

## CHAPTER 385

## COUNTY TREASURER

**385.01 ELECTION; PERSONS NOT ELIGIBLE.**

The offices of county commissioner and deputy county treasurer are not incompatible. OAG Aug. 8, 1924 (179).

**385.02 DEPUTIES; BONDS.**

In an action by the board against the sureties on a treasurer's bond it is not essential that the complaint show an authorizing resolution by the board or that settlements have been made by the county auditor with the defaulting treasurer or that the state auditor authorized the commencement of the suit. Board v Smith, 22 M 97; Board v Bongard, 82 M 431, 85 NW 214.

Leave to sue on a county treasurer's bond, and sureties, need not be obtained from the court. County of Waseca v Sheehan, 42 M 57, 43 NW 690; Board v Bongard, 82 M 431, 85 NW 214.

Where a county treasurer withheld from the treasury state and county tax funds but turned over to his successor sufficient moneys to cover the misappropriation, the county holds that part of the fund belonging to the state as trustee for the state and must account for it. Board v Knudson, 71 M 461, 74 NW 158.

Where the county treasurer obtains a corporate bond and pays the premium thereon, he is entitled to recover the amount paid from the county. His individual payment of the bond premium in the first instance was not a voluntary payment preventing recovery. Bosshard v Steele County, 173 M 283, 217 NW 354; 174 M 281, 219 NW 96.

Robbery and burglary insurance on public money in the county treasury or being transported may be purchased with the approval of the county board. OAG Nov. 17, 1944 (125a-28); OAG Dec. 27, 1944 (125a-28).

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).

Application of rule that plaintiff may recover if able to make out a case without resort to illegal transaction. 12 MLR 535.

**385.04 ACCURATE ACCOUNT KEPT.**

Under practice prescribed by the public examiner, a county treasurer should compute and keep a record of mortgage tax collections. OAG July 27, 1945 (418-A-11).

**385.05 RECEIPT AND PAYMENT OF MONEY.**

The voucher provided for by section 264.02 is not in itself the instrument by which payment is made but serves merely as authority for the auditor to draw his warrant on the treasurer in conformity with the facts certified upon the voucher. The warrant is the instrument of payment. 1944 OAG 179, Dec. 7, 1943 (125-A-64).

**385.06 BOARD OF AUDITORS TO AUDIT ACCOUNTS OF TREASURER.**

The duties of the board of auditors cannot be delegated. OAG June 10, 1943 (124-A).

There is no statutory authority permitting the board of auditors to employ clerk. OAG Aug. 20, 1943 (124-A).

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Emoluments of clerk of district court to be reported. Fees for handling drivers' licenses. Not to be reported: Fees from naturalization proceedings, fees as member board of auditors, and fees for acting as a member of the canvassing board. OAG July 11, 1946 (144-a-4).

### 385.07 FUNDS, WHERE DEPOSITED.

Amended by L. 1947 c. 29 s. 1.

A school district organized for specific and limited purposes; not for the purpose of leasing public property nor furnishing premises to others rent free. 1944 OAG 105, Aug. 30, 1943 (622-A-6).

Public depository of county funds may not receive deposits in excess of capital and surplus; but depository of funds of state, town, city, village, borough and school district are controlled by section 118.11. OAG Jan. 9, 1947 (140-a-1).

Application of the clean hands doctrine in case of wrongful deposits; subrogation. 18 MLR 879.

### 385.09 BONDS OF DEPOSITORIES.

Commodity stamp fund should be kept separate, and the money deposited in the bank where the county welfare fund is deposited. 1942 OAG 105, Aug. 8, 1941 (140a-7).

### 385.12 DEPOSIT IN OFFICIAL CAPACITY; PENALTY FOR FAILURE.

When the county treasurer recognizes an order on the treasury issued from the county auditor's office on the proper blank, which is in all things regular on its face, and issues a check upon the legal county depository for the sum named therein payable to the person who is designated as payee and apparently entitled to receive the same, then delivers such check to the pretended representative of such payee in good faith and without negligence, neither the treasurer nor his sureties are liable on his official bond for a forgery of the order or of the endorsement of the payee named thereon. The treasurer had no voice in selecting the bank or banks as county depositories. This was done for the county through the board of auditors. Board v Elmund, 94 M 196, 102 NW 719.

### 385.13 PUBLIC FUNDS KEPT SEPARATE.

The fact that moneys received by county treasurer and deposited in over-remittance account were received by the treasurer without authority and as trustee for others than the county, did not make the county owner of the account so as to render the bank liable for its diversion to the treasurer's personal use; and the fact that the treasurer transferred funds from this trust account to his personal account did not charge the bank with notice that the treasurer was converting county funds. U. S. Fidelity & Guaranty v Metropolitan Bank, 1 F. Supp. 514.

### 385.14 INSURANCE AGAINST LOSS BY ROBBERY OR BURGLARY.

Robbery and burglary insurance on public money in the county treasury or in transport may be purchased with approval of the county board. OAG Nov. 17, 1944 (125a-28); OAG Dec. 27, 1944 (125a-28).

### 385.15 PAYMENT.

No duty is violated by failure of the county treasurer to collect all interest on county funds payable by the bank designated as a place for public deposits. Board v Miller, 101 M 294, 112 NW 276.

### 385.16 COMPENSATION MILEAGE OF BOARD OF AUDITORS.

Mileage for one meeting may be charged by members of the board of audit. OAG Oct. 8, 1945 (541).

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## **385.18 EXEMPTION FROM LIABILITY.**

Liability of public officer for loss of funds. 11 MLR 175.

## **385.28 NOT TO SPECULATE IN ORDERS OR WARRANTS.**

The county treasurer or his employees are not prohibited from purchasing county warrants, but they must be purchased at par and without discount. OAG Dec. 14, 1945 (90-B).

## **385.31 PAYMENT OF COUNTY ORDERS OR WARRANTS.**

County warrants must be paid in the order of their registration. OAG May 19, 1933 (107-A-10).

The statute prescribes the manner of handling county warrants, and the prescription is mandatory. 1944 OAG 181, May 19, 1943 (107-A-5).

Section 162.01, subd. 4, prescribes that warrants may be drawn on the road and bridge fund for construction and maintenance of county roads. OAG Aug. 27, 1946 (377-B-3).

## **385.37 SALARY; CLERK HIRE.**

The county treasurer is not entitled, in addition to his salary, to compensation for collection of instalments of principal and interest on assessments for county ditches. *Trovaten v Pennington County*, 135 M 274, 160 NW 766.

In counties covered by this section the county treasurer should turn in to the treasury fees collected by him for the issuance of tax certificates as to current taxes. This reverses the opinion of January 4, 1928. 1944 OAG 227, July 23, 1943 (450-E).

## **385.373 CLASSIFICATION OF COUNTIES FOR SALARY PURPOSES.**

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 any 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.

## **385.39 MONEYS AND BOOKS DELIVERED TO SUCCESSOR IN OFFICE.**

Where a county treasurer withheld from the treasury state and county tax funds but turned over to his successor sufficient moneys to cover the misappropriation, the county holds that part of the fund belonging to the state as trustee for the state and must account for it. *Board v Knudson*, 71 M 461, 74 NW 158.