

Section 3 is effective the day after final enactment.

Approved March 24, 1986

CHAPTER 418—S.F.No. 2116

An act relating to elections; providing for removal of certain elected county officials; proposing coding for new law in Minnesota Statutes, chapter 351; repealing Minnesota Statutes 1984, sections 351.03; 351.04; 351.08 to 351.11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[351.14] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 1 to 10.

Subd. 2. MALFEASANCE. "Malfeasance" means the willful commission of an unlawful or wrongful act in the performance of a public official's duties which is outside the scope of the authority of the public official and which infringes on the rights of any person or entity.

Subd. 3. NONFEASANCE. "Nonfeasance" means the willful failure to perform a specific act which is a required part of the duties of the public official.

Subd. 4. MISFEASANCE. "Misfeasance" means the negligent performance of the duties of a public official or the negligent failure to perform a specific act which is a required part of the duties of the public official.

Subd. 5. ELECTED COUNTY OFFICIAL. "Elected county official" means any public official who is elected to county-wide office or appointed to an elective county-wide office, including county attorney, county sheriff, county auditor, county recorder, and county treasurer. "Elected county official" also means a county commissioner elected or appointed from a commissioner district.

Sec. 2. **[351.15] REMOVAL OF ELECTED COUNTY OFFICIAL.**

An elected county official may be removed from office in accordance with the procedures established in sections 1 to 10.

Sec. 3. **[351.16] PETITION; REVIEW.**

Subdivision 1. FORM OF PETITION. Any registered voter may petition the county auditor requesting a removal election and setting forth facts which allege with specificity that an elected county official committed malfeasance or nonfeasance in the performance of official duties during the current or any previous term in the office held by the elected county official, except that a petition may not be submitted during the 180 days immediately preceding a

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general election for the office which is held by the county official named in the petition. The petitioner must attach to the petition documents which contain the signatures of supporters who are registered voters totalling at least 25 percent of the number of persons who voted in the preceding election for the office which is held by the county official named in the petition. Each page on which signatures are included must clearly identify the purpose of the petition. The registered voters must be residents of the county or, in a removal election involving a county commissioner, of the commissioner district which elected the named county commissioner. The signatures of supporters must be on forms provided by the county auditor.

Subd. 2. COUNTY AUDITOR'S DUTIES. The county auditor shall examine the petition to determine whether it contains the requisite number of valid signatures of registered voters. If so, the county auditor shall forward the petition, but not the signatures, to the clerk of appellate courts within 15 days of receipt of the petition. If the county auditor determines that the petition does not include the requisite number of signatures, the county auditor shall deny the petition within 15 days of receipt of the petition.

Subd. 3. REMOVAL OF COUNTY AUDITOR. If the county auditor is the named elected county official, the petition must be submitted to the chair of the county board of commissioners who shall appoint a county official to perform the duties of the county auditor specified in sections 1 to 10.

Subd. 4. LIMITATION. An elected county official is not subject to a removal election on the ground that misfeasance in the performance of official duties was committed, or on the ground of disagreement with actions taken that were within the lawful discretion of the elected county official.

Sec. 4. [351.17] CHIEF JUSTICE REVIEW; ASSIGNMENT TO SPECIAL MASTER.

The clerk of appellate courts shall submit the petition to the chief justice. The chief justice shall review the petition to determine whether the petition properly alleges facts which, if proven, constitute malfeasance or nonfeasance in the performance of official duties. If the petition properly contains factual allegations of malfeasance or nonfeasance, the chief justice shall assign the case to a special master for a public hearing. The special master must be an active or retired judge. The chief justice may issue an order denying the petition if it appears that the petition does not contain allegations which, if proven, constitute malfeasance or nonfeasance in the performance of official duties.

Sec. 5. [351.18] WAIVER.

An elected county official who is the subject of a petition under section 3 may waive in writing the right to a public hearing. If the hearing is waived, the case must be certified by order of the chief justice to the county auditor for a removal election to be held within 30 days of the receipt of the order.

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Sec. 6. [351.19] PUBLIC HEARING.

Subdivision 1. TIME; SUBPOENAS; AMENDMENT OF PETITION. A public hearing into the allegations of a petition under section 3 must be held within 60 days after issuance of the order of the chief justice assigning the case to a special master. The special master may issue subpoenas to compel the testimony of witnesses and the production of documents. The petition may be amended of right by the petitioners at any time prior to 40 days before the scheduled hearing. The special master may permit later amendment of the petition only for good cause.

Subd. 2. DETERMINATIONS BY SPECIAL MASTER. The special master shall take evidence at a public hearing under this section and determine:

(1) whether the petitioners have shown by clear and convincing evidence that the factual allegations of malfeasance or nonfeasance are true; and

(2) if so, whether the facts found to be true constitute malfeasance or nonfeasance.

The special master shall dismiss the petition at any time if it appears that this standard has not been met.

Subd. 3. RULES. The public hearing under this section must be conducted using the Minnesota Rules of Civil Procedure, unless modified in sections 1 to 10, and the Minnesota Rules of Evidence.

Subd. 4. LEGAL COUNSEL. The petitioners and the elected county official shall be represented by legal counsel at their own expense, and shall pay their costs associated with the hearing except that the county may assume the legal costs incurred by the elected county official. The county shall pay all other costs of the hearing.

Subd. 5. DECISION. The special master shall issue a decision within 60 days after the end of a public hearing under this section.

Subd. 6. APPEAL. If a petition under this section is dismissed by the special master, either before or after a public hearing, the petitioner may appeal the decision to the supreme court within 30 days. The supreme court shall grant an expedited appeal.

Sec. 7. [351.20] DECISION; CERTIFICATION.

If the special master determines that the elected county official committed malfeasance or nonfeasance in the performance of official duties, the case must be certified to the county auditor for a removal election on a date to be fixed by the county auditor and held within 30 days of the order of the special master.

Sec. 8. [351.21] APPEAL.

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An elected county official may appeal the decision of a special master under section 7 to the supreme court within ten days. The removal election is stayed until 20 days after the supreme court issues a decision on the appeal. The supreme court shall grant an expedited appeal.

Sec. 9. [351.22] REMOVAL ELECTION; DISQUALIFICATION.

Subdivision 1. MAJORITY VOTE; FORM OF QUESTION. An elected county official may be removed pursuant to sections 1 to 10 by majority vote. The removal election is a special election conducted under applicable provisions of section 375.20. The question submitted to the voters must be:

"Should, elected (appointed) to the office of,
(Name) (title)
be removed from that office?"

Yes
No"

Any resulting vacancy must be filled as provided by law.

Subd. 2. DISQUALIFICATION. A removed county official may not thereafter hold the same office for the remainder of the term to which the official was elected.

Sec. 10. [351.23] EXTENSION OF TIME.

The chief justice may extend the time limitations in sections 1 to 10 for good cause.

Sec. 11. REPEALER.

Minnesota Statutes 1984, sections 351.03; 351.04; 351.08; 351.09; 351.10; and 351.11, are repealed.

Sec. 12. EFFECTIVE DATE.

This act is effective the day following final enactment and applies retroactively to any conduct which occurred prior to its enactment.

Approved March 24, 1986

CHAPTER 419—S.F.No. 2127

An act relating to the city of Cologne; exempting certain general obligation bonds and tax levies from debt and levy limitations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. AUTHORIZATION.

The city of Cologne, Carver county, upon authorization by the electors of the city, may issue its general obligation bonds in the principal amount not to exceed \$350,000 to finance the acquisition and betterment of a fire station and city hall within the city. The bonds may be issued notwithstanding the debt

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