

CHAPTER 382

COUNTY OFFICERS

382.01 AUDITOR, TREASURER, SHERIFF, REGISTER OF DEEDS, ATTORNEY, CORONER, SURVEYOR, SUPERINTENDENT OF SCHOOLS; ELECTION, TERM.

A judge of probate is a county officer within the meaning of section 382.05 and must file a written statement of his fees, gratuities, and emoluments of his office. OAG March 6, 1940 (347-E).

Persons residing in cities of the first class may not participate in the election of a county superintendent of schools. OAG June 2, 1945 (166-E-9).

Incumbent sheriff to serve until his successor is elected and has qualified. OAG Dec. 21, 1946 (390-a-2).

382.02 COUNTY BOARD TO FILL VACANCIES.

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 the counties of the state. *Imsdahl v Weeks*, 158 M 512, 197 NW 973.

Where the legislature in 1945 re-enacted the act fixing the terms of certain county officers and providing that appointments thereunder should be made by county board, but omitted the clerk of the district court and court commissioner from the county officers previously named in the act, board of county commissioners no longer had authority to fill vacancy in office of court commissioner, and such power of appointment was in district court under statute re-enacted in 1945 and providing that where a vacancy occurs in office of court commissioner, judge of district court of the county shall appoint some competent person to fill such vacancy. *State ex rel v Washburn*, 224 M 269, 28 NW(2d) 652.

The county surveyor need not be a registered land surveyor. He must be a legal voter of the county. OAG July 30, 1945 (123).

Any vacancy in the office of sheriff shall be filled by appointment by the county board. OAG Dec. 21, 1946 (390-a-2).

382.05 COUNTY OFFICIALS TO REPORT FEES.

In reporting the fees and emoluments of his office, the clerk of the district court should include fees received for services rendered as a member of the board of audit, for acting in naturalization proceedings, taking passport applications, and acting as a member of the county canvassing board. OAG May 23, 1944 (83-F).

382.08 RECORDING FEES PAID BY COUNTY.

The county must stand the expense of the filing and recording of official bonds with the register of deeds or clerk of court. OAG March 6, 1945 (373-B-10-I).

382.153 WHEN PREMIUM ON SURETY BONDS SHALL BE PAID BY COUNTY.

Amended by L. 1947 c. 69 s. 1.

382.154 PAYMENT OF PREMIUM FOR BONDS OF COUNTY OFFICERS AND EMPLOYEES.

Based upon the provisions of section 574.19 the county board has the right to select the surety company to write the county treasurer's bond. OAG Nov. 15, 1946 (450-B).

As a district court reporter serves a state officer he is not a county employee, and the premium on his bond cannot be paid by the county. OAG March 12, 1947 (129).

382.16 RECORDS ARE PUBLIC; COPIES.

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 section 382.16, and other like statutes, is to extend that right or privilege to all citizens; and it was competent for the legislature in doing so to surround the privilege thus extended with such restrictions and limitations as the legislature deemed proper. Such statutes do not authorize an examination or inspection of the records and files in the office of the clerk of the district court by any person when the purpose thereof is to complete and certify to abstracts of title to real estate. *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 the request of any person engaged in the business of making abstracts of title and certify and deliver transcripts of judgments entered upon his docket. *State ex rel v Scow*, 93 M 11, 100 NW 382.

A publication of jurisdictional proceedings if fair and impartial is privileged; but a complaint or other pleading in a civil action which has never been presented to the court for its action is not a jurisdictional proceeding within the rule, and its publication, if it contains libelous matter, can only be justified by showing that it is true. *Nixon v Dispatch Printing Co.* 101 M 309, 112 NW 258.

Right to inspect public records. 12 MLR 671.

382.18 OFFICIALS NOT TO BE INTERESTED IN CONTRACTS; VIOLATION; GROSS MISDEMEANOR.

Amended by L. 1947 c. 360 s. 1.

This opinion supersedes the opinion 1942 OAG 99, dated March 27, 1941 (90-B-8). A county commissioner may under certain circumstances sell culverts to the county and the county under certain circumstances purchase culverts from a company in which a commissioner acts as salesman, but the salesman must not have a pecuniary interest. OAG Oct. 23, 1944 (90b-8).

A deputy coroner cannot sell merchandise or service to the county. OAG March 27, 1945 (90b).

The county coroner may furnish medical assistance to an old age recipient. OAG Sept. 11, 1945 (521-V).

The fact that a physician's wife is a member of the county welfare board does not prohibit a contract between the physician and the county relating to the care of the indigent poor. OAG Nov. 16, 1945 (90-B).

A member of the county welfare board may be compensated for his actual mileage in the performance of his duty as appraiser but cannot be paid for his services. OAG Dec. 6, 1945 (125-A-64).

There is no prohibition against a justice of the peace writing insurance for the village. OAG Jan. 31, 1946 (266-B-16).

Except for the prohibition found in section 280.05, any person may purchase tax-forfeited lands. OAG Oct. 16, 1946 (90-B).

382.20 SALARIES OF COUNTY OFFICERS IN CERTAIN COUNTIES.

If the county board decides to increase county salaries under section 382.20, the compensation of all officers and employees of the county to whom the statute applies should be increased in the amount therein provided. OAG June 4, 1943 (122-B-6).

382.21 SALARIES OF COUNTY OFFICERS IN CERTAIN COUNTIES.

Section 382.21 is not a limitation on the powers of the county welfare board to increase or diminish salaries in accordance with the county merit system rules. OAG Sept. 21, 1944 (125-A-64).

382.23 NOT TO AFFECT CERTAIN OFFICERS.

When a general law, uniform in its operation, is required the law is nonetheless general and uniform because it divides the subject of its operation into classes and applies different rules to different classes. If the law operates uniformly upon all members of any class of persons, places, or things, and deals with matters peculiar to the act, it is general; but the classification must be based upon substantial distinctions, that is, there must be some reason suggested by necessity or by some difference in the situation and circumstances of the subjects placed in the different classes and suggesting the necessity of different legislation with respect to them. There must be an evident connection between the distinctive features to be regulated and the regulations adopted. For the reasons above stated L. 1943, c. 15, must be declared special legislation and invalid. *Hamlin v Ladd*, 217 M 249, 14 NW(2d) 396.

Special legislation under guise of classification; need for constitutional revision. 11 MLR 209.

382.265 CLERK HIRE IN COUNTY OFFICES IN CERTAIN COUNTIES.

The compensation of a county attorney's stenographer is not a proper charge against his contingent fund. Under section 382.265 the county attorney may apply for an allowance for clerk hire, which the county board under section 388.105 in their discretion may allow in what sum they deem adequate. An appeal lies to the district court if the county attorney is dissatisfied. OAG Jan. 27, 1947 (121-a-4).

382.27 REIMBURSEMENT OF PEACE OFFICERS.

County officers cannot be reimbursed for expenses in attending traffic safety meetings at a distance. OAG June 24, 1946 (104-d-6).

382.28 JUSTICES AND CONSTABLES.

If the justice of the peace elect fails to qualify within the time fixed by statute, the county board is authorized to fill the vacancy. The appointee does not hold until the end of the term of his predecessor. OAG June 13, 1944 (266-A-7).