

CHAPTER 367

TOWN OFFICERS

367.01 DELIVERY TO SUCCESSOR.

State representative may act as town attorney. Jan. 25, 1947 (280-N).

367.03 VACANCIES.

The office of assessor becomes vacant upon the removal of the incumbent from the town. OAG April 29, 1943 (12-c-2).

There is no vacancy by reason of the illness of the town supervisor. OAG April 4, 1944 (437-A-21).

Assessor must be elected in each odd-numbered year. In case of a vacancy the board appoints, and the appointee holds office until the next election in an odd-numbered year. OAG March 29, 1945 (12-c-4).

When by judicial decision all the present town officers are declared disqualified by reason of residence, there being no qualified officers to fill vacancies, section 367.03 is not available, and the offices must be filled at special election called under section 212.03. OAG Aug. 21, 1947 (427-a-21).

367.04 AUDITOR TO APPOINT ASSESSOR.

Amended by L. 1947 c. 111 s. 1.

A town assessor must be a resident of the town. OAG March 31, 1944 (12-c-2).

367.05 COMPENSATION.

Amended by L. 1947 c. 420 s. 1.

The assessor may be paid per diem or by total contract so that the maximum is not exceeded. The salary may differ in odd or even-numbered years. 1942 OAG 186, July 16, 1941 (12B-1).

Offices of county commissioner and town clerk are not incompatible. 1944 OAG 231, Sept. 15, 1944 (358-A-3).

Compensation in some towns is based upon the number of numbered sections. OAG Feb. 15, 1945 (437a-3).

Compensation cannot be less than the amount fixed by state law. OAG May 4, 1945 (12-C-1).

Action of the board increasing the salary of the assessor in one year has no effect on succeeding years. Any amount other than the \$6.00 per day set by state law must be taken up at the annual meeting. OAG May 17, 1945 (12-C-1); OAG July 17, 1945 (12-C-1).

When the county auditor calls instruction meetings, those attending are paid by the county. OAG Aug. 8, 1945 (12).

In towns having an assessed valuation in excess of one million dollars, and located in a county containing a city of the first class, the salary of assessor is fixed by statute, and neither the electorate nor the town officers have any authority to change it. OAG Jan. 29, 1946 (437-A-3).

Town supervisors may receive pay as weed inspectors but the total compensation is limited by the provisions of sections 367.05 and 367.06. OAG Sept. 23, 1946 (322-A-2).

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The electors may fix the compensation of the town assessor by a motion adopted at the annual meeting. If no compensation is fixed, the assessor will be paid at the rate of \$6.00 per day, subject to the legal maximum and minimum. OAG March 14, 1947 (12-c-1).

Subject to maximum limitation, town supervisors are entitled to four dollars per diem for inspecting town roads. OAG July 15, 1947 (437-a-3).

367.06 SALARIES OF TOWN OFFICERS IN CERTAIN TOWNS.

Salaries fixed under this section cannot be raised by action of the town meeting. OAG March 29, 1945 (437-a-3).

367.10 TOWN CLERK; BOND; OATH.

A town clerk may also hold the office of justice of the peace, village recorder, in a village within the township, county commissioner, or clerk of a common school district. OAG March 10, 1933 (358-d-4); OAG March 6, 1941 (358-E-7); OAG Sept. 15, 1944 (358-A-3); OAG March 1, 1946 (358-F).

367.16 DUTIES.

A town treasurer, who pays out the money of his town upon orders issued in payment of illegal claims, presented to and allowed by the county board, knowing all the facts disclosing the illegality of the claims, is liable in an action by the town for a return of the money, notwithstanding the fact that the orders may have been fair on their face. *Town v Buyck*, 112 M 94, 127 NW 452.

Mandamus is a proper remedy to compel the treasurer of a town to pay valid orders issued by the board of supervisors, and the validity of such orders may be determined in such proceedings. *State ex rel v Clark*, 116 M 500, 134 NW 130.

The town electors, having voted to raise money for the purpose of constructing a town fire hall, may proceed to build the structure in 1947 although the money to pay for same will not be available until 1948. The town may issue town orders or warrants upon the town building fund up to the amount that will come into the hands of the treasurer in 1948 on account of the 1947 levy. OAG March 25, 1947 (442-B-6).

367.20 FEES.

The voters at annual meeting may increase the compensation of the town treasurer. OAG March 27, 1946 (455-D).

367.21 JUSTICE'S BOND.

A duly elected justice of the peace, who fails to file his bond and oath with the clerk of court but assumes to act as a duly qualified justice is an officer de facto. *County v Bockenstedt*, 170 M 384, 212 NW 905.

367.22 CONSTABLE'S BOND.

Constables give bonds to the village to be approved by the council and similar to those required of town constable and governed by the same laws. OAG March 20, 1947 (847-a-6).