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GOVERNMENTAL RESPONSIBILITY FOR TORTS IN MINNESOTA*

By Orville C. Peterson†

III. CONSTITUTIONAL, STATUTORY AND CHARTER MODIFICATIONS OF COMMON LAW RULES

J. THE NOTICE OF CLAIMS ACT

1. HISTORY AND PRESENT PROVISIONS

Apart from constitutional restrictions, the legislature may decide the extent to which the state and its subdivisions should be subject to liability for the torts of their officers and agents. It may clearly grant complete immunity, subject municipalities to the same liability as that of private individuals under similar circumstances, or impose certain conditions on the performance of which liability is made to depend. Its most important action of the last type is the passage of an act requiring notice before certain tort actions may be commenced. The basic section of the present statute reads as follows:

"Every person who claims damages from any city, village or borough for or on account of any loss or injury sustained by reason of any defect in any bridge, street, sidewalk, road, park, ferry-boat, public works or any grounds or places whatsoever, or by reason of the negligence of any of its officers, agents, servants or employees, shall cause to be presented to the common council or other governing body within thirty days after the alleged loss or injury, a written notice, stating the time, place and circumstances thereof, and the amount of compensation or other relief demanded. No action therefor shall be maintained unless such notice has been given; or if commenced within ten days thereafter, or more than one year after the occurrence of the loss or injury."

This statute and its predecessors have been in effect in somewhat similar form ever since 1897. Like provisions in special

*Continued from 26 Minnesota Law Review 358, 480 and 613. Views expressed in this study are the author’s and not those of the League of Minnesota Municipalities, with which he is associated.

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775See Nichols v. City of Minneapolis, (1883) 30 Minn. 545, 16 N. W. 410; Black v. Board of County Commissioners, (1906) 97 Minn. 487, 107 N. W. 560; Schigley v. City of Waseca, (1908) 106 Minn. 94, 118 N. W. 259.

7761 Mason's 1927 Minn. Stats., sec. 1831.
charters antedate that time.\textsuperscript{777} Laws of 1897, chapter 248, first applied such a requirement for notice before suit and a relatively brief limitation on actions arising out of tort claims to all cities, villages, and boroughs in the state.\textsuperscript{778} Somewhat modified in form, it appeared in the Revised Laws of 1905,\textsuperscript{779} remaining in that form until supplanted in 1913 by a new provision\textsuperscript{780} which is the present statute. About twenty-nine other states require that notice of tort claims against municipal corporations be given within certain fixed time limits.\textsuperscript{781}

It will be noticed that the Minnesota law applies to all municipal corporations but not to counties, towns, and school districts.\textsuperscript{782}

The present statute and its predecessors have been held constit-

\textsuperscript{777}For example, the Minneapolis special charter of 1881, Minnesota Sp. Laws 1881, ch. 76, subch. 8, sec. 20, the St. Paul special charter of 1885, Minnesota Sp. Laws 1885, ch. 7, sec. 19, and the Mankato special charter of 1881, Minnesota Sp. Laws 1881, ch. 73, subch. 8, sec. 8 contained such provisions. These may have served as models for the general state-wide legislation of 1897.

\textsuperscript{778}Section 1, the only section here material, reads as follows: "Before any city, village or borough in this state shall be liable to any person for damages for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect in any bridge, street, road, sidewalk, park, public ground, ferry boat, or public works of any kind in said city, village or borough, or by reason of any alleged negligence of any officer, agent, servant or employee of said city, village or borough, the person so alleged to be injured, or some one in his behalf, shall give to the city or village council, or trustees or other governing body of such city, village or borough, within thirty days after the alleged injury, notice thereof; and shall present his or their claim to compensation to such council or governing body in writing, stating the time when, the place where and the circumstances under which such alleged loss or injury occurred and the amount of compensation or nature of relief demanded from the city, village or borough, and such body shall have ten days' time within which to decide upon the course it will pursue with relation to such claim; and no action shall be maintained until the expiration of such time on account of such claim nor unless the same shall be commenced within one year after the happening of such alleged injury or loss."

\textsuperscript{779}Sec. 768. This section was almost identical with the present statute. It reads: "Every person who claims damages from any city, village or borough for loss or injury sustained by reason of any defect in a street, road, bridge or other public place, or by reason of negligence of its officers, agents, or servants, shall cause to be presented to its council or other governing body within thirty days after the alleged loss or injury, a written notice stating the time, place, and circumstances thereof, and of the amount of compensation or other relief demanded. No action therefor shall be maintained unless such notice has been given, or if commenced within ten days thereafter, or more than one year after the occurrence of the loss or injury."

\textsuperscript{780}Laws 1913, ch. 391.

\textsuperscript{781}National Institute of Municipal Law Officers, Report No. 60 (1940) Tort Notice of Claim Statutes, p. 2.

\textsuperscript{782}Bohrer v. Village of Inver Grove, (1926) 166 Minn. 336, 207 N. W. 721.
tional.\textsuperscript{783} It has superseded previous charter and special law provisions in conflict with it.\textsuperscript{784} The statute of 1897 did not prevent the subsequent adoption of a different home rule charter provision on the subject;\textsuperscript{785} but it is clear that the present statute is virtually the exclusive law on the subject, applying to all home rule charter cities as well as to other municipal corporations.\textsuperscript{786}

2. Purpose

When one individual negligently injures another, the wrongdoer ordinarily needs no notice of the accident and the claim for damages that results, since he is well aware of the accident himself. To a somewhat less extent, this is also true of most private corporations whose operations are more confined in area and scope of functions than are those of municipal corporations. In the case of the latter, particularly those of any size at all, many accidents happen through their negligence of which they cannot possibly be aware. In streets alone no reasonable inspection can reveal all the defects which might cause accidents.\textsuperscript{787} Owing to these circumstances—in addition, perhaps to a recognition of the different light placed by many individuals upon actions against individuals and those against governments—the statute requiring notice of claim before actions based on negligent torts might be brought was enacted.\textsuperscript{788} Its object is to "give the municipality an

\textsuperscript{783}Winters v. City of Duluth, (1901) 82 Minn. 127, 84 N. W. 788; Frasch v. City of New Ulm, (1915) 130 Minn. 41, 153 N. W. 121. See Nichols v. City of Minneapolis, (1883) 30 Minn. 545, 16 N. W. 410. Because of a title that was narrower than the body of the act, the 1897 statute was partially ineffective, Winters v. Duluth, supra this note; but the defect was remedied by the 1905 revision. Mitchell v. Village of Chisholm, (1911) 116 Minn. 323, 133 N. W. 804.

\textsuperscript{784}Doyle v. City of Duluth, (1898) 74 Minn. 157, 76 N. W. 1029; Nicol v. City of St. Paul, (1900) 80 Minn. 415, 83 N. W. 375.

\textsuperscript{785}Peterson v. City of Red Wing, (1907) 101 Minn. 62, 111 N. W. 840. "The subject of notice to a municipality of claims for damages by reason of defects in its streets as a condition precedent to maintaining an action therefor is germane to the subject of municipal legislation; hence the provision of the home rule charter here in question is valid, and the general law on the subject in force when the charter was adopted is not applicable to this case."

\textsuperscript{786}Mason's 1927 Minn. Stats., sec. 1833; Johnson v. City of Duluth, (1916) 133 Minn. 405, 158 N. W. 616. Notwithstanding this decision and the statute, a charter provision requiring notice has since been construed and applied. Szroka v. N. W. Bell Telephone Co., (1927) 171 Minn. 57, 213 N. W. 557.

\textsuperscript{787}Duluth, for example, had 637.5 miles of streets in 1930 and St. Louis Park with 4,811 population in 1930, had 282. (1938) 23 Minnesota Municipalities 286, 321.

\textsuperscript{788}David, Municipal Liability for Tortious Acts and Omissions (1936) 151. The purpose and policy of notice statutes, as stated in the cases, are
opportunity to investigate and to protect against fictitious claims." Put more fully,

"The manifest object of such notice is to enable the municipality, by its governing body, promptly to investigate, or cause to be investigated, the time, place, and circumstances of the injury, while witnesses were obtainable and facts fresh in their recollection." If the notice is properly given, the municipal authorities have an opportunity to settle the claim without suit if it be found after investigation that the claim is a meritorious one; and if not they can intelligently answer and defend any action brought to enforce the claim. Hence, the essential criterion of a notice is whether it gives the municipal corporation sufficient information within the time allotted to permit its officials to make proper investigation to determine the truth and the merit of the claim. The requirement of notice is mandatory and a sufficient notice is a condition precedent to recovery. However, it is to be construed liberally in favor of the person injured.

3. Claims to Which Statute Applies

The notice of claims act does not mention utilities specifically, nor does it draw any distinction in language between actions arising out of the performance of a governmental function for which liability may be imposed (i.e., the maintenance of streets and sewers) and those arising out of the operation of proprietary enterprises. The court has held, however, that the statute applies to the latter as well as the former. The court pointed out in the case in which this principle was established that there is as much need for notice in the case of claims arising out of utility operations as in the case of other claims for which the munici-

discussed in the report of the National Institute of Municipal Law Officers on Tort Notice of Claim Statutes, p. 306.

788 Kelly v. City of Faribault, (1905) 93 Minn. 293, 104 N. W. 231.
790 Olcott v. City of St. Paul, (1904) 91 Minn. 207, 97 N. W. 879. A number of other cases are to the same effect. See, for example, Kandelin v. City of Ely, (1910) 110 Minn. 55, 124 N. W. 449.
793 Nichols v. City of Minneapolis, (1883) 30 Minn. 545, 16 N. W. 410; Harder v. City of Minneapolis, (1889) 40 Minn. 446, 42 N. W. 350; Bausher v. City of St. Paul, (1898) 72 Minn. 539, 75 N. W. 745.
795 Frasch v. City of New Ulm, (1915) 130 Minn. 41, 153 N. W. 121.
pality may be liable. It further found that the statute does not involve an arbitrary discrimination in favor of utilities which are municipally-owned.

The present statute requires the serving of notice when the cause of action arises out of one of two things: (1) defects in streets or other public places; (2) negligence of the municipal corporation’s agents. The original statute of 1897 also covered these general types of tort claims, but the title of the act was so restrictive that the notice requirement was held to be inapplicable to claims arising out of negligence unconnected with streets or other public places. However, when the section was carried over into the 1905 revision, this defect in title was cured and since that time the statute has been wholly in effect. The 1913 act supplanting the comparable sections of the Revised Laws of 1905 both as to negligence and as to defects in streets and public places has been applied on numerous occasions.

The title to the 1897 act referred only to claims for personal injuries. Hence it was held that the notice requirement did not apply to claims for damages to property. However, it was evident from an earlier decision that nothing more serious than a defect in title prevented the broader application of the act. In

799 "Every reason which calls for the service of a written notice of claim upon a municipality before suit in any case, applies in this. It is as important that the head or administrative body of a city have notice of claim for negligent injury or damage caused by something connected with its water system, as if the injury arose out of some negligent defect in its streets. The funds of a city must be used to pay the one claim as well as the other. The purpose of notice is to enable a city to ascertain the facts, and keep in touch with the evidence pertaining to the claim, so as to facilitate a just settlement, or, if that cannot be done, defend with effect. The legislature, having deemed it expedient and conducive to public welfare to permit municipalities to own and manage public utilities, may to a reasonable extent protect them against stale and long hidden demands, and, perhaps unnecessary lawsuits, by requiring timely notice as a condition precedent to suit." Idem, (1915) 130 Minn. 41, 43, 153 N. W. 121.

797 See Johnson v. City of Duluth, (1916) 133 Minn. 405, 158 N. W. 616.

798 "An act relating to actions against cities, villages or boroughs for damages to persons injured on streets and other public grounds, by reason of the negligence of any public officer, agent or employee of any city, village or borough."

799 Winters v. City of Duluth, (1901) 82 Minn. 127, 84 N. W. 788.

800 Mitchell v. Village of Chisholm, (1911) 116 Minn. 323, 133 N. W. 804. See also Diamond Iron Works v. City of Minneapolis, (1915) 129 Minn. 267, 152 N. W. 647.

801 Minnesota, Laws 1913, ch. 391, sec. 1 found in 1 Mason's 1927 Minn. Stats., sec. 1831. See the quotation in full, supra, pp. 224-225.

802 See the cases cited infra this chapter.

803 See note 798, supra.

804 Megins v. City of Duluth, (1906) 97 Minn. 23, 106 N. W. 89.
Nichols v. City of Minneapolis, a similar provision in the special charter of Minneapolis was held applicable to claims for property damage. It was argued by the plaintiff that the phrase, "on account of any injuries received by any defect . . ." was limited by a subsequent phrase, "and that the person so injured . . .," but the court said this was a strained construction, since the quoted phrase was perfectly correct language to use in speaking of one injured in his property. "No reason can be conceived," it added, "for any difference in the rule in the two classes of cases, and the language of the charter makes none." Following this argument, the notice requirement of the Revised Laws of 1905 was held to apply to property damage as well as to injuries to the person, and the present statute has been similarly construed. The cause of the damage, and not the kind of damage resulting, is the test of whether notice is required.

On the other hand, not all kinds of damages to property—and presumably not all kinds of personal injuries, although this point has not been determined—are within the purview of the notice statute. Where there is a direct invasion of the plaintiff's property, negligence need not be an element of the tort; consequently in such cases no notice is required. Thus in Bohrer v. Village of Inver Grove, the village and school district filled in a natural ravine or gully on the land of the school district with sand and dirt, so that when rains came the sand and dirt washed down upon the plaintiff's adjoining property. The court held that the plaintiff was not required to give notice of the claim before commencing action. In this case not only was the claim not predicated upon negligence, but the injury was not the result of anything done on the land of the village.

An action to enjoin a municipal corporation from continuing a nuisance need not be preceded by a notice of claim; the statute apparently applies only to actions at law for damages. An action for damages resulting from the maintenance of a nuisance in which negligence is not a necessary element may also

805 (1883) 30 Minn. 545, 16 N. W. 410.
806 (1883) 30 Minn. 545, 547, 16 N. W. 410.
807 Sec. 768.
808 Diamond Iron Works v. City of Minneapolis, (1915) 129 Minn. 267, 152 N. W. 647.
809 Hughes v. Village of Nashwauk, (1927) 177 Minn. 547, 225 N. W. 898.
810 (1926) 166 Minn. 336, 207 N. W. 721.
be maintained without serving the statutory notice. In these cases the nuisance consisted of casting sewage on the plain-
tiff's premises. The same rule does not apply to actions arising
out of "nuisances" maintained in the street, since such cases
clearly involve defects in the street or negligent maintenance of the
street within the contemplation of the notice statute.

It would appear that in most cases of trespass to real property,
as in the nuisance cases where an objectionable substance is cast
on private property by the municipal corporation, there is like-
wise no requirement that a notice of claim be served before suit.
The suggestion in Bohrer v. Village of Inver Grove, in which
notice was held not required, that "the legal rights of the parties
may be worked out upon the theory of a trespass or a nuisance" indicates that this is true. On this theory, the plaintiff in a recent
case sought to avoid the necessity of a notice, but he was un-
successful, primarily because he pleaded negligence rather than
trespass, and secondarily, perhaps, because the alleged tort was
not in fact a trespass. The plaintiff in that case had a private
system for the distribution of water to the inhabitants of Lincoln
Township, part of which was incorporated as the village of Mahtomedi. After incorporation, the village built its own system,
in the course of which, according to the plaintiff's complaint, it
"wrongfully, negligently, and carelessly prosecuted" the work "so
as to break, pull apart, and loosen the pipes of the plaintiff and
immediately upon completion of its installation covered all of said
pipes including the pipes of the plaintiff." Because of these
"wrongful, negligent, and careless acts," the plaintiff's mains and
pipes leaked so that he was unable to serve his customers, and he
sued for damages. The court decided the complaint sounded in
negligence and that there could be no recovery because notice had
not been given. The word "wrongfully," which the plaintiff in-
sisted was sufficiently descriptive of trespass to distinguish it from
the terms "negligently and carelessly" which immediately followed,
was construed with the other words as claiming wrongful injury
based on negligence and carelessness. "In passing," the court said
in dictum, "it is very difficult to imagine, upon the facts of this
case, that the village, in building its own system of water supply,

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813(1926) 166 Minn. 336, 207 N. W. 721.
814(1926) 166 Minn. 336, 338, 207 N. W. 721.
authorized under our statutes, can be said to be a trespasser upon its own streets."

Even where unlawful invasion of private property can be considered as resulting from a defect in the street, as in some cases of interferences with surface water, no notice is required. The words in the statute have been construed to refer to

"defects in public ways or structures as such, and with regard to their usefulness and safety for the purposes of travel. There is nothing suggesting that the statute was intended to cover injuries resulting to adjacent property from conditions which do not render the street or highway defective as such."

Actions for damages for taking or damaging private property for public use need not be preceded by notice. Thus no notice is necessary in an action for damages resulting from grading a street or from changing the grade.

Until the passage of the 1913 act, the general notice statute had no application to damage actions for death by wrongful act as distinct from injuries. This was true both before and after the 1905 revision. The same construction had been made of special charter provisions whose language was similar. Even if the death did not occur until after the last date on which notice could legally be served had the action been for personal injuries, the notice requirement was inapplicable.

The rule that the statute did not apply to wrongful death actions was abrogated by express provision of the 1913 notice statute. Section 3 of that act made the general notice provisions applicable when the claim was one for death by wrongful act or omission, the notice to be given in such case by the personal representative, surviving spouse or next of kin, or the consular officer if the deceased was an alien, within one year after the

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811 Mason's 1927 Minn. Stats., sec. 1229.
817 Pye v. City of Mankato, (1888) 38 Minn. 536, 38 N. W. 621; Moran v. City of St. Paul, (1893) 54 Minn. 279, 56 N. W. 80. In both these cases, provisions of special charters were involved, but language is so similar to that of the present general statute that the cases must be considered as determining the point with respect to 1 Mason's 1927 Minn. Stats., sec. 1831 as well.
821 Johnson v. City of Duluth, (1916) 133 Minn. 405, 158 N. W. 616.
823 Orth v. Village of Belgrade, (1902) 87 Minn. 237, 91 N. W. 843.
824 Senecal v. City of West St. Paul, (1910) 111 Minn. 253, 126 N. W. 826.
825 Mason's 1927 Minn. Stats., sec. 1832.
alleged injury or loss resulting in death. However, if a notice has been presented by the deceased within thirty days after the injury or loss which would have been sufficient if he had lived, the notice requirement is considered complied with. The "provisions" of the notice statute which this section makes applicable to wrongful death actions are three: (1) notice must be given; (2) action may not be commenced within ten days immediately after the injury; (3) the action must be commenced within one year after the injury. Thus the action must be begun within the same period within which the notice must be given. In this respect the 1913 notice statute prevails over the earlier general provision of the wrongful death statute permitting the action to be brought within two years.

The 1913 act requiring notice of tort claims before suit extended the notice requirement in one other particular. It had been held that the law as it existed both before and after the 1905 revision did not require notice where the defendant municipal corporation was the employer of the plaintiff and the injury occurred in the course of that employment. This was also true of the requirement that action had to be commenced within one year after the injury. The 1913 law specifically stated, "The provisions of section shall also apply when the claim is based on the failure of the city, village or borough in one of the duties assumed by or imposed upon it as a master or employer." However, the section now is of little importance, since the workmen's compensation law provisions regarding notice to the employer apply to claims of this kind against municipal corporation as well as those against private employers. The original workmen's compensation act passed at the same session as the

826 Kuhlman v. City of Fergus Falls, (1929) 178 Minn. 489, 227 N. W. 653.
827 Ibid.
828 Kelly v. City of Faribault, (1905) 95 Minn. 293, 104 N. W. 231; Pesek v. City of New Prague, (1906) 97 Minn. 171, 106 N. W. 305.
830 Quackenbush v. Village of Slayton, (1913) 120 Minn. 373, 139 N. W. 716; Schultz v. City of St. Paul, (1913) 124 Minn. 257, 144 N. W. 955.
832 Mason's 1927 Minn. Stats., sec. 1831.
833 Written notice may be dispensed with if the employer has actual notice. See State ex rel. Northfield v. District Court, (1915) 131 Minn. 352, 155 N. W. 103.
834 Minnesota, Laws 1913, ch. 467.
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notice statute containing the provision regarding master and servant claims, included its own notice requirement. Since there is no longer any necessity for proving negligence in master and servant cases and since the liability of the employer prescribed by the workmen’s compensation act is exclusive, there appears to be little room left for the operation of the general notice of claims statute in cases of “the failure of the city, village or borough in one of the duties assumed by or imposed upon it as a master or employer.”

4. DESCRIPTION OF PLACE OF ACCIDENT

Since the notice of claim is not a pleading and is not to be construed according to the technical rules applicable to pleadings, the place of the accident is sufficiently described if the proper municipal officers may, by reasonable diligence, identify it. When it conveys the necessary information to the proper person, the notice is sufficient even though there are some inaccuracies in it. On the other hand, the notice cannot describe one defect and the complaint charge another entirely different one.

What is an adequate notice in respect to description of the place of accident must, of course, be decided in each individual case on the basis of the peculiar facts there involved; but a few illustrations from the decisions may give some idea of the liberality of the court in interpreting the notice statute. In Harder v. City of Minneapolis, the notice said the injury occurred on 21st Street between 15th and 16th Avenues. Actually the accident happened between 15th and Bloomington; 21st Street was not opened the additional block to 16th Avenue. The notice was held sufficient since the officers, from the description given, could easily tell the location. A notice that concluded with the words, “that the place of my said accident was about seventy-

835Secs. 19, 20.
836Minnesota, Laws 1937, ch. 64, sec. 1; 3 Mason's 1927 Minn. Stats. 1940 Supp., sec. 4272-1.
837Minnesota, Laws 1937, ch. 64, sec. 3; 3 Mason's 1927 Minn. Stats., 1940 Supp., sec. 4272-3.
839Harder v. City of Minneapolis, (1889) 40 Minn. 446, 42 N. W. 350; Lyons v. City of Red Wing, (1899) 76 Minn. 20, 78 N. W. 868; O'Brien v. City of St. Paul, (1911) 116 Minn. 249, 133 N. W. 981.
840Harder v. City of Minneapolis, (1889) 40 Minn. 446, 42 N. W. 350.
842(1889) 40 Minn. 446, 42 N. W. 350.
three feet north of the fence on the north line of the property of John Woodcock, adjoining said South Park street” was held sufficient in another case. A notice which described an accident as happening about 147 feet from a corner when it actually happened twenty feet from the spot described has also been held adequate. In Hebert v. Village of Hibbing, the notice said the accident occurred at a point on a sidewalk on a described portion of a street 200 feet west of a particular alley intersection. Actually there was no alley, but there was a driveway, and there was evidence that the accident happened 200 feet west of this driveway. This was held sufficient.

The notice of injury given in Moran v. Village of Hibbing mentioned the southeast instead of the northwest corner, but it did make reference to the “corner between the end of the cement sidewalk on the westerly side of Second avenue and Alice street, which runs in an east and west direction.” In holding that this was sufficiently definite to satisfy the requirements of the statute, the court agreed with the trial judge’s statement that while the mistake in the first reference to the place of the accident, given in the notice of claim, might, standing alone, be fatal, the subsequent description called attention to the right corner. Some reliance was also placed on the fact that the error in the notice did not actually mislead the defendant, whose counsel had made thorough preparation at the trial.

If the place of accident is insufficiently described in one notice, but a simultaneously-served notice of a claim arising out of the same accident describes the place sufficiently, the first notice will also be regarded as sufficient. In such a case the two notices should be read together.

5. Description of Defect

The same liberal construction of notices of claims has been adopted with respect to the description of the defect or act of negligence which occasioned the injury. Occasionally notices have been held insufficient, although this is comparatively unusual. In Hampton v. City of Duluth, the court found a notice fatally defective which described a smooth and slippery ice condition at

843Lyons v. City of Red Wing, (1889) 76 Minn. 20, 78 N. W. 868.
845(1927) 170 Minn. 211, 212 N. W. 186.
846(1928) 173 Minn. 458, 217 N. W. 495.
847Boyd v. City of Duluth, (1925) 164 Minn. 63, 204 N. W. 562.
848(1918) 140 Minn. 303, 168 N. W. 20.
one point when what actually caused the accident was a rough and uneven condition more than twenty-five feet westerly. Similarly, in Olcott v. City of St. Paul\textsuperscript{849} where the complaint alleged the accident was due to a hole in an allegedly defective sidewalk, a notice of claim was held insufficient which did not mention the unsafe character of the sidewalk, but alleged by way of inducement that the accident occurred “while plaintiff was lawfully passing over the said sidewalk at the place mentioned, in consequence of the defective, slippery, icy, smooth, and unsafe condition of said sidewalk. . . .” The court found nothing in this notice that would direct the attention of the city officials to the material and essential grounds upon which recovery was sought. “If we could sustain the complaint, and the evidence to support the same, upon such a notice, we need give no effect whatever to the requirements that the circumstance of the injury should be set forth.”\textsuperscript{850} Yet the fact that the court has several times had occasion to distinguish the notice in the Olcott Case in order to hold other notices sufficient suggests that it may have been unnecessarily strict in that case in what virtually amounted to the application of rules of pleading to a notice of claim.\textsuperscript{851} Ordinarily the results have been more favorable to the plaintiff. In Larkin v. City of Minneapolis,\textsuperscript{852} for example, a notice was found to comply with the statute when it stated,

> “that said injuries were caused at said place through carelessness and negligence of said city in failing to maintain and construct in a safe and proper manner the sidewalk crossing said alley at said place, and in failing to remove therefrom the ice and snow which has accumulated and become bumpy, slanting, and slippery, whereby the undersigned while traveling on said sidewalk on said 5th Street was caused to fall.”

The court pointed out that the notice informed the city of two conditions: an accumulation of ice and snow and a defective sidewalk. Even though the plaintiff could not have recovered for the first, the notice was sufficient to lead the city officials to the second. In another case,\textsuperscript{853} a notice charging a “patch of ice” was held a sufficient designation of the circumstances to admit

\textsuperscript{849}(1904) 91 Minn. 207, 97 N. W. 879.
\textsuperscript{850}(1904) 91 Minn. 207, 210, 97 N. W. 879.
\textsuperscript{851}See Kandelin v. City of Ely, (1910) 110 Minn. 55, 124 N. W. 449; Larkin v. City of Minneapolis, (1910) 112 Minn. 311, 127 N. W. 1129; Weber v. City of Minneapolis, (1916) 132 Minn. 170, 156 N. W. 287.
\textsuperscript{852}(1910) 112 Minn. 311, 127 N. W. 1129.
\textsuperscript{853}Anderson v. City of Minneapolis, (1917) 138 Minn. 350, 165 N. W. 134.
proof of "an uneven ridge of ice," the defect alleged in the complaint.

The decision in Goar v. Village of Stephen\(^{854}\) shows how little will satisfy the statutory requirements when the preparation of a more adequate notice would require technical knowledge which the plaintiff, or even his attorney, could not be expected to have. The plaintiff had been badly burned while ironing when high voltage from the village's electric distribution system somehow reached her hand. The notice stated that electricity of a dangerously high voltage entered the plaintiff's house and caused the injuries and "that said injuries were caused . . . as the natural consequence of . . . some defect in the wiring system and equipment" by reason of the negligence of the village "in the care, operation and control of said system . . . ."

The notice was held sufficient. Otherwise, the court pointed out, it might be necessary for the plaintiff to employ an electrical engineer or other expert to examine an entire municipal system before she could give the notice which was a condition precedent to her right to recovery.

Since the notice is intended to give the municipal authorities sufficient information to enable them to investigate the claim, it has been suggested that the plaintiff might be precluded from recovery notwithstanding service of an adequate notice if his wilful acts deprived the defendant of the benefit of the notice. In Wornecka v. City of St. Paul,\(^{855}\) the attorney for the plaintiff, shortly after the accident out of which the action arose, took the defective plank which allegedly caused it, replaced it with a good plank, and then served the statutory notice. The court held that whether the defendant was deprived of the protection of the statute was a fact question and upheld the trial court's action in granting the defendant's motion for a new trial.\(^{856}\)

6. Statement of Time of Accident

The requirement that the notice state the time of the injury appears to have been construed only once. In Murphy v. City of St. Paul,\(^{857}\) it was held that as against a demurrer, a statement

\(^{854}\)(1923) 157 Minn. 228, 196 N. W. 171.
\(^{855}\)(1912) 118 Minn. 207, 136 N. W. 561.
\(^{856}\)There was some evidence that the sidewalk inspector of the city had notice of the accident and examined the place where it occurred before the plaintiff's attorney removed the loose plank.

\(^{857}\)(1915) 130 Minn. 410, 153 N. W. 619.
in a notice that the accident occurred December 23 when it happened December 24th was sufficient.

7. STATEMENT OF CLAIM

It has been held that the amount stated in the notice as the amount claimed is not necessarily the maximum amount that the plaintiff may recover. Since the object of the statute requiring notice is to furnish information to municipal officials of the happening of the accident and that a claim is to be made, the situation should be considered analogous to the case where an attorney presents a bill to his client for services rendered and then sues for more when the client refuses to pay. This rule, the court held, should apply in all cases where a specific claim is made for unliquidated damages.\footnote{7}

The 1897 notice statute required that the notice state “the amount of compensation or the nature of the relief demanded. . . .”\footnote{8} One notice, after charging the injury, stated that the person injured would claim damages and the plaintiff contended this met the requirement of the statute in giving “the nature of the relief demanded.” The court held, however, that the quoted phrase was not intended to apply to such a case as this but only to cases where some other relief than money compensation was demanded. The plaintiff’s notice was held deficient, therefore, in not stating “the amount of compensation . . . demanded.”\footnote{9}

In \textit{Ackeret v. City of Minneapolis},\footnote{10} a parent claimed damages for an injury to his son, both on his own account and as the statutory representative of his son. The court held that a notice of claim was sufficient in that case if it contained the essential information required by the statute even though it failed to state specifically that the parent would claim damages both for himself and for his son and failed to state the proportion between the two of the amount named as the total demanded.

8. SERVICE OF NOTICE

The statute requires the notice to be presented to the council or other governing body, but how it must be given and the claim

\footnotetext{\textsuperscript{7}}{\textsuperscript{7}}\textsuperscript{7}Ter\textsuperscript{7}y\textsuperscript{7}l v. City of Faribault, (1901) 84 Minn. 341, 87 N. W. 917.
\footnotetext{\textsuperscript{8}}{\textsuperscript{8}}\textsuperscript{8}Minnesota, Laws 1897, ch. 248, sec. 1.
\footnotetext{\textsuperscript{9}}{\textsuperscript{9}}Bausher v. City of St. Paul, (1898) 72 Minn. 539, 75 N. W. 745. It may be noted that the present statute is less open to the interpretation for which the plaintiff contended in the Bausher Case since it requires statement of “the amount of compensation or other relief demanded.” 1 Mason's 1927 Minn. Stats., sec. 1831.
\footnotetext{\textsuperscript{10}}{\textsuperscript{10}}(1915) 129 Minn. 190, 151 N. W. 976.
presented to the council is not prescribed. The court has held that it must be done in some practical and effective way, and that in determining the sufficiency of the method adopted in any particular case, technical strictness will not be required. A substantial compliance with the statute is all that is necessary.\footnote{862}

A notice may be served upon the officer who is custodian of the records and files of the council; but to be effective as notice to the council in such cases, the notice must be served on that officer at his office or place of transacting the official business pertaining to his office.\footnote{863} In villages generally this is the recorder or clerk.\footnote{864} Apparently the notice may be presented at a council meeting;\footnote{865} but if it is served on the clerk of the council, it is immaterial so far as the plaintiff's right to recovery is concerned, whether or not the clerk presented it to the council.\footnote{866} In Minneapolis, notice served upon the assistant city clerk in the absence of the clerk has been upheld.\footnote{867}

What effect should be given to service on a member of the council who has no secretarial duties for the council appears never to have been specifically determined, although one case seems to indicate that this is not a satisfactory method of service. It was held in Doyle v. City of Duluth,\footnote{868} that service on the mayor was not sufficient;\footnote{869} and more recently the same principle

\footnote{862}Roberts v. Village of St. James, (1899) 76 Minn. 456, 79 N.W. 519.
\footnote{863}See Peterson v. Village of Cokato, (1901) 84 Minn. 205, 87 N.W. 615. In other states service on the clerk has been held sufficient when the notice has been handed to him when he was not on duty or in his office. King v. City of Parson, (1915) 95 Kan. 654, 149 Pac. 699; Wolf v. City of Venice, (1910) 152 Ill. App. 585; Richmond v. City of Marseilles, (1914) 190 Ill. App. 227.
\footnote{864}Peterson v. Village of Cokato, (1901) 84 Minn. 205, 87 N.W. 615. In Bausher v. City of St. Paul, (1898) 72 Minn. 539, 75 N.W. 745, the court conceded without deciding that the city clerk of St. Paul was the ex officio clerk of that city and keeper of the council records. Doubtless this is true under the home rule charters of most cities.
\footnote{865}See Doyle v. City of Duluth, (1898) 74 Minn. 157, 76 N.W. 1029; Lyons v. City of Red Wing, (1899) 76 Minn. 20, 78 N.W. 868.
\footnote{866}Peterson v. Village of Cokato, (1901) 84 Minn. 205, 87 N.W. 615. An earlier case, Doyle v. City of Duluth, (1898) 74 Minn. 157, 76 N.W. 1029, had suggested that when the notice is served in this way, a request should be annexed that it be laid before the council at its next meeting; but in Roberts v. Village of St. James, (1899) 76 Minn. 456, 79 N.W. 519, this was specifically held immaterial because, since the notice is directed to the council, it is the duty of the clerk to lay it before the council at its next meeting whether or not a request to do so is made. Otherwise all that would be necessary to avoid recovery would be for the council to refrain from meeting until 30 days after the injury.
\footnote{867}Kelly v. City of Minneapolis, (1899) 77 Minn. 76, 79 N.W. 653.
\footnote{868}(1898) 74 Minn. 157, 76 N.W. 1029.
\footnote{869}See also Nicol v. City of St. Paul, (1900) 80 Minn. 415, 83 N.W. 375.
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has been applied to cities where the mayor is a member of the council and has the same vote as other members.\(^{870}\) This seemed like too technical a construction to two members of the court, particularly in a case where the mayor had turned the notice over to the corporation counsel, but it remains the law. Logically the rule of that case should apply where service is made on any member of the council other than the clerk in municipalities where the clerk is a member of the council.

It has been held that service need not be made on a park board even when the injury out of which the claim arises occurs in a park under the jurisdiction of such a board.\(^{871}\) Presumably this is true also of an accident occurring through negligence in the operation of a municipal utility under the exclusive control of a utilities commission.

Technical defects in the service of the notice, as in the case of insufficiencies in other respects, usually have been held immaterial. A notice otherwise regular but signed with the wrong initials—those of the plaintiff's husband—has been held valid, since it was not apparent how the defendant could have been prejudiced by the mistake.\(^{872}\) An error in the address to which the notice is directed is not significant if the notice is actually served on the proper person.\(^{873}\) Service of a copy of the notice has been held as valid as service of the original.\(^{874}\)

9. **EXCUSE FOR NONCOMPLIANCE**

Some of the requirements for notice of tort claims which were included in special charters made an exception to the notice requirement when the person injured was "bereft of reason by virtue of the accident."\(^{875}\) None of the general statutes have contained any exception in favor of either insane persons, minors, or others; and it is evident that the court will not read such exceptions into the statute. It specifically has refused to exempt minors from the notice requirement of the Minneapolis charter,

\(^{870}\) Aronson v. City of St. Paul, (1934) 193 Minn. 34, 257 N. W. 662.
\(^{871}\) Kleopfert v. City of Minneapolis, (1903) 90 Minn. 158, 95 N. W. 908.
\(^{872}\) Terryll v. City of Faribault, (1900) 81 Minn. 519, 84 N. W. 458.
\(^{874}\) Kelly v. City of Minneapolis, (1899) 77 Minn. 76, 79 N. W. 653.
\(^{875}\) See Ray v. City of St. Paul, (1890) 44 Minn. 340, 46 N. W. 675; Szroka v. Northwestern Bell Telephone Co., (1927) 171 Minn. 57, 213 N. W. 557. Many home rule charters contain such a provision. In Ray v. City of St. Paul the injured person was held not to have been bereft of his reason because of the accident; although morphine was administered to relieve his pain, he was found to be in command of his mental faculties.
although the charter provision did except persons bereft of their reason because of the injury. Whether there should be other exceptions the court considered a matter of legislative policy. The great majority of the courts hold that the municipal corporation may not waive the notice as required by the statute, but this question is still undecided in Minnesota. There is no exception, as there is in the workmen’s compensation act, where the municipal corporation has actual knowledge of the injury; and the supreme court recently has ruled that actual notice of the accident and the facts concerning it does not excuse non-compliance with the notice of claims statute, since this notice is a condition precedent to suit. In this case a police officer who saw the accident filed a report showing he had investigated it and stating the facts and circumstances. A copy of this report, which gave all the information required by the statute except a statement of the amount of compensation demanded, was served on the city. This was held insufficient. In that case, the city had had the plaintiff questioned and had received from her a written statement setting forth her version of the facts, but the court found that this did not operate to avoid the necessity of a proper notice. In these circumstances, the court refused to uphold the notice upon the ground either of estoppel or of waiver.

K. Statutes Governing Presentation, Auditing, and Allowance of Claims

1. Application to Tort Claims

Persons who have claims against counties, towns, school districts, and cities and villages generally are required to submit them to the board or council before they may be allowed. A formal procedure of presentation in verified form, consideration, and allowance by the board or council is necessary before the claims can be paid. The statute relating to villages has been

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878 See 1 Mason’s 1927 Minn. Stats., sec. 4280.
879 Olson v. City of Virginia, (Minn. 1941) 300 N. W. 42.
880 1 Mason’s 1927 Minn. Stats., secs. 646, 668, par. 1, counties; 3 Mason’s 1927 Minn. Stats., 1940 Supp., sec. 2849-2, school districts; 4 Mason’s 1927 Minn. Stats., Secs. 1105, 1106, towns; idem, secs. 1222, 1223, villages; idem, secs. 766-769, municipalities. School districts are not included in the term municipalities as used in the last-cited law, but towns
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held inapplicable to tort claims.881 Taking the language of the section as a whole, the court construed the section as making the village council a board of audit and not a tribunal to assess damages; the section was intended to apply "only to claims of a charter usually susceptible of being itemized," and was never intended to embrace damage suits upon unliquidated tort demands.882

A similar construction was made of a city charter provision upon somewhat different grounds. A special law charter of the city of Austin provided for presenting "accounts, claims or demands of every kind whatsoever" to the council before suit. It also provided for the service of a notice of tort claim before suit, a provision similar to the general statute now in force. On the ground that it could hardly be presumed that claims should be presented twice, the court construed the first provision as referring only to claims in contract, not those in tort.883 It appears fairly well established from these cases that in any case where the general notice of claim statute applies, it is unnecessary to comply with the usual procedure of presenting claims applicable to contract claims; and in villages,885 there is no necessity for complying with the presentation of claims provision in tort cases even in instances where the general notice requirement is inapplicable. However, since the decision in Manson v. Village of Chisholm turned largely on the language of the particular statute involved, it is doubtful that it can be cited as a precedent on the latter point except in the case of villages. Consequently, the applicability to tort claims not covered by the notice statute of city charter provisions or statutes relating to cities which require presentation of claims to the council before suit is an open question in any

and counties are. Olson v. Independent and Cons. School District No. 50, (1928) 175 Minn. 201, 220 N. W. 606. They are, however, specifically covered by the later enactment which became 3 Mason's 1927 Minn. Stats., 1940 Supp., sec. 2849-2. No effort has been made to gather the provisions of home rule charters or statutes relating to cities; but it is safe to say from casual search that similar requirements are quite uniformly imposed. This is an appropriate subject for inclusion in a home rule charter. State ex rel. Barber Asphalt Paving Co. v. District Court, (1903) 90 Minn. 457, 97 N. W. 132.

881 Manson v. Village of Chisholm, (1919) 142 Minn. 94, 170 N. W. 924.

882 The court found that the history of the statute confirmed its view.

883 Clark v. City of Austin, (1888) 38 Minn. 487, 38 N. W. 615.

884 I.e. 1 Mason's 1927 Minn. Stats., sec. 1831.

885 Sec. 1222, the section previously cited, has been construed as applying both to villages operating under the Revised Laws of 1905 and to those operating under Laws of 1885, ch. 145. First National Bank v. Village of Buhl, (1922) 151 Minn. 206, 186 N. W. 306.
particular case; much is likely to depend on the language used in each instance.

The applicability of the provision relating to towns to tort actions also never has been satisfactorily determined. The statute\(^\text{886}\) provides that

"no action upon any claim or cause of action for which a money judgment only is demandable, except upon town orders, bonds, coupons, or written promises to pay money, shall be maintained against any town, unless a statement of such claim shall have been filed with the town clerk. No action shall be brought upon any town order until the expiration of thirty days after payment thereof has been demanded."

In an action to recover damages from a town for unreasonably casting surface waters on plaintiff's land, the court held that an objection that there had been a failure to comply with this requirement of the statute had not been raised by the answer and therefore could not be considered;\(^\text{887}\) but in the course of the opinion, the court said obiter dictum:

"There is force in the contention that the legislature, by requiring all claims against towns to be filed with the town clerk as a condition precedent to the right to maintain an action thereon, intended something more than a mere formality, and that, if the statute is to serve any useful purpose, it should be construed to suspend the right of action for a reasonable time after the claim is filed to permit the board of supervisors to inquire into and allow or disallow the same."\(^\text{888}\)

The necessity for compliance with statutes requiring the presentation of claims against the county and school district in tort cases also has not been determined. There is no broad prohibition of suit before presentation and no requirement of the lapse of a minimum time as in the case of towns, but it has been held that, at least as to contract claims, filing of the claims is a condition precedent to suit.\(^\text{889}\) Consequently, the provisions relating to towns, counties, and school districts are probably all to be construed alike. There is a dictum in a federal case that these statutes do not relate to tort claims,\(^\text{890}\) and the Minnesota court has held that they have no application to a claim fixed by law.\(^\text{891}\)

\(^{886}\)Mason 1927 Minn. Stat., sec. 1106; see also idem, sec. 766.

\(^{887}\)Halvorson v. Town of Moranville, (1917) 137 Minn. 349, 163 N. W. 673.

\(^{888}\) (1917) 137 Minn. 349, 351, 163 N. W. 673.

\(^{889}\)Board of County Commissioners v. Clapp, (1901) 83 Minn. 512, 86 N. W. 775; see Old Second National Bank v. Town of Middletown, (1896) 67 Minn. 1, 69 N. W. 471.


\(^{891}\)City of Fergus Falls v. Board of County Commissioners, (1903) 88
The cases in other jurisdictions appear divided and so much depends upon the language used in the statute that they are of little help in Minnesota. While the same considerations do not apply to the presentation of tort claims as to others, some purpose would be served by requiring tort claims to be presented before suit; but the application of the statutes to such situations, except in the case of villages, must still be considered undetermined.

2. Power to Compromise Claims

Courts have differed somewhat in their views toward the power of municipalities to compromise claims against them in the absence of specific statutory authority. A power to compromise has generally been implied where there is liability and the amount remains unliquidated, but it has frequently been denied when liability has not been definitely established. Our court has taken a somewhat more liberal view. In Snyder v. City of St. Paul, the court permitted the city of St. Paul, in the absence of specific charter authority, to compromise a salary claim. The court explained:

"It is a generally accepted doctrine that a municipality may, unless forbidden by statute or charter, compromise claims against it without specific express authority, such power being implied from its capacity to sue and be sued, and that ordinarily power to compromise claims is inherent in the common council as a representative of the municipality. If it makes such compromises in good faith and not as a gift in the guise of a compromise, the settlement is valid and does not depend upon the ultimate decision that might have been made by a court for or against the validity of the claim."

It has been held that a compromise may be made at any time until final judgment; but a city may not compromise a claim which

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Minn. 346, 93 N. W. 126. "In such case the county commissioners have no right to interfere, and no power to pass upon the liability or nonliability of the county, for the law fixes the liability as well as the amount thereof. . . . There is nothing for the commissioners to pass upon." idem, p. 348.

692See 6 McQuillin, Municipal Corporations (2d ed. rev. 1936), sec. 2629. See also the early case of Murphy v. County Commissioners of Steele County, (1869) 14 Minn. 67. A contract claim was there involved, but some of the language and the reference to a New York case may be of interest in this connection.

693As in the case of the tort notice of claims statute relating to cities and villages.


695(1936) 197 Minn. 308, 267 N. W. 249.

696(1936) 197 Minn. 308, 309, 267 N. W. 249.
has gone to judgment unless the debtor is unable to pay in full.\textsuperscript{897} In both of these cases, contract claims were involved, but no good reason occurs why the same thing is not true of tort claims.

The statement in the \textit{Snyder Case} that the council must make compromises in good faith and not as a gift in the guise of a compromise suggests that a municipality may have no power to compromise a tort claim as to which the recognized principles make it clear that there is no liability. Thus, there probably is no power to compromise a claim arising out of negligence occurring in the exercise of a governmental function or a claim arising out of an injury due to a street defect when no notice has been served and the thirty-day period within which it might be served has expired.\textsuperscript{898} Probably it has been a recognition of this fact that has led to the passage of bills in the legislature, special in their effect, authorizing payment of claims on which there could be no liability as a matter of law.\textsuperscript{899}

General statutes relating to municipal corporations and quasi municipal corporations in Minnesota contain no specific authorization or prohibition of the compromise of claims.\textsuperscript{900} A number of home rule charters, however, do place some restriction on the making of compromises, usually by requiring a two-thirds or a three-fourths vote of the council to effect such a settlement of a claim.\textsuperscript{901} Recent statutes authorizing the indemnification of public

\textsuperscript{897} Oakman v. City of Eveleth, (1925) 163 Minn. 100, 203 N. W. 514. Here again, if a compromise is made, it must be made in good faith. Ibid.

\textsuperscript{898} The attorney general once reached this conclusion as to the latter situation. Minn. Op. Atty. Gen. 1922, No. 50. He relied upon Van Auken v. City of Adrian, (1904) 135 Mich. 534, 98 N. W. 15. See People v. Parker, (1907) 231 Ill. 478, 83 N. E. 282; City of Cincinnati v. Rogers, (1922) 16 Ohio App. 139. It is clear from the Snyder Case, however, that it does not have to be definitely determined that there is a liability before a compromise is justified; and a mere error of judgment made in good faith will not defeat such a compromise.

\textsuperscript{899} See, for example, Minnesota, Laws 1937, chs. 357, 422, 424; Minnesota, Laws 1933, ch. 201; Minnesota, Laws 1925, ch. 310; Minnesota, Laws 1923, ch. 306. Many of these laws if challenged would probably be found unconstitutional as special legislation. Cf. Szroka v. Northwestern Bell Telephone Co., (1927) 171 Minn. 57, 213 N. W. 557.

\textsuperscript{900} Aside from possible authority granted to counties by 1 Mason's 1927 Minn. Stats., sec. 668, par. 1 which empowers the county board to "examine, settle and allow all accounts, demands, and causes of action against the same, and, when so settled, to issue county orders therefor, as provided by law."

\textsuperscript{901} Ada, (1908) secs. 85, 86; Alexandria, (1909) secs. 69, 70; Bemidji (1905) ch. IV, sec. 21; Detroit Lakes, (1903) secs. 77, 78; Fergus Falls, (1903) secs. 85, 86; Moorhead, (1900) secs. 86, 87; Staples, (1908) secs. 76, 77; West St. Paul, (1917) ch. IV, sec. 32; Willmar, (1901) secs. 82, 83; Windom, (1920) secs. 82, 83. A few require only a simple majority, either of those present, like Jackson, (1920) secs. 81, 82; St. James, (1918) secs. 76, 77; and Worthington, (1909) secs. 78, 79, or of the members-elect, like St. Paul, (1914) sec. 133, pars. 2, 3.
employees for motor vehicle torts have contained express provision authorizing the compromise of such claims, whether groundless or not.\textsuperscript{902}

L. Statutes Providing for the Direct Assumption of Liability

1. Statutes Providing for Payment of Specific Claims Against the State

Because of the firmly established principle of sovereign immunity from suit, one who has been injured in his person or property by wrongful acts or omissions of state officers or employees generally has been without any remedy except the political one of appealing to the legislature. Statutes paying claims of aggrieved individuals have been passed since early statehood; but tort claims authorized to be paid have been steadily increasing in number.\textsuperscript{903} Acts authorizing payment of various types of claims against the state, both contract and tort, have been passed at virtually every session of the legislature since the state was organized.\textsuperscript{904}

\textsuperscript{902}Minnesota, Laws 1935, chs. 15, 173, Minnesota, Laws 1937, ch. 149 found in 3 Mason's 1927 Minn. Stats., 1940 Supp., secs. 2780-17b, c, d, 3139-3, 4, 5, and 1933-67. These statutes are discussed in part M, infra.

\textsuperscript{903}A search of the session laws of ten year intervals shows that no tort claims were authorized by the legislatures of 1859, 1869, and 1879, and none in 1889 except one claim for loss suffered by a prison guard due to a prison fire. In 1899, payment of three tort claims by third persons and one by a state employee was authorized. The 1909 legislature authorized payment of eight claims by workmen (including National Guardsmen) but none where the injured person was not employed by the state. The 1919 legislature had a similar record with 27 claims by workmen authorized to be paid. In 1929, however, the legislature authorized payment of 25 tort claims in addition to 11 claims for employees' injuries; and in 1939 about 63 tort claims were paid or suit against the state was authorized upon them, four injuries to employees also being deemed compensable. These figures are only approximately correct, because the information given in the claims acts is too meagre in some instances to permit an accurate classification of the claims paid.

\textsuperscript{904}Those passed during the 1900's include: Minnesota, Laws 1901, chs. 311, 381, sec. 6; Laws 1903, ch. 285, sec. 5; Laws 1905, ch. 337, sec. 18; Laws 1907, ch. 476, sec. 32; Laws 1909, ch. 375, sec. 41; Laws 1911, ch. 280, sec. 13; Laws 1913, ch. 583, sec. 15; Laws 1915, ch. 377; Laws 1917, ch. 439; Laws 1919, ch. 464; Laws 1921, ch. 512; Laws 1923, ch. 445; Laws 1925, ch. 425; Laws 1927, chs. 384, 442; Laws '1929, chs. 393, 394, 427; Laws 1931, ch. 416; Laws 1933, ch. 390, 427; Laws 1935, ch. 392; Laws 1937, chs. 453, 454; Laws 1939, chs. 397, 419; Laws 1941, chs. 435, 537, 538. Practice, at least recently, has been for interested senators and representatives to introduce individual claims bills. Claims which the appropriate committees have considered meritorious have then been consolidated into a single bill. Highway claims now are handled through one or two separate
At best this political remedy is an uncertain method of redress. An injured person must convince his own senator or representative, or some other one who can be induced to interest himself in the claim, that his claim is a meritorious one. If he fails in this initial step, he has no remedy at all. Even if he succeeds here he faces the much more difficult task of demonstrating the soundness of his claim to the committee members, then to the whole senate and house. Obviously with other committee assignments demanding the legislators’ attention, claims cannot get a full, impartial hearing; and political influence must play an important part in the outcome. Many meritorious claims go unrecompensed, and some of more dubious merit are paid. Even the authorization by the legislature is not enough, for many of the claims authorized fail to meet the approval of the attorney general or fail to satisfy other requirements set out in the claims acts for their passage.\textsuperscript{9}

2. Acts Waiving Governmental Immunity from Suit

With the increasing number and complexity of claims, the legislature has found it more and more difficult to give adequate consideration to claims against the state based on tortious acts or omissions of its officers. One way in which this difficulty might be avoided is by imposing on a regular trial court the duty of determining the facts giving rise to the claim. A court is obviously better equipped and better trained to do this job than a legislature whose entire regular deliberations are confined to a period of ninety legislative days each biennium.

Extremely jealous of the state’s immunity, the legislature only recently has taken any steps to break it down, even in par-

\textsuperscript{9}Information from the highway department confirms this statement. In only one case since 1927 have all the claims covered by a highway claims act actually been paid. That case is Minnesota, Laws 1939, ch. 397. In recent years the legislature has divided the highway claims between two bills, placing in one bill only those about which there was no question of the state’s responsibility and in the other all claims of dubious merit. Minnesota, Laws 1939, ch. 397 was one of the former. On the other hand none of the claims specified in some claims acts has ever been paid. Minnesota, Laws 1927, ch. 384 is an example. See on this general subject, Nutting, Legislative Practice Regarding Tort Claims Against the State, (1939) 4 Mo. L. Rev. 1.
particular cases. Apparently not until 1935 did the legislature authorize the determination of tort claims against the state through judicial channels. Laws of 1935, ch. 308, in the orthodox fashion of claims acts, authorizes the payment of a maximum amount in settlement of twelve claims, of which ten may properly be regarded as sounding in tort. But Section 13 of the act was novel. It reads,

"The foregoing claims have been allowed for the purpose of permitting the claimants to contest their rights in the courts, if any they have, as the wrongs or alleged wrongs to property of the claimants were of such complicated character that the committees of the legislature felt that they could not hear them properly on the facts and the purpose of making the allowance is only to give the claimants the right to have their injuries, if any they have, sustained, entitling them to a day in court and the amounts allowed are in no way to be considered by the courts as an adjudication of the claim, insofar as the amount is concerned." 908

Another act 907 passed the same day followed this pattern. It authorized suit on a number of claims, about ten of which may be considered as being based on an alleged tortious act or omission. It also fixed maximum amounts which were not to be construed

"as involving the sums of money that should actually be paid, but have been put into the various sections of this bill for the purpose of giving the claimants a chance to have a day in court where the claims can be adjudicated in the usual way as a matter of law." 908

It is impossible, of course, to tell how the results achieved through an adjudication "in the usual way as a matter of law" compare with those that the legislature might have achieved had it made the decision upon the claims itself. At any rate, only four of the claims included in the first act were ever paid and only nineteen of the second. 909

The precedents established in 1935 were followed in 1937, 910

909 Information secured from the department of highways, December 4, 1941. The proportion actually paid does not differ markedly from that arrived at by comparing the number of claims authorized to be paid under more orthodox claims acts and the number actually paid. In both these cases, not all the claims actually paid were settled for the full amount authorized.
in 1939,911 and again in 1941.912 All these later acts authorized suit within six months of passage and permitted the commissioner of highways to "pay, compromise, adjust or settle" any of the claims within the maximums stated in the acts. An attempt was made in the 1941 legislature to provide a general waiver of immunity so that claimants generally could bring action against the state;913 but this bill, on which no progress was made, did not extend to tort claims.

Until recently, the effect of these statutes waiving the state's immunity from suit has been in doubt. Some other courts had held that by these laws, the legislature waived only immunity from being sued and in no way created or admitted a liability where none existed before.914 This attitude is typical of the strictness with which courts have construed statutes passed in derogation of common law immunity, and squares with our own court's attitude toward the Minnesota statute making school districts liable "for an injury to the rights of the plaintiff arising from some act or omission of such board."915 Other courts, however, particularly more recently, have given the statutes a broader construction and have held that these special acts waive immunity from liability as well as from suit.916

The Minnesota court, in a recent decision construing Laws 1939, ch. 420, has joined the latter group of courts.917 Stating that

911 Minnesota, Laws 1939, chs. 396, 420. All the claims included in Laws 1939, ch. 396 grew out of the construction of a single bridge, but the legislature said in its preamble that "the number and nature of such claims is such that it is impracticable for the Legislature to determine the merits thereof." Information from the department of highways indicates that all of these claims except two have been paid at a small fraction of the total authorized. Test cases were brought on two of the items but the claimants lost.

912 Minnesota, Laws 1941, chs. 456, 539.

913 H.F. 440, S. F. 404.


a claim statute such as that under discussion may recognize legal obligations and may compensate by direct appropriation or may waive immunity from suit, the court concluded that if the latter method is employed the legislature might prescribe such terms and conditions for recovery as it deems appropriate. Since the complaint was responsive to those terms and conditions, liability, the court felt, should follow. On the question of whether anything more than an immunity to sue was waived, the court added,

“We think it is apparent that the legislature intended to compensate for injury done by waiving its sovereign immunity to suit. To hold otherwise would virtually give plaintiff a mere right to sue but leave him with only a non-existent cause. Such a construction would amount to a total destruction of the obvious beneficent purpose of the act. The trial judge aptly said: ‘It should not be assumed that the legislature intended that the claimants named were to be put to the expense of instituting and maintaining actions, nor the county and state to the expense incident to the conduct and trial of such actions . . . if it did not intend that the state should be held liable for damages.’”

The state relied upon the principle that a governmental agency is not answerable for damages sustained as the result of the negligence of its officers or agents in the performance of governmental functions. However, the case in issue involved damages from a diversion of surface water, which, as the court pointed out, came within the exception that “towns and counties charged with highway construction and maintenance are liable in damages to property owners if and when the owners’ property rights are invaded.” The case cannot be considered, therefore, as final authority upon the question of the effect of the immunity waiver in cases of negligent injury to persons or personal property rather than to abutting real property. The fact that quasi municipal corporations are not liable for negligence in the discharge of governmental functions even though they may be sued suggests that the state’s immunity from suit is not necessarily the only

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918 The court cited State ex rel. Wharton v. Babcock, (1930) 181 Minn. 409, 232 N. W. 718, which held that the legislature could not constitutionally authorize payment from the trunk highway fund of claims for damages due to the negligence of the state in the maintenance of highways.


920 (1940) 207 Minn. 412, 291 N. W. 900, 902.

921 A few of the former injuries have been included in the acts waiving immunity from suit. Minnesota, Laws 1939, ch. 420, for example, contained one claim for damages from negligent spreading of calcium chloride as a result of which some milk cows were poisoned and died, and another item of damages for personal injuries and property damaged by negligent construction and maintenance of a trunk highway.
bar to liability of the state for personal injuries resulting from its defective highway maintenance. On the other hand, the argument of Westerson v. State indicates that a waiver of immunity from suit might carry with it a waiver of immunity from liability in such cases as well as in the type of action involved in that case.

In states where the question of what is special legislation is one for final judicial determination, special acts waiving state immunity from tort liability have been held unconstitutional when they have been attacked as having been passed where a general law could be made applicable. However, the laws that have been passed in Minnesota to waive the state's immunity from suit in particular cases can hardly be considered invalid as special legislation. Claims acts or special acts waiving the state's immunity are not included among the kinds of special acts specifically prohibited by the Minnesota constitution, and at least the former necessarily must be special.

Laws authorizing suits against the state have as yet carved out only a small segment of the possible field of state liability in tort. Immunity has been waived only where the claims have involved complicated situations or otherwise have arisen out of peculiar circumstances. Yet these few acts may be of considerable significance, for they manifest, in some cases even in express language, a legislative recognition that at least in the limited field covered by them, the law-making body is in no position to pass intelligently and adequately upon the claims involved. Theoretically, there is no reason why the principle of these acts should not be extended by opening the courts to any individual who has a

923Minn. const. art. 4, sec. 33. This section begins by forbidding a special law "in all cases when a general law can be made applicable," but this general clause has not been used to invalidate laws as special if the law could not be invalidated as infringing the specific prohibitions which follow. Consult Anderson, Special Legislation in Minnesota, (1923) 7 Minnesota Law Review 133-151, 187-207.

924See Dike v. State, (1888) 38 Minn. 366, 8 N. W. 95, which held that a statute which singles out a particular claimant and allows him to establish his claim on appealing from the findings of a claims commission to the district court, although other claimants do not have this right, is constitutional. The court pointed out that appropriation acts necessarily cannot be general.

925In Minnesota, Laws 1937, ch. 480, the state waived immunity from suit "for any injuries, for personal injuries and property damaged, caused by the location, construction, reconstruction, improvement and maintenance of the trunk highway system." The court has held, however, that this waiver does not extend to claims other than those enumerated in the following sections of the Act. Underhill v. State, (1940) 208 Minn. 498, 294 N. W. 643.
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claim against the state; but such a departure from precedent is not yet on the horizon.926

3. Mob and Riot Acts

At common law one whose property or person was injured by acts of mobs or rioters had no recourse for the damage against the state or the political subdivision in which it occurred. This was treated merely as a lapse of a governmental duty for which no liability could be imposed.927 However, legislation now exists in about half the states giving the injured persons redress against municipal corporations or quasi municipal corporations for damages to person, property, or both.928 Minnesota is among these states, but its statute is not extensive in its effect.929 It is limited to damages for lynching, defined by the act as the killing of a human being by the act or procurement of a mob.930 The county in which a lynching occurs is made liable to the dependents of the person lynched in an amount up to $7,500, recoverable in a civil action. As is generally true of statutes of this kind, reasonable care is no defense. The statute, like others throughout the country, appears to be predicated either on the theory that the county is by implication at fault when a lynching occurs or on the idea that it is better that the loss be distributed equitably over the community than that the injured persons should have to bear the loss alone. It has been said that statutes of this kind "exemplify an advanced theory of public assumption of risk which far exceeds in social significance any thing to be found in tort liability for official wrongdoing."931 In Minnesota, however, the

926It has taken place, however, in New York through the court of claims act. N. Y. Laws 1929, ch. 467; Court of Claims Act, sec. 12-a. Cf. recent Michigan statutes allowing claims for injuries caused by negligence in the construction, improvement or maintenance of any trunk line highway. Michigan, Acts 1925, no. 374, p. 736; Comp. Laws (1929) sec. 238.


928Liability of the Municipality for Mob Violence, (1937) 6 Ford. L. Rev. 270-283; Communal Liability for Mob Violence, (1936) 49 Harv. L. Rev. 1362-1369. Both these articles cite all the existing statutes of the various states.

9292 Mason's 1927 Minn. Stats., secs. 10036-10037. An effort to extend this liability was made in the 1941 legislature but the bill, H.F. 936, failed of passage after being approved by the house of representatives.

930Idem, sec. 10036.

statute in its restricted form may never have been used; at least it appears never to have been construed by the courts.

4. **Motor Vehicle Owner's Vicarious Liability Statute**

Minnesota, in line with a number of other states, has passed a statute\(^9\) making the owner of a motor vehicle liable for the negligence of one who uses the automobile with his consent. In at least one state, such an act has been held to apply to municipal corporations and to make them liable for the acts of a policeman where otherwise, according to well-settled principles, the city would be immune.\(^3\) In Minnesota, however, a specific exception has been made so that the statute evidently does not extend the liability of municipal or quasi municipal corporations in the case of motor vehicle torts.\(^3\)

5. **The Workmen's Compensation Act**

Before the passage of the workmen's compensation act, the master generally was liable for injuries to his servant in the course of his employment only when the injuries were tortious; and the questions whether the master was negligent and the servant was not, and whether the servant assumed the risk of the particular injury usually had a significant bearing on the master's liability.\(^3\) These same principles had been applied in a number of cases to injuries to municipal as well as private employees.\(^9\) Municipalities were held liable only in case their tortious acts or omissions resulted in the injury; and, indeed, there is evidence that even here, as in the case of injuries to third persons, the fact

\(^{923}\) Mason's 1927 Minn. Stats., 1940 Supp., sec. 2720-104. This is part of the safety responsibility act, Laws 1933, ch. 351.


\(^{934}\) The word "person" as used in the act is defined to exclude the state and its political subdivisions. 3 Mason's 1927 Minn. Stats., 1940 Supp., sec. 2720-101. As to the construction of such statutes generally, consult a note in (1937) 21 MINNESOTA LAW REVIEW 823.

\(^{935}\) See cases cited in 4 Dunnell's Minn. Digest, (1927) secs. 5833, 5855, 5964, 5999.

\(^{936}\) See, for example, Friedrich v. City of St. Paul, (1897) 68 Minn. 402, 71 N. W. 387; Hughey v. City of Wabasha, (1897) 69 Minn. 245, 72 N. W. 78; Stahl v. City of Duluth, (1898) 71 Minn. 341, 74 N. W. 143; Gilbert v. City of Tracy, (1911) 115 Minn. 443, 132 N. W. 752; Sivertson v. City of Moorhead, (1912) 119 Minn. 467, 138 N. W. 674; Jones v. City of St. Paul, (1915) 130 Minn. 260, 153 N. W. 516.
that the municipality was engaged in a governmental function was
a good defense.537

Under the workmen's compensation act, however, questions
of negligence, contributory negligence, assumption of risk and
other common law defenses are not material in determining lia-
bility.538 Consequently the responsibility of the employer may be
considered as not sounding in tort; at any rate, his liability may be
quite without fault. The subject of liability of municipalities
under the workmen's compensation act is therefore treated as
beyond the scope of this study.

One interesting problem of municipal liability under the work-
men's compensation act has developed recently in connection with
municipal sponsorship of work relief projects.539 Only two cases
involving a situation of this kind have reached the supreme court.
In Michels v. City of St. Paul540 a city was held liable for injuries
suffered by a worker on a CWA project where the city had by
written agreement assumed the liability imposed by law.541 In
Bushnell v. City of Duluth,542 the city was held liable under
the workmen's compensation act for injuries to a truck driver
who was working under direction of a W. P. A. foreman on a
boulevard improvement project. The only question involved was
whether the injury occurred while the driver was sufficiently
under the control and management of the W. P. A. foreman to
charge the city with liability under the workmen's compensation
act. The driver was substituting for his brother at the time the
accident occurred. Recent cases elsewhere have been divided.
The result has depended generally on the determination of fact
questions surrounding the relationship between the parties, lia-
bility being imposed where the worker could be found to be the
employee of the municipality either for all purposes or for the
particular transaction under the borrowed servant doctrine.543

(To be Concluded)

537See Bang v. Independent School District No. 27, (1929) 177 Minn.
454, 225 N. W. 449.
538Mason's 1927 Minn. Stats., 1940 Supp., secs. 4272-1, 4272-3.
539Tort liability for injury to third persons due to relief projects has
been discussed earlier. See (1942) 26 MINNESOTA LAW REVIEW 308.
540(1935) 193 Minn. 215, 258 N. W. 162.
541The city's contention that it had assumed only the liability imposed
by law and that such liability did not exist in such cases in Minnesota
where there was no employer-employee relationship was not discussed by
the court.
542(1940) 209 Minn. 27, 295 N. W. 73.
543See cases cited in note, (1938) 7 Geo. Wash. L. Rev. 264, and
annotation in 120 A. L. R. 1148; cf. Hanson v. St. James Hotel and Union
City Mission, (1934) 191 Minn. 315, 254 N. W. 4.