

CHAPTER 389

COUNTY SURVEYOR

389.01 ELECTION; TERM; BOND.

HISTORY. R.S. 1851 c. 8 art. 7 ss. 1, 8; 1853 c. 11 s. 1; P.S. 1858 c. 7 ss. 83, 90; G.S. 1866 c. 8 ss. 199, 206; 1875 c. 30 s. 1; G.S. 1878 c. 8 ss. 230, 238; 1881 c. 46 s. 1; 1887 c. 32; 1889 cc. 56, 175; G.S. 1894 ss. 829, 837; R.L. 1905 s. 575; 1913 c. 458 ss. 1, 2; G.S. 1913 ss. 809, 979; 1915 c. 168 ss. 1, 2; G.S. 1923 ss. 820, 821, 936; M.S. 1927 ss. 820, 821, 936.

Laws 1915, Chapter 168, is constitutional except as to clerk of the district court. State ex rel v Berg, 132 M 426, 157 NW 653; 133 M 65, 157 NW 907.

A constitution should be given a prospective operation only, unless on its face the contrary intention is clearly manifested, or such construction is absolutely necessary to give meaning to the language used. State ex rel v Houdersheldt, 151 M 167, 186 NW 234.

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 counties of the state. Imsdahl v Weeks, 158 M 512, 197 NW 973; State ex rel v Borgen, 189 M 216, 248 NW 744, 249 NW 183.

No qualifications are required except that he be a legal voter. Section 326.03 does not apply. OAG Dec. 28, 1934 (10a-3).

The offices of county surveyor and county highway engineer are incompatible. OAG Jan. 31, 1935 (358a-7).

Officer who was also officer-elect, died between election and end of term. Vacancy in office existed at once to be filled by commissioners. On the first Monday the following January a vacancy again existed to be filled by the commissioners: 1940 OAG 209, April 11, 1939 (373a-4).

389.02 DEPUTIES; SURVEYS; RECORDS.

HISTORY. R.S. 1851 c. 8 art. 7 ss. 2, 4; P.S. 1858 c. 7 ss. 84, 86; G.S. 1866 c. 8 ss. 200, 201; 1875 c. 30 s. 2; G.S. 1878 c. 8 ss. 232, 233; 1881 c. 42 s. 1; G.S. 1894 ss. 831, 832; R.L. 1905 s. 576; G.S. 1913 s. 980; G.S. 1923 s. 937; M.S. 1927 s. 937.

Where one contemplating the platting of his land as a townsite employs the county surveyor to survey it, and a plat is made in accordance with the survey, and the surveyor attaches his official certificate in form prescribed by statute, the survey is an official one, and the record of it, including "field notes and calculations" should be transmitted by the surveyor to his successor in office. State ex rel v Patton, 62 M 388, 64 NW 922.

This section does not authorize a county surveyor, when a county or town lets a contract for public improvements, the plans for which in his opinion require the service of a surveyor or engineer, to do the work at the expense of the county unless requested to do so by the proper public authorities. Haynes v Board, 65 M 384, 67 NW 1005.

A person under 21 years of age cannot be a deputy. He may be employed as a clerk. OAG Dec. 19, 1938 (126a-33).

Unless provided for in budget or covered by appropriations, the county board may not allow the claim made by a deputy surveyor. OAG Jan. 12, 1938 (475b).

389.03 COMPENSATION.

HISTORY. Ex. 1857 c. 21; 1867 c. 96; G.S. 1878 c. 8 s. 231; G.S. 1894 s. 830; R.L. 1905 s. 577; 1909 c. 303 s. 1; G.S. 1913 s. 981; 1919 c. 480; G.S. 1923 s. 938; M.S. 1927 s. 938; 1943 c. 296 s. 1.

Expenses incident to attending conventions may not be paid out of county funds. OAG March 6, 1936 (123f).

Laws 1943, Chapter 296, permits a maximum of \$15.00 per day including time spent in travel, plus all expenses. Helpers must be paid by the person served. OAG May 17, 1944 (123f).

389.04 RULES FOR SURVEYS.

HISTORY. R.S. 1851 c. 8 art. 7 ss. 6, 10; 1857 c. 11 s. 1; P.S. 1858 c. 7 ss. 89, 92, 93; 1861 c. 8 ss. 2, 3; G.S. 1866 c. 8 ss. 202 to 204; 1870 c. 43 s. 1; 1875 c. 31 s. 1; G.S. 1878 c. 8 ss. 234 to 236; G.S. 1894 ss. 833 to 835; 1903 c. 51; R.L. 1905 s. 578; G.S. 1913 s. 982; G.S. 1923 s. 939; M.S. 1927 s. 939.

The monuments and boundary lines established by the United States government survey control and mistakes cannot be corrected judicially. Evidence of error is inadmissible, and a state statute is inoperative when it conflicts with an act of congress. *Chan v Brandt*, 45 M 93, 47 NW 461; *Beardsley v Crane*, 52 M 537, 54 NW 740.

Where owing to meandered lake, but one quarter-corner post was established upon the ground lines of the section, which post was on the south line thereof, the division line between the southeast and southwest quarters must be ascertained by running a line due north from the quarter-post to the meandered lake upon the north side of the section. *Beardsley v Crane*, 52 M 537, 54 NW 740; *Chan v Brandt*, 45 M 93, 47 NW 461.

Section 389.02 which provides that the county surveyor shall execute all surveys which shall be ordered by any court, board of county commissioners, or town supervisors, does not authorize the surveyor, when a contract is let, and when he thinks the services of a surveyor is necessary, to voluntarily do the work and charge the town or county. *Haynes v Board*, 65 M 384, 67 NW 1005.

If a government post has disappeared, the site of its location may be established by clear and satisfactory evidence, and, if so established, will control and govern as fully as if the original post remained. *Beltz v Mathiowitz*, 72 M 443, 75 NW 699; *Stadin v Helin*, 76 M 496, 79 NW 537, 600; *Moser v Doffner*, 111 M 464, 125 NW 275, 127 NW 494.

When meandered corners are lost they are restored in accordance with United States Land Office circular of March 14, 1901; and where calls are inconsistent they are to be given prevailing effect in the following order: (1) natural objects; (2) artificial marks; (3) courses and distances. *Kleven v Gunderson*, 95 M 246, 104 NW 4.

Lost interior section corners should be restored from the nearest known corners north, south, east, and west, proportional to those down in the field notes of the original survey. *Grandt v Town*, 163 M 368, 204 NW 317.

389.05 PLATS AND FIELD NOTES.

HISTORY. 1857 c. 11 s. 1; P.S. 1858 c. 7 s. 93; G.S. 1866 c. 8 s. 204; 1870 c. 43 s. 1; G.S. 1878 c. 8 s. 236; G.S. 1894 s. 835; R.L. 1905 s. 579; G.S. 1913 s. 983; G.S. 1923 s. 940; M.S. 1927 s. 940.

389.06 LOST POSTS.

HISTORY. 1861 c. 8 s. 4; G.S. 1866 c. 8 s. 205; G.S. 1878 c. 8 s. 237; G.S. 1894 s. 836; R.L. 1905 s. 580; G.S. 1913 s. 984; G.S. 1923 s. 941; M.S. 1927 s. 941.

See annotations under section 389.04.

The government field notes gave the width of the sections on the north of the standard parallel, from 33 to 35 inclusive, at 80 chains each, or 240 chains in all from the southwest corner of section 33 to the corresponding corner of 36. There being no surplus to distribute, the actual location of the lost closing corner between the two sections lying south of the standard parallel is to be determined by measuring east or west, as the case may be, from the nearest standard corner shown by the government field notes. The field notes and the original plats govern. *Ferch v Konne*, 78 M 515, 81 NW 524.

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Where a section corner post has disappeared, the evidence of witness-bearing trees and the surveyor's field notes will usually prevail. If the calls of the field notes are erroneous, their use or rejection becomes a practicable matter. There is no applicable universal rule. Other facts may be taken into consideration. *Sommer v Meyer*, 125 M 258, 146 NW 1106.