REPUBLICAN STATE CENTRAL COMMITTEE
4940 Viking Drive
MINNEAPOLIS, MINNESOTA 55435

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 1969

STATE OF MINNESOTA
REVISOR OF STATUTES
SAINT PAUL

JOSEPH J. BRIGHT
REVISOR

January 7, 1969

The Honorable James B. Goetz
President of the Senate

and

The Honorable Lloyd L. Duxbury, Jr.
Speaker of the House of Representatives

State Capitol
Saint 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, 1966, and ending September 30, 1968.

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, 1966, and ending September 30, 1968, 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.

MINNEAPOLIS FEDERATION OF TEACHERS, LOCAL 59, AFL-CIO,
v. PETER OBERMEYER et al
BOARD OF EDUCATION OF SPECIAL SCHOOL DISTRICT NO. 1
v. MINNEAPOLIS FEDERATION
OF TEACHERS, LOCAL 59, AFL-CIO, AND ANOTHER
275 Minn. 347, 147 N.W. 2d 358
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."

O'BRIEN v. JOHNSON
275 Minn. 305, 148 N.W. 2d 357
February 3, 1967

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 their 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):
>
> > "'***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.

"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.' Undoubtedly § 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. However, no such limitation is contained in the statute and we are not at liberty to read one in. Where, as here, property already owned by the debtor is occupied as his homestead following the sale of a previous homestead, it strikes us that the statute perverts the purpose of the constitution when it permits 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.' We therefore echo what our predecessors have said and urge appropriate legislation to correct the problem, but 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 Calif. State Bar J. 370, 374."

MOREY v. SCHOOL BOARD
276 Minn. 48, 148 N.W. 2d 370
February 10, 1967

This case is an appeal from an order of the district court denying appellant school board's motion to reinstate its resolution terminating the contract of Edith Morey as one of its teachers. The supreme court affirmed the lower court. It quoted Minnesota Statutes, Section 125.12, Subd. 3, and stated as follows:

> "'* * * Before a teacher's contract is terminated by the board, the board shall notify the teacher in writing and state its reason for the proposed termination. Within ten days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken.'
>
> "A hearing in this context, the same as elsewhere, if it means anything, must mean a fair hearing based upon evidence having probative value. It may be unfortunate that under this provision the hearing afforded a teacher becomes of somewhat less value when the same board that prefers the charges against her sits in judgment upon the hearing. It is even more futile where, as here, the final determination is based on evidence that would not be admissible in any court of law. If such hearing is to be meaningful it probably ought to be conducted by an impartial tribunal, not by the board that prefers the charges. The final determination ought to be based on reliable evidence, even though the technical rules of evidence in court trials need not be followed."

HOVANETZ v. ANDERSON
276 Minn. 543, 148 N.W. 2d 564
February 10, 1967

In a per curiam decision the sole issue raised by the appeal is whether the court should judicially abrogate the rule of interspousal immunity prohibiting one spouse from maintaining an action against the other to recover damages for personal injury resulting from a negligent tort. The facts were briefly that:

The plaintiff was injured in an automobile accident in which she was a passenger and of which the defendant was the driver. About eleven months after she commenced her action she and defendant were married and thereafter the trial court dismissed the action on the grounds of marital immunity.

The court pointed out:

> "We recognize that for the past 50 years this common-law doctrine of marital immunity has been under attack and that many of the reasons advanced for continued judicial adherence are out of tune with the realities of life about us, especially as to torts arising out of the operation of motor vehicles. However, this long-established immunity is based upon significant considerations of public policy, questions concerning which are peculiarly suited to legislative resolution. The growing number of decisions in jurisdictions permitting direct suits by the spouse are based either upon express statutory authority or, in large part, upon a liberal construction of their married women's acts. In the period that the rule has been criticized, only three states have effectively abandoned it by expressly reversing prior decisions. Shortly after Illinois judicially abrogated the rule in Brandt v. Keller, 413 Ill. 503, 109 N.E. (2d) 729, the Illinois legislature reinstated it.

"Without foreclosing a reexamination of the rule when an appropriate case compels us to do so, we believe the proper course is to suggest, as we have repeatedly implied, that the legislature consider the need and propriety of any change of the rule. We followed that course recently with respect to the problem of governmental immunity in Spanel v. Mounds View School Dist. No. 621, 264 Minn. 279, 118 N.W. (2d) 795. The legislative process is uniquely adaptable to investigate the facts and to exercise its broad authority to deal not only with the particular issue confronting us but also related problems necessarily affected by any repudiation or modification of the rule."

TWIN CITY CANDY & TOBACCO CO., INC. v. A WEISMAN CO.
276 Minn. 225, 149 N.W. 2d 698
March 20, 1967

This case involves two actions to enjoin violations of the Minnesota Unfair Cigarette Sales Act. This act was enacted by Extra Session Laws 1961, Chapter 35, and coded in Minnesota Statutes 1965, as Sections 325.64 to 325.76.

The sole issue before the court is whether the failure to require proof that sales at less than cost are with the intent or effect of injuring competition renders the statute invalid. The court held that the law is invalid.

The court went on to say:

> "Without attempting to catalogue exhaustively all of the sales which are not exempt under our statute but may nonetheless be innocent, it is enough to say that no accommodation is made for the vendor who in good faith is overstocked and requires capital for other merchandise but does not intend to discontinue permanently the sale of cigarettes. In addition, there is no opportunity for a vendor to show he mistakenly sold below cost to meet what he honestly believed was the legal price of his competitors, or that he innocently erred in arriving at his own cost figures. Under our statute all of these hypothetical sales are subject to criminal and civil sanctions without permitting the defendant to prove they occurred without predatory intent or without any harmful effect on legitimate competition. Under such circumstances, we hold in accordance with the weight of authority that the statute denies the defendant due process of law under the Fourteenth Amendment and is invalid in its entirety."

In conclusion the court further stated:

> "Except as to criminal prosecutions where a defendant consitutionally enjoys a presumption of innocence and the burden is on the state, we suggest that the difficulty of proof to which the Iowa court

alluded may be overcome constitutionally by the adoption of a statute which makes a sale below cost prima facie evidence of predatory intent or effect. While there is a division of opinion with respect to the validity of such a provision, the weight of authority and, we believe, the better reasoned decisions hold there is no constitutional impediment in requiring that in civil litigation the vendor has the burden of proving his below-cost sales were made without predatory intent or effect.

"However, for the reasons discussed, the Minnesota Unfair Cigarette Sales Act, §§ 325.64 to 325.76, as presently drafted cannot be sustained."

Revisor's note:

Laws 1967, Chapter 600, repealed the former law in its entirety and reenacted a new Minnesota Unfair Cigarette Sales Act coded in Minnesota Statutes 1967, as Sections 325.64 to 325.76.

IN RE WELFARE OF ARLENE KARREN ET AL
v.
HENNEPIN COUNTY WELFARE DEPARTMENT
276 Minn. 554, 150 N.W. 2d 24
March 31, 1967

This per curiam decision involved an application of appellant for a transcript of proceedings in the District Court to be paid for by the county on the grounds that appellant is indigent and cannot afford to pay for the transcript. The case concerned an appeal from orders in the District Court terminating appellant's parental rights to her minor children.

The court said:

> "The application must be denied because there is no authority, statutory or otherwise, for the county to furnish a free transcript in a civil action of this kind. It may be unfortunate that the legislature has not made such provision, but if a transcript is to be furnished in a case of this kind, authority to pay for it will have to come from the legislature."

STATE v. DHAEMERS
276 Minn. 332, 150 N.W. 2d 61
April 14, 1967

Defendant was indicted by the grand jury on two counts of murder in the first degree and was convicted of the commission of the crimes. On appeal defendant, among other things, contended that the court erred in applying the so-called M'Naghten rule.

The court pointed out:

> "Defendant also contends that the court erred in applying the test of criminal responsibility set forth in Minn. St. 611.026, the so-called M'Naghten rule, which reads:
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> > "'No person shall be tried, sentenced, or punished for any crime while in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of these causes, as not to know the nature of his act, or that it was wrong.'
>
> "While we agree that the M'Naghten rule should have been discarded with the horse and buggy, it is part of our statutory law and as such, as long as we adhere to the rule that the legislature can prescribe rules of evidence, we must adhere to the statute. State v. Finn, 257, Minn. 138, 100 N.W. (2d) 508. It would be better if the statute were repealed so that the courts could develop rules for determining mental competency more in harmony with advances made in this scientific field since the ammouncement of the M'Naghten rule in 1843."

IN RE JURY PANEL SELECTED FOR DAKOTA COUNTY
276 Minn. 503, 150 N.W. 2d 863
May 12, 1967

Under Minnesota laws there are two methods of selecting grand and pettit jurors depending upon the population of the county. Counties of over 100,000 population use one method and counties under 100,000 population use another. In Dakota county the selection of jurors is made based on the county having a population of less than 100,000 because of the last 1960 Federal census. The contention of the plaintiffs in the case was that subsequent to 1960 a special Federal census was taken in six of the larger municipal subdivisions in the county which established population gains in those subdivisions in such numbers that if substituted for the 1960 census figures this census would ostensibly increase the county-wide population to over 100,000. The special census referred to was made as provided by statute for the purposes of apportionment of state cigarette and liquor taxes. The court held that the regular census of 1960 applied in determining the population of the county.

The court said:

> "The statutory test applies 'unless another intention clearly appears.' Had the legislature intended any piecemeal census determination for any county it could have specifically so provided. There is no indication whatever of a legislative intent that authorization of a special census for apportionment of cigarette and liquor taxes was to be used for any other purpose than that. It is one thing to apportion tax receipts to a specific municipality - a matter of direct concern only to that municipality. It is quite another thing to

use such a partial census in determining the population of a county as a whole when less than all of the municipal subdivisions of the county are contemporaneously enumerated by census."

Following this paragraph the court stated as a note the following:

"We commend to the legislature that where a different result is intended than indicated in this case, each such statute might more specifically stipulate what different test of population is intended. As it stands, any other result may create innumerable questions and potential for abuse, including races for special censuses to gain a statutory advantage for municipalities or counties in situations not contemplated by the legislature."

STATE v. PAULICK
277 Minn. 140, 151 N.W. 2d 591
June 23, 1967

This matter before the court arose on a petition for a writ of prohibition alleging that the Municipal Court of Hennepin county does not have jurisdiction over defendant and therefore sought to enjoin the prosecution of a traffic violation. The only issue before the court was whether the execution of the complaint before a clerk of the court rather than a magistrate is a denial of defendant's constitutional rights.

Minnesota Statutes, Section 488A.10, Subdivisions 3 and 7, applicable to the Hennepin County Municipal Court, permits the clerks or a judge of that court to take complaints and issue warrants. Minnesota Statutes Section 629.42, a general law, on the other hand directs that complainants be examined before a magistrate prior to the issuance of a warrant. The court observed that these sections are somewhat in conflict. The court in a rather lengthy opinion held that the provisions of section 488A.10, subdivisions 3 and 7, as they apply to clerks and deputy clerks of the Hennepin County Municipal Court are unconstitutional.

The court concluded by stating:

> "The conclusion is inescapable that under the State and Federal Constitutions we can no longer draw a rational distinction between arrests made for

misdemeanors and those made for felonies. The impact on the individual is merely a matter of degree. In all of the cases cited, the United States Supreme Court has stressed the need for interposing a judicial officer between the police and the accused. As applied to the facts of the instant case, the soundness of that approach is manifest. However conscientious and impartial may be the clerk of Hennepin County Municipal Court who supervised the execution of the complaint and issued the warrant on behalf of the village of Minnetonka, his background and experience we can assume are not in the law. It is highly improbable that he was qualified to determine whether the complaint and warrant met constitutional standards. It is with the greatest difficulty we envision his refusing to issue a warrant upon the complaint of a state highway patrolman. These are functions which the judiciary cannot delegate, since they require both a knowledge of the law and the authority to grant or refuse the request of law-enforcement officers to initiate criminal procedures. Consequently, we hold that Minn. St. 488A.10, subds. 3 and 7, as they apply to clerks and deputy clerks of Hennepin County Municipal Court are unconstitutional. To the extent that City of St. Paul v. Umstetter, 37 Minn. 15, 33 N.W. 115, and City of St. Paul v. Ulmer, 261 Minn. 178, 185, 111 N.W. (2d) 612, 617, are inconsistent with the conclusion we now reach they are hereby overruled. The temporary restraining order is therefore made absolute."

STATE v. EUBANKS
277 Minn. 257, 152 N.W. 2d 453
July 21, 1967

The M'Naghten rule for criminal responsibility again was before the court in this case. Defendant appealed from a judgment of conviction of murder in the first degree and among other claims of error in the case raised the point that Minnesota Statutes, Section 611.026, embodying the M'Naghten rule, violates the due process of the Fourteenth Amendment to the Constitution and that the trial court failed to discard the rule or properly interpret the statute. Section 611.026 provides:

> "No person shall be tried, sentenced, or punished for any crime while in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of these causes, as not to know the nature of his act, or that it was wrong."

The court said:

> "Almost from its first pronouncement in M'Naghten's Case, 10 Clark & Finnelly 200, 8 Eng. Rep. 718, decided in 1843, this rule has been subject to attack and criticism, particularly by the medical and, more recently, the psychiatric professions. Nevertheless, the M'Naghten rule has become almost universally the test of insanity in criminal cases. While we do not imply that the defense did not present a convincing case for the fact that the M'Naghten rule is an ancient and archaic test for criminal responsibility, in Minnesota its application is plainly required by statute. The legislature as recently as 1963 had an opportunity to reevaluate and reconsider alternatives to the

M'Naghten rule and took no action, which must indicate an adherence to § 611.026. While it may be true that other tests of criminal responsibility would be more appropriate, the fact remains that the legislature rejected an opportunity to change the law. Therefore, this court,in the exercise of judicial restraint, ought not to assume the awesome responsibility of doing so by statutory construction."

STATE v. BORST
278 Minn. 388, 154 N.W. 2d 888
December 1, 1967

The defendant in this case was charged with a crime constituting a misdemeanor. The question before the court was whether defendant was entitled to have counsel appointed for him in a misdemeanor case assuming that he was financially unable to procure counsel in his own behalf. The court pointed out that the question is a troublesome one which has caused much difficulty throughout the country because the right to counsel should not logically be based on the name given to a crime. The court called attention to the Minnesota Statutes providing for counsel as follows:

> "Section 611.07, subd. 1, provides that counsel may be appointed for an indigent defendant charged with a felony or gross misdemeanor. Subd. 2 provides for payment of their fees, if such counsel appeal, in cases involving felonies or gross misdemeanors. Our Public Defender Act, Minn. St. 611.14 to 611.29, adopted in 1965, provides that the public defender may represent an indigent person charged with a felony or gross misdemeanor and similarly may represent such defendant on appeal or in a postconviction proceeding.
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> "There are two statutory provisions originally intended to provide a public defender in Hennepin and Ramsey Counties. Section 611.12 applies to counties 'now or hereafter' having a population of 300,000 or more. It was originally intended to apply to Hennepin County. Section 611.13, which by its title applies to Ramsey County, covers counties 'now or hereafter' having a population of more than 240,000 and less than 500,000. At the time these statutory provisions were enacted 611.13 could apply only to Ramsey County and § 611.12 could apply only to Hennepin County. However, by virtue of growth of population Ramsey County now

comes within the provisions of both sections so we assume that it may follow the provisions of either. For the purposes of this opinion, we simply wish to indicate that under both statutes the public defender may be appointed to represent persons charged with a felony or gross misdemeanor. None of the statutory provisions provide for appointment of a public defender to represent a defendant charged with a misdemeanor."

The court after discussing a number of decisions of the supreme court of the United States and supreme courts of other states went on to say:

"Thus it is that, rationalize as we will, it is simply impossible to draw a distinction between the right to counsel in misdemeanor, gross misdemeanor, and felony cases merely because they are called by different names. A defendant convicted of a misdemeanor may be sentenced to 90 days in jail; conviction of a gross misdemeanor may conceivably lead to a jail sentence of less than 90 days, or only a fine; and still our statutes require that the court provide counsel for an indigent defendant charged with a gross misdemeanor and are silent as to appointing counsel for one charged with a misdemeanor. A defendant in court on a charge defined as a misdemeanor is as helpless to defend himself as he would be if he were charged with a gross misdemeanor or felony. While a misdemeanor under our laws, drawing a sentence which may not exceed 90 days in jail, might be considered a petty offense by many of the cases mentioned above, it nonetheless is a deprivation of liberty which, to an innocent person convicted because he is unable to properly defend himself, is of considerable consequence. If that be true, anyone accused of a misdemeanor who is unable to obtain facilities so that he can properly defend himself should be furnished such facilities, at least if he is apt to be deprived of his liberty.

"Until we have a definitive decision by the Supreme Court of the United States as to whether Gideon requires appointment of counsel for an indigent charged with a misdemeanor as defined by our laws, as a Sixth-Amendment right, we choose not to guess at what it may eventually hold by basing our decision on the Federal Constitution or even on our state constitution. In the exercise of our supervisory power to insure the fair administration

of justice, we decide that counsel should be provided in any case, whether it be a misdemeanor or not, which may lead to incarceration in a penal institution. In other words, if the court is to impose a jail sentence, counsel should be furnished. We leave for future determination the question of whether counsel must be furnished where only a fine is to be imposed."

The court in concluding said:

"We realize the practical difficulties of applying the rule we announce here. There is no statutory provision for compensating appointed counsel in misdemeanor cases. However, such services must be procured, and until the legislature can meet and make such provision for compensation, or extend the public defender system so that these cases are handled through its offices, it may be possible that counsel can be procured without great expense."

WITTHUHN v. DURBAHN
157 N.W. 2d 360
March 15, 1968

Action was brought for injuries sustained in automobile collision. Before the case came on for trial the plaintiff met death in an unrelated accident. The original plaintiff's widow, as administrix of his estate, was substituted as plaintiff. The defendants made a motion to dismiss the action on ground that the original plaintiff's death terminated the action. The district court entered an order dismissing the action, and the widow appealed. The supreme court held that the action was properly dismissed in view of statute providing that a cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in wrongful death statute.

In concluding the court said:

> "Plaintiff argues strongly that denying survival to claims of this nature is unjust, and she urges, accordingly, that Eklund be overruled. We may agree that the denial is out of step with present-day notions; the Eklund court obviously viewed it with disfavor. 211 Minn. 168, 300 N.W. 620. But it is a denial clearly required by the statute. The Eklund result is the only one consistent with the language of 573.01. Regardless of the personal predilections of the court, it does 'not have the right to grant judgment in defiance of the statute.' 211 Minn. 169, 300 N.W. 620."

STATE v. TARGET STORES
156 N.W. 2d 908
March 19, 1968

This was a test case to determine the constitutionality of Laws 1967, Chapter 165, Minnesota Statutes 1967, Sections 325.91 to 325.915, which was a statute prohibiting the Sunday sale of specified classes of commodities designated as restricted. The lower court dismissed the criminal complaints charging violation of this law and the state appealed from the order so dismissing the complaints.

In a rather lengthy opinion citing and discussing the so-called "Sunday closing cases" the court pointed out that the state has broad constitutional power to establish a common day of rest, repose, recreation, and tranquility, and that the exercise of that power in the instant case does not offend against the First Amendment of the Constitution but the court held that the Sunday closing statute before it in this case was unconstitutional for the reasons stated as follows:

> "We hold, nevertheless, that the statute is so vague and uncertain in its statutory scheme and criminal consequence as to violate the due process clause of the Fourteenth Amendment. The vagueness is inherent both in the way this statute is structured upon the restricted-commodity concept and in the relationship of this statute, with its specific prohibitions, to the general statute, with its general prohibitions, against the sale of goods on Sunday."

In conclusion the court said:

"We conclude, in order to avoid future uncertainty that would arise from the enactment of this invalid statute or from any ambiguous language in this or other opinions of this court, that the net result of today's decision is simply to restore the Sunday closing situation in Minnesota to exactly what it was before the enactment of L.1967, c. 165. Nothing,in short, should be construed to make lawful any act that has been unlawful under any state statute existing prior to this nullified statute."

DAKOTA HOSPITAL v. COUNTY OF CLAY
160 N.W. 2d 246
July 5, 1968

Dakota Hospital located in the city of Fargo, North Dakota, brought an action against Clay county, Minnesota, for care given by the hospital to a welfare patient domiciled in Clay county. The hospital was denied recovery in this case because of Minnesota Statutes, Section 261.21, which reads in part as follows:

> "The county board of any county in this state is hereby authorized to provide for the hospitalization in hospitals within the county or elsewhere within the state of indigent residents of such county who are afflicted with a malady, injury, deformity, or ailment of a nature which can probably be remedied by hospitalization and who are unable financially to secure and pay for such hospitalization * *."

The question presented before the court is whether the term "within the state" prohibits the county board from hospitalizing indigents in hospitals in sister states. The court said:

> "It seems clear that the legislature in § 261.21 has restricted the welfare board of any county in this state to authorizing hospitalization for indigent residents of the county only in hospitals located within the county or elsewhere within the state. Thus, defendant's welfare board could neither authorize nor be held liable for the cost of Mrs. Mohr's hospitalization in North Dakota.
>
> "* * *There is no ambiguity in the provision of § 261.21 requiring a county welfare board to authorize hospitalization for an indigent resident only in a hospital in the county or in the state. That restriction must govern until such time as the legislature might see fit to provide a more flexible rule. If the

practice of using hospitals in a foreign state is to be authorized, the authority must come from the legislature and not from the courts. This court cannot construe an unambiguous statute which does not authorize the practice as doing so."