

CHAPTER 382

COUNTY OFFICERS

382.01 AUDITOR, TREASURER, SHERIFF, REGISTER OF DEEDS, ATTORNEY, CORONER, SURVEYOR, SUPERINTENDENT OF SCHOOLS; ELECTION; TERM.

HISTORY. 1913 c. 458 ss. 1, 2; G.S. 1913 ss. 809, 810; 1915 c. 168 ss. 1, 2; G.S. 1923 ss. 820, 821; M.S. 1927 ss. 820, 821.

The term of office of a county officer appointed when a new county is created continues until the first Monday in January, following the next general election at which county officers are elected in all the counties of the state. *Imsdahl v Weeks*, 158 M 512, 197 NW 973.

The legislature may fix the term and provide for filling of vacancies in the office of sheriff; and no lawful ballots can be cast for the office of sheriff at a general election unless the term of the incumbent, whether elected or appointed, expires the first Monday of January following such election. *State ex rel v Borgen*, 189 M 216, 248 NW 744, 249 NW 183.

Court commissioners are elected at the same time and for a similar period as are other county officers. OAG Dec. 18, 1934 (128e).

A county coroner, who is also an undertaker, cannot enter into a contract with the county for the burial of paupers. 1938 OAG 140, April 29, 1937 (90b).

An officer, who was also officer-elect, died between election and the end of the term. A vacancy in office existed at once to be filled by the commissioners, and on the first Monday in the succeeding January a vacancy again existed to be filled for the full term. 1940 OAG 209, April 11, 1939 (373a-4).

A court commissioner was elected in 1926 and the office became vacant in 1929, and the vacancy was not filled by appointment, and in 1932, 1934 and 1936 there was an election to the office by filling in blank space on the ballot. In 1938 a blank space was left, but a different person was voted for. The person receiving the most votes in 1938 was entitled to the certificate of election. OAG April 17, 1939 (128e).

382.02 COUNTY BOARD TO FILL VACANCIES.

HISTORY. 1915 c. 168 s. 3; G.S. 1923 s. 822; M.S. 1927 s. 822.

See annotations under section 382.01.

By the constitution, the office of clerk of the district court is elective, the term is for four years. It commences and terminates on the first Monday in January, and upon its termination there is a vacancy, and no right in the incumbent to hold over. This term cannot be extended by the legislature. *State ex rel v Berg*, 132 M 428, 157 NW 653.

Laws 1913, Chapter 458, fixing the terms of certain county officers at four years and operating prospectively, is constitutional, and there will be no election of such officers in 1916. *State ex rel v Berg*, 133 M 65, 157 NW 907.

A constitution, like a statute, should be given a prospective operation only unless on its face the contrary intention is clearly manifested; or, if such operation is absolutely necessary to give meaning to the language. Construing the amendment to Minnesota Constitution, Article 6, Section 7, extending the term of office of probate judges, the amendment enlarged the term of office of judges chosen at the general election in 1920 and they took office in January, 1921, for a period of four years. *State ex rel v Houdersheldt*, 151 M 167, 186 NW 234.

The auditor cannot hire a surveyor to make a plat, but may request one from the county surveyor. If there is no county surveyor, the vacancy may be filled by the county board. OAG Feb. 3, 1934.

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Vacancy in the office of clerk of the district court is filled by the district judge, under section 485.12, and not by the county board under section 383.02. OAG Nov. 25, 1938 (144a-5).

The district judge appoints in case of a vacancy in the office of county commissioner. OAG March 27, 1944 (128d).

When the office of clerk of the district court becomes vacant on September 24, his successor should be elected at the November election. OAG Oct. 17, 1944 (144a-5).

382.03 HENNEPIN COUNTY MAY FURNISH TRANSPORTATION FOR COUNTY OFFICERS.

HISTORY. 1927 c. 220 s. 1; M.S. 1927 s. 822-3; 1939 c. 361 s. 2.

382.04 OFFICES AT THE COUNTY SEAT.

HISTORY. R.S. 1851 c. 8 art. 2 s. 1, art. 3 s. 4, art. 4 s. 1, art. 6 s. 1; 1858 c. 48 ss. 1, 23; 1858 c. 75 ss. 8 to 11; P.S. 1858 c. 7 ss. 19, 39, 53, 77, 80; P.S. 1858 c. 8 ss. 102 to 105; 1860 c. 2 s. 1; 1860 c. 3 s. 5; G.S. 1866 c. 8 ss. 111, 129, 152, 167, 189, 196; 1868 c. 38 s. 1; G.S. 1878 c. 8 ss. 129, 148, 174, 195, 220, 227; G.S. 1894 ss. 707, 726, 760, 785, 819, 826; R.L. 1905 s. 602; 1909 c. 447 s. 1; G.S. 1913 s. 1074; G.S. 1923 s. 975; M.S. 1927 s. 975.

In mandamus to enforce a purely public duty not due to government as such, any private person may move as relator. Any citizen of the county may file an information to compel the register of deeds or auditor to keep his office at the county-seat. He need not precede his application by a demand on the officer. State ex rel v Weld, 39 M 426, 40 NW 561.

382.05 COUNTY OFFICIALS TO REPORT FEES.

HISTORY. 1893 c. 144 s. 1; G.S. 1894 s. 870; R.L. 1905 s. 603; G.S. 1913 s. 1075; G.S. 1923 s. 976; M.S. 1927 s. 976.

NOTE: Certain counties are subject to the provisions of special laws, and to the provisions of general laws of special application.

The income of the register of deeds from abstracts of title must be certified and reported. OAG April 30, 1929.

Fee for receiving applications for drivers' licenses, under the provision of Laws 1933, Chapter 352, need not be reported under this section. OAG July 22, 1933.

In making his verified statement, the register of deeds should report all his uncollected fees. OAG March 8, 1935 (104b-7).

Interest of a member of the county board in specifications for trucks to be purchased. 1942 OAG 99, March 27, 1941 (90B-8).

A county official may not legally purchase tax-forfeited land. 1942 OAG 197, Sept. 3, 1941 (90-B).

The fact that his wife is a paid welfare worker does not prevent the publisher from making a valid contract with the county. OAG Jan. 19, 1944 (90b-6).

Clerk of the district court must report all fees earned as member of the board of audit, or canvassing board, and for taking passport applications and acting in naturalization proceedings. OAG May 23, 1944.

Instances where a county commissioner may make valid contracts. OAG Oct. 23, 1944 (90b-8).

382.06 PENALTY FOR VIOLATION.

HISTORY. 1893 c. 144 s. 3; G.S. 1894 s. 872; R.L. 1905 s. 604; G.S. 1913 s. 1076; G.S. 1923 s. 977; M.S. 1927 s. 977

382.07 STATEMENTS; PROSECUTION.

HISTORY. 1893 c. 144 s. 2; G.S. 1894 s. 871; R.L. 1905 s. 605; G.S. 1913 s. 1077; G.S. 1923 s. 978; M.S. 1927 s. 978

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382.08 RECORDING FEES PAID BY COUNTY.

HISTORY. 1889 c. 181 s. 1; G.S. 1894 s. 873; R.L. 1905 s. 606; G.S. 1913 s. 1078; G.S. 1923 s. 979; M.S. 1927 s. 979.

The county must bear the expense of recording a town treasurer's bond. 1934 OAG 866, May 1, 1933 (45a-4).

As of the present date, the executive secretary of the county welfare board cannot be required to execute a fidelity bond; but if the board of control (director of public welfare) indicates that such bond is desirable, and the secretary furnishes a bond which is filed as other bonds, and paid for by the county, the bond so voluntarily given would be enforceable. 1938 OAG 136, Aug. 25, 1937 (104a-2).

The appointment and oath of a special deputy must be filed, but need not be recorded. 1942 OAG 205, Aug. 31, 1942 (373-B-10-b).

382.09 BLANKS FURNISHED.

HISTORY. 1881 c. 110 ss. 1, 2; 1883 c. 9 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 ss. 268a, 268b; G.S. 1894 ss. 874, 875; R.L. 1905 s. 607; G.S. 1913 s. 1079; G.S. 1923 s. 980; M.S. 1927 s. 980.

382.10 BONDS RECORDED AND FORWARDED TO SECRETARY OF STATE.

HISTORY. 1881 c. 110 ss. 5, 6; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 ss. 268d, 268e; G.S. 1894 ss. 877, 878; R.L. 1905 s. 608; 1909 c. 115 s. 1; G.S. 1913 s. 1080; G.S. 1923 s. 981; M.S. 1927 s. 981.

A person under 21 years of age cannot be bonded as a deputy in a county office. He may be bonded as a clerk, even though the position requires no bond. OAG Dec. 19, 1938 (126a-33).

382.11 NON-APPROVAL OF BOND.

HISTORY. 1881 c. 110 s. 7; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 268f; G.S. 1894 s. 879; R.L. 1905 s. 609; G.S. 1913 s. 1081; G.S. 1923 s. 982; M.S. 1927 s. 982.

382.12 BONDS NOT WITHDRAWN.

HISTORY. 1874 c. 89 s. 2; 1881 c. 110 s. 8; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 268g; G.S. 1894 s. 880; R.L. 1905 s. 610; G.S. 1913 s. 1082; G.S. 1923 s. 983; M.S. 1927 s. 983.

382.13 NEW BOND; NOTICE.

HISTORY. 1885 c. 198 ss. 1 to 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 ss. 270a, 270b, 270c; G.S. 1894 ss. 882 to 884; R.L. 1905 s. 611; G.S. 1913 s. 1083; G.S. 1923 s. 984; M.S. 1927 s. 984.

The board of county commissioners is without authority to reduce the penalty of the official bond of the county treasurer during his term of office. 1940 OAG 193, March 1, 1940 (450b-2).

382.14 FAILURE TO GIVE; OFFICE VACANT.

HISTORY. 1885 c. 198 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 270d; G.S. 1894 s. 885; R.L. 1905 s. 612; G.S. 1913 s. 1084; G.S. 1923 s. 985; M.S. 1927 s. 985.

382.15 ORIGINAL, HOW AFFECTED BY NEW BOND.

HISTORY. 1885 c. 198 s. 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 270e; G.S. 1894 s. 886; R.L. 1905 s. 613; G.S. 1913 s. 1085; G.S. 1923 s. 986; M.S. 1927 s. 986.

382.153 SURETY BOND PREMIUM PAID BY COUNTY.

HISTORY. 1943 c. 537 s. 1; 1945 c. 57 s. 1.

382.154 PAYMENT OF PREMIUM FOR BONDS OF COUNTY OFFICERS AND EMPLOYEES.

HISTORY. 1945 c. 32 s. 1.

382.16 RECORDS ARE PUBLIC; COPIES.

HISTORY. 1887 c. 83 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 ss. 271, 272; G.S. 1894 ss. 887, 888; R.L. 1905 ss. 614, 615; G.S. 1913 ss. 1086, 1087; G.S. 1923 ss. 987, 988; M.S. 1927 ss. 987, 988.

The statutes do not authorize an examination or inspection of the records and files in the office of the clerk of the district court by any person when the purpose thereof is to complete and certify to abstracts of title in real estate. When such is the purpose of the examination, the clerk may refuse to permit it to be made. A person desiring an examination or inspection of the records for that purpose is required by the statutes to apply to the clerk therefor. *State ex rel v McCubrey*, 84 M 439, 87 NW 1126.

The clerk is entitled to receive the sum of 50 cents for making search and certifying to each existing judgment docketed in their office; and also the sum of 50 cents for making search and certifying to the nonexistence of judgments against any individual; and the fact that the person requesting the certificate is an abstractor, and intends to use the information in his business, is immaterial. *State ex rel v Scow*, 93 M 11, 100 NW 382.

A publication of judicial proceedings if fair and impartial is privileged; but a pleading in a civil action which has never been presented to the court for its action is not a judicial proceeding within the rule, and its publication, if it contains libelous matter, can only be justified by a showing that it is true. *Nixon v Dispatch Prt'g Co.* 101 M 309, 112 NW 258.

The probate court is required to keep records relative to insanity and juvenile matters. 1934 OAG 297, March 27, 1933 (346).

A petition for change of county-seat on file with the county auditor is open for public inspection. OAG March 24, 1938 (125a-19).

Right to inspect public records. 12 MLR 671.

382.17 WOMEN DEPUTIES.

HISTORY. 1891 c. 40 s. 1; G.S. 1894 s. 890; R.L. 1905 s. 616; G.S. 1913 s. 1088; G.S. 1923 s. 989; M.S. 1927 s. 989.

382.18 OFFICIALS NOT TO BE INTERESTED IN CONTRACTS; VIOLATION; GROSS MISDEMEANOR.

HISTORY. 1901 c. 324; R.L. 1905 s. 617; G.S. 1913 s. 1089; G.S. 1923 s. 990; M.S. 1927 s. 990.

The facts stated in the indictment constitute a public offense. That the two defendants are accused jointly of the crime is not a ground for demurrer, nor does it appear from the indictment that defendants could not be jointly guilty of the offense charged. The statute against county officials being interested in a county contract applies to all county officers, not alone to those who have official duties to perform in relation to the contract. *State v Byhre*, 137 M 195, 163 NW 282.

Where a defalcation occurs on the part of a public official who has succeeded himself as such for more than one of more terms, and given different bonds assuring his fidelity to his trust, the liability falls upon the bondsmen who were such at the time of the defalcation. *Board of Education v Robinson*, 81 M 305, 84 NW 105; *Township of Angus v Champion*, 183 M 9, 235 NW 615.

Application of the provisions of this section as in defense of liability of the matter of a promissory note. *Boeder v Taggatz*, 187 M 337, 245 NW 428.

The president of the village council may submit a bid and enter into a contract with the water, light and power and building commission. OAG March 19, 1934 (707b-79).

The county road foreman is prohibited from being interested, directly or indirectly, in any contract with the county. 1934 OAG 195, June 6, 1933 (90b-7).

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A county commissioner, who is by profession a veterinarian, may not under contract with the live stock sanitary board test cattle for disease. 1934 OAG 230, July 12, 1933 (90b).

A member of the county welfare board is forbidden from being interested in a contract with the county. There is no prohibition against his wife being interested in such a contract, but there is always an issue of fact as to whether the member is interested in the contract entered into in the wife's name. 1938 OAG 137, July 27, 1937 (125a-64).

The county coroner, who is an undertaker, cannot enter into a contract with the county for the burial of paupers. 1938 OAG 140, April 29, 1937 (90b).

A county treasurer may act as a director of a national bank in which are savings deposits of county funds. This is because the choice of a depository is made by a board consisting of the chairman of the county board, the clerk of court, and the county auditor, and the depository bond is approved by the board of county commissioners. 1940 OAG 114, July 21, 1939 (90b-2).

The board of education may purchase insurance from an agent who is a city alderman since, according to the city charter of the city of Rochester, the city council has no authority or control over the board of education. 1940 OAG 116, Aug. 25, 1940 (90c-5).

A county commissioner who is also a member of the county welfare board and a stockholder in an incorporated general merchandise store, may not enter into a contract with the store on account of the welfare board. OAG Nov. 30, 1938 (358a-3).

The coroner whose compensation is derived entirely from fees may act upon the examining board at an insane hearing. OAG July 6, 1936 (340b-2).

The county health officer receiving no remuneration of any kind is not a county officer, and he may receive compensation from the county for operations upon poor relief patients and for hospitalization in a hospital owned by him. OAG April 16, 1935 (707b-6).

An alderman of a city may receive a liquor license, but is forbidden to vote on his own application. OAG Feb. 15, 1935 (218g).

A probate judge owning a newspaper is not prohibited from publishing legal publications in his own newspaper, the fees being paid by private individual. OAG Feb. 6, 1934.

The county cannot purchase a truck from a member of the board, even if it would be to the advantage of the county to do so. 1942 OAG 99, March 27, 1941 (90-B-8).

Neither a county officer, nor any of his deputies may purchase land at a tax-forfeited land sale in their county. 1942 OAG 197, Sept. 8, 1941 (90-B).

382.187 SALARY INCREASES.

HISTORY. 1943 c. 597.

382.19 SALARIES NOT REDUCED.

HISTORY. 1921 c. 361 s. 1; M.S. 1927 §. 997-1.

This law is effective upon a determination by the district court determining the value of the motor vehicle in the county in question. OAG Dec. 28, 1931.

382.20 SALARIES OF COUNTY OFFICERS IN CERTAIN COUNTIES.

HISTORY. 1929 c. 313; M. Supp. s. 997-2.

In arriving at the assessed valuation of property in a county for the purpose of fixing salaries, it is not necessary to go behind the assessed valuation as determined by the tax commission. Lands acquired by the state through the operation of the rural credit department should not be included in the valuation, but the \$100.00 personal property exemption should be included. 1934 OAG 257, Dec. 27, 1934 (104a-9).

Where land is bid in for the state at the annual May sale for delinquent taxes for 1932 and subsequent years, and is subsequently assigned, the interest is figured

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at eight per cent instead of 12 per cent, and is figured on the amount of the original tax from the first day of March following the year in which the taxes become due and also upon the costs authorized by law. OAG March 6, 1939 (412a-9).

The words "any county officer" include county commissioners. OAG Feb. 10, 1934.

Where salaries of certain commissioners were restored after reduction by fall in valuation, such commissioners should receive the same reimbursement for their actual and necessary traveling expenses as they received previous to their reduction in salary. OAG Nov. 4, 1933.

382.21 SALARIES OF COUNTY OFFICERS IN CERTAIN COUNTIES.

HISTORY. 1935 c. 349 s. 1; Ex. 1936 c. 39 s. 1; M. Supp. s. 997-4a.

The county auditor's salary at the beginning of his term in January, 1927, was set at \$2,500. Upon his being reelected and taking office in January, 1931, the county board, although the valuation of Kittson county had decreased, fixed his salary at \$2,500, which he drew for the full four-year term. A new county auditor assuming office in January, 1935, is entitled to the benefits of Laws 1935, Chapter 349, and should receive the same salary as the county auditor received for the year 1931. 1936 OAG 109, Oct. 31, 1935.

382.23 NOT TO AFFECT CERTAIN OFFICERS.

HISTORY. 1935 c. 349 s. 3; Ex. 1936 c. 39 s. 1; M. Supp. s. 997-4c.

382.24 APPLICATION.

HISTORY. 1935 c. 349 s. 4; Ex. 1936 c. 39 s. 1; M. Supp. s. 997-4d.

The act does not apply to county officers in counties where salaries are fixed by other statutes, but prevails in case of any inconsistencies. OAG Sept. 13, 1935 (107b-14).

382.25 CLERK HIRE FOR COUNTY AUDITORS AND COUNTY TREASURERS IN CERTAIN COUNTIES.

HISTORY. 1935 c. 351 s. 1; M. Supp. s. 997-4g.

Where clerk hire of \$85.00 a month was allowed for many years under Laws 1927, Chapter 374, additional clerk hire may be given an incumbent clerk by passage of a resolution by the board of county commissioners and with the approval of the attorney general and the public examiner. OAG Jan. 31, 1939 (450c-1).

382.26 CLERK HIRE AS OTHERWISE PROVIDED BY LAW.

HISTORY. 1935 c. 351 s. 2; M. Supp. s. 997-4h; 1945 c. 330 s. 1.

382.27 REIMBURSEMENT OF PEACE OFFICERS.

HISTORY. 1911 c. 268 s. 1; G.S. 1913 s. 758; G.S. 1923 s. 761; M.S. 1927 s. 761.

382.28 JUSTICES AND CONSTABLES.

HISTORY. R.S. 1851 c. 7 s. 11; P.S. 1858 s. 1 s. 261; G.S. 1866 c. 8 s. 108; G.S. 1878 c. 8 s. 122; G.S. 1894 s. 694; R.L. 1905 s. 445; G.S. 1913 s. 770; G.S. 1923 s. 776; M.S. 1927 s. 776.