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REPORT

OF

REVISOR OF STATUTES

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CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

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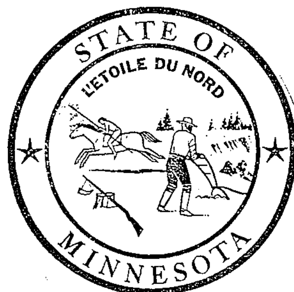

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November 15, 1978

The Honorable Edward J. Gearty
President of the Senate

and

The Honorable Martin O. Sabo
Speaker of the House of Representatives

State Capitol
St. Paul, Mn. 55155

The Revisor of Statutes transmits herewith his Report to the Legislature as required by Minnesota Statutes, Section 482.09 (9), concerning statutory changes recommended or discussed or statutory deficiencies noted in opinions of the Supreme Court of Minnesota between September 30, 1976 and September 30, 1978.

Respectfully submitted,

Steven C. Cross

Steven C. Cross
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 the legislature by November 15 of each even numbered year 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, 1976, and ending September 30, 1978, together with a statement of the cases and the comment of the court, are set forth on the following pages, in the order of the sections discussed.

TABLE OF CASES

Case	Page
AMDAL, PRICE v.	19
ANDERSON, MATTER OF	14
ARENS v. HANECY	8
ARVIG TELEPHONE COMPANY v. NORTHWESTERN BELL TELEPHONE COMPANY	12
BUSCH v. BUSCH CONSTRUCTION, INC.	15
BUSCH CONSTRUCTION, INC., BUSCH v.	15
CINCINNATI CORPORATION, LAMBERTSON v.	7
HANECY, ARENS v.	8
HYLEN v. OWENS	5
INDEPENDENT SCHOOL DISTRICT NO. 621 v. PUBLIC EMPLOYMENT RELATIONS BOARD	10
IZAAK WALTON LEAGUE OF AMERICA ENDOWMENT, INC. v. MINNESOTA	13
LAKICS v. LANE BRYANT DEPARTMENT STORE	9
LAMBERTSON v. CINCINNATI CORPORATION	7
LANE BRYANT DEPARTMENT STORE, LAKICS v.	9
MATTER OF ANDERSON	14
MATTER OF THE WELFARE OF S. L. J.	20
MINNESOTA, IZAAK WALTON LEAGUE OF AMERICA ENDOWMENT, INC. v.	13
MINNESOTA ENVIRONMENTAL QUALITY COUNCIL, NO POWER LINE, INC. v.	6
NO POWER LINE, INC. v. MINNESOTA ENVIRONMENTAL QUALITY COUNCIL	6

NORTHWESTERN BELL TELEPHONE COMPANY, ARVIG TELEPHONE COMPANY v. 12

OWENS, HYLEN v. 5

PACIFIC INDEMNITY COMPANY v. THOMPSON-YAEGER, INC. 17

PRICE v. AMDAL 19

PUBLIC EMPLOYMENT RELATIONS BOARD, INDEPENDENT SCHOOL DISTRICT NO. 621 v. 10

S. L. J., MATTER OF THE WELFARE OF 20

THOMPSON-YAEGER, INC., PACIFIC INDEMNITY COMPANY v. 17

HYLEN v. OWENS, 251 N.W.2d 858, MARCH 11, 1977

The decision in this case was a stage in a hard fought effort to establish a county ditch in Blue Earth county. Justice Yetka observed, in a special concurring opinion joined by two colleagues,

> "Finally, it appears to me that the entire drainage laws now on the books should be looked at by the legislature in the light of the new environmental protection statutes added during recent years, compiled in Minn. St. cc. 116 to 116H. Surely, under the new environmental laws serious doubt as to the desirability of any general drainage schemes must exist.
>
> "It appears ludicrous to me that simply to gain a few acres of farm land, swamps and marshes should be drained by one unit of government while another unit of government seeks state funds to acquire and protect wetlands, also to have the same farming areas that are the most active in the drainage schemes seek Federal and state disaster relief due to the effects of drought during dry cycles." 251 N.W.2d 863

NO POWER LINE, INC. v. MINNESOTA ENVIRONMENTAL QUALITY COUNCIL, 262 N.W.2d 312, SEPTEMBER 30, 1977

This case upheld the location of a power line in western Minnesota and the condemnation of land for it. Justice Yetka wrote a special concurring opinion commenting that the state agencies involved had taken too passive a role in the process.

> "I cannot envision a governmental agency being effective in protecting the public without having the authority to itself seek out the facts independently. The legislature should address itself to clarifying and strengthening the role of the agencies in this type of proceeding if the intent of the environmental statutes is to be carried out." 262 N.W.2d 332

> "I would hope that this case would make it apparent to the legislature that the statute, as written, is not preventing the continued warping away of our treasured rural environment; that the state agencies must be given a clear mandate to stop the destruction of farm and forest lands; that existing roadways and railroad rights of way must be used wherever possible, even though the resultant cost may be higher in dollars than some other possible route." 262 N.W.2d 333

LAMBERTSON v. CINCINNATI CORPORATION,
257 N.W.2d 679, FEBRUARY 4, 1977

Lambertson was an injured worker whose injury was compensable under the workers compensation law and also the basis for a claim against a third party who was not his employer. After discussing the intricate problems involved in reconciling Lambertson's possible claims and remedies the court quoted a writer on the subject,

> "A situation like this ought to be dealt with legislatively. It is rather inconsiderate to force courts to speculate about legislative intention on the strength of statutory language, in the framing of which the draftsmen had not the remotest trace of the present question in their minds. The legislature should face squarely the question whether the third party who happens to be so unfortunate as to get tangled up with a compensable injury should, so to speak, individually subsidize the compensation system by bearing alone a burden which normally he could shift to the employer." 257 N.W.2d 689

and further observed,

> "If further reform is to be accomplished, it must be effected by legislative changes in workers'-compensation-third-party law." 257 N.W.2d 689

ARENS v. HANECY, AUGUST 25, 1978

Mrs. Arens was employed as a household worker by Mrs. Hanecy. On the third day of her employment Mrs. Arens was injured in a fall. She sought workers' compensation which was denied by the supreme court. The governing language appears in section 176.41, subdivision 1.

> "Neither shall the chapter apply to any person employed as a household worker in, for, or about, a private home or household who earns less than $500 in cash in any three month period from a single private home or household provided that any household worker who has earned $500 or more from his present employer in any three month period within the previous year shall be covered by Laws 1975, Chapter 359 regardless of whether or not he has in the present quarter earned $500."

The claimant, Mrs. Arens, asserted that the statute required only a rate of pay of $500 per quarter. The defendant asserted that actual earnings of $500 are required to have workers' compensation coverage.

The supreme court said the statute is ambiguous but held against the claimant because of the history of the legislation.

> "We believe that the record indicates that the legislature made a major policy decision in extending workers' compensation coverage to household workers and, reflecting the concerns of the members, chose to restrict coverage to a specific class of those employees. The legislature may wish to reexamine and further extend workers' compensation coverage. That decision, however, is not within our power or purview."

LAKICS v. LANE BRYANT DEPARTMENT STORE, 263 N.W.2d 608, FEBRUARY 3, 1978

Gladys Lakics died while her workers compensation claim for temporary total disability was pending before the workers compensation court of appeals. The claim was allowed after her death and ordered to be paid to her brothers and sisters. The supreme court reversed stating,

> "In the absence of statutory authorization for the order, we are faced with the fact that rights and benefits granted by the Worker's Compensation Act rest solely upon, and are limited by, the statutes creating them." 263 N.W.2d 610

Minnesota Statutes 1974, Section 176.101, Subdivision 6, contained a provision for payment to dependents or heirs

> "***(A)ccrued compensation due to the deceased prior to his death but not paid is payable to such dependent persons or legal heirs as the commissioner of the department of labor and industry, compensation judge, or commission, in cases upon appeal, may order, without probate administration."

This provision together with other language was repealed by Laws 1975, Chapter 359, Section 8. The supreme court concluded,

> "In the light of this consequence, it seems to us that the legislature may wish to reexamine the wisdom of repealing Minn. St. 1974, § 176.101, subd. 6." 263 N.W.2d 610

Minnesota Statutes, Section 179.63, Subdivisions 7 and 13

INDEPENDENT SCHOOL DISTRICT NO. 621 v. PUBLIC EMPLOYMENT RELATIONS BOARD, 268 N.W.2d 410, AUGUST 28, 1978

The school district hired 13 teachers on a temporary basis. Two teachers associations sought to have them included in a bargaining unit.

The definition of "teacher" in section 179.63, subdivision 13 applies to teacher labor relations. Although amended by Laws 1978, Chapter 789, Section 1, the subdivision still contains some odd grammar.

> "Subd. 13. 'Teacher' means any person other than a superintendent or assistant superintendent, employed by a school district in a position for which the person must be certificated by the state board of education or in a position as a physical therapist or an occupational therapist; and such employment does not come within the exceptions stated in subdivision 7, or defined in subdivisions 8, 9, or 14."

The court commented as follows about the language following the semicolon.

> "The grammatical construction of this subdivision makes it unclear as to whether the subdivision 7, 8, 9, and 14 exceptions apply. We find, as the parties apparently assumed, the legislature intended that if a person comes within the specified subdivisions he or she is <u>not</u> a teacher for the purposes of PELRA." 268 N.W.2d 412 (note 3)

Another difficulty appeared in the language of section 179.63, subdivision 7, clause (f)

> "Subd. 7. 'Public employee' or 'employee' means any person appointed or employed by a public employer except:
>
> "...(f) employees who hold positions of a basically temporary or seasonal character for a period not in excess of 100 working days in any calendar year;...."

The court commented,

> "The provision at issue in the present case, Minn. St. 179.63, subd. 7(f), is problematic because it speaks of 'employees who hold positions of a basically temporary or seasonal character' rather than temporary or seasonal employees." 268 N.W.2d 412

The reference to "positions" gave latitude for argument but after a review of the comparable teachers' tenure cases the court concluded that the existing language should be construed to mean the suggested language.

> "Although the language in the statutes leaves much to be desired as to clarity of expression, we believe the <u>intent</u> of the legislature is clear...." 268 N.W.2d 414

Minnesota Statutes, Sections 237.12 and 237.16, Subdivision 1

ARVIG TELEPHONE COMPANY v. NORTHWESTERN BELL TELEPHONE COMPANY, AUGUST 18, 1978

Arvig Telephone Company wanted to transfer all its long distance calls through equipment it owned at one location. That would have required Arvig to end its long distance connections with Northwestern Bell Telephone Company at all but one point. Bell objected that the disconnections were unlawful and the new switching equipment would displace service it already provided.

Section 237.12 requires that a connection between systems may be discontinued only with the approval of the public service commission upon a showing of public convenience.

Section 237.16, subdivision 1, prohibits one company from installing toll service equipment in territory already served by another company.

The commission held for Bell, the district court held for Arvig and the supreme court held for Bell.

The supreme court commented about the statutes,

> "In fairness to the litigants, it must be observed that at the heart of the difficulty posed by this case is the somewhat antiquated nature of the statutes with which we must deal."

and

> "We note, however, that the confusion generated by this litigation seems easily capable of repetition and would best be remedied by a legislative amendment."

IZAAK WALTON LEAGUE OF AMERICA ENDOWMENT, INC. v. MINNESOTA, 252 N.W.2d 852, MARCH 18, 1977

The League bought a parcel of tax forfeited land to hold as wildlife habitat until the state would buy it back. The League received a tax deed. The state refused to complete the repurchase because the League did not have marketable title.

The supreme court declined to decide the case because there was no real controversy between the parties. The court made some general observations about tax titles.

> "We are aware that the marketability of tax titles, and their validity generally, is a topic of much concern to the profession and to the public. The state has a strong interest in being able to collect taxes due it by a sure and final method. The current statutory scheme does not in unmistakable terms provide that desired measure of certainty and finality. See, Note, 1 Wm. Mitchell L. Rev. 1. The possible or preferred solutions, however, are more properly directed to the legislature." 252 N.W.2d 854

MATTER OF ANDERSON, 252 N.W.2d 592, APRIL 1, 1977

Judge Anderson was suspended without pay for three months. The supreme court remarked,

> "The fact that suspension shifts additional work to other judges is a problem which should be considered when the present law is next reviewed by the legislature." 252 N.W.2d 595

BUSCH v. BUSCH CONSTRUCTION, INC., 262 N.W.2d 377,
DECEMBER 9, 1977

Angeline Busch was injured and sued to recover her anticipated future medical expenses. It was argued that only her husband could sue for her future medical expenses since he had primary liability. This drew section 519.05 into construction.

> "519.05 LIABILITY OF HUSBAND AND WIFE. No married woman shall be liable for any debts of her husband, nor shall any married man be liable for any torts, debts, or contracts of his wife, committed or entered into either before or during coverture, except for necessaries furnished to the wife after marriage, where he would be liable at common law. Where husband and wife are living together, they shall be jointly and severally liable for all necessary household articles and supplies furnished to and used by the family."

Earlier cases construing this statute and its common law context held that a married woman was precluded from herself suing for her medical expenses.

The supreme court overruled the earlier cases to the extent they are inconsistent with the present holding and tried to give the statute a constitutional construction.

> "The constitutionality of this statute was not raised, thus we decline to rule on the issue; however, we believe the legislature should consider the repeal or modification of § 519.05. It is a vestige of an earlier era when the husband was the sole income producer in the family, and it was intended to insure that he would provide his spouse with the necessities of life. It was also intended

> to insure that suppliers of such services would not hesitate to provide those services for fear that they would not be paid. This law has no place in the statute books today where a significant percentage of married women are working to help support the family, where national policy requires access to individual credit regardless of sex, and where group insurance and other supportive means exist to provide payments for medical care.
>
> "We hold that the statute does not relieve the wife of liability to pay for her necessities, but vests a secondary liability in her husband. Since modern law now permits both husband and wife to legally contract, we hold that she, as well as her husband or any other adult, may contract and be primarily responsible for any legal obligation resulting from that contract. The statute creates an obligation in the husband to pay in case of default by the wife." 262 N.W.2d 402

The court suggested trust arrangements for the wife's award to protect the husband for claims arising from his secondary liability. It thought the need for special arrangements, "further proof of the outmoded policies embodied in the statute." 262 N.W.2d 402 (note 22)

The statute does not create a parallel secondary liability of the wife for claims against the husband.

PACIFIC INDEMNITY COMPANY v. THOMPSON-YAEGER, INC.,
260 N.W.2d 548, SEPTEMBER 16, 1977

Section 541.051 limits actions against persons who provide improvements to real property. It does not apply to improvements made by owners or tenants. The supreme court found the section unconstitutional. After citing rulings from other states the court wrote,

> "We...do not feel compelled to elaborate further, except to state that we too can see no basis for including within the protection of the statute persons who construct or design improvements to real estate, and excluding other persons against whom third parties might bring claims should they incur injury, such as owners and material suppliers. Legislative classifications must apply uniformly to all persons who are similarily situated, and the distinctions which separate those who are included within a classification from those who are not must be natural and reasonable, not fanciful and arbitrary." (Citations omitted)
>
> "It appears that the statute contravenes this prohibition in that it grants a special immunity to persons within its terms, without a rational basis for regarding those persons as a distinct and separate class." 260 N.W.2d 555

The section was amended while the lawsuit was in progress to exclude from its scope the statutory warranties of Minnesota Statutes, Section 327A.02. The amendment, by Laws 1978, Chapter 65, Section 8, does not meet the court's objection. Although the court does not mention the amendment, it was passed before the opinion was rendered and, in

any case, would not revive a section found unconstitutional. An effort to provide a similar but constitutional law would require a new enactment. Repeal of section 541.051 would be appropriate.

PRICE v. AMDAL, 256 N.W.2d 461, JUNE 10, 1977

Section 602.04 created a rebuttable presumption that a person was not himself negligent if he died in a situation that caused a negligence suit for his claim. This presumption proved impractical. A claim against a decedent's estate could not equitably be tried together with a claim on his behalf since the presumption would not apply to both. Neither could they be fairly tried apart because of problems of res judicata, estoppel and inconsistent verdicts. After a series of cases which, in the circumstances, could only produce unsatisfactory results the court held the section unconstitutional as a denial of equal protection. The legislature ratified the decision by repealing section 602.04, twice. Laws 1978, Chapter 491, Section 1 and Laws 1978, Chapter 674, Section 46.

MATTER OF THE WELFARE OF S. L. J., 263 N.W.2d 412, FEBRUARY 17, 1978

A fourteen year old child made an obscene remark to police officers. She was found delinquent by the district court but the finding was reversed by the supreme court. The decision turned on the construction of section 609.72, subdivision 1.

> "609.72 DISORDERLY CONDUCT. Subdivision 1. Whoever does any of the following in a public or private place, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:
>
> "(1) Engages in brawling or fighting; or
>
> "(2) Disturbs an assembly or meeting, not unlawful in its character; or
>
> "(3) Engages in offensive, obscene, or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger, or resentment in others."

The court found that words, by themselves, could only be criminal if they are 'fighting words.' Whether words are 'fighting words' depends on the circumstances surrounding their utterance. The court criticized the statute but gave it a narrow, constitutional construction.

> "Turning to the language of the statute, it is clear that, as written, § 609.72, subd. 1(3), is both overly broad and vague. Since the statute punishes words alone--'offensive, obscene, or abusive language'--, it must be declared unconstitutional as a violation

> of the First and Fourteenth Amendments unless it only proscribes the use of 'fighting words.' Section 609.72, subd. 1(3), however, punishes words that merely tend to 'arouse alarm, anger, or resentment in others' rather than only words 'which by their very utterance inflict injury or tend to incite an immediate breach of the peace.' Since the statute does not satisfy the definition of 'fighting words,' it is unconstitutional on its face.
>
> "Although § 609.72, subd. 1(3), clearly contemplates punishment for speech that is protected under the First and Fourteenth Amendments, we can uphold its constitutionality by construing it narrowly to refer only to 'fighting words'." 263 N.W.2d 418, 419

The statute could be amended to meet constitutional requirements by separating the language violation from the other unlawful actions and requiring that the language be likely to provoke an assault or breach of the peace.