

## Other Public Rights and Privileges

## CHAPTER 351

## RESIGNATIONS, VACANCIES, REMOVALS

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**351.01 RESIGNATIONS.**

Resignations shall be made:

(1) By incumbents of elective offices, to the officer authorized by law to fill a vacancy in such office by appointment, or to order a special election to fill the vacancy;

(2) By appointive officers, to the body, board, or officer appointing them, unless otherwise specially provided.

**History:** *RL s 2666 (6952)*

**351.02 VACANCIES.**

Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

(1) The death of the incumbent;

(2) His resignation;

(3) His removal;

(4) His ceasing to be an inhabitant of the state, or, if the office is local, of the district, county or city for which he was elected or appointed, or within which the duties of his office are required to be discharged;

(5) His conviction of any infamous crime, or of any offense involving a violation of his official oath;

(6) His refusal or neglect to take the oath of office, or to give or renew his official bond, or to deposit or file such oath or bond within the time prescribed;

(7) The decision of a competent tribunal declaring his election or appointment void;

(8) The death of the person elected or appointed to fill a vacancy, or for a full term, before he qualifies, or before the time when by law he should enter upon the duties of the office to which he was elected or appointed, in which case the vacancy shall be deemed to take place at the time when his term of office would have begun had he lived.

**History:** *RL s 2667; 1973 c 123 art 5 s 7 (6953)*

**351.03 REMOVAL BY GOVERNOR.**

The governor may remove from office any clerk of the supreme court or a district court, judge of probate, judge of any municipal court, justice of the peace, court commissioner, sheriff, constable, coroner, auditor, county recorder, county attorney, county superintendent of schools, county commissioner, county treasurer, or any collector, receiver, or custodian of public moneys, when it appears to him by competent evidence, that either has been guilty of malfeasance or

nonfeasance in the performance of his official duties; first giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.

**History:** *RL s 2668; 1913 c 462 s 1; 1959 c 458 s 1; 1976 c 181 s 2 (6954)*

#### **351.04 SPECIAL COMMISSIONER TO TAKE TESTIMONY.**

When charges are made against any such officer, the governor shall appoint a special commissioner to take and report the testimony for and against him to be used on the hearing. Each witness shall subscribe his name to his testimony when the same is reduced to writing.

**History:** *RL s 2669 (6955)*

#### **351.05 VACANCY DURING RECESS OF LEGISLATURE.**

When a vacancy occurs during the recess of the legislature, in any office which the legislature, or the governor by and with the advice and consent of the senate, or of both branches of the legislature, is authorized to fill by appointment, unless otherwise specially provided, the governor may appoint some suitable person to perform the duties of such office for the time being. The person so appointed, before proceeding to execute his duties, shall qualify in the manner required by law of the officer in whose place he is appointed and hold office until the vacancy is regularly filled, as provided by law.

**History:** *RL s 2670 (6956)*

#### **351.06 APPOINTMENT; CONTINUANCE OF TERM; IMPEACHMENT.**

Unless otherwise provided for, when a vacancy in an elective office is authorized to be filled by appointment, such appointment shall continue until the next general election occurring after there is sufficient time to give the notice prescribed by law, and until a successor is elected and has qualified. When any state officer, excepting the lieutenant governor, shall be temporarily suspended from the performance of the duties of his office by reason of his having been impeached, the governor shall appoint some suitable person to exercise the duties of such office during the time of such suspension, and such person, before entering upon his duties, shall comply with the requirements of law relating to the same, and during his incumbency shall be governed in the administration thereof by all laws enacted in reference thereto, and receive the compensation provided by law for such office.

**History:** *RL s 2671 (6957)*

#### **351.07 HABITUAL DRUNKENNESS.**

The habitual drunkenness of any person holding office under the constitution or laws of this state shall be good cause for his removal from office by the authority and in the manner provided by law.

**History:** *RL s 2672 (6958)*

#### **351.08 SUSPENSION OF COUNTY TREASURER; TREASURER AD INTERIM.**

When it shall appear from the report of the state auditor that any county treasurer has been guilty of malfeasance or non-feasance in the performance of his official duties, the governor may suspend such treasurer from office, if he shall deem the public interest so requires. Upon such suspension, the governor shall immediately notify the county auditor, who shall notify the county board of such suspension, and call a meeting thereof, to be held at the earliest possible date and within five days from the date of notice. The board shall meet at the time

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specified and appoint a treasurer ad interim, who shall qualify according to law, whereupon the suspended treasurer shall deliver to the treasurer ad interim all the public property, money, books, accounts, papers, and documents in his possession.

**History:** *RL s 2673; 1973 c 492 s 14 (6959)*

## 351.09 CHARGES; COMMISSIONER; WITNESSES.

The suspended county treasurer may notify the governor that he desires a hearing upon the charges made against him, whereupon the governor shall cause the same to be reduced to writing, and a copy thereof to be furnished to such treasurer. He shall appoint a special commissioner to take and report the testimony for and against such officer. The commissioner shall notify the treasurer of the time and place when and where he will take such testimony, and shall also notify the county attorney, who shall appear for the county upon the examination.

**History:** *RL s 2674 (6960)*

## 351.10 HEARING; DECISION; DEMAND, WHEN MADE.

The governor shall fix the time and place of hearing on the report, and give the county treasurer notice thereof. If, upon hearing, the charges are sustained, the governor shall make his order removing the treasurer from office absolutely, and the treasurer ad interim shall continue to discharge the duties of treasurer until his successor is elected and has qualified; but if, upon the hearing, the charges are not sustained, the treasurer shall be restored to office. If the suspended treasurer shall not, within 30 days after the date of the order of suspension, demand a hearing, such neglect shall create a vacancy in the office, and the treasurer ad interim shall continue in office as in case of a removal.

**History:** *RL s 2675 (6961)*

## 351.11 FEES OF COMMISSIONERS AND WITNESSES; HOW PAID.

The fees of the special commissioners provided for in this chapter shall be the same allowed by law to referees, and witnesses giving testimony for the prosecution before such commissioner shall be allowed the same fees as witnesses in the district court. In case of removal by the governor of state officers, such fees shall be paid by the state on the order of the governor. On presentation of the order to the commissioner of finance, he shall draw his warrant upon the state treasurer in favor of the person entitled to the same; but, when testimony is taken for or against a county officer, the fees of the commissioner and witnesses for the prosecution shall be paid by the county, upon allowance by the county board, in the same manner as other claims against the county. In such proceedings against a county officer, when testimony is taken by a shorthand reporter, his fees shall be the same as allowed district court reporters for like services, and the county board shall provide for its payment; but, if such services are performed by the commissioner, he shall be paid only reporter's fees. In such case the county board, in its discretion, may allow to counsel compensation not exceeding \$10 per day for the time actually engaged before the commissioner.

**History:** *RL s 2676; 1973 c 492 s 14; 1977 c 403 s 9 (6962)*

**351.12** [Renumbered 43.223]

**351.13** [Renumbered 43.224]