

## CHAPTER 385

## COUNTY TREASURER

**385.01 ELECTION; PERSONS NOT ELIGIBLE.**

**HISTORY.** 1849 c. 22 ss. 1, 3; R.S. 1851 c. 8, art. 3, ss. 1, 3; P.S. 1858 c. 7 s. 113; P.S. 1858 c. 8 s. 37; 1860 c. 3 ss. 1, 4; G.S. 1866 c. 8 ss. 125, 128; G.S. 1878 c. 8 ss. 144, 147; G.S. 1894 ss. 722, 725; R.L. 1905 s. 494; G.S. 1913 s. 841; G.S. 1923 s. 839; M.S. 1927 s. 839.

**NOTE:** See section 382.01 for term of county treasurer.

Ring was elected and qualified as county treasurer for a term commencing March 1, 1878. On Nov. 29, 1879, he was reelected for a second term to commence March 1, 1880, but did not qualify for such second term as required by statute. The office became vacant in respect to such second term because of Ring's failure to so re-qualify, and the county commissioners were required to appoint a county treasurer for a period to commence March 1, 1880. County of Scott v Ring, 29 M 398, 13 NW 181.

A term cannot constitutionally extend beyond the seven-year limitation set forth in the constitution. State ex rel v Windom, 131 M 401, 155 NW 629.

Under a statute creating an office, fixing the term, and making no provision for holding over until a successor is elected and qualified, the term is definite and a vacancy exists upon its expiration. State ex rel v Windom, 131 M 401, 155 NW 629.

**385.02 DEPUTIES; BONDS.**

**HISTORY.** 1849 c. 22 s. 2; R.S. 1851 c. 8 art. 3 s. 2; P.S. 1858 c. 8 s. 113; 1860 c. 3 s. 2; G.S. 1866 c. 8 s. 126; 1877 c. 11 s. 1; G.S. 1878 c. 8 s. 145; G.S. 1894 s. 723; 1903 c. 339; R.L. 1905 s. 495; G.S. 1913 s. 842; 1923 c. 293; G.S. 1923 s. 840; 1927 c. 406; M.S. 1927 s. 840; 1935 c. 273; 1939 c. 164; M. Supp. s. 839-1.

The official bond given by a county treasurer determines the extent of his responsibility; which is not that of an ordinary bailee, but is imposed by the express condition of the bond; an absolute responsibility for all moneys coming into his hands as county treasurer. County Commissioners v Jones, 18 M 199 (182); Board v Tower, 28 M 45, 8 NW 907; Board of Education v Jewell, 44 M 427, 46 NW 914.

Money was stolen from a safe furnished to the county treasurer by the county. Under the laws in force at the time an absolute responsibility was imposed upon a county treasurer for all moneys received by him as such, independent of his responsibility upon his official bond. County Commissioners v Gilbert, 19 M 244 (176).

The county board may sue the county treasurer either on the bond or independent of it for the conversion of funds belonging in the county treasury and may recover for all the funds converted; state, county, town, school, and other funds. County Commissioners v Smith, 22 M 97.

In an action on a county treasurer's bond, the authority to fill a blank in a sealed instrument may be given by parol; the authority may be implied from the circumstances; the sureties in this case impliedly authorized the insertion of a sum in the blank space in the bond, but the sureties are liable only on the general bond and not on the moneys collected on the county school and university land. State v Young, 23 M 551; Board v Tower, 28 M 45, 8 NW 907; Board v Knudson, 71 M 461, 74 NW 158; Board v Knudson, 82 M 151, 84 NW 657.

Where a county treasurer held over illegally from March 1 to June 21, his sureties were liable only for a defalcation occurring during his legal term of office. County of Scott v Ring, 29 M 398, 13 NW 181.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 385.03 COUNTY TREASURER

2366

An action may be prosecuted by a county against its treasurer and his sureties without first obtaining leave from the court. *County of Waseca v Sheehan*, 42 M 57, 43 NW 690.

Neither the negligence of the county commissioners nor their actual malfeasance is a defense in an action against the county treasurer and his bondsmen. *County of Waseca v Sheehan*, 42 M 57, 43 NW 690; *Board v Bongard*, 82 M 431, 85 NW 214.

A vote of the school district, and of the board of education, without consideration, to discharge the legal obligation of the treasurer, is ineffectual. *Board of Education v Jewell*, 44 M 427, 46 NW 914.

Where a deputy clerk of the district court issued false certificates that certain named persons served as jurors obtained written orders of the county auditor directing the treasurer to pay, forged the names of the payees, and collected the money from the treasurer, the treasurer is liable to the county for the sum so paid out. His negligence in failing to ascertain whether the purported signatures of the payees were genuine was the proximate cause of the loss. *Board v Nelson*, 51 M 79, 52 NW 992.

Where a statute imposes the duty upon a public officer to pay over moneys received by him in his official capacity, the obligation is an absolute one; and where money was paid into court in condemnation proceedings and deposited in a solvent bank, which afterwards failed, the clerk and his sureties are liable for the loss. *N. P. Ry. Co. v Owens*, 86 M 188, 90 NW 371.

Where a deputy county auditor issues fraudulent redemption and refundment orders and forges the endorsements of payees and obtains payment thereon from the county treasurer, the treasurer and his sureties are liable for the amount so paid. *Board v Elmund*, 89 M 56, 93 NW 1054.

Where the county treasurer recognizes an order on the treasury issued from the county auditor's office on the proper blank, which is in all things regular on its face, and issued a check upon the legal county depository for the sum named therein payable to the person designated as payee and delivers the check to the pretended representative of payee in good faith, neither he nor his sureties are liable on his official bond. *Board v Elmund*, 94 M 196, 102 NW 719.

An agreement will be in force, even if it is incidentally connected with an illegal transaction, if the plaintiff will not require the aid of the illegal transaction to make out his case. *Bosshard v County of Steele*, 173 M 283, 217 NW 354.

Where the treasurer paid all or part of the premium on his bond which the law required the county to pay, such payment was not a statutory payment of the obligation of the county and the plaintiff is entitled to recover the money so paid. *Bosshard v County of Steele*, 173 M 283, 217 NW 354.

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

With the approval of the county board robbery and burglary insurance on money or securities in transportation or in the treasury, may be purchased. OAG Nov. 17, 1944, Dec. 27, 1944 (125a-28).

Action on sheriff's bond given in one state cannot be maintained in another. 7 MLR 239.

Application of rule that plaintiff may recover if able to make out a case without resort to illegal transaction. 12 MLR 535.

## 385.03 FAILURE TO QUALIFY.

**HISTORY.** 1860 c. 3 s. 3; G.S. 1866 c. 8 s. 127; G.S. 1878 c. 8 s. 146; G.S. 1894 s. 724; R.L. 1905 s. 496; G.S. 1913 s. 843; G.S. 1923 s. 841; M.S. 1927 s. 841.

Where the incumbent treasurer was elected to succeed himself but failed to re-qualify within the statutory time, the board was required to appoint a person to the office. *County of Scott v Ring*, 29 M 398, 13 NW 181; *State ex rel v Windom*, 131 M 401, 155 NW 629.

**385.04 ACCURATE ACCOUNT KEPT.**

**HISTORY.** 1860 c. 3 s. 5; G.S. 1866 c. 8 s. 129; G.S. 1878 c. 8 s. 148; G.S. 1894 s. 726; 1899 c. 31; R.L. 1905 s. 497; G.S. 1913 s. 844; G.S. 1923 s. 842; M.S. 1927 s. 842.

The fact that moneys received by county treasurer and deposited in over-remittance account were received by the treasurer without authority and as trustee for others than the county, did not make the county owner of the account so as to render the bank liable for its diversion to the treasurer's personal use; and the fact that the treasurer transferred funds from this trust account to his personal account did not charge the bank with notice that the treasurer was converting county funds. *U. S. Fidelity & Guaranty v Metropolitan Bank*, 1 F. Supp. 514.

**385.05 RECEIPT AND PAYMENT OF MONEY.**

**HISTORY.** 1849 c. 22 s. 4; R.S. 1851 c. 8 art. 3 s. 4; P.S. 1858 c. 7 s. 38; 1860 c. 3 s. 6; G.S. 1866 c. 8 s. 130; G.S. 1878 c. 8 s. 149; 1881 c. 11 s. 1; G.S. 1894 s. 727; R.L. 1905 s. 498; G.S. 1913 s. 845; 1919 c. 417; G.S. 1923 s. 843; M.S. 1927 s. 843.

A failure by a county treasurer to pay over to the proper officer on demand a draft upon him by the state auditor in favor of the state treasurer for moneys in his hands belonging to the state, as evidenced by the certificate of settlement by him and the county auditor, is prima facie evidence of embezzlement. Similarly, his refusal to pay over to one claiming to be his successor may be shown as evidence upon the question of embezzlement and without proving that the person making the demand was rightfully entitled to the office. *State v Mimms*, 26 M 183, 2 NW 494.

The county treasurer is not authorized to pay the amount of a judgment against the county except upon an order or warrant of the county auditor. *State v Foot*, 98 M 467, 108 NW 932.

Where a decree of distribution of the probate court awarded a sum of money to an heir whose whereabouts are unknown, and the administrator deposits it with the county treasurer pursuant to statute, a creditor of such heir may impound the money by garnishment. *O'Day v O'Day*, 171 M 280, 214 NW 26.

A county treasurer not authorized to appoint a deputy may authorize a clerk to sign county warrants for him. OAG Feb. 7, 1939 (104b-13).

Costs and disbursements collected through successful litigation revert to the general revenue fund. OAG July 1, 1944 (199a-1).

**385.06 BOARD OF AUDITORS TO AUDIT ACCOUNTS OF TREASURER.**

**HISTORY.** 1860 c. 3 s. 7; G.S. 1866 c. 8 s. 131; 1873 c. 38 s. 1; G.S. 1878 c. 8 s. 150; G.S. 1894 s. 728; 1899 c. 31; R.L. 1905 s. 499; 1909 c. 22; G.S. 1913 s. 846; G.S. 1923 s. 844; M.S. 1927 s. 844.

Where the county treasurer recognizes an order on the treasury issued from the county auditor's office on the proper blank which is in all things regular on its face, and issued a check on the legal county depository for the sum named therein payable to the person designated as payee and delivers the check in good faith, neither the treasurer nor his sureties are liable on his official bond. *Board v Elmund*, 94 M 196, 102 NW 719.

A county treasurer has no duty in designating a depository bank for county funds nor in approving the bond the bank furnishes, and the treasurer's ownership of stock in the bank does not stop the bank from becoming a legal depository of county funds. *County of Marshall v Bakke*, 182 M 10, 234 NW 1.

**385.07 FUNDS, WHERE DEPOSITED.**

**HISTORY.** 1881 c. 124 s. 1; 1883 c. 51 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150a; G.S. 1894 s. 729; 1897 c. 323; R.L. 1905 s. 500; 1907 c. 352 s. 1; G.S. 1913 s. 847; G.S. 1923 s. 846; M.S. 1927 s. 846; 1945 c. 559 s. 1.

That part of Laws 1873, Chapter 38, amending General Statutes 1866, Section 131, which provides for a deposit in banks by the county treasurer of the funds in the county treasury is valid and applies to all the funds in such treasury. *First Nat'l v Shepard*, 22 M 196.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 385.07 COUNTY TREASURER

2368

In an action upon the bond of the county treasurer wherein the sureties set up the defense that the board of auditors never considered the application of the bank and never designated it as county depository, and that they never knew the bond had been apportioned or that funds had been deposited with the bank, does not state a defense. *Board v State Bank*, 64 M 180, 66 NW 143.

The state treasurer and his sureties are liable to the state on account of all moneys deposited by him in banks selected by him in accordance with the provisions of the statute. *State v Bobleter*, 83 M 479, 86 NW 461.

The county had funds on deposit in the First National Bank and the First State Bank of Balaton. The State bank took over the assets and assumed the liabilities of the First National. The county treasurer was notified and made entries in his books showing transfer of funds. He made deposits in the First National Bank and drew upon it in excess of the credit balance of both banks when they attempted to consolidate. The relation of the depository bank and the county is that of debtor and creditor, and to release the defendant and substitute a new debtor in defendant's place requires further assent by the county than is shown in this instance. *County of Lyon v First Nat'l*, 166 M 109, 207 NW 138.

For moneys in excess of the authorized deposit received by a depository bank from real estate owners who, under an arrangement between the county treasurer and the bank, paid their taxes to the bank, the bank crediting same to the county's depositing account, and the treasurer, on being notified of the payment, charged the bank therewith and issued at the same time to the respective taxpayers proper tax receipts, the county is entitled to a preference, if before the money reaches the county treasurer the bank is closed. *Traverse Co. v Veigel*, 176 M 596, 224 NW 159.

The agreement by the county board to accept certificates of deposit for county funds to enable the closed bank to reopen is not a designation of the bank as a county depository. *Mahnomen v Klyver*, 180 M 433, 230 NW 891.

The county treasurer has no part in designating a depository bank nor in approving the bond furnished by the bank and the fact that the treasurer owns stock in the depository bank does not disqualify the bank from becoming a legal depository. *County of Marshall v Bakke*, 182 M 10, 234 NW 1.

The auditor and treasurer of a county, acting under the advice of the state public examiner, may not refuse, in violation of law, to pay over to a town the amount of current taxes collected for it upon the ground that the town is liable to the county for its proportionate share in prior losses caused by the insolvency of certain county depositories. Mandamus is the proper remedy to compel them to perform their statutory duties. *State ex rel v County of Pennington*, 211 M 569, 2 NW(2d) 41.

See *U. S. Fidelity & Guaranty v Metropolitan Bank*, 1 F. Supp. 514.

National banks may pay interest on public funds, but payment of interest by a designated county depository is not required. 1934 OAG 29, May 25, 1934 (32f).

Where funds remain in a designated depository after expiration of a designated term, the county is a preferred creditor. 1934 OAG 201, July 27, 1933 (140f-3).

A county, in absence of negligence, is not liable to the state for tax moneys lost through closing of a depository. OAG Feb. 17, 1933.

Where the bond offered by the bank was in all respects regular, with sureties who were solvent and financially responsible, the board of audit has no authority to demand a corporate bond but must approve the bond offered by the bank. 1934 OAG 208, Feb. 14, 1933 (140a-4).

R.F.C. capital debentures are not capital stock to be used to entitle a bank to additional deposits. 1936 OAG 5, Jan. 25, 1935 (707a-11).

A newly organized state bank may be designated as a depository. 1936 OAG 7, March 2, 1935 (29a-12).

Commodity stamp fund should be kept separate, and the money deposited in the bank where the county welfare fund is deposited. 1942 OAG 105, Aug. 8, 1941 (140a-7).

The maximum to be deposited in a bank is governed by section 118.11. OAG May 8, 1944 (140a-1).

**385.08 CAPITAL STOCK.**

**HISTORY.** 1881 c. 124 s. 1; 1883 c. 51 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150a; G.S. 1894 s. 729; 1897 c. 323; R.L. 1905 s. 501; G.S. 1913 s. 848; G.S. 1923 s. 847; M.S. 1927 s. 847.

**385.09 BONDS OF DEPOSITORIES.**

**HISTORY.** 1881 c. 124 s. 2; Ex. 1881 c. 43 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150b; G.S. 1894 s. 730; R.L. 1905 s. 502; 1909 c. 124 s. 1; G.S. 1913 s. 849; G.S. 1923 s. 848; M.S. 1927 s. 848.

Laws 1873, Chapter 38, Section 1, authorizes the selection of a depository of county funds by the board of county auditors, but this designation does not become operative so as to authorize the deposit of funds until the bond is furnished and approved by the county board. A depository bond is not invalid because it does not secure the payment of interest. *Meeker Co. v Butler*, 25 M 363.

The statute requires that banks be selected by the board of auditors and the bank designated as a depository furnish a bond to be approved by the county commissioners. It will not be presumed that the county board is authorized to accept other securities in lieu of a bond. *Lissenton v County Board*, 54 M 555, 56 NW 251.

After the bond was executed in the amount of \$20,000 one of the principals on the bond without fraudulent intent changed the amount to \$21,500, which bond as changed was accepted and approved and the funds of the county deposited with the banking firm. The change is a material one and discharged the sureties. Two of the sureties knew of an alteration of the bond and did not repudiate it and they are estopped to deny liability. *County Board v Gray*, 61 M 242, 63 NW 635.

In an action on a bond, the answer of the sureties in the instant case does not state a defense. *County Board v State Bank*, 64 M 180, 66 NW 143.

The bank named as depository was a copartnership, and one of the five sureties was indebted to the principals upon a promissory note, and another was a surety on the note, the banking copartnership made an assignment. The makers of the note alleged they have paid to the county one-half of the amount of county funds on deposit when the assignment was made and petitioned that the amount of said payment be offset against the note in the hands of the assignee. The bondsman, who was a mere surety upon the note, was not entitled to have the amount paid by him offset against the note. *Cosgrove v McKasy*, 65 M 426, 68 NW 76.

The statute requires that the bond of a depository of county funds be made payable to the county. The bond in question was made payable to board of county commissioners. This was a mere irregularity which did not invalidate the bond. *County Board v Amer. Loan and Trust*, 67 M 112, 69 NW 704.

A bank which has been a depository of county funds for a term about to expire, and indebted to the county for money deposited during the term, was designated a depository for a second term and gave a bond conditioned that it would pay on demand all funds "which shall be deposited in said bank pursuant to said designation." During the second term there were deposits, and withdrawals, the amount of the payments during a second term exceeding the amount of deposits during the same time, leaving a balance still due the county when the bank failed during the second term. The sureties were only liable for money deposited during the second term, but the relation between the bank and county was that of debtor and creditor and when money was deposited with the bank it became the bank's property and all payments made by it to the county were made with the bank's own funds and there being one single continuous account, the law will appropriate the payments according to the rule that the first item on the credit side discharges or reduces the first item on the debit side. *County Board v Citizens Bank*, 67 M 236, 69 NW 912.

The bond of a depository of county funds purported to be made by Harry P. Smith, cashier of the Manufacturers Bank, and the appellant sureties. In the bond the principal is described as "the above-bounden, the Manufacturers Bank"; and it is signed "Harry P. Smith, Cashier." It is the bond of the bank as principal, and the sureties are liable thereon. *County Board v Manufacturers Bank*, 69 M 421, 72 NW 701.

# MINNESOTA STATUTES 1945 ANNOTATIONS

During the life of the bond the county treasurer, with the consent of the county commissioners, deposits in the bank money which was part of a sinking fund and took over certificates of deposit payable in six months with interest at three per cent. The only authority the treasurer or the board had to deposit money is that conferred by statute, the moneys being payable on demand and the interest in accordance with the original proposal of the bank to the commissioners. On all of the money so deposited with interest at two per cent the sureties on the bond are liable. *County Board v Security Bank*, 75 M 174, 77 NW 815.

A bank largely indebted to the county became insolvent and the county board neglected to file the claim of the county within the time limited. As the sureties never requested that the county should file its claim, the mere failure of the county officers to so file did not release the sureties either in toto or pro tanto. *County Board v Security Bank*, 75 M 175, 77 NW 815.

The bond secured the amount on deposit, which was represented by a time certificate. *County Board v American Loan & Trust*, 75 M 489, 78 NW 113.

After the bond had been executed, the principal, with the consent of the obligee, altered the bond by reducing the interest from three per cent to two per cent. This was a material alteration which discharged the sureties on the bond. *County Board v Greenleaf*, 80 M 242, 83 NW 157.

The state treasurer and his sureties are liable to the state on all moneys deposited by the treasurer in banks or with bankers selected by him in accordance with the provision of the statute. *State v Bobleter*, 83 M 479, 86 NW 461.

The assent of the county to the release of a depository bank and substitution of a new debtor was not conclusively established and consequently the county could proceed against the depository bank and its sureties. *County of Lyon v First National*, 166 M 109, 207 NW 138.

Misrepresentations made by the principal to induce the sureties to execute a bond, not imputable to the obligee, are not available as a defense against liability on the bond. *National Sureties v Becklund*, 169 M 177, 210 NW 882.

A surety who has paid more than his proportion of the liability is entitled to contribution from cosureties. *National Sureties v Becklund*, 169 M 177, 210 NW 882.

Bonds given to secure the deposit of public funds are governed by the rule governing official bonds, and the fact that county officers knew that a depository was insolvent and accepted its bond without communicating that information to the sureties does not absolve the sureties from liability thereon. *County of Wilkin v First State Bank*, 170 M 115, 212 NW 183.

A county having two or more bonds covering the same deposit may maintain an action on each, but can collect only once. *Wilkin County v First State Bank*, 170 M 115, 212 NW 183; *County of Pennington v Gimestad*, 170 M 164, 212 NW 185.

In this action to recover of the sureties on two bonds, it was error to direct the entry of judgment against the sureties on either bond for less than the amount of deposit, interest and costs. This action is not for contribution as between the cosureties, but the bond of the independent sureties must be considered as imposing liability to the county equal to that imposed by the bond executed by the surety company. *County of Goodhue v Noser*, 171 M 8, 212 NW 948.

The debtors of an insolvent bank when sued by the receiver cannot offset the liability as sureties for the bank upon a depository bond. *Veigel v Converse*, 168 M 408, 210 NW 162; *Farmers & Mchts. Bank v Melvy*, 172 M 80, 214 NW 792.

For moneys in excess of the authorized deposit received by a depository bank from real estate owners who, under an arrangement between the county treasurer and the bank, paid their taxes to the bank, the bank crediting same to the county's deposit and the treasurer charging the balance therewith and issuing to the taxpayers proper tax receipts, the county is entitled to a preference if before the money reaches the county treasurer the bank is closed. *Traverse v Veigel*, 176 M 594, 224 NW 159.

The depository bond limited the liability to \$5,000. At the time the bank failed the county had deposited \$8,882.94 of which amount \$5,000 was a preferred claim which receiver promptly paid to the county. This payment did not discharge the liability of the sureties on their bond and they remained liable for the balance. *Anderson v Peterson State Bank*, 191 M 404, 254 NW 459.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2371

COUNTY TREASURER 385.14

Where the bond offered by the bank is in all respects regular and the personal sureties thereon solvent and financially responsible, the board of audit has no authority to refuse to accept this bond and should qualify the bank as a legal depository. 1934 OAG 208, Feb. 14, 1933 (140a-4).

Where a bank designated as a depository is insured by the Federal Deposit Insurance Corporation, the bank is not required to furnish a bond. 1936 OAG 6, Feb. 4, 1935 (401b-2).

## 385.10 PROPOSALS BY BANKS.

HISTORY. 1881 c. 124 s. 3; 1887 c. 84; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150c; G.S. 1894 s. 731; R.L. 1905 s. 503; G.S. 1913 s. 850; G.S. 1923 s. 849; M.S. 1927 s. 849.

In view of the provisions in section 385.09, the complaint in this case does not sufficiently allege that any designation of the depository had ever been made before the bond was approved and as the complaint does not state that any county funds were deposited after the approval of the bond, no cause of action is stated and the complaint is demurrable. Board v Amer. Loan & Trust, 67 M 112, 69 NW 704.

The sureties were only liable for money deposited during the second term for which their bond was given, but the relation between the bank and county being that of debtor and creditor and the action being a running account, the law will appropriate the first item on the credit side to discharge or reduce the first item on the debit side, and similar. Board v Citizens Bank, 67 M 236, 69 NW 912.

The money deposited either commercially or by certificates of deposit must be deemed a deposit under the statute, payable on demand, and the sureties on the bond are liable. Board v Security Bank, 75 M 174, 77 NW 815.

The agreement here in question was not a designation of the reorganized bank as a county depository. Mahnomen v Klyver, 180 M 431, 230 NW 891.

Under the statute, the county treasurer has no voice in designating county depository banks. That is done by a board of auditors consisting of the chairman of the county board, the county auditor, and the clerk of the district court. It is the duty of the county board to approve the depository bond and sureties thereon. County v Bakke, 182 M 10, 234 NW 1.

A new advertisement and a new designation and approval must be made every two years, a mere informal approval of the former or existing arrangement being insufficient. OAG Dec. 18, 1929.

## 385.11 SURETIES.

HISTORY. 1881 c. 124 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150d; G.S. 1894 s. 732; R.L. 1905 s. 504; G.S. 1913 s. 851; G.S. 1923 s. 850; M.S. 1927 s. 850.

## 385.12 DEPOSIT IN OFFICIAL CAPACITY; PENALTY FOR FAILURE.

HISTORY. 1881 c. 124 s. 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150e; G.S. 1894 s. 733; R.L. 1905 s. 505; G.S. 1913 s. 852; G.S. 1923 s. 851; M.S. 1927 s. 851.

NOTE: See U.S. Fidelity & Guaranty v Metropolitan Bank, section 385.07.

## 385.13 PUBLIC FUNDS KEPT SEPARATE.

HISTORY. 1881 c. 124 s. 6; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150f; G.S. 1894 s. 734; R.L. 1905 s. 506; G.S. 1913 s. 853; G.S. 1923 s. 852; M.S. 1927 s. 852.

## 385.14 INSURANCE AGAINST LOSS BY ROBBERY OR BURGLARY.

HISTORY. 1927 c. 137 s. 1; M.S. 1927 s. 852-1.

Liability for money stolen from the county treasurer must be accounted for by the treasurer or his sureties. Robbery or burglary insurance may be purchased with the approval of the county board. OAG Nov. 17, 1944, Dec. 17, 1944 (125a-28).

**385.15 PAYMENT.**

**HISTORY.** 1881 c. 124 s. 7; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 150g; G.S. 1894 s. 735; R.L. 1905 s. 507; G.S. 1913 s. 854; G.S. 1923 s. 853; M.S. 1927 s. 853.

Part of the money collected by the defaulting treasurer belonged to the county and part to the state. Before the commencement of this action, the treasurer turned over to his successor in office a sum greater than the amount due the county, but it did not appear that the treasurer had commingled the state funds with the county funds, and the action of a trial court in directing a verdict for the county was not justified by the evidence. *Board v Knudson*, 71 M 461, 74 NW 158.

Where the bond, after execution, was changed, reducing the rate of interest from three per cent to two per cent, alteration was material and the sureties were discharged. *Board v Greenleaf*, 80 M 242, 83 NW 157.

The assent of the county to release of depository bank and substitution of new debtor, not conclusively established so as to estop the county from proceeding against the bank and its sureties. *County of Lyon v First National*, 166 M 109, 207 NW 138.

A county treasurer may authorize a clerk to sign county warrants for him. OAG Feb. 7, 1939 (104b-13).

**385.16 COMPENSATION MILEAGE OF BOARD OF AUDITORS.**

**HISTORY.** 1873 c. 38 s. 2; 1881 c. 48 s. 1; G.S. 1878 c. 8 s. 151; G.S. 1894 s. 737; R.L. 1905 s. 508; 1913 c. 357 s. 1; G.S. 1913 s. 855; G.S. 1923 s. 854; M.S. 1927 s. 854; 1945 c. 538 s. 1.

The chairman of the county board is not entitled to mileage for every day traveling from his home to and from the county-seat when the county board is in session for three days. OAG May 19, 1933.

**385.17 NEGLECT OF DUTY; GROSS MISDEMEANOR.**

**HISTORY.** 1873 c. 38 s. 3; G.S. 1878 c. 8 s. 152; G.S. 1894 s. 738; R.L. 1905 s. 509; G.S. 1913 s. 856; G.S. 1923 s. 855; M.S. 1927 s. 855.

**385.18 EXEMPTION FROM LIABILITY.**

**HISTORY.** 1873 c. 38 s. 4; G.S. 1878 c. 8 s. 153; G.S. 1894 s. 739; R.L. 1905 s. 510; G.S. 1913 s. 857; G.S. 1923 s. 856; M.S. 1927 s. 856.

Origin and legislative history of this section. *State v Bobleter*, 83 M 479, 86 NW 461.

Where the county treasurer recognizes an order on the treasury issued from the county auditor's office on the proper blank and regular on its face, and issues a check upon a legal county depository for the sum named payable to the person designated, and delivers the check to the pretended representative of such payee in good faith, neither he nor his sureties are liable on his official bond. *Board v Elmund*, 94 M 196, 102 NW 719.

In the instant case the complaint stated a cause of action. *Board v Miller*, 101 M 294, 112 NW 276.

The county treasurer and his official sureties are exempted from loss from the failure of lawful depository banks wherein county funds are on deposit within the amount of the depository bond. *County v Bakke*, 182 M 10, 234 NW 1.

It is not unlawful for the county treasurer to deposit county funds in a bank not designated as a county depository or deposit more county funds than are covered by the depository bond, but the treasurer and his bondsmen remain liable for money in his hands. *Anderson v Peterson State Bank*, 191 M 404, 254 NW 459.

Liability of public officer for loss of funds. 11 MLR 175.

**385.19 TREASURER TO EXHIBIT ACCOUNTS.**

**HISTORY.** 1849 c. 22 s. 5; R.S. 1851 c. 8 art. 3 s. 5; P.S. 1858 c. 7 s. 39; 1860 c. 3 s. 8; 1861 c. 3 s. 1; G.S. 1866 c. 8 s. 132; G.S. 1878 c. 8 s. 154; G.S. 1894 s. 740; R.L. 1905 s. 511; G.S. 1913 s. 858; G.S. 1923 s. 857; M.S. 1927 s. 857.



# MINNESOTA STATUTES 1945 ANNOTATIONS

2373

COUNTY TREASURER 385.26

Board of county commissioners may sue the county treasurer, either on the bond or independent of it, for the conversion of funds belonging in the county treasury and recover for all funds converted: state, county, town, school, and other funds. The defendant is not entitled to a bill of particulars and the complaint need not specify errors in the treasurer's account. If the allegations in the complaint are not sufficiently specific the defendant's remedy is by motion to have the complaint made more definite and certain. Board v Smith, 22 M 97.

## 385.20 FAILURE TO SETTLE.

HISTORY. 1860 c. 3 s. 39; G.S. 1866 c. 8 s. 135; G.S. 1878 c. 8 s. 157; G.S. 1894 s. 743; R.L. 1905 s. 512; G.S. 1913 s. 859; G.S. 1923 s. 858; M.S. 1927 s. 858.

## 385.21 ACTION AGAINST TREASURER.

HISTORY. 1860 c. 3 s. 14; G.S. 1866 c. 8 s. 136; G.S. 1878 c. 8 s. 158; G.S. 1894 s. 744; R.L. 1905 s. 513; G.S. 1913 s. 860; G.S. 1923 s. 859; M.S. 1927 s. 859.

The responsibility of the county treasurer is not that of an ordinary bailee but such as is imposed by the express terms of his bond, an absolute responsibility for all moneys coming into his hands as county treasurer. County Commissioners v Jones, 18 M 199 (182); County Commissioners v Gilbert, 19 M 214 (176); County Commissioners v Smith, 22 M 97; County Commissioners v Nelson, 51 M 79, 52 NW 991; Board v Knudson, 82 M 151, 84 NW 657.

An action may be prosecuted by a county against its treasurer and the sureties on his official bond without first obtaining leave from the court. County of Waseca v Sheehan, 42 M 57, 43 NW 690.

Where a deputy county auditor issues fraudulent and fictitious redemption and refundment orders and forges the endorsement of the payee and obtains payment thereon from the county treasurer, the treasurer and his sureties are liable for the amount so paid. Board v Elmund, 89 M 56, 93 NW 1054; Board v Elmund, 94 M 196, 102 NW 719.

## 385.22 REMOVAL OF TREASURER.

HISTORY. 1860 c. 3 s. 15; G.S. 1866 c. 8 s. 137; G.S. 1878 c. 8 s. 159; G.S. 1894 s. 745; R.L. 1905 s. 514; G.S. 1913 s. 861; G.S. 1923 s. 860; M.S. 1927 s. 860.

See annotations under section 385.19.

## 385.23 MONEY COLLECTED.

HISTORY. 1860 c. 3 s. 16; G.S. 1866 c. 8 s. 138; G.S. 1878 c. 8 s. 160; G.S. 1894 s. 746; R.L. 1905 s. 515; G.S. 1913 s. 862; G.S. 1923 s. 861; M.S. 1927 s. 861.

## 385.24 REFUSAL TO EXECUTE PROCESS.

HISTORY. 1860 c. 3 s. 17; G.S. 1866 c. 8 s. 139; G.S. 1878 c. 8 s. 161; G.S. 1894 s. 747; R.L. 1905 s. 516; G.S. 1913 s. 863; G.S. 1923 s. 862; M.S. 1927 s. 862.

## 385.25 PROCEEDINGS AGAINST DEPUTY.

HISTORY. 1860 c. 3 s. 18; G.S. 1866 c. 8 s. 140; G.S. 1878 c. 8 s. 162; G.S. 1894 s. 748; R.L. 1905 s. 517; G.S. 1913 s. 864; G.S. 1923 s. 863; M.S. 1927 s. 863.

## 385.26 NEW BOND; INSOLVENCY OF SURETY.

HISTORY. 1860 c. 3 s. 31; G.S. 1866 c. 8 s. 141; G.S. 1878 c. 8 s. 163; G.S. 1894 s. 749; R.L. 1905 s. 518; G.S. 1913 s. 865; G.S. 1923 s. 864; M.S. 1927 s. 864; Ex. 1933 c. 4.

Where the county treasurer was required by the county board to give a new bond with sureties to be approved by it and the board was not in session during any part of the ten days allowed by statute, the treasurer had the bond prepared and issued ready for delivery but kept it until the board met the day after the ten days had expired. He failed to give a new bond within the meaning of the

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 385.27 COUNTY TREASURER

2374

statute, for though he could not deliver the bond to the board itself within the statutory time, he should have delivered it to the county auditor as clerk for the board. *State v Sanderson*, 26 M 333, 3 NW 984.

If the bond first required by the county board has been executed, there is no authority in the board thereafter to conceal same. 1936 OAG 137, March 5, 1935 (104b-13).

The county board 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).

### 385.27 FAILURE TO GIVE BOND.

HISTORY. 1860 c. 3 s. 32; G.S. 1866 c. 8 s. 142; G.S. 1878 c. 8 s. 164; G.S. 1894 s. 750; R.L. 1905 s. 519; G.S. 1913 s. 866; G.S. 1923 s. 865; M.S. 1927 s. 865.

See annotations under section 385.26.

### 385.28 NOT TO SPECULATE IN ORDERS OR WARRANTS.

HISTORY. 1849 c. 22 s. 10; R.S. 1851 c. 8 art. 3 s. 10; P.S. 1858 c. 7 s. 44; 1860 c. 3 s. 33; G.S. 1866 c. 8 s. 143; G.S. 1878 c. 8 s. 165; G.S. 1894 s. 751; R.L. 1905 s. 520; G.S. 1913 s. 867; G.S. 1923 s. 866; M.S. 1927 s. 866.

### 385.29 NOT TO LEND FUNDS.

HISTORY. 1860 c. 3 s. 34; G.S. 1866 c. 8 s. 144; G.S. 1878 c. 8 s. 166; G.S. 1894 s. 752; R.L. 1905 s. 521; G.S. 1913 s. 868; G.S. 1923 s. 867; M.S. 1927 s. 867.

### 385.30 TO PROSECUTE BONDS.

HISTORY. 1849 c. 22 s. 7; R.S. 1851 c. 8 art. 3 s. 7; P.S. 1858 c. 7 s. 41; 1860 c. 3 s. 20; G.S. 1866 c. 8 s. 146; G.S. 1878 c. 8 s. 168; G.S. 1894 s. 754; R.L. 1905 s. 523; G.S. 1913 s. 869; G.S. 1923 s. 868; M.S. 1927 s. 868.

### 385.31 PAYMENT OF COUNTY ORDERS OR WARRANTS.

HISTORY. 1849 c. 22 s. 8; R.S. 1851 c. 8 art. 3 s. 8; P.S. 1858 c. 7 s. 42; 1860 c. 3 s. 21; G.S. 1866 c. 8 s. 147; G.S. 1878 c. 8 s. 169; 1879 c. 33 s. 1; G.S. 1894 s. 755; R.L. 1905 s. 524; G.S. 1913 s. 870; 1919 c. 31; G.S. 1923 s. 869; 1925 c. 176; M.S. 1927 s. 869; 1937 c. 400 s. 1; 1941 c. 56; 1943 c. 298 s. 1.

Where county orders are payable to bearer and the treasurer pays them in good faith and without any notice of defect in the bearer's title, although past due, the county is discharged. *Sweet v County Commissioners*, 16 M 106 (96).

Where a deputy county auditor issues fraudulent and fictitious redemption and refundment orders and forges the endorsements of the payee and obtains payment thereon from the county treasurer, the treasurer and his sureties are liable. *Board v Elmund*, 89 M 56, 93 NW 1054; 94 M 196, 102 NW 719.

School district moneys can be disbursed only on orders or other authorized vouchers. It is a breach of a legal duty where the school district treasurer pays a warrant not presented to him for payment; and a payment without such presentation to a former holder of a warrant who has assigned it is not a payment of the warrant and the assignee may recover. *First Nat'l Bank v School District*, 173 M 383, 217 NW 366.

The county board has no authority to order interest paid until money is available for the payment of the warrant; but, if the warrants were sold under the provisions of Laws 1935, Chapter 121, interest may be paid in accordance with the terms of the resolutions of the county board authorizing the sale of such warrants. 1938 OAG 330, March 23, 1937 (521b-1).

Notice that county warrants numbers 1000 to 1500 are payable is sufficient to cover all intermediate numbered warrants. OAG July 13, 1933.

County board has no right to reduce the rate of interest on county warrants which are marked "not paid for want of funds" unless there has been a special

# MINNESOTA STATUTES 1945 ANNOTATIONS

2375

COUNTY TREASURER 385.37

arrangement with local banks or with the purchasers when sold at public subscription. OAG June 13, 1936 (107a-5).

Notice must be given to a holder of an unpaid warrant when money is available for payment. This notice stops the accrual of interest thereafter, and the six-year limitation begins to run from the date of the notice. 1942 OAG 130, Dec. 26, 1941 (107a-10); OAG March 6, 1944 (107a-9).

## **385.32 TRANSFER OF FUNDS TO AVOID INTEREST ON WARRANTS DRAWN ON INSUFFICIENT FUND.**

**HISTORY.** 1925 c. 318 s. 1; M.S. 1927 s. 869-1.

The county board cannot appropriate money in aid of a charitable hospital by authorizing warrants unless the money is available or a tax levy has been made and is in process of collection. OAG Nov. 9, 1933.

When warrants drawn on an insufficient fund are outstanding the county treasurer, for the purpose of saving interest, may, with the consent of the county board and county auditor, transfer moneys temporarily from other county funds so that these outstanding warrants may be paid. OAG Feb. 5, 1935 (107a-12).

Expenses of classification and appraisal of tax-delinquent land forfeited to the state cannot be paid out of any funds except the forfeited tax sale fund; but said fund may temporarily borrow money from the county revenue fund. 1936 OAG 357, Nov. 14, 1936 (700d-2).

Moneys levied for a sinking fund to retire bonds cannot be diverted to any other use until the bonds have been retired and paid. OAG Nov. 30, 1938 (37a-12).

The sanatorium fund comes within the provisions of this section. OAG Feb. 6, 1939 (556a-10).

## **385.33 LAWS NOT REPEALED.**

**HISTORY.** 1925 c. 318 s. 2; M.S. 1927 s. 869-2.

## **385.34 TO DEPOSIT ORDERS; AUDITOR'S DUTY.**

**HISTORY.** 1860 c. 3 s. 22; G.S. 1866 c. 8 s. 148; G.S. 1878 c. 8 s. 170; 1879 c. 33 s. 1; G.S. 1894 s. 756; R.L. 1905 s. 525; G.S. 1913 s. 871; G.S. 1923 s. 870; M.S. 1927 s. 870.

## **385.35 ALLOWANCES.**

**HISTORY.** 1849 c. 22 s. 11; R.S. 1851 c. 8 art. 3 s. 11; P.S. 1858 c. 7 s. 45; 1860 c. 3 s. 28; 1861 c. 3 ss. 27, 28; 1862 c. 10 s. 2; 1863 c. 2 ss. 2, 3; 1865 c. 66; G.S. 1866 c. 8 ss. 149, 150; 1873 c. 39 s. 1; 1875 c. 27 s. 2; 1877 c. 120 s. 3; G.S. 1878 c. 8 ss. 171, 172; 1881 c. 38 s. 1; 1881 c. 68 s. 2; 1885 c. 16; 1885 c. 89; 1887 c. 31; G.S. 1894 ss. 757, 758; R.L. 1905 s. 526; G.S. 1913 s. 872; G.S. 1923 s. 871; M.S. 1927 s. 871.

## **385.36 COUNTY TREASURER MAY RECEIVE FEES AND MILEAGE.**

**HISTORY.** 1929 c. 172; M. Supp. s. 871-1; 1945 c. 184 s. 1.

## **385.37 SALARY; CLERK HIRE.**

**HISTORY.** 1849 c. 22 s. 11; R.S. 1851 c. 8 art. 3 s. 11; P.S. 1858 c. 7 s. 45; 1860 c. 3 s. 28; 1861 c. 3 s. 28; 1862 c. 10 s. 2; 1863 c. 2 s. 3; 1865 c. 66; G.S. 1866 c. 8 s. 150; 1873 c. 39 s. 1; 1875 c. 27 s. 2; 1877 c. 120 s. 3; G.S. 1878 c. 8 s. 172; 1881 c. 38 s. 1; 1881 c. 68 s. 2; 1885 c. 16; 1885 c. 89; 1887 c. 31; G.S. 1894 s. 758; 1895 c. 291; 1897 c. 8; 1903 c. 229; R.L. 1905 s. 527; 1911 c. 333 s. 1; G.S. 1913 s. 873; 1919 c. 247; 1921 c. 387; G.S. 1923 s. 872; M.S. 1927 s. 872.

County treasurers are not entitled to fees for preparing tax lists for banks desiring to remit taxes for their customers. OAG May 19, 1933.

County treasurers are not entitled to pay for services in bookkeeping, issuing checks, or taking receipts on federal projects. OAG Nov. 22, 1934 (104a-6).

Where a county officer holds over he is entitled to compensation from the end of the term to the date when his successor qualifies. OAG Dec. 1, 1934 (104a-9).

# MINNESOTA STATUTES 1945 ANNOTATIONS

## **385.373 COUNTY TREASURER**

2376

For salary purposes the determination by the tax commissioners of the value of property is conclusive. OAG Dec. 27, 1934 (104a-9).

A county officer may employ a person under 21 years of age as a clerk, though the appointee cannot qualify as a deputy. OAG Dec. 19, 1938 (126a-33).

## **385.373 CLASSIFICATION OF COUNTIES FOR SALARY PURPOSES.**

HISTORY. 1945 c. 329 s. 1.

## **385.374 ADJUSTMENT OF SALARIES; ADDITIONAL COMPENSATION.**

HISTORY. 1945 c. 329 ss. 2, 3, 6.

## **385.38 STATEMENT OF EMPLOYEES AND THEIR PAY IN CERTAIN COUNTIES; FEES PAID INTO COUNTY TREASURY.**

HISTORY. 1895 c. 291; R.L. 1905 s. 528; G.S. 1913 s. 883; M.S. 1927 s. 872-1.

## **385.39 MONEYS AND BOOKS DELIVERED TO SUCCESSOR IN OFFICE.**

HISTORY. 1860 c. 3 s. 29; G.S. 1866 c. 8 s. 151; G.S. 1878 c. 8 s. 173; G.S. 1894 s. 759; R.L. 1905 s. 529; G.S. 1913 s. 884; M.S. 1927 s. 872-2.

## **385.40 PUBLICATION OF NOTICE WHEN TAXES BECOME DELINQUENT.**

HISTORY. 1909 c. 307 s. 1; G.S. 1913 s. 766; G.S. 1923 s. 772; M.S. 1927 s. 772.

## **385.41 TREASURER TO PREPARE AND PUBLISH NOTICE.**

HISTORY. 1909 c. 307 s. 2; G.S. 1913 s. 767; G.S. 1923 s. 773; M.S. 1927 s. 773.