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 1961

State of Minnesota

REVISOR OF STATUTES

State Capitol

St. Paul (1) Minnesota

January 5, 1961

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, 1958, and ending September 30, 1960, including one opinion of October 17, 1960.

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

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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, 1958, and ending September 30, 1960, including one opinion of October 17, 1960, together with a statement of the cases and the comment of the court, are in the order of their decision as follows:

McCOURTIE v. UNITED STATES STEEL CORPORATION
253 Min 501 93 N.W. 2d 552
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 situtation, 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.

The special concurring opinion in the concluding paragraph makes these remarks:

> "It cannot be denied that the interpretation of this statutory provision has presented this court with many difficulties in the past. We have, however, heretofore tried to construe it so as to give it a meaning which would carry out the purposes which the legislature sought to accomplish. It seems to me that we now depart from that fundamental rule of interpretation. We neither clarify the law or our former decisions. What we in effect are doing is to repeal the statute by a process of judicial construction. It is difficult to imagine any situation where the statute can now have any application. I think that we should be frank enough to say, in view of this decision, that we will give it no consideration in the future. Probably the result we have arrived at is a good one from a social point of view, but it seems to me that it is not our function to determine what social paths we should follow in the future. If the statute is to be amended or repealed, the prerogative to do so lies with the legislature and not with the courts. It is unfortunate, of course, in view of the difficulty we have had in the past in construing this statute that the legislature had not done something to clarify the law, but it still remains a fact also that our function, as long as the statute exists as it does, is to seek some pattern of construction consistent with the intent of the legislature and to give to the language used such meaning as will carry out that intent."

STATE EX REL. TOWN OF WHITE BEAR v.
CITY OF WHITE BEAR LAKE
255 Minn. 28, 95 N.W. 2d 294
March 6, 1959

Two quo warranto proceedings were brought to test the validity of the annexation of certain territory by

the city of White Bear Lake. The supreme court affirmed the lower court holding invalid the attempted annexation.

The issues were: (1) Whether either or both attempted annexations are invalid upon the ground that the initiating petitions were entertained by the governing body of the city of White Bear Lake within the 2 years following a prior annexation election at which the majority of votes were cast in the negative; (2) whether the annexed territory, which is located in a metropolitan area, is so conditioned as to be subject for annexation to the city of White Bear Lake; (3) whether a failure to verify one of the petitions, as required by statute, renders the annexation void; and (4) whether any part of the annexed land is "more than one and one half miles from the present limits of the city" contrary to statutory requirements.

The decision points out the deficiencies in the annexation procedures as contained in Minnesota Statutes 1957, Chapter 413. The decision closes with the following comment:

> "This case vividly illustrates the inequities and the inflexibility of the present statutory procedures for the annexation, or the original incorporation, of suburban territory within a large metropolitan area. Although the testimony herein clearly demonstrates that large portions of the annexation territory are properly conditioned for the benefits of municipal government, both annexations fail completely because once an annexation proceeding has begun, our statutes make no provision for a

separation of improperly conditioned territory from that which is properly conditioned for city government. Much good can be accomplished by amending our statutes to provide that, before a proposed annexation is submitted to the voters for their consideration, a hearing, upon due notice, be first held before an administrative commission to determine if improperly conditioned territory has been included, and to give consideration to the conflicting claims of rival municipalities seeking to annex the same territory. The present hit-and-miss annexation procedures result in a gerrymandering of suburban areas which makes long-range planning both difficult and expensive. It seems desirable that annexation--or original incorporation--of territory can best be supervised by a part-time administrative commission composed of impartial persons who are familiar with the problems of towns, villages, cities, and metropolitan areas."

STATE EX REL FOSTER v. CITY OF MINNEAPOLIS
255 Minn. 249, 97 N.W. 2d 273
May 1, 1959

This was an action in mandamus for an order directing the Minneapolis building inspector to issue a building permit to the owners of the premises involved for the erection of an office building. The premises, since the adoption of the Minneapolis Comprehensive Zoning Ordinance, had been zoned as commercial property. The city building inspector denied the owner's application for a permit because the city by ordinance amended the zoning ordinance by rezoning the premises as residential property.

Minnesota Statutes, Section 462.18, under which the Comprehensive Zoning Ordinance was adopted, provides that any city of the first class may adopt a zoning ordinance; and that the governing body of a city which has adopted such an ordinance:

> "* * *may thereafter alter the regulations or plan, such alterations, however, to be made only after there shall be filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the real estate affected, and after the affirmative vote in favor thereof by a majority of the members of the governing body of any such city; *-*-*" [Underlining supplied.]

The underlined portion of the above quotation is referred to as the "consent clause" of the statute.

Prior to the adoption of the amendment, written consent of the owners of adjoining property as provided by this section had been filed in the office of the clerk of the city.

The court held the consent clause unconstitutional. It said:

> "We are of the opinion that the consent clause of section 462.18, as a prerequisite to the exercise of the city council's legislative authority to amend the comprehensive zoning ordinance, constitutes an unlawful delegation of power to impose restrictions on real property, and renders this provision of the statute invalid. It is well settled that a municipal corporation may not condition restricted uses of property upon the consent of private individuals such as the owners of adjoining property; and that it is an unreasonable exercise of police power to rest control of property uses in the hands of the owners of other property.

" * * *

"In the instant case the consent clause in section 462.18 does not merely set in force an authorized power delegated to the council but in substance grants to adjoining owners the right to empower the council to act to impose property restrictions where otherwise it would have no such authority. As such, it is in contravention of U. S. Const. Amend. XIV."

STATE v. MULALLY
99 N.W. 2d 892
December 4, 1959

The defendant in this case charged with violating a city ordinance prohibiting disorderly conduct contended that he was entitled to a jury trial in municipal court based on the decision of State v. Hoben, 256 Minn. 436, which held that a defendant was entitled to a jury trial to acts which constitute violations of those ordinances which relate to the subject of traffic regulations covered by the Highway Traffic Regulation Act, Minnesota Statutes, Chapter 169. The court distinguished the Hoben case and held the defendant was not entitled to trial by jury in municipal court for violation of this city ordinance. The court noted that under Laws 1959, Chapter 388, in prosecutions for the violation of municipal ordinances a jury trial is secured to the defendant on appeal to the district court.

The opinion concludes:

> "That appears to be the present state of the law. Counsel for the petitioner, however, suggests that a more satisfactory arrangement for the prosecution of ordinance violations would be to have all jury trials held on appeal in the district court. However desirable such an arrangement might be, it is a matter to be addressed to the legislature and it is not within the province of this court to make that determination."

NAFTALIN v. KING
102 N.W. 2d 301
April 1, 1960

The question before the court was whether the issuance by the state, pursuant to Extra Session Laws 1959, Chapter 90, 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, Article IX, Sections 5, 6, and 7. The court under the stare decises rule followed the case of Naftalin v. King, 252 Minn. 381, 90 N.W. 2d 185, decided May 9, 1958, holding similar legislation constitutional. The last two paragraphs of the opinion, representing the majority of the court, states as follows:

> "In a footnote in our 1958 decision of Naftalin v. King, supra, we said that largely because of our prior decisions of long standing we were holding that the building certificates of indebtedness authorized by the 1955 and 1957

acts did not contravene Minn. Const. art. 9, sections 5, 6, and 7, however, that it was the opinion of all the members of the court at that time that a word of caution as to future state finances was in order.

To the extent that dicta may be binding, and to the extent to which others may rely on the instant decision in passing laws similar to Ex. Sess. L. 1959, c. 90, it is our opinion now that if this court is again presented with the issue in connection with future laws pledging the credit of the state as security such laws should be declared in violation of Minn. Const. art 9, sections 5, 6, and 7."

The dissenting opinion representing the view of the minority of the court stated that the act was invalid.

REMINGTON ARMS COMPANY v. G.E.M.
102 N.W. 2d 528
April 8, 1960

Action by manufacturer to restrain super department store operator and operator's lessee-licensee from selling or offering for sale manufacturer's trade-mark commodities at prices below "established" fair trade minimum prices.

The manufacturer has an agreement with two Minnesota retailers stipulating the minimum retail price of its products. It had no contract with the defendants with respect to the sale of its commodities or the minimum resale prices thereof. The plaintiff maintained that by virtue of Minnesota Statutes, Sections 325.08 to 325.14 [Laws 1937, Chapter 117] that the prices stipulated by its contracts were binding on the defendants,

who had notice thereof, regardless of whether the defendants were parties to such contracts and that the defendants could not lawfully sell such commodities at any price below the prices so fixed by the plaintiff manufacturer.

Sections 325.08 to 325.14 are sometimes referred to as the Fair Trade Act, Retail Price Maintenance Law, or Nonsigner Act.

The court pointed out that at the heart of the Fair Trade Act is the so-called "nonsigner" provision, section 325.12, which reads:

> "Wilfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of sections 325.08 to 325.13, whether the person so advertising, offering for sale, or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby."

The court held the act unconstitutional, and the holding of the court can be best summarized by quoting from syllabus 3 of the decision which states:

> "The purported authority to fix prices under M.S.A. 325.08 to 325.14 (Minnesota Fair Trade Act) is an unconstitutional exercise of legislative power in that it delegates to private persons the right to prescribe a rule governing conduct for the future which is binding upon those who do not consent; it fails to provide any standard or condition as to the necessity of the act, provides for no hearing or safeguards, and is not subject to review."

RANDALL v. VILLAGE OF EXCELSIOR
103 N.W. 2d 131
May 6, 1960

Action by a minor against a village for personal injuries received in an automobile accident while intoxicated as a result of drinking liquor purchased by another minor from the defendant village's municipal liquor store. The court held that the Civil Damage Act, Minnesota Statutes, Section 340.95, does not create a cause of action in favor of one injured by reason of his own intoxication, that only an innocent third person who is injured as a result of the intoxication of another is entitled to its benefits. The opinion concludes with the following paragraph:

> "As much as we might wish to reach for the result plaintiff seeks, judicial restraint prevents us from doing so. We are dealing here with an important area of tort responsibility in which the legislature has already by the Civil Damage Act extended common-law liability. If liability of those engaged in the sale of intoxicants is to be further extended so as to abrogate the defense of contributory negligence of minors or others who themselves suffer damage as a result of voluntary intoxication, it is for the legislature to take such action."

DENIO v. WESTERN ALLOYED STEEL CASTINGS CO.
103 N.W. 2d 384
May 27, 1960

In this workmen's compensation case the employee claimed that the decision of the industrial commission was in error in failing to find a total disability from silicosis contracted from his employment and that the commission erred in not finding the employee disabled within the meaning of Minnesota Statutes 176.66, Subdivision 1 and in not awarding him compensation pursuant to section 176.66, subdivision 2, and that it erred in applying provisions of sections 176.662 and 176.664.

As to the second claim of employee, the court said:

> "In connection with employee's second claim that the commission erred in not finding him disabled under section 176.66, subd. 1, and in not awarding him compensation under section 176.66, subd. 2, we are confronted with section 176.664, which provides in part:
>
> > 'Compensation is not payable for partial disability from silicosis or asbestosis, except where such partial disability follows a compensable period of total disability.'
>
> Here, the evidence supports the commission's finding that the employee did not sustain temporary total disability by reason of the occupational disease; that being so, compensation is not payable for partial disability from silicosis or asbestosis. Under those circumstances we are unable to find reversible error on the part of the commission.

It is the employee's position that the above-quoted provision of section 176.664 is unconstitutional if applicable here.

"In attacking the constitutionality of the section, the employee argues with much sincerity and emphasis that it discriminates against two classes of workers in that only workers partially disabled from silicosis and asbestosis are prevented from receiving compensation. He contends that if he incurred his present disability from any occupational disease other than silicosis or asbestosis there would be no question that he would be entitled to compensation. He, therefore, claims that section 176.664, insofar as it provides that compensation is not payable for partial disability for silicosis or asbestosis except where it follows a compensable period of total disability, establishes an unreasonable, arbitrary, and capricious classification and is therefore unconstitutional.

"The employee argues that he was disabled because of a well-known occupational disease and that the legislature did not intend to discriminate against him because his disability resulted from the contraction of silicosis. He cites the report of the Legislative Interim Committee on Occupational Diseases, January 1943, and claims that the legislature intended to adopt an all-inclusive act with respect to those unfortunate workers who contract disabling occupational diseases.

"The employee's argument is well presented. The provision under attack, however, does provide that compensation is not payable for partial disability from silicosis or asbestosis, except where it follows a compensable period of total disability, which is not shown here. Regardless of what our personal feelings may be with reference to inclusion of these diseases on the same basis as other occupational diseases, the matter is a legislative one to correct rather than a judicial one. For those reasons we find no reversible error on the part of the commission."

ANDERSON v. CITY OF MINNEAPOLIS
103 N.W. 2d 397
June 3, 1960

A fireman was awarded compensation for disability due to an occupational disease — heart condition. He was advised of his heart condition three years before he notified his employer. Upon notification to the employer, he was examined by employer's doctor and his employment terminated.

The question presented to the court was whether the claim for compensation was barred by Minnesota Statutes, Section 176.66, Subdivision 3, which reads:

> "Neither the employee nor his dependents are entitled to compensation for disability or death resulting from occupational disease, unless such disease is due to the nature of his employment as defined in section 176.011, subdivision 15, and was contracted therein within 12 months previous to the date of disablement; except in the case of silicosis or asbestosis, in which cases disablement of the employee must occur within three years from the date of such employee's last exposure with an employer in an employment to the nature of which the disease may have been a hazard, and except if immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, or as a member of the Minnesota highway patrol, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease shall be presumed to have been contracted therein within 12 months previous to the date of disablement." (Underlining supplied.)

The court read this section with section 176.011, subdivision 15, and section 176.66, subdivision 1. It pointed out that the legislature intended a distinction be drawn between contracting the disease and "disablement." The court said:

> "* * * The term 'disablement' is defined by the legislature and presents no serious difficulty in its application. The term 'contracted,' however, when used with reference to occupational diseases such as sclerosis, silicosis, berylliosis, tuberculosis, or other diseases which are of a progressive nature and often require the lapse of much time from their inception until they reach a stage where they are disabling or where it can be said that they have been legally contracted within the meaning of the Workmen's Compensation Act, has given rise to much difficulty.* * * "

It further stated:

> "In attempting to give effect to both subds. 1 and 3 of section 176.66, the rule evolved by our decisions is that an occupational disease such as sclerosis, silicosis, berylliosis, or tuberculosis is 'contracted' within the meaning of the statute when it first manifests itself so as to interfere with bodily functions."

The court discusses the nature of the diseases mentioned and then states:

> "* * * It is thus apparent that it is not satisfactory to equate the first symptoms of an occupational disease with legal contraction of the disease for the purpose of determining when the limitation provided in section 176.66, subd. 3, shall commence to run. Neither is it satisfactory to equate contraction with disability, as that term is used in subd. 1, for to do so renders the limitation period provided by the legislature completely nugatory. It would seem that, in order to accord compensation acts the liberal construction that they are entitled to, we must go one step farther than our present definition and hold that, within the meaning of section 176.66, subd. 3, a progressive occupational disease such as sclerosis, silicosis,

berylliosis, and tuberculosis is contracted when it manifests itself so as to interfere with bodily functions to such an extent that the employee can no longer substantially perform the duties of his employment. While we realize that this definition comes perilously close to repealing the limitation provided by section 176.66, subd. 3, it seems necessary to so hold if we are not to deprive many employees of their right to compensation simply because they did not make a claim for it when the first symptoms of an occupational disease were discovered. Rather than to do that, it seems to us better to leave it to the legislature to provide a more definite definition than we have now."

Under the facts in this case the court affirmed the findings of the commission that the disease was not contracted more than 12 months prior to employee's disablement.

MEADOWBROOK MANOR, INC. v. CITY OF ST. LOUIS PARK AND COUNTY OF HENNEPIN
104 N.W. 2d 540
June 10, 1960

Certain property was assessed by the city for benefits for a sanitary sewer improvement. Published notice of the assessment proceedings was given as required by Minnesota Statutes, Section 429.061, Subdivision 1. This section provides for published

notice when the council will meet to consider the proposed assessment, the notice to be made in a newspaper at least once no less than two weeks prior to the meeting of the council. There is no provision for actual notice to the property owner of the meeting.

The taxpayer in this case had no actual notice of the assessment until receipt of a statement from the county treasurer. The taxpayer's contention before the court was that the published notice does not comply with the due process requirements of the United States Constitution, Article XIV.

The court upheld this contention in that because of lack of proper notice to the taxpayer the land was not assessed in accordance with the requirements of due process. The court pointed out that although the city had complied with all statutory provisions as to the assessment, that in view of several recent decisions of the Supreme Court of the United States that mere publication of the notice was not sufficient. The court stated that something more must be done than publication to inform the owner of land of the assessment proceeding, and that the decisions of the Supreme Court of the United States would indicate that mailed notice would satisfy due process.

STATE v. MEISINGER
103 N.W. 2d 864
June 17, 1960

A quo warranto proceeding was brought to test the right of respondent to act as a special judge in the municipal court of West St. Paul. The mayor of the city appointed respondent as special judge under the provisions of the Municipal Court Act, Laws 1959, Chapter 660, Section 6, Subdivision 5, the last sentence of which provides:

> " * * * In the absence or disability of the municipal judge and special municipal judge of said court, if there be one, the mayor or president of the council may designate a practicing attorney to sit as special judge instead of such municipal judge from day to day."

The court held that the sentence quoted is inconsistent with Article 6 of the Minnesota Constitution and therefore void for the reason that under Section 11 of Article 6, appointments to fill any vacancy in the office of judge is thereby made by the governor.

The court stated that the legislature has wide discretion in organizing courts inferior to the district court but that Article 6 provides that all judges shall be elected in the manner provided by law by the electors of the state, district, county, municipality, or other territory wherein they are to serve; and also provides for appointments to fill any vacancy in the office of judge to be made by the governor.

EASTWOOD v. DONOVAN
105 N.W. 2d 686
October 17, 1960

A proceeding to compel the secretary of state to remove from the general election ballot the name of a candidate who filed for Congress by petition, the petition being challenged on the ground that it lacked the required number of signatures. The case was decided on a question of law, it being unnecessary for the court to pass upon the merits. In commenting upon the judicial problems that exist if the court had been required to pass upon the merits, the decision states:

> "Existing statutes make it virtually impossible to have a case of this kind heard and determined on the merits. Section 202.11, subd. 2, provides that no person may sign a nominating petition until after the date of the primary election. Under section 202.13, subd. 1, such nominating petition must be filed on or before 39 days before the general election. In view of the large number of names required, such petition frequently is not filed until the last day on which that may be done. Such was the case here. The time required to check out all names on such petition makes it difficult, if not impossible, to bring the matter into court in time so that a trial of the claims of the parties may be adequately heard and determined. A decision in such case must be rendered in time so that ballots may be printed and mailed to absentee voters all over the world. If we are to avoid disenfranchisement of such absentee voters, it is apparent that the time allowed for trial and determination of fact issues is wholly insufficient. It would seem to us that this difficulty merits the careful consideration of the legislature. Either nominating petitions

should be filed sufficiently long in advance of the election to permit an adequate challenge of an insufficient petition or they should be abolished entirely. The only other alternative is for this court to refuse to entertain such petition on the ground that we are denied an opportunity of adequately considering it."
