

CHAPTER 485

CLERKS OF THE DISTRICT COURT

485.01 ELECTION; BOND; DUTIES.

HISTORY. R.S. 1851 c. 8 art. 11 ss. 2, 3, 5; P.S. 1858 c. 7 ss. 120, 121, 123; G.S. 1866 c. 8 ss. 225, 226; G.S. 1878 c. 8 ss. 257, 258; 1879 c. 91 s. 1; 1887 c. 72; 1889 c. 50 s. 1; G.S. 1894 ss. 856 to 858; 1895 c. 281; R.L. 1905 s. 106; G.S. 1913 s. 219; G.S. 1923 s. 191; 1925 c. 337 s. 1; M.S. 1927 s. 191.

The defendant herein received in his official capacity as clerk of district court, money paid into court in condemnation proceedings, which he deposited, in his name as clerk, in a solvent bank, which afterward failed. Held, he and the sureties on his official bond are liable for such loss. *Railway v Owens*, 86 M 188, 90 NW 371.

The right of the governor to remove a clerk of court is governed by Minnesota Constitution, Article 13, Sections 1, 2, and by Minnesota Statutes 1941, Section 351.03. 1916 OAG 468, Sept. 22, 1916.

Clerk's commission on moneys deposited in condemnation proceedings is governed by section 357.02. 1926 OAG 59, Dec. 24, 1925.

The clerk of court may practice law in probate court and transact any other legal business not connected with the district court. OAG Feb. 15, 1932.

Exhibits appertaining to criminal cases may be released or disposed of under court order and in no other way. OAG March 6, 1936 (815a).

Where a vacancy occurs in the office of the clerk of the district court on Sept. 24, the office must be filled at the November general election. OAG Oct. 17, 1944 (144a-5).

485.011 SALARIES IN CERTAIN COUNTIES.

HISTORY. 1909 c. 335 s. 1; 1943 c. 191 s. 1.

485.012 CLASSIFICATION OF CERTAIN COUNTIES.

HISTORY. 1909 c. 335 s. 2; 1943 c. 191 s. 2.

485.013 COMPENSATION.

HISTORY. 1909 c. 335 s. 3; 1943 c. 191 s. 3.

485.014 LAWS EXCEPTED FROM REPEAL.

HISTORY. 1909 c. 335 s. 4; 1943 c. 191 s. 4.

485.015 SALARY IN RAMSEY COUNTY.

HISTORY. 1937 c. 157; 1939 c. 297; M. Supp. s. 193-5.

485.016 SALARIES.

HISTORY. 1945 c. 568 s. 1.

485.017 SALARIES IN CERTAIN COUNTIES.

HISTORY. 1945 c. 518 ss. 1, 2.

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485.02 MONEY PAID INTO COURT; FEES.

HISTORY. R.S. 1851 c. 8 art. 2 § 3; P.S. 1858 c. 7 s. 121; G.S. 1866 c. 8 s. 225; G.S. 1878 c. 8 s. 257; 1879 c. 91 s. 1; 1887 c. 72; G.S. 1894 s. 856; R.L. 1905 s. 107; G.S. 1913 s. 220; 1921 c. 178; G.S. 1923 s. 192; M.S. 1927 s. 192; 1937 c. 188 s. 1.

A deposit of money in lieu of bail is to be treated as a recognizance, and the clerk may not charge a commission on forfeited bail money. 1924 OAG 41, May 22, 1923; 1934 OAG 270, April 19, 1934.

The clerk is not entitled to charge a commission on money deposited as an award in condemnation proceedings, and any interest earned on the fund belongs to the persons entitled to the money. 1926 OAG 57, Feb. 26, 1926; 1926 OAG 59, Dec. 24, 1925.

When the clerk deposits money in a national bank, taking a certificate of deposit; in case of failure of the bank, the clerk must stand the loss. OAG April 28, 1933.

Banks may place floating charges on out-of-town checks on money deposited with the clerk. OAG Oct. 30, 1935 (532a-2).

Laws 1937, Chapter 188, defines the privileges of the clerk relating to money deposited or disbursed under order of court. 1938 OAG 159, May 4, 1937.

485.03 DEPUTIES.

HISTORY. R.S. 1851 c. 8 art. 2 ss. 6, 7; P.S. 1858 c. 7 ss. 124, 125; G.S. 1866 c. 8 ss. 227, 228; 1877 c. 12 s. 1; G.S. 1878 c. 8 ss. 259, 260; G.S. 1894 ss. 859, 860; R.L. 1905 s. 108; G.S. 1913 s. 221; G.S. 1923 s. 193; M.S. 1927 s. 193.

Judicial notice will be taken in the district court of the signature and official character of all persons who have been duly appointed deputies by the clerk, as all such appointments must be approved by the judge of the court. State v Barrett, 40 M 65, 41 NW 459.

The offices of clerk of the probate court and clerk of the district court are incompatible. 1936 OAG 208, Dec. 31, 1936.

Upon reelection of the clerk, deputies must be reappointed. Their appointment continues only during the original or current time of the appointing officer. OAG Jan. 28, 1937 (144a-1).

485.04 ASSIGNMENT CLERK IN RAMSEY COUNTY.

HISTORY. 1925 c. 52 ss. 1 to 3; M.S. 1927 ss. 193-1, 193-2, 193-3.

Special legislation in Minnesota, 7 MLR, 133 to 151, 187 to 207; 11 MLR 206; Kumm, Minnesota Constitution, 97 to 111.

485.05 DEPUTY CLERK IN ST. LOUIS COUNTY.

HISTORY. 1935 c. 179; M. Supp. s. 193-4.

485.06 SEARCH OF RECORDS; CERTIFICATE; PUBLIC INSPECTION.

HISTORY. R.S. 1851 c. 71 ss. 72, 78; R.S. 1851 c. 82 s. 40; P.S. 1858 c. 61 ss. 72, 78; P.S. 1858 c. 73 s. 40; G.S. 1866 c. 8 s. 229; G.S. 1878 c. 8 s. 261; 1883 c. 28 s. 1; 1887 c. 48 s. 1; G.S. 1894 s. 861; R.L. 1905 s. 109; 1907 c. 203 s. 1; G.S. 1913 s. 222; G.S. 1923 s. 194; M.S. 1927 s. 194.

The right to inspect and examine public records by a person having no interest therein does not exist at common law, and the purpose of the statute was to extend the right or privilege to all citizens. The legislature has the right to surround the privileges others extended with such restrictions and limitations as that body deems necessary and proper. State ex rel v McCubrey, 84 M 439, 87 NW 1126.

Upon tender of the fees prescribed by law, the clerk is required to search the records in his custody, upon request of any person engaged in the business of making abstracts of title, and certify and deliver transcripts of judgments entered upon his docket. Mandamus will lie to compel the clerk to perform this duty.

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The fact that an abstracter intends to use the information so furnished indiscriminately in his business, is immaterial. *State ex rel v Scow*, 93 M 11, 100 NW 382.

While the middle initial is no part of a name, yet the law makes a distinction between Wm. B. Brown, and Wm. M. Brown, consequently when a search is made for judgments against John Jones, the certificate should include judgments against John G. Jones. 1918 OAG 80.

Judgment confessed under section 281.47 relating to allocation in payment of delinquent taxes is not a judgment to which an abstracter or clerk of court must certify as a judgment. OAG April 20, 1936 (520b).

Normally the clerk's judgment search need not extend farther back than ten years. A further search may be made on request. OAG June 17, 1944 (144b-3).

485.07 BOOKS TO BE KEPT.

HISTORY. R.S. 1851 c. 71 ss. 72, 78; R.S. 1851 c. 82 s. 40; P.S. 1858 c. 61 ss. 72, 78; P.S. 1858 c. 73 s. 40; G.S. 1866 c. 8 s. 229; G.S. 1878 c. 8 s. 261; 1883 c. 28 s. 1; 1887 c. 48 s. 1; G.S. 1894 s. 861; R.L. 1905 s. 110; G.S. 1913 s. 223; G.S. 1923 s. 195; M.S. 1927 s. 195.

The question on appeal was whether or not there had been a foreclosure of a mortgage and a sale thereunder, all papers having been lost. The defendant purchaser under the foreclosure sale produced sufficient evidence (if competent) to establish the foreclosure. Held, the evidence of the clerk is equally as competent as that of the judge who made the order. The fact that the clerk was required to keep certain books, and that on producing the books no record could be found of the foreclosure, does not create a presumption that cannot be overcome by parol evidence. *Smith v Valentine*, 19 M 452 (293).

Laws 1885, Chapter 181, directed the clerk of court of each county in the state to procure the necessary books and to index all judgments. Plaintiff procured an order from the judge of the district court and pursuant to that order, and resting on the statute, purchased books and made the index, and sued the county for the amount set by the court. Held, the county is not liable. *Rasmussen v Clay*, 41 M 283, 43 NW 3.

On an attempted appeal from a judgment, no written notice of an order given by an adverse party can set the 30-day time limit running within which to take an appeal until the order is filed with the clerk. *Backstrom v New York Life*, 187 M 35, 244 NW 64.

Confessions of judgment intended to allow real estate judgment instalment payments should not be docketed. OAG Aug. 23, 1944 (144b-3).

485.08 INDEX OF RECORDS.

HISTORY. 1885 c. 181; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 261b; G.S. 1894 s. 863; R.L. 1905 s. 111; G.S. 1913 s. 224; G.S. 1923 s. 196; M.S. 1927 s. 196.

485.09 REPORT IN CRIMINAL CASES TO COUNTY ATTORNEY.

HISTORY. 1885 c. 191 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 212d; G.S. 1894 s. 807; R.L. 1905 s. 112; G.S. 1913 s. 227; G.S. 1923 s. 197; M.S. 1927 s. 197.

As to whom the clerk of a municipal court must report depends upon the law under which it is created or established. The county attorney in his report to the attorney general should include cases prosecuted in the municipal courts. OAG Oct. 18, 1923 (87).

Amount paid to an attorney appointed by the court to represent a defendant in justice court in a criminal case should be included as a part of the costs in action. OAG Jan. 28, 1935 (121b-17).

485.10 ENTRY OF UNREGISTERED CASES.

HISTORY. 1885 c. 262; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 261c; G.S. 1894 s. 864; R.L. 1905 s. 113; G.S. 1913 s. 228; G.S. 1923 s. 198; M.S. 1927 s. 198.

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In an action for separate maintenance against a non-resident husband in which property within the jurisdiction has been attached, the court may render judgment therefor and make it a lien on the property so attached, although it is not enforceable against the husband personally. *Pye v Magnuson*, 178 M 531, 227 NW 895.

485.11 PRINTED CALENDARS.

HISTORY. 1909 c. 369 s. 1; G.S. 1913 s. 229; G.S. 1923 s. 199; M.S. 1927 s. 199.

485.12 VACANCY.

HISTORY. 1861 c. 32; G.S. 1866 c. 8 s. 230; G.S. 1878 c. 8 s. 262; G.S. 1894 s. 865; 1895 c. 283; R.L. 1905 s. 114; G.S. 1913 s. 230; G.S. 1923 s. 200; M.S. 1927 s. 200; 1945 c. 180 s. 1.

Goddard, who died between the time of his election and the date for taking office, was not an incumbent, and his death did not create a vacancy. As the law stood at the date of Goddard's death, the then incumbent was entitled to hold office the full term for which Goddard was elected, and also under the holding that Special Laws 1869, Chapter 83, Section 1, was unconstitutional. *State ex rel v Benedict*, 15 M 198 (153).

Under the provisions of Minnesota Constitution, Article 6, Section 13, the term of a clerk of the district court is limited to four years, and he is not empowered to thereafter hold office until his successor is elected and qualified. A prospective appointment to fill a vacancy sure to occur in a public office, made by an officer who, or by a body which, as then constituted, is empowered to fill the vacancy when it arises, is, in the absence of a law forbidding it, a valid appointment, and vests title to the office in the appointee. *State ex rel v O'Leary*, 64 M 207, 66 NW 264.

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. Under a statute providing that the incumbent of an office shall hold until his successor is elected and qualified, the constitution not prohibiting such provision, effect is given to the word "elected", and if a successor is not elected, the incumbent holds over and there is no vacancy to be filled by appointment. *State ex rel v Windom*, 131 M 401, 155 NW 629.

Where a clerk was appointed on May 17, 1909, his term of office expires in January, 1911. 1910 OAG 349.

Where the clerk of the court was elected in 1912 for a term beginning January, 1913, and in January, 1914, the incumbent died, and the vacancy was filled by appointment by the court, and at the next general election the appointee was elected, he holds for a full four-year term. 1914 OAG 52.

Laws 1915, Chapter 168, having been declared unconstitutional as far as clerk of the district court is concerned, section 485.12 remains effective, and a vacancy shall be filled by the judge or judges of the district court, and the appointee will hold until the next general election at which time the one elected is elected for a full four-year term. 1922 OAG 175, 176.

The offices of clerk of the probate court and of clerk of the district court are incompatible. 1926 OAG 208.

A vacancy occurring on Sept. 24, 1944, should be filled at the November election. OAG Oct. 17, 1944 (144a-4).

485.13 DESTRUCTION OF FILES AND DOCUMENTS.

HISTORY. 1945 c. 264 ss. 1, 2.