REPORT

OF

REVISOR OF STATUTES

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

SUBMITTED TO THE LEGISLATURE OF THE STATE OF MINNESOTA

JANUARY 1959

State of Minnesota

REVISOR OF STATUTES

State Capitol

St. Paul (1) Minnesota

January 7, 1959

The Honorable Karl F. Rolvaag
President of the Senate
and
The Honorable E. J. Chilgren
Speaker of the House of Representatives
State Capitol
St. Paul 1, Minnesota

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, 1956, and ending December 31, 1958.

Respectfully submitted,

Joseph J. Bright

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Revisor of Statutes

REPORT OF THE REVISOR OF STATUTES
TO THE
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CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

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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, 1956, and ending December 31, 1958, together with a statement of the cases and the comment of the court, are as follows:

STATE v. KETTERER
248 Minn. 173, 79 N.W. 2d 136
October 26, 1956

Defendant was tried and convicted in municipal court

without a jury for the violation of two city ordinances. On appeal to the district court he asked for a jury trial, which was denied.

The question on appeal to the Supreme Court was whether the constitutional guarantee of a jury trial applied to offenses involving violation of municipal ordinances, either before the municipal court or on appeal to the district court.

The Supreme Court held that, even though the violation of an ordinance is a "criminal offense" within the literal meaning of the Constitution, the constitutional guarantee of jury trial does not apply to such offenses. The court construed Minnesota Statutes, Sections 488.25 and 633.22, and said:

> "In construing legislative enactments we should not overlook two basic facts, namely, that the same offense is involved whether the matter is tried by the municipal court or by the district court, and, secondly, that the policy of the law since time immemorial, as revealed by our own decisions, has been to place prosecution of ordinance violations in a distinct class by themselves to the end that the trial of the offenders against municipal bylaws shall be speedy and the punishment promptly imposed in a summary manner without resort to jury trial (see, City of Mankato v. Arnold, 36 Minn. 62, 30 N.W. 305) unless the legislature sees fit to grant to a defendant the right to a jury trial as is done if the case is tried by a justice of the peace. Our legislature recognized the common-law summary procedure by expressly giving it recognition through the enactment of § 488.09. State v. Olson, 115 Minn. 153, 131 N.W. 1084. In the absence of clear statutory language we should not attribute to the legislature an intent to authorize the abandonment of the summary procedure the moment an appeal is taken. If we were to do so we would reach the absurd con-

clusion that the legislature intentionally enacted two separate statutory provisions, both dealing with the same offense, which work at cross-purposes with each other. We conclude therefore that §§ 488.25 and 633.22 do not afford the accused a right to jury trial upon appeal from a conviction by the municipal court for an ordinance violation.

"* * *

"In determining defendant's contentions adversely to him we are not unmindful, in the light of modern conditions, of the need for a reappraisal of the status of prosecutions for violation of municipal ordinances to determine whether a jury trial ought not to be made available in certain instances. If, however, any changes are to be made in our long-established practice governing ordinance violations, the right to make those changes belongs to the legislature and not to the court."

PHILLIPS v. ERICSON
248 Minn. 452, 88 N.W. 2d 513
January 11, 1957

This case involved an election contest for an alleged violation of the corrupt practices act. The two main questions involved in the appeal to the Supreme Court were, first: One of procedure under the inconsistent and conflicting provisions of Minnesota Statutes, Chapter 208, and also Minnesota Statutes, Section 211.35; and, second: Whether the Legislature conferred upon the courts authority to try and determine an alleged violation of the corrupt practices act.

The court's opinion pointed out the confusion that exists in statutory provisions pertaining to election contests. In

pointing out the statutory deficiencies in this connection, the court in effect recommended that the Legislature prescribe definite directions as to procedure in elections contests.

YELLOW MFG. ACCEPTANCE CORP. v. HANDLER
249 Minn. 539, 83 N.W. 2d 103
May 17, 1957

The case involved the repossession by the seller of property sold under a conditional sales contract. The court held that the seller's repossession, summarily, of personal property without giving notice of the intention or purpose thereof to the buyer constitutes an election of remedies binding the seller and terminating the contract; and that he cannot thereafter sue for the purchase price except where he has given proper notice and retakes the property for the purpose of enforcing the seller's common-law lien in an equitable proceeding to foreclose the same. In interpreting Minnesota Statutes, Sections 511.18 and 511.19, the court stated that the Legislature recognized that the only remedy or means provided in foreclosing a conditional sales contract is by bringing an appropriate action in the courts, there being no statutory authority or procedure of foreclosure prescribed in case the buyer defaults.

The court pointed out, by citing an earlier case, that a more desirable method must wait until the Legislature sees fit to enact the uniform conditional sales act. A concluding

paragraph states:

> "If changes from our present decision law applying to the conditional sales contract are to be made, in what has in effect become a rule of property of long standing, it is our view that such changes should await the legislative will and its consideration in the matter of effecting needed changes to correct whatever inequities presently exist, if any, as between seller and buyer as parties to such contracts."

STATE v. ELAM
250 Minn. 274, 84 N.W. 2d 227
July 19, 1957

A taxpayer in this case asserted, under Minnesota Statutes, Section 279.15, the defense of unfair or unequal assessment in delinquent tax proceedings. The court held that this statute is repealed by implication except for the defense of exemption of property from the tax, payment of the tax, or the assertion of jurisdictional objections in the delinquent tax proceedings. It further held that sections 278.01, 278.05, and 278.13 provide an exclusive remedy and require that the defense of unfair or unequal assessment must be asserted by petition on or before June 1 in the year in which the tax is payable.

LANG v. WILLIAM BROS. BOILER & MFG. CO.
250 Minn. 521, 85 N.W. 2d 412
October 4, 1957

An action was brought by employee under the workmen's compensation act against a third-party tortfeasor in accord-

ance with Minnesota Statutes, Section 176.061, Subdivision 5. The opinion of the court points out certain ambiguities in this statute, primarily because of an amendment made by Laws 1953, Chapter 755, Section 6, Subdivision 5. The portion of the law involved in the case prior to amendment, as quoted by the court, reads as follows (p. 530):

> "* * * If the action against such other party is brought by the injured employe * * * and judgment is obtained and paid, or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employe * * *."

The court then quoted the portion of the law after the 1953 amendment, as follows:

> "* * * If the action against such other party is brought by the injured employee * * * and judgment is obtained and paid, and settlement is made with the other party, the employer may deduct from the compensation payable by him the amount actually received by the employee * * *."

and then said:

> "* * * Our present statute is somewhat ambiguous. Why the disjunctive 'or' between 'paid' and 'settlement' was changed to the conjunctive 'and,' and the words 'either with or without suit' were deleted from the statute, we have no way of knowing. Use of the word 'settlement,' separated by the conjunctive 'and' from the word 'paid,' in connection with obtaining a judgment seems to be wholly superfluous. If the judgment is paid, it would seem that it is also settled, and, conversely, if it is settled it would have to be paid. We do not think that the change manifests an intention on the part of the

legislature to change the substance of the statute, nor need it be so construed here. * * *"

SCHMILLEN v. DAVE SCHROEDER GROCERY
250 Minn. 561, 85 N.W. 2d 740
November 1, 1957

This case, involving workmen's compensation, concerned a disability resulting from an injury occurring in 1923 and the further allowance of medical benefits. The court made the following comment (p. 567):

> "* * * We are not unmindful of the fact that there is no statute limiting the time when the Industrial Commission may on appeal grant a rehearing on the propriety of further allowance of medical benefits necessitated or occasioned by the original injury. The legislature has made no provision for such limitations. See, M.S.A. 176.135. The commission determined that the employee failed to meet the burden of establishing his claims and therefore was not entitled to benefits under the Workmen's Compensation Act."

BERGSTROM v. O'BRIEN SHEET METAL CO.
251 Minn. 32, 86 N.W. 2d 82
November 8, 1957

An employee under the workmen's compensation act brought an action to determine or recover compensation for accidental injury sustained March 11, 1940, in the course of his employment. The Industrial Commission denied compensation on the ground that the employe had failed to institute the action within the period prescribed by the statute in effect at the time of the accident- -

the same as the present law. The Supreme Court affirmed the decision of the Industrial Commission. The statutory provision in effect at the time of the accident was Mason St. 1927, section 4282(1), which section is now Minnesota Statutes, Section 176.151, which provides in part as follows:

> "The time within which the following acts shall be performed shall be limited to the following periods, respectively:
>
> "(1) Actions or proceedings by an injured employee to determine or recover compensation, two years after the employer has made written report of the injury to the commission, but not to exceed six years from the date of the accident."

The court made this comment in the last sentence of the opinion:

> "While fairness and justice speak for the desirability of a statutory provision which would extend time for the commencement of actions or proceedings to determine or recover compensation to a six-year period from the date of the discovery of the disabling nature of an industrial accident sustained by an employee, any such relief must come from the legislature."

NAFTALIN v. KING
90 N.W. 2d 185
May 9, 1958

In this case one of the basic questions raised was whether the issuance by the state, pursuant to Laws 1955, Chapter 855 (as amended by Laws 1957, Chapter 729), and Extra Session Laws 1957, Chapter 2, of certain tax anticipation building certificates to defray the cost of constructing and rehabilitating a variety of state buildings creates a state debt within the debt

limitations of Minnesota Constitution, Art. IX, Sections 5, 6, and 7. The court on this question cited the earlier decisions and pointed out that defendant's argument might well prevail if the present court were passing on the issue for the first time, but that it could find no justification for overruling the long standing special-fund rule of said earlier cases. In note No. 6 to said opinion the court made the following comment:

> "Although, largely because of our prior decisions of long standing, we definitely hold that the building certificates of indebtedness authorized by the 1955 and 1957 acts do not contravene Minn. Const. art. 9, §§ 5, 6, and 7, it is the opinion of all members of the court that a word of caution as to future state financing is in order. As forcefully pointed out in Brunk v. City of Des Moines, 228 Iowa 287, 291 N.W. 395, 134 A.L.R. 1391, the special-fund type of financing may be so abused that it becomes merely a subterfuge for evading the purpose of constitutional state debt limitations. A constitutional provision which has become so outmoded that only an ever-increasing application of legal ingenuity makes it workable in meeting the modern needs of state finance should be amended. The abuse of the special-fund doctrine has become apparent to many authorities. See, Annotations, 92 A.L.R. 1299 and 134 A.L.R. 1999; 23 Minn. L. Rev. 391; Ratchford, American State Debts, pp. 446 to 466."

STATE EX REL. McGINNIS v. POLICE C.S. COMM. ETC.
91 N.W. 2d 154
June 27, 1958

This case involved the discharge of the chief of police of the village of Golden Valley following hearings before the village police civil service commission. An appeal was taken to the district court under Minnesota Statutes, Section 197.46

of the veterans preference law, and also under Minnesota Statutes, Section 491.12 of the police civil service commissions act. Appellant later elected to prosecute his appeal under section 197.46. The case was tried in district court de novo before a jury, the trial court refusing to consider the transcript of the proceedings before the civil service commission of the village.

On appeal, one of the questions before the court was the propriety of that part of section 197.46 providing the method of review by the district court. The portion of said section involved reads as follows:

> "* * * Issues of fact shall be framed upon motion of either party and the trial thereof shall be by jury unless trial by jury shall be waived. The burden of proving incompetency or misconduct shall rest upon the governmental subdivision alleging the same."

It was held that the above quoted section may not be given effect as it conflicts with Minnesota Const. Art. 3, Section 1, and prior decisions of the court. The court said:

> "However, apart from the above consideration, four different cases have specifically held that the decision of an administrative body in determining whether or not to discharge an employe is an administrative function. And further that a review of such a decision by the courts must be a limited review. [Cases cited.] Thus, in view of the law of this state that an order by an administrative body which involves a nonjudicial function may only be reviewed in a limited way and because the function here involved was clearly administrative and nonjudicial, the above-quoted portion of § 197.46

must be held to be ineffective as it clearly provides for a method of review by the district court which is inconsistent with prior holdings of this court. Therefore, we hold that review of the order provided for in § 197.46 must be by certiorari to the district court."

BOSCH v. MEEKER COOP. L. & P. ASSN.
91 N.W. 2d 148
June 27, 1958

This case concerned the procedure used by the defendant cooperative light and power association to reelect its board of directors at the annual meeting held in 1956. The plaintiff in the case was a stockholder who brought the action for himself and other stockholders as a class seeking a declaratory judgment declaring that Minnesota Statutes, Section 308.07, and the bylaws of the association prohibited stockholders from voting by mail for the election of directors.

The opinion points out an ambiguity in Minnesota Statutes, Chapter 308, applying to cooperative associations, and states:

"However, it must be pointed out that the Minnesota legislature in 1957 passed c. 186, § 1 (M.S.A. 308.071, subd. 1), validating elections for directors of cooperative associations theretofore held by mail where the association came under c. 308 and where its bylaws provided for election of the directors by mail. Subd. 2 of that act is very ambiguous. It may well be that the legislature intended to permit voting for directors by mail where a cooperative's bylaws or articles so provided after the passage of that act. However, the law as passed states in part:

"'If voting by mail is authorized by the

articles of incorporation or the bylaws of any such cooperative association, then any stockholder of such association may, at any election of any director of such association which shall be held hereafter and prior to January 1, 1958, vote by mail * * *.' [Italics supplied.]

"Thus, the addition of the words 'prior to January 1, 1958,' if the statute is read literally, permits voting for directors by mail only between March 20, 1957, the date of approval of the act, and January 1, 1958. If the legislature did not intend to limit the right to vote by mail for directors to that limited period of about nine months it can correct the situation in the next session of the legislature if it so desires.

"It is apparent that the confusion in the instant case arises from the fact that the present directors tried to hold an election for directors by mail at the same time as they were trying to amend their bylaws to provide for such an election by mail. The proper procedure would be to vote for directors in the usual manner and to submit a fair and reasonable amendment to the bylaws so that subsequent elections for directors could be held by mail, if, as stated previously, the legislature clarifies § 308.071 at the next session."

ORTH v. SHIELY PETTER CRUSHED STONE COMPANY
91 N.W. 2d 463
July 11, 1958

After receiving workmen's compensation for permanent total disability the injured employee petitioned the industrial commission for an additional $5,000 from the special compensation fund as provided in Minnesota Statutes, Section 176.13. The employee had previously obtained a settlement in a third-party action based upon negligence arising out of the accident. The

industrial commission denied the petition of the injured employee, holding that the custodian of the special compensation fund was entitled to be subrogated to the settlement.

On appeal the court reversed the order of the commission and held that the $5,000 be paid to the employee. It pointed out that in determining subrogation rights to employee's third-party negligence action the compensation act is governed by the general principle that in the absence of unmistakable language the act should not be interpreted to cut off or limit the workman's common law or statutory remedies not otherwise limited therein.

The opinion states:

> "Had the legislature intended that the custodian was to be subrogated to an individual employer's rights in his employee's third-party action, it should have so provided. Not having done so, we are not authorized to construe § 176.06, subd. 2, to make up for the omission. The issue is governed by the terms of this section, and since thereunder the custodian of the special compensation fund is not granted subrogation rights, we must hold that he is without authority to be subrogated to the employee's third-party action here * * *."

The court in the instant case was confined to the denial to the right of subrogation to the custodian of the special compensation fund. However, in what would be considered dictum, the court stated that there is nothing in the statute which authorizes such subrogation to anyone except the employer and that no subrogation would lie in favor of the employer's compensation insurer although that was assumed in a number of

cases in which the precise issue was not raised. The present statute authorizing subrogation is Minnesota Statutes, Section 176.061.

The special concurring opinion joined in by three justices agrees that the custodian of the special compensation fund is not entitled to subrogation but in effect vigorously dissents from the holding that the insurer of an employer is not entitled to subrogation where such insurer has made payments to the employee, holding that this is contrary to many previous decisions of the court.

The special concurring opinion points out that an earlier opinion of the court held that an employer could not be subrogated to the rights of an employee against a third party when the employer's compensation insurer paid the award to the injured employee, and therefore states that if the instant case is to be followed only the employer who is self-insured will have the right of subrogation. It observed that the employer would be refused the right if the insurer pays the award and the insurer will not be allowed it since he is not within the terms of the statute.

STATE v. PETT
92 N.W. 2d 205
September 16, 1958

Defendant was confined in jail under an indictment of

murder in the first degree. His application to the district court for bail was denied. He contended that he was entitled to be released on bail as a matter of right. The state contended that the trial court in its discretion may deny bail to a defendant when the crime is murder in the first degree.

Before the court for interpretation was Minn. Const. Art. 1, Section 7, quoted in part as follows:

> "* * * All persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; * * *."

Also involved was the interpretation of Minnesota Statutes, Section 629.52, which as the court points out has remained unchanged since the abolishment of capital punishment, the material portion of which reads as follows:

> "* * * A person charged with an offense punishable by death shall not be admitted to bail if the proof is evident or the presumption great, * * *."

The argument of the state was that, inasmuch as murder in the first degree was the only crime punishable by death at the time this state abolished capital punishment, the constitution had reference to the offense rather than to the punishment; that therefore the trial court has the same discretion in denying bail to a defendant charged with that offense as it had when the conviction was punishable by death.

The court in effect held that the term "capital offense"

has a well-defined meaning, and when the state abolished the death penalty for murder in the first degree there was no longer any capital offense in the state. It pointed out that the constitution has never been amended to keep pace with the change, nor has the statute been so amended, and that an amendment of the statute without an amendment of the constitution would be ineffective. The court said:

> "Where words used in our constitution have a clear and well-defined meaning, there is no room for construction. Neither the courts nor the legislature have a right to substitute for words used in the constitution having a well-defined meaning other words having a different meaning. That is exactly what we would be doing were we to substitute 'murder in the first degree' for 'capital offense.' Murder in the first degree is not a capital offense when it cannot be punished by death. The right to amend the constitution rests exclusively with the people; and if, constitutionally, bail is to be withheld in cases other than capital offenses at the discretion of the trial court, that change must be brought about by an amendment of the constitution. As the constitution now reads, all crimes are bailable."

McCOURTIE v. UNITED STATES STEEL CORPORATION
93 N.W. 2d ____
November 21, 1958

Plaintiff was working as an employee of a plumbing sub-contractor when he was struck by a piece of steel dropped by employees of defendant, who was the sub-contractor for the steel structure work on a building project. Both sub-contractors were either insured or self-insured under the workmen's compensation act.

In the action for personal injuries by plaintiff against defendant it was held that the employees of defendant and the plaintiff were not "working together" or engaged in a "common activity" on the same project in such fashion that they were subjected to the same or similar hazards so as to bring defendant within the protection of Minnesota Statutes, Section 176.061, Subdivisions 1 to 4.

The court pointed out that originally under the workmen's compensation act an employee could recover in a common-law action for negligence against a third-party tortfeasor, but the amount of recovery was limited by the act. A 1923 amendment enlarged the remedy against the negligent third party except where the employer and the third party were engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received.

The court said:

> "The statutory terms 'common enterprise' and 'the same or related purposes' are admittedly confusing when an attempt is made to apply them to a fact situation, and they have caused difficulty in attempts of this court to interpret them consistently. It should be acknowledged, however, that the intent of the legislature in certain respects is clear. It is certain that the legislature intended to restore, at least in part, the common-law rights of the workman injured by a negligent third party when both employers were under the act. In reviewing the authorities as they apply to various fact situations, one basic principle of law is clearly

stated, and it is this: The protection of the statute is denied to the negligent third-party employer, except in those situations where the employees are engaged in a common activity."

The opinion after discussing a number of cases interpreting the statute states:

"From these decisions it is apparent that the 'common activities of the employees test' has become the foundation for the interpretation of the statute."

It also observed:

"That the legislature intended the 'common activities of the employees test' to be applied is further manifested by the fact that in 1953 the legislature revised and reenacted many sections of the Workmen's Compensation Act. The legislature has been aware of the fact that this test has been applied since 1942. We may assume that had the legislature been dissatisfied with that test it would have changed the section now before the court at the time it revised other sections of the act."

The special concurring opinion of Justice Knutson (joined in by the Chief Justice and another justice) does not agree with the construction placed by the majority opinion on section 176.061. In effect it holds that the majority opinion digresses from the former holdings interpreting the statute. It points out that the former decisions held that employees of contractors and sub-contractors working on the same project are within the meaning of the statute; that the emphasis in interpreting the statute is upon the common activities of the employers rather than the employees.