authority, there is nothing to prevent collective bargaining when it is entered into voluntarily and no prohibitory state statute exists. Even though courts may sanction voluntary bargaining in the absence of statute, satisfactory results can hardly be expected.

A statute is needed to spell out procedures to be used in the determination of majority representatives in an appropriate unit. But this is a legislative concern. It may be assumed from the statement expressed in the governor's veto message that H.F. 1504, or some law similar to it, will at the next legislative session provide teachers with rights correlative to those given to other employees of the state. In the meantime, there is nothing to prevent the school board from meeting with representatives of both teacher groups. Certainly, in the past the school board has not dealt individually with its more than 3,000 teachers. Until the legislature provides a better method, the parties must resort to the former methods employed to solve their differences."