

CHAPTER 388

COUNTY ATTORNEY

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388.01 ELECTION; QUALIFICATIONS; TERM; BOND. There shall be elected in each county a county attorney who shall be learned in the law, and whose term of office shall be four years and until his successor qualifies. Before entering upon his duties he shall give bond to the county in the penal sum of \$1,000, to be approved by the county board, conditioned that he will faithfully and impartially discharge the duties of his office and pay over without delay to the county treasurer all moneys which come into his hands by virtue thereof, which bond and his oath shall be filed for record with the register of deeds and when so recorded shall be forwarded by the register of deeds to the secretary of state, unless said bond is in a similar manner provided or included in a general bond covering this and other officers of said county.

[R L s 563; 1943 c 355 s 1; 1959 c 189 s 1; 1965 c 749 s 1] (924)

388.02 JUSTICE OF THE PEACE INELIGIBLE. No person who holds the office of justice of the peace shall be eligible to the office of county attorney and no person shall hold both offices at the same time.

[R. L. s. 564] (925)

388.03 [Obsolete]

388.04 COUNTY ATTORNEY AND VILLAGE ATTORNEY NOT INCOMPATIBLE. In all counties in this state having a population of not more than 5,000, the office of county attorney and village attorney shall not be deemed incompatible and may be held by the same person.

[1935 c. 14] (925-2)

388.05 DUTIES. The county attorney shall appear for the county in all cases in which it is a party, give opinions and advice upon the request of the county board or any county officer upon all matters in which the county is or may be interested, or in relation to the official duties of such board or officer; attend upon all terms of the district court for such county, and upon all other courts having criminal jurisdiction for the preliminary examination of persons charged with crime, when such court shall request his attendance and furnish him a copy of the complaint; attend before the grand jury upon their special request, give them legal advice, and examine witnesses in their presence, and issue subpoenas to bring witnesses before such jury or any magistrate before whom he is conducting an examination; and, at the request of the coroner, he shall attend any inquest. He shall draw all indictments and presentments found by the grand jury and prosecute the same to a final determination in the district court; and when requested by the attorney general shall appear for the state in any case instituted by the attorney general in his county, or before the United States land office in case of application to preempt or locate any public lands claimed by the state, and assist in the preparation and trial.

[R. L. s. 565] (926)

388.06 [Repealed, 1965 c 749 s 5]

388.07 [Repealed, 1965 c 749 s 5]

388.08 PROHIBITIONS. No county attorney or assistant county attorney shall receive or accept any fee or reward from, or which is paid or given on behalf of, any one for services rendered or to be rendered in the prosecution or conduct of any official duty or business. No person as an attorney who directly or indirectly advises in relation to, or aids or promotes the defense of, any action or proceeding in any court or prosecution which is carried on by a person as county attorney, with whom

such attorney is directly or indirectly connected, or who, having himself prosecuted any action or proceeding as county attorney, shall afterwards advise in relation to or take any part in the defense thereof; nor shall any attorney be allowed to prosecute or assist such county attorney or assistant in any criminal prosecution or other official action where such attorney is interested in any other action or matter pending or to be commenced in which a recovery depends upon the matter involved in such prosecution or other official action. Any person offending against any provision of this section shall be guilty of a misdemeanor.

[R. L. s. 568] (929)

388.09 OTHER ATTORNEY EMPLOYED. When there is no county attorney the county board may employ any competent attorney to perform such legal services for the county as may be necessary. The board may employ an attorney other than the county attorney either to assist him or to appear for the county or any officer thereof in any action in which such county or officer in his official capacity is a party, or to advise the board or its members in relation thereto, or in relation to any other matter affecting the interests of the county, and may pay such attorney out of the funds of the county.

[R. L. s. 569] (930)

388.10 ASSISTANTS. The county attorney of any county in this state who has no assistant is hereby authorized to appoint, with the consent of the county board of the county, one or more attorneys to assist him in the performance of his duties. Each assistant shall have the same duties and be subject to the same liabilities as the county attorney and hold office during the pleasure of the county attorney. Each assistant shall be appointed in writing and his oath and appointment shall be filed for record with the register of deeds. The county board of such county shall fix the salary of each assistant county attorney appointed pursuant to the provisions of this section, and the salary when so fixed by such county board shall thereafter be paid by the county in equal monthly installments upon the warrant of the county auditor during the period for which such salary is so fixed or during such portion thereof as an assistant county attorney continues in office.

[1921 c 444 s 1; 1925 c 15 s 1; 1941 c 96 s 1; 1951 c 117 s 1; 1965 c 749 s 2; 1967 c 718 s 1] (930½)

388.103 ASSISTANTS AND DEPUTY SHERIFFS. The board of county commissioners of any county in which a training camp is established for active training of military or naval forces, or of any adjoining county, may declare an emergency and, in addition to any salaries heretofore authorized by law for assistant county attorneys and deputy sheriffs, may authorize, fix, and pay the salaries of such additional assistant county attorneys and deputy sheriffs as the board deems necessary during such emergency.

[1941 c. 347]

388.105 [Repealed, 1967 c 718 s 5]

388.11 LAW PARTNER NOT TO DEFEND. No law partner of the county attorney, or attorney having his office with him, shall appear for the defendant in any criminal action which it is the duty of the county attorney to prosecute.

[R. L. s. 570] (931)

388.12 ATTORNEY TO ASSIST. The judge of any district court may by order entered in the minutes at any term of court appoint an attorney of such court to act as, or in the place of, or to assist, the county attorney at such term, either before the court or grand jury. The person so appointed shall take the oath required by law of county attorneys and thereupon may perform all his duties at such term of court, but shall receive no compensation where the county attorney is present at such term, except by his consent, and to be paid from his salary.

[R. L. s. 571] (932)

388.13 BENDER ACCOUNT; PAY OVER MONEYS. On or before January first, in each year, the county attorney shall file in the office of the county auditor a verified account of all moneys received by him during the preceding year by virtue of his office specifying therein the name of the person from whom received, the amount paid by each and on what account; and, unless previously paid, shall at the same time pay over such moneys to the county treasurer, and take duplicate receipts therefor, one of which he shall file with the county auditor. If he shall refuse or neglect to account for and pay over any moneys so received, the auditor

shall cause an action to be instituted upon his bond to recover the same, and damages for failure to account.

[*R. L. s. 572*] (933)

NOTE: See section 382.05.

388.14 CONTINGENT FUND; EXPENSES. The county board may set apart yearly a sum, not exceeding \$3,000, as a contingent fund for defraying necessary expenses not especially provided for by law, in preparing and trying criminal cases, conducting investigations by the grand jury, and paying the necessary expenses of the county attorney incurred in the business of the county. All disbursements from such fund shall be made upon written request of the county attorney by auditor's warrant, countersigned by a judge of the district court. Any balance remaining at the end of the year shall be transferred to the revenue fund.

[*R L s 574; 1909 c 233 s 1; 1917 c 307; 1965 c 749 s 4*] (934)

388.15 M.S. 1949 [Renumbered 388.15, subd. 1]

388.15 FUNDS FOR INVESTIGATION. Subdivision 1. **Appropriation.** The county board of any county in this state, upon the request of the county attorney of such county, may appropriate, for the use of the county attorney, such funds, not otherwise appropriated, as he deems necessary for the investigation and the procuring of evidence when he has reason to believe that any closed bank, savings bank, trust company, or building and loan association incorporated under the laws of the State of Minnesota, has violated any provision of law. Such amount shall be in addition to the contingent fund of such county now allowed by law and shall be disbursed only on order of a district judge of the district in which any such county is located, approving such expenditure.

Subd. 2. **Borrowing money.** The county board, if no funds are available, may borrow such money as it deems necessary to carry out the provisions of section 388.15, but such loan shall not run over one year.

[*1925 c 264 s 1, 2*] (934-1, 934-2)

388.16 [Renumbered 388.15, subd 2]

388.17 [Repealed, 1949 c 597 s 5]

388.18 COMPENSATION SCHEDULE, SALARIES. Subdivision 1. **Minimum salaries.** The county attorneys in all counties in this state with less than 100,000 inhabitants, according to the 1960 federal census shall receive as compensation for services rendered by them for their respective counties annual salaries not less than the following amounts based on the population according to the then last preceding federal census:

- (a) In counties with less than 10,000 inhabitants \$4,000;
- (b) In counties with 10,000 but less than 20,000 inhabitants \$5,000;
- (c) In counties with 20,000 but less than 30,000 inhabitants \$6,000;
- (d) In counties with 30,000 but less than 40,000 inhabitants \$7,000;
- (e) In counties with 40,000 or more inhabitants \$8,000.

Subd. 2. **Set by board.** The county board of each of the counties specified in subdivision 1 annually shall set by resolution the salary of the county attorney which shall be paid to the county attorney at such intervals as the board shall determine but not less often than once each month. At the January meeting prior to the first date on which applicants may file for the office of county attorney the board shall set by resolution the minimum salary to be paid the county attorney for the term next following. In the event a vacancy occurs in the office of county attorney the board may set the annual salary for the remainder of the calendar year at an amount less than was set for that year. The board in any case specified in this section may not set the annual salary at an amount less than the minimums provided in subdivision 1 but it may set the salary in excess of such minimums. The salary of the county attorney shall not be reduced during the term for which he is elected or appointed.

Subd. 3. M.S. 1949 [Repealed, 1951 c 327 s 6]

Subd. 3. **Cost of living adjustments.** The salary of the county attorney when set pursuant to the provisions of subdivision 1 shall constitute a base salary and the county attorney shall be subject to any cost of living adjustment made subsequent to July 1, 1967, pursuant to the provisions of Minnesota Statutes, Section 375.43, and acts amendatory thereof or supplemental thereto.

Subd. 4. **Effect upon certain sections.** Subdivisions 1 through 3 shall not be construed as repealing any existing law which provides for a higher minimum salary in any county than the amount provided in subdivision 1, but shall be deemed

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to supersede the provisions of any act setting a maximum salary for the county attorney in any of the counties specified in subdivision 1.

Subd. 5. Budget for office. The county board by resolution shall provide the budget for (1) the salary of the county attorney, any assistant county attorneys and employees in the county attorney's office; (2) other expenses necessary in the performance of the duties of said office and (3) the payment of premiums of any bonds required of the county attorney and any assistant county attorney or employee in the county attorney's office and the board is authorized to appropriate funds therefor.

Subd. 6. Appeal from resolution of the board. The county attorney, if dissatisfied with the action of the county board in setting the amount of his salary or the amount of the budget for the office of county attorney, may appeal to the district court on the grounds that the determination of the county board in setting such salary or budget was arbitrary, capricious, oppressive or in unreasonable disregard for the responsibilities and duties of said office. The appeal shall be taken within 15 days after the date of the resolution setting such salary or budget by serving a notice of appeal on the county auditor and filing same with the clerk of the district court. The county board may retain special counsel pursuant to Minnesota Statutes, Section 388.09 to represent it in the appeal proceedings. The court either in term or vacation and upon 10 days notice to the chairman of the board shall hear such appeal. On the hearing of the appeal the court shall review the decision or resolution of the board in like manner as though reviewed by certiorari, except new or additional evidence may be taken. The court may order the officer appealing and the board to submit briefs or other memoranda and may dispose of the appeal on such writings. If the court shall find that the board acted in an arbitrary, capricious, oppressive or unreasonable manner it shall remand the matter to the county board for further action consistent with the court's finding.

[1945 c 525 s 1, 2; 1949 c 597 s 2-4; 1951 c 327 s 6; 1967 c 718 s 2]