

CHAPTER 387

SHERIFF

387.01 BOND; OATH.

Title to a public office cannot be determined in a mandamus proceeding but temporary possession of the office, pending litigation to try title thereto, may be controlled thereby. The granting or withholding of the remedy rests in the discretion of the trial court. The relator may be rejected if he has not "clean hands." *State ex rel v Magie*, 183 M 60, 235 NW 526.

An action in damages against a Minnesota sheriff and his bondsmen having been brought in Wisconsin federal district court was transferred to Minnesota federal district court. On motion of the surety company the case was remanded to Wisconsin. The United States courts have no power to order transfer of a case from one district to a district in another state. *Brown v Heinen*, 61 F. Supp. 563.

The sheriff has the general responsibility for enforcing the criminal laws throughout his county. It is his duty, so far as available means permit, to take the initiative in law enforcement without waiting for complaints, to investigate conditions respecting observance of the laws, to take such action as circumstances may require for the prevention of violations, to arrest offenders when sufficient grounds appear, to swear to criminal complaints when he has sufficient knowledge of the facts, and to investigate criminal cases and secure evidence for the prosecution thereof. Any one may report a law violation to the sheriff, who should make such investigation and take such action as the case may require. OAG July 14, 1947 (733).

Action on the sheriff's bond given in one state cannot be maintained in another. 7 MLR 239.

Surety's liability for wrongful acts of the sheriff. 9 MLR 487.

Actions asserted against the sheriff; liability to third persons for wrongful levy. 23 MLR 805.

387.03 POWERS AND DUTIES.

The sheriff has no authority to employ counsel to conduct litigation in behalf of his county. Such authority rests exclusively with the county board. An unauthorized employment of counsel by such sheriff though invalid and not binding on the county may be revived by the county board, but no ratification can take place except by official action taken by them with reference to such employment. *True v County Board*, 83 M 293, 86 NW 102.

A search warrant, fair on its face, protects the officer executing it and those called by the officer to assist, even though the complaint upon which it issued is insufficient. *McSherry v Heimer*, 132 M 260, 156 NW 130.

An execution, regular and fair on its face, constitutes full and complete protection to the officer levying the same on property of the execution debtor. *Whitney v Redmond*, 153 M 162, 190 NW 57.

One appointed and commissioned by the commissioner of public safety of the city of St. Paul as a special police officer and who, at the request of the justice of the peace, served process issued out of his justice court, is entitled to recover of an attorney practicing in said court for such process so served at the attorney's request the fees prescribed by section 357.12. *Russ v Cane*, 205 M 188, 285 NW 472.

On application to set aside service of summons, while sheriff's return of service is strong evidence in plaintiff's favor, statements therein not based upon personal knowledge of the sheriff are entitled to no greater weight than statements

387.07 SHERIFF

of other witnesses based upon similar foundations. *Murtha v Olson*, 221 M 240, 21 NW(2d) 607.

It is the sheriff's duty to execute a warrant of commitment to state school for girls under the general duties prescribed for him by statute, but his expenses may properly be paid either from the contingent fund provided for in section 636.03 or from the sheriff's expense money. OAG Aug. 8, 1944 (268-F).

A deputy sheriff may execute a commitment by a justice of the peace in any county of the state. OAG June 11, 1945 (390-A-3).

A sheriff may receive compensation from the board for services and expenses in returning a parole violator to the custody of the state parole board. Such service is no part of his official duties. OAG Sept. 13, 1945 (328-a-1).

Governmental responsibility for torts. 26 MLR 856.

387.07 NEGLECT OF DUTY.

In proceedings to compel a sheriff to pay certain judgments because of his failure to levy execution thereunder the relief sought against the sheriff was properly denied by the trial court, the misconduct of the sheriff not being shown to justify the relief. *Allen v Christensen*, 111 M 414, 127 NW 185.

The failure of the sheriff to serve a notice of expiration of the time for redemption from a tax sale does not give to the holder of the tax certificate an action against the sheriff for the value of the land since it is speculative and uncertain whether the owner of the land would have failed to redeem. *Foster v Wagener*, 129 M 11, 151 NW 407.

A sheriff is protected and justified for acts done in executing the process and orders of a court having jurisdiction of the subject matter when the process is regular on its face; the sheriff being neither permitted nor required to inquire into the validity of an order placed in his hands for execution, is protected by the order even though the proceedings in which it was issued are erroneous and voidable. *Robinette v Price*, 214 M 521, 8 NW(2d) 800.

387.10 POWERS AFTER EXPIRATION OF TERM.

Where the sheriff levied execution on a crop owned by the judgment debtor and the levying sheriff having completed his term without selling the crop, the successor sheriff had no authority under the old execution if the former sheriff was still alive and able to act. OAG April 10, 1943 (390-A-19).

387.11 COUNTY JAIL.

A sheriff whose compensation is governed by the general salary law is not entitled to charge his county for serving subpoenas in criminal cases. He may be paid his mileage. 1942 OAG 210, Oct. 21, 1942 (390-A-11).

387.13 PROHIBITIONS.

A deputy sheriff cannot hold the office of town supervisor. OAG Aug. 18, 1924 (358-A-5).

Offices of justice of the peace and deputy sheriff are incompatible. 1926 OAG 212 (April 20, 1926).

County commissioner cannot hold office of court bailiff or deputy sheriff. 1932 OAG 190 (Dec. 31, 1930).

Deputy sheriff cannot serve as salaried game warden. 1932 OAG 192, April 9, 1931.

A deputy sheriff cannot be clerk of the school board if the clerkship carries with it a salary. OAG Sept. 30, 1931 (358-A-5).

A member of the legislature is ineligible to hold the office of deputy sheriff. 1938 OAG 278 (Oct. 7, 1937).

Offices of constable and deputy sheriff are incompatible. OAG March 29, 1938 (358-A-5).

A deputy sheriff cannot be village president. 1942 OAG 228 (Nov. 29, 1941).

Office of alderman in a home rule charter city where the aldermen serve without pay is not incompatible with the office of deputy sheriff. OAG Feb. 11, 1947 (358-a-5).

387.14 DEPUTIES.

A deputy sheriff is not required to give a bond. OAG March 13, 1940 (45-D).

The failure by a sheriff to surrender upon the demand by its owner, a stranger to the action, personal property levied upon by the sheriff or his deputy is a conversion of the property. *Croll v Moritz*, 112 M 270, 127 NW 1020.

387.15 WOMEN MAY BE APPOINTED DEPUTY SHERIFFS.

Sections 387.15, 387.16, 387.17, apply to cases where a special female deputy sheriff is called upon to serve on a particular occasion or particular case. OAG April 8, 1946 (390-B-2).

387.18 COUNTY BOARDS FIX SALARIES IN LIEU OF FEES IN CERTAIN COUNTIES.

No per diem is to be paid when conveying insane patients without attendant or deputy. 1944 OAG 222, Sept. 9, 1943 (390-C-6).

387.19 DIVISION OF COUNTIES IN CLASSES.

The law is nonetheless general and uniform because it divides the subject of its operation into classes and applies different rules to different classes. To be general, the law must apply and operate uniformly on all members, classes of persons, places or things, requiring legislation peculiar to itself in matters governed by the law. The classification must be based on some reason suggested by necessity or because of some difference in the situation and circumstances of the subjects placed in the different classes. There must be an evident connection between the distinctive fees to be regulated and the regulations adopted. Based upon the above rules, L. 1943, c. 15, is special legislation and invalid. *Hamlin v Ladd*, 217 M 249, 14 NW(2d) 396.

A deputy sheriff confined to the hospital and unable to work for several months is entitled to just compensation during such illness. OAG July 21, 1943 (359-A-21).

387.20 SALARIES FOR SHERIFFS FOR CERTAIN COUNTIES PRESCRIBED.

The sheriff's salary in a county of less than 75,000 inhabitants pays him in full for services of all kinds except certain services required under the tax laws. He is not allowed extra fees for services relating to insane persons or juvenile delinquents. OAG July 5, 1945 (390-a).

The sheriff attending a state-wide conference called by the governor does so in the performance of his official duties and his expense is a lawful charge against his county. OAG July 11, 1947 (104-a-c).

387.24 PAYMENT OF DEPUTY SHERIFF.

The office assistant employed by the sheriff in a manner other than prescribed by statute is not a deputy but a personal employee of the sheriff and cannot be paid by the county. OAG Nov. 17, 1943 (390-B-2).

If a deputy sheriff leaves his position and the sheriff hires another to take his place temporarily, without having him appointed a deputy by the district judge, the temporary appointee is not entitled to compensation from the county. OAG Nov. 3, 1943 (107-A-6).

Where compensation is fixed by the court such determination is binding on the county board. The order of the court may be reviewed by certiorari. OAG Jan. 24, 1947 (390-B-1).

387.25 SETTLEMENTS WITH COUNTY BOARD.

The custom of the sheriff's office of serving papers without collecting fees in advance and holding the originals until the fees are paid does not estop the county from requiring the sheriff to account for such fees even if he does not collect them. St. Louis County v Magie, 198 M 127, 269 NW 105.

387.28 SHERIFF'S EXPENSE IN CERTAIN COUNTIES.

Repealed by L. 1947 c. 457 s. 2.

**387.29 REIMBURSEMENT FOR PUBLIC USE OF SHERIFF'S AUTOMOBILE.
HISTORY. 1947 c. 88 s. 1.**