

## CHAPTER 387

## SHERIFF

**387.01 BOND; OATH.**

**HISTORY.** 1849 c. 23 s. 3; R.S. 1851 c. 8 art. 4 s. 3; P.S. 1858 c. 7 s. 49; G.S. 1866 c. 8 s. 165; G.S. 1878 c. 8 s. 193; G.S. 1894 s. 783; 1895 c. 281; 1902 c. 51 s. 17; R.L. 1905 s. 547; G.S. 1913 s. 925; G.S. 1923 s. 905; M.S. 1927 s. 905.

Tullis was elected sheriff, gave a bond which was approved by the board, and entered into the duties of his office. After the bond has been approved by the board its delivery is implied, and the sheriff was acting at least de facto, and he together with his bondsmen are liable under the complaint. *State v Brisbin*, 17 M 451 (429).

A judgment against the principal in an official bond recovered for acts or omissions which were a breach of the conditions of such obligation is prima facie evidence against the sureties. *Beauchaine v McKinnon*, 55 M 318, 56 NW 1065.

When a contract of surety is made, an obligation is implied on the part of the principal that he will indemnify the surety for any payments the latter may make under the contract. In the application for a bond the applicant waived his exemptions including the homestead provision. This was probably illegal; but where a contract is illegal only in part and the illegal part is severable, the remainder will be enforced. *Hartford v Dahl*, 202 M 410, 278 NW 571.

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

The type of action asserted against the sheriff. 23 MLR 805.

**387.02 FAILURE TO QUALIFY.**

**HISTORY.** 1849 c. 23 s. 3; R.S. 1851 c. 8 s. 3; P.S. 1858 c. 7 s. 49; G.S. 1866 c. 8 s. 166; G.S. 1878 c. 8 s. 194; G.S. 1894 c. 784; R.L. 1905 s. 548; G.S. 1913 s. 926; G.S. 1923 s. 906; M.S. 1927 s. 906.

**387.03 POWERS AND DUTIES.**

**HISTORY.** 1849 c. 23 s. 7; R.S. 1851 c. 8 art. 4 s. 7; P.S. 1858 c. 7 s. 53; G.S. 1866 c. 8 s. 167; G.S. 1878 c. 8 s. 195; G.S. 1894 s. 785; R.L. 1905 s. 549; G.S. 1913 s. 926; G.S. 1923 s. 907; M.S. 1927 s. 907; 1943 c. 330 s. 1.

A public official cannot receive, for performing an official duty, any compensation or reward other than that prescribed by law. A person who had committed a felony in one county was arrested in another by a deputy sheriff without a warrant and the deputy was not entitled to the reward which had been offered. *Warner v Grace*, 14 M 487 (364).

The sheriff took property into his possession but not in accordance with Laws 1868, Chapter 115, but proceeded under the law of 1866 which had been expressly repealed. The proceedings were void, for when a remedy is provided by statute and proceedings under the remedy distinctly specified, it is a prohibition against proceedings in any other manner. *Castle v Thomas*, 16 M 490 (443).

The ruling in *Barry v McGrade*, 14 M 163, holding that the statute requiring notice to be given in certain cases to an official levying upon personal property before bringing suit against him applies only to cases where the property is levied upon or taken by the officer while in the possession of the defendant. *Butler v White*, 25 M 432.

The per diem allowed to the sheriff covers such services as bringing into court and removing prisoners for arraignment, trial and sentence; and the sum allowed

him for boarding prisoners includes washing done for them. *Connolly v County of Dakota*, 35 M 365, 29 NW 1.

The mere service of a notice of expiration of the time for redemption from a tax sale does not vest in the holder of the tax sale certificate title to the land for the property owner has time for redemption. The failure of the sheriff to serve such a notice does not give to the holder of the tax certificate an action against the officer for the value of the land, since it is speculative and uncertain whether the owner will make redemption. *Foster v Wagener*, 129 M 11, 151 NW 407.

A sheriff's official duty implies alertness and initiative to enforce the laws enacted by the people for their protection and wellbeing; and the sheriff who fails to meet these requirements is properly removed from office. *In re Removal of Messenbrink*, 211 M 114, 300 NW 398.

Under this section a sheriff has authority to employ aid to accompany him to another state to get a prisoner charged with crime in the sheriff's county; and the county, having paid the aid, cannot question the employment; and the insurer is in no better position than the employer to question the legality of the employment. *Sexton v County of Waseca*, 211 M 422, 1 NW(2d) 394.

A sheriff is protected and justified for acts done in executing the process and orders of the court, the process being regular on its face and the court having jurisdiction of the subject matter. A public officer whose functions are judicial is not liable to persons injured by the honest exercise of his judgment within his jurisdiction. *Robbinette v Price*, 214 M 521, 8 NW(2d) 800.

The certificate of service must be signed by the party making the service and not by his deputy. OAG Jan. 23, 1934.

There is no statute which authorizes the sheriff to hire investigators in arson cases, but he is authorized to appoint special deputies who are paid as deputies. OAG Aug. 30, 1937 (197a).

It is the duty of the sheriff to execute orders of the court. 1942 OAG 23, Feb. 26, 1942 (840a-6); OAG Aug. 8, 1944 (268f).

Against the advice of the county attorney, and without extradition papers, the sheriff may go to another state and arrest a person for whom he has a warrant, and if the prisoner voluntarily returns with him, he is entitled to such reasonable expense money as the board will allow, but not the statutory mileage and per diem. OAG Dec. 29, 1944 (390c-3).

Governmental responsibility for torts; indirect assumption of liability. 26 MLR 856.

#### **387.04 DUTIES OF SHERIFF IN HENNEPIN COUNTY.**

HISTORY. 1913 c. 440 s. 2; G.S. 1913 s. 1022; M.S. 1927 s. 907-1.

#### **387.05 SHALL GIVE CERTIFICATE, WHEN.**

HISTORY. 1849 c. 23 s. 9; R.S. 1851 c. 8 art. 4 s. 9; P.S. 1858 c. 7 s. 55; G.S. 1866 c. 8 s. 169; G.S. 1878 c. 8 s. 197; G.S. 1894 s. 787; R.L. 1905 s. 550; G.S. 1913 s. 928; G.S. 1923 s. 908; M.S. 1927 s. 908.

In a certificate of chattel mortgage foreclosure a police officer's signature should be acknowledged but that of the sheriff need not. OAG Dec. 23, 1936 (390a-19).

#### **387.06 FAILURE TO PAY OVER MONEY.**

HISTORY. 1849 c. 23 s. 10; R.S. 1851 c. 8 art. 4 s. 10; P.S. 1858 c. 7 s. 56; G.S. 1866 c. 8 s. 170; G.S. 1878 c. 8 s. 198; 1885 c. 74; G.S. 1894 s. 788; R.L. 1905 s. 551; G.S. 1913 s. 929; G.S. 1923 s. 909; M.S. 1927 s. 909.

An order pursuant to a hearing on an order to show cause why the sheriff should not pay over money collected by him is appealable as "a final order affecting a substantial right". Where the sheriff shows no reasonable excuse for his failure to pay over the money the court has no right to relieve the sheriff from the 20 per cent damages assessed by the statute. *Coykendall v Way*, 29 M 162, 12 NW 452.

Where the sheriff is guilty of misconduct in refusing to execute a writ of execution, the district court is authorized to require the correction of the injury done and the making good of the loss his misconduct has occasioned, and in addition a fine may be imposed upon him for the use of the county. *Brewer v Elder*, 33 M 147, 22 NW 622.

A sheriff who levies on personal property of the execution debtor and sells it to the purchaser without receiving the price may be proceeded against summarily and compelled to pay the party entitled to the surplus any excess there may be of the selling price over the amount required to satisfy the execution and costs. *Kumler v Brandenburg*, 39 M 59, 38 NW 704.

Money paid to a sheriff to redeem land from a foreclosure sale is money received by him "by virtue of his office"; and the mere employment of an attorney to foreclose a mortgage does not give him authority to receive from a sheriff money paid in redemption. *In re Grundysen*, 53 M 346, 55 NW 557.

The summary process under this section only applies when it is the sheriff's plain and undisputed duty to pay over the money and his neglect is wilful. *Hull v Chapel*, 71 M 408, 74 NW 156; *Deering v Burke*, 74 M 80, 76 NW 1020; *Roache v Dunn*, 97 M 529, 106 NW 965; *Allen v Christensen*, 111 M 414, 127 NW 185; *Brach v Fitzgerald*, 155 M 369, 193 NW 585.

#### 387.07 NEGLECT OF DUTY.

HISTORY. R.S. 1851 c. 8 art. 4 s. 19; P.S. 1858 c. 7 s. 64; G.S. 1866 c. 8 s. 171; G.S. 1878 c. 8 s. 199; G.S. 1894 s. 789; R.L. 1905 s. 552; G.S. 1913 s. 930; G.S. 1923 s. 910; M.S. 1927 s. 910.

See annotations under section 387.06.

When the defendant sheriff under an execution levied upon certain personal property of the judgment debtor knowing that a writ of attachment against the same person was about to issue in an action brought by another creditor, the question whether the sheriff with this knowledge used due diligence in levying under the execution upon sufficient of the available personal property of the judgment debtor, was a question of fact for the jury. *Reaume v Winkelman*, 192 M 1, 255 NW 81.

#### 387.08 CRIMINAL PROCESS, WHEN FILED.

HISTORY. 1885 c. 191 s. 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 212e; G.S. 1894 s. 808; R.L. 1905 s. 553; G.S. 1913 s. 931; G.S. 1923 s. 911; M.S. 1927 s. 911.

#### 387.09 NOT TO BUY AT SHERIFF'S SALE.

HISTORY. 1849 c. 23 s. 13; R.S. 1851 c. 8 art. 4 s. 12; P.S. 1858 c. 7 s. 58; G.S. 1866 c. 8 s. 173; G.S. 1878 c. 8 s. 201; G.S. 1894 s. 791; R.L. 1905 s. 554; G.S. 1913 s. 932; G.S. 1923 s. 912; M.S. 1927 s. 912.

#### 387.10 POWERS AFTER EXPIRATION OF TERM.

HISTORY. 1849 c. 23 s. 14; R.S. 1851 c. 8 art. 4 s. 14; P.S. 1858 c. 7 s. 59; 1862 c. 22; G.S. 1866 c. 8 s. 174; G.S. 1878 c. 8 s. 202; G.S. 1894 s. 792; R.L. 1905 s. 555; G.S. 1913 s. 933; G.S. 1923 s. 913; M.S. 1927 s. 913.

The ruling in *Barry v McGrade*, 14 M 163, requiring that a notice be given to an officer levying upon personal property before bringing suit against him applies only to cases where the property levied upon was taken while in the possession of the defendant. *Butler v White*, 25 M 432.

If a sheriff, during his term of office, had begun to execute a writ of attachment against rent of tax-delinquent land he may execute and return same after expiration of his term of office. OAG Dec. 28, 1934 (412a-25).

#### 387.11 COUNTY JAIL.

HISTORY. 1849 c. 23 s. 6; R.S. 1851 c. 8 art. 4 s. 6; P.S. 1858 c. 7 s. 52; G.S. 1866 c. 8 s. 175; G.S. 1878 c. 8 s. 203; G.S. 1894 s. 793; R.L. 1905 s. 556; G.S. 1913 s. 934; G.S. 1923 s. 914; M.S. 1927 s. 914.

Where the county constructed a building for a jail and sheriff's residence and fitted up and used one cell-room as a jail, but having no other county building appropriated the remainder of the building for use of county offices, the sheriff cannot oust the other county officers therefrom. *Curtis v Lincoln*, 136 M 25, 161 NW 210.

In the absence of negligence, the sheriff is not liable for loss of money held for a federal prisoner in a jail safe. OAG July 27, 1933.

### 387.12 MAY CONVEY PRISONERS.

**HISTORY.** R.S. 1851 c. 8 art. 4 s. 17; P.S. 1858 c. 7 s. 62; G.S. 1866 c. 8 s. 176; G.S. 1878 c. 8 s. 204; G.S. 1894 s. 794; R.L. 1905 s. 557; G.S. 1913 s. 935; G.S. 1923 s. 915; M.S. 1927 s. 915.

### 387.13 PROHIBITIONS.

**HISTORY.** R.S. 1851 c. 8 art. 4 s. 18; P.S. 1858 c. 7 s. 63; G.S. 1866 c. 8 s. 177; G.S. 1878 c. 8 s. 205; G.S. 1894 s. 795; 1897 c. 4; R.L. 1905 s. 558; G.S. 1913 s. 936; G.S. 1923 s. 916; M.S. 1927 s. 916.

The office of a member of the legislature is incompatible with that of deputy sheriff. 1938 OAG 278, Oct. 7, 1937 (280h).

The offices of constable and deputy sheriff are incompatible. OAG March 29, 1938 (358e-1).

The office of village president and of deputy sheriff are incompatible. 1942 OAG 228, Nov. 29, 1941 (358A-5).

### 387.14 DEPUTIES.

**HISTORY.** 1849 c. 23 s. 5; R.S. 1851 c. 8 art. 4 s. 5; P.S. 1858 c. 7 s. 51; G.S. 1866 c. 8 s. 178; G.S. 1878 c. 8 s. 206; G.S. 1894 s. 796; R.L. 1905 s. 559; G.S. 1913 s. 937; G.S. 1923 s. 917; M.S. 1927 s. 917.

When a decree of foreclosure directs the premises "be sold at public auction by the sheriff" and that the sheriff make a report of such sale, the duties enjoined by the decree are imposed on the sheriff as an officer and are a part of his official duties, and the signing of the report of sale in his name by his deputy is authorized by law. *Hotchkiss v Cutting*, 14 M 537 (408).

The statute intends that a jailer shall be a deputy of the sheriff; and the sheriff has the exclusive power of appointment although such appointment is not effectual until approved by the judge of the district court. The jailer can be removed by the sheriff only. The judge of the district court may determine the compensation to be allowed a jailer but an order that such jailer shall receive no compensation is void. *State ex rel v McIntyre*, 25 M 383.

Where a suit is founded on a statute, and such statute is repealed without a saving clause before the conclusion of the suit, the suit must end where the appeal finds it. *State ex rel v Brown*, 216 M 138, 12 NW(2d) 180.

The county cannot pay a deputy sheriff a per diem or salary unless there is an order of the district court approving the appointment. OAG Aug. 9, 1935 (390b-2).

A deputy sheriff is not allowed per diem fees for guarding the sheriff in transporting persons to state institutions. OAG July 6, 1936 (390b-2).

Neither the county board nor the sheriff has any legal authority to purchase uniforms for deputy sheriffs. OAG July 2, 1937 (125b).

An appointment of a special deputy sheriff need not be recorded, but it must be filed with the register of deeds, and the ten cent filing fee is chargeable to the county. 1942 OAG 205, Aug. 31, 1942 (373-B-10b).

### 387.15 WOMEN MAY BE APPOINTED DEPUTY SHERIFFS.

**HISTORY.** 1921 c. 369 s. 1; G.S. 1923 s. 918; M.S. 1927 s. 918.

### 387.16 TO HAVE CHARGE OF JURIES WHEN.

**HISTORY.** 1921 c. 369 s. 2; G.S. 1923 s. 919; M.S. 1927 s. 919.

**387.17 COMPENSATION.**

HISTORY. 1921 c. 369 s. 3; G.S. 1923 s. 920; M.S. 1927 s. 920.

**387.18 COUNTY BOARDS FIX SALARIES IN LIEU OF FEES IN CERTAIN COUNTIES.**

HISTORY. 1917 c. 312 s. 1; 1933 c. 24 s. 1; M. Supp. s. 920-1.

When a fee office has by statute been put upon a salary basis its fees are made public property. A custom of the sheriff's office of serving papers without collecting fees in advance and then holding the originals for payment of the fees comes so far from having any legal justification that, however much acquiesced in by other public officials, it cannot create an estoppel against the county. County v Magie, 198 M 127, 269 NW 105.

In counties governed by the sheriff's general salary law, the salary of the sheriff is in full for his services in conveying insane, feeble-minded or inebriate cases. He receives his expenses for himself, patient and assistants. In juvenile cases the mileage rate is probably only five cents per mile. Mileage should be approved and ordered paid by the probate judge. The sheriff has his seven cents mileage when serving subpoenas in criminal cases but no fees. 1942 OAG 210, Oct. 21, 1942 (390-A-11).

**387.19 DIVISION OF COUNTIES IN CLASSES.**

HISTORY. 1917 c. 312 s. 2; 1933 c. 24 s. 2; M. Supp. s. 920-2.

**387.20 SALARIES FOR SHERIFFS FOR CERTAIN COUNTIES PRESCRIBED.**

HISTORY. 1917 c. 312 s. 3; M. Supp. s. 920-3.

Section 350.11 provides maximum which may be allowed a sheriff for use of his automobile and the county board may fix an amount less than the statutory maximum. OAG May 29, 1935 (390a-11).

A sheriff receiving a salary is not entitled to a fee for serving a criminal warrant nor committing to jail. OAG March 10, 1939 (390c-2).

**387.21 COUNTY BOARD MAY INCREASE SALARY.**

HISTORY. 1917 c. 312 s. 4; 1933 c. 24 s. 3; M. Supp. s. 920-4.

**387.22 COMPENSATION OF JAILER DEPUTIES IN CERTAIN CASES FIXED BY DISTRICT COURT.**

HISTORY. 1917 c. 312 s. 5; M. Supp. s. 920-5.

The county cannot pay the deputy of a salaried sheriff a per diem or salary unless there is an order of the district court approving the appointment. OAG Oct. 9, 1935 (390b-2).

**387.23 SPECIAL DEPUTIES NOT PAID OUT OF COUNTY REVENUE FUND.**

HISTORY. 1917 c. 312 s. 6; M. Supp. s. 920-6.

**387.24 PAYMENT OF DEPUTY SHERIFF.**

HISTORY. 1917 c. 312 s. 7; M. Supp. s. 920-7.

A deputy sheriff cannot collect a per diem for acting as guard to sheriff and his prisoner in transporting the prisoner to state institution. OAG July 6, 1936 (390b-2).

**387.25 SETTLEMENTS WITH COUNTY BOARD.**

HISTORY. G.S. 1866 c. 8 s. 179; G.S. 1878 c. 8 s. 207; G.S. 1894 s. 797; R.L. 1905 s. 560; G.S. 1913 s. 938; G.S. 1923 s. 921; M.S. 1927 s. 921.

# MINNESOTA STATUTES 1945 ANNOTATIONS

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## **387.26 DEPUTIES ATTENDING COURT.**

HISTORY. 1893 c. 153 ss. 1, 2; G.S. 1894 ss. 798, 799; R.L. 1905 s. 561; G.S. 1913 s. 939; G.S. 1923 s. 922; M.S. 1927 s. 922.

## **387.27 COMPENSATION OF JAILERS.**

HISTORY. 1873 c. 43 s. 2; G.S. 1878 c. 8 s. 209; G.S. 1894 s. 800; R.L. 1905 s. 562; G.S. 1913 s. 940; G.S. 1923 s. 923; M.S. 1927 s. 923.

When committing a female to custody of a sheriff of another county, the judge may on proper showing require the employment of a matron by the sending county. 1942 OAG 151, Nov. 6, 1941 (127-a).

## **387.28 SHERIFF'S EXPENSE IN CERTAIN COUNTIES.**

HISTORY. 1929 c. 136; 1931 c. 313; M. Supp. s. 822-2; 1941 c. 508; 1943 c. 258 s. 1.

NOTE: See section 350.11.

Section 387.28 does not authorize the purchase of uniforms. OAG Feb. 29, 1944 (390a-17).

Governmental responsibility for tort. 26 MLR 856.