

## CHAPTER 388

## COUNTY ATTORNEY

**388.02 JUSTICE OF THE PEACE INELIGIBLE.**

Nothing in section 388.02 prevents a municipal judge from being elected to the office of county attorney and qualifying as such. Such election and qualification would automatically vacate the office of municipal judge. OAG Sept. 27, 1938 (184).

**388.04 COUNTY ATTORNEY AND VILLAGE ATTORNEY NOT INCOMPATIBLE.**

Offices of county attorney and court commissioner in the same county are incompatible. 1922 OAG 414, March 30, 1922.

Offices of county attorney and city attorney are incompatible. 1926 OAG 209, May 23, 1925.

Offices of county attorney and village clerk are incompatible. OAG July 26, 1934 (358-F).

Offices of county attorney and village attorney are incompatible. 1934 OAG 513, Dec. 27, 1934 (358a-1).

A county attorney may be a member of the school board. 1928 OAG 229, Feb. 4, 1928.

A county attorney may serve as special assistant United States attorney assisting in securing flowage easements on lands bordering Lake of the Woods. 1934 OAG 512, Feb. 7, 1934 (358a-1).

A county attorney may also serve as examiner of titles. 1936 OAG 258, Oct. 7, 1935 (358a-1).

**388.05 DUTIES.**

A prosecuting attorney is a public officer whose duties and obligations in a trial of a case are not simply those of an attorney in a civil action. Much latitude is allowed him in making his final argument before the jury, but he may not inject into it extrinsic and prejudicial matters which have no basis in the evidence. The defendant in the instant case did not have a fair trial, and a new trial must be ordered. *State v Bernstein*, 148 M 301, 181 NW 947.

The county attorney who prosecuted Zasko for criminal negligence in killing Lee appeared for the Zaskos in defense of this civil action. While the court does not look with favor upon such conduct, in this instance the county attorney consulted with and obtained the consent of the counsel for plaintiff before making his appearance, and the plaintiff is now in no position to challenge the conduct of the county attorney. *Lee v Zasko*, 213 M 244, 6 NW(2d) 793.

This section makes it the duty of the county attorney, when directed by the proper authority, to bring actions of foreclosure of an old age assistance lien. 1944 OAG 314, April 28, 1943 (521-P-4).

Where the county owned a half interest in real estate which is being sold in probate proceedings by the heirs, who own the other half, the county attorney, who represents the administrator as his attorney, cannot be a purchaser at the sale of the property. OAG Feb. 14, 1944 (90-B-9).

It is the duty of the county attorney to decide whether a case should be prosecuted. OAG Aug. 12, 1946 (121-B-7).

The offices of county attorney and village recorder and of school treasurer are incompatible. 1934 OAG 511, July 26, 1934 (358a-1).

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The offices of assistant county attorney and court commissioner are incompatible. OAG Jan. 14, 1946 (385-B-1).

The county attorney may be director of the school board and clerk of the board. OAG Aug. 24, 1943 (358-A-1).

## 388.07 TRANSCRIPT TO ATTORNEY GENERAL.

The county attorney need not report violations of city ordinances to the attorney general. OAG Feb. 15, 1944 (121-B-17).

## 388.08 NOT TO RECEIVE FEES; PROHIBITIONS; MISDEMEANOR.

Rules governing attorneys in the practice of their profession. 16 MLR 273.

## 388.09 OTHER ATTORNEY EMPLOYED.

The county board may employ an attorney to advise the board in relation to the payment of the debts of a distressed and dissolved town. OAG Oct. 19, 1943 (125-A-56).

## 388.10 COUNTY ATTORNEYS MAY APPOINT ASSISTANTS IN CERTAIN CASES.

A court commissioner cannot at the same time act as assistant county attorney. OAG Jan. 13, 1946 (358-B-1(a)).

## 388.105 CLERK HIRE FOR COUNTY ATTORNEYS IN CERTAIN COUNTIES.

The stenographer in the county attorney's office paid by county funds is a public employee and must pay retirement association deductions. OAG July 21, 1945 (331-B-1).

## 388.14 CONTINGENT FUND; EXPENSES.

L. 1943, c. 219, was unconstitutional as special legislation. *Hamlin v Ladd*, 217 M 249, 14 NW(2d) 396.

A judge of the district court may allow payment from the county attorney's contingent fund in reimbursement for meals consumed by the county attorney while in discharge of the business of the county. OAG April 24, 1944 (121-A-8).

## 388.17 COMPENSATION IN CERTAIN COUNTIES.

L. 1945, c. 525, ss. 1, 2, (section 388.18) repealed the first two paragraphs of section 388.17. OAG Jan. 22, 1947 (121-a-9).

## 388.18 COMPENSATION SCHEDULE, SALARIES.

Remedy of a county attorney where the county board fails to make an allowance for clerk hire, when on previous years a reasonable allowance had been made. OAG Jan. 28, 1946 (121-A-4).

Section 388.18 as far as inconsistent with section 388.17 is effective, being an enactment of later date. The county board may change the salary, and raise the compensation of the county attorney during the term. OAG Jan. 30, 1947 (121-a-9).