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THE

# GENERAL STATUTES

OF THE

## STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL  
REPORTER SYSTEM

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COMPLETE IN TWO VOLUMES

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### VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,  
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE  
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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CHAPTER 9.

RESIGNATIONS, VACANCIES, AND REMOVALS.

§ 891. Resignations, how made.

Resignations shall be made—

First. By all 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 such vacancy.

Second. By all officers holding their offices by appointment, to the body, board or officer that appointed them, unless otherwise specially provided.

(G. S. 1866, c. 9, § 1; G. S. 1878, c. 9, § 1.)

§ 892. Office becomes vacant, when.

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

First. The death of the incumbent.

Second. His resignation.

Third. His removal.

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

Fifth. His conviction of any infamous crime, or of any offence involving a violation of his official oath.

Sixth. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit or file such oath or bond, within the time prescribed by law.

Seventh. The decision of a competent tribunal declaring void his election or appointment.

Eighth. The death of the person elected or appointed to fill a vacancy, or for a full term, before he qualifies, or his death before the time when by law he should enter upon the duties of his office to which he was elected or appointed, in which case the vacancy shall be deemed to take place at the time when the term of office of the predecessor of such deceased person would have expired, if such death had not happened.

(G. S. 1866, c. 9, § 2, as amended 1869, c. 81, § 1; G. S. 1878, c. 9, § 2.)

This section has reference to an *incumbent* of an office, *i. e.*, to a person *in possession* of the office; not to one elected, but who has not qualified or entered into possession. *State v. Benedict*, 15 Minn. 193, 201, (Gil. 153, 156.)

See *County of Scott v. Ring*, 29 Minn. 398, 402, 13 N. W. Rep. 181.

Subd. 5. A slanderous charge that plaintiff (a justice) perjured himself in deciding a suit against the defendant, while it does not charge a technical perjury, does charge that the plaintiff violated his official promissory oath. *Gove v. Blethen*, 21 Minn. 80, 84.

See *Norwood v. Holden*, cited in note to § 653, *supra*.

§ 893. Governor may remove certain officers, when.

The governor may remove from office any clerk of the supreme or district court, judge of probate, court commissioner, sheriff, coroner, auditor, register of deeds, county attorney, county superintendent of schools, or county commissioner, county treasurer, or any collector, receiver, or custodian of public moneys, whenever it appears to him, by competent evidence, that either of such officers have 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.

(G. S. 1866, c. 9, § 3, as amended 1868, c. 45, § 1; G. S. 1878, c. 9, § 3; 1881, c. 21, § 1.)

See *Larrabee v. Minnesota Tribune Co.*, 36 Minn. 141, 30 N. W. Rep. 462.

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## § 894. Special commissioners to be appointed, when.

Whenever charges are duly made against any officer, under chapter nine of the general statutes, and acts amendatory thereto, relating to resignations, vacancies and removals, the governor shall appoint special commissioners to take and report testimony for and against such officer, to be used in determining his guilt or innocence.

(1872, c. 37, § 1; G. S. 1878, c. 9, § 4.)

## § 895. Commissioners to be sworn.

Each commissioner, before he enters upon his duties in taking such testimony, shall be sworn to truly and faithfully take and record the testimony of each witness, and report the same fully and impartially to the governor within the time required by the commission of his appointment.

(1872, c. 37, § 2; G. S. 1878, c. 9, § 5.)

## § 896. Witnesses to be sworn.

The commissioners shall administer to each witness the oath required to be administered to witnesses testifying in courts of record of this state, and each witness shall subscribe his name to his testimony when reduced to writing by the commissioners.

(1872, c. 37, § 3; G. S. 1878, c. 9, § 6.)

## § 897. Fees of commissioners.

The fees of commissioners for such services shall be the same as now allowed by law to referees in actions brought in the district courts of this state, and shall be paid out of moneys not otherwise appropriated, on the order of the governor; and on presentation of such order to the auditor of the state, he shall draw his warrants on the state treasurer in favor of the person entitled to the same; provided, that when testimony is taken for and against a county officer, like fees of the commissioner shall be paid by the county wherein such officer was elected, and be allowed in the same manner as other claims against the county.

(1872, c. 37, § 4; G. S. 1878, c. 9, § 7.)

## § 898. Fees of commissioners, counsel, and witnesses.

Commissioners heretofore appointed by the governor to take and report testimony for and against an officer charged with malfeasance or non-feasance in office, under chapter nine of the general statutes, shall be paid like fees and in same manner as is required by section four of this act; and in all cases where testimony has been or shall be taken by the commissioners appointed by the governor in such cases, the county commissioners of the proper county may, if they think it advisable, allow and pay reasonable compensation to counsel, for attending to the prosecution of such cases, not exceeding ten dollars per day for the time actually engaged before the commissioners, and may allow witnesses fees for the prosecution, the same as is allowed to witnesses in cases in the district court of the state.

(1872, c. 37, § 5; G. S. 1878, c. 9, § 8.)

## § 899. Vacancy happening during recess of legislature, how filled.

Whenever 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, are authorized to fill by appointment, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office for the time being.

(G. S. 1866, c. 9, § 4; G. S. 1878, c. 9, § 9.)

## § 900. Appointees to qualify, how.

Each of the persons appointed in pursuance of the preceding section, shall, before proceeding to execute the duties assigned him, qualify in the same manner as required by law of the officer in whose place he is appointed; and he shall continue to exercise and perform the powers and duties of the office

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to which he is so appointed, until such vacancy is regularly supplied, as provided by law.

(G. S. 1866, c. 9, § 5; G. S. 1878, c. 9, § 10.)

§ 901. **Appointment—How long to continue.**

In all offices not otherwise provided for, when a vacancy 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 qualified. All county officers now holding by virtue of an election shall hold their office for the full term thereof, as now prescribed by law for such county officers.

(G. S. 1866, c. 9, § 6; G. S. 1878, c. 9, § 11; as amended 1879, c. 53, § 1.)

Should no one be elected and qualify at the succeeding election, the appointee would continue to hold the office. *Territory v. Smith*, 3 Minn. 240, 245, (Gil. 164, 168.)

See *County of Scott v. Ring*, 29 Minn. 398, 403, 13 N. W. Rep. 181; *State v. Benedict*, 15 Minn. 198, 202, 203, (Gil. 153.)

§ 902. **Appointment when state officer is impeached.**

Whenever 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, it shall be the duty of the governor to appoint some suitable and proper person to exercise the duties of such office during the time of such suspension; which said person, before entering upon the duties of the same, shall comply with the requirements of the laws relating to the same, and during the incumbency of the said office shall be governed in the administration of the same by all laws that have been enacted for that purpose, and shall receive such compensation as is provided by law for such office.

(1873, c. 30, § 1; G. S. 1878, c. 9, § 12.)

§ 903. **Removal for habitual drunkenness.**

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

(1878, c. 74, § 1; G. S. 1878, c. 9, § 13.)

§ 904. **Governor may suspend county treasurer, when.**

Whenever it shall appear from the report of the public examiner that the treasurer of any county has been guilty of malfeasance or nonfeasance in the performance of his official duties, the governor may suspend such treasurer from office, if he shall deem the public interests so to require.

(1881, c. 108, § 1; <sup>1</sup> G. S. 1878, v. 2, c. 9, § 14.)

Laws 1881, c. 108, is constitutional. *State v. Peterson*, 50 Minn. 239, 52 N. W. Rep. 655.

Pending proceedings under this chapter for removal of a county treasurer and suspending him, he may resign, but is not eligible for reappointment for the remainder of the term by the county commissioners until acquitted or the proceedings dismissed. The proceedings may be prosecuted after his resignation to determine his eligibility. *State v. Dart* (Minn.) 59 N. W. Rep. 190.

§ 905. **Notice of suspension—Treasurer ad interim.**

In case of such suspension, the governor shall immediately notify the auditor of the county, who shall at once give notice to the commissioners of said county of such suspension, and call a meeting of the board, to be held at the earliest possible date, and within five days from date of said notice. It shall be the duty of said board of commissioners to convene at the time mentioned in such notice, and to appoint a county treasurer *ad interim*, and such person shall qualify according to the provisions of section one hundred and forty-five of chapter eight of the General Statutes of one thousand eight hundred and seventy-eight, whereupon the suspended treasurer shall deliver to such treas-

<sup>1</sup> "An act providing for the suspension and removal of county treasurers for malfeasance or nonfeasance in office, and the appointment of county treasurers ad interim."

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urer *ad interim* all the public property, money, books, accounts, papers, and documents in his possession.

(1881, c. 108, § 2; G. S. 1878, v. 2, c. 9, § 15.)

An order of suspension only takes effect when issued and served; the fact that the governor signed it when out of the state will not render it void. *State v. Peterson*, 50 Minn. 239, 52 N. W. Rep. 655.

§ 906. Charges to be reduced to writing, when.

The suspended treasurer may notify the governor that he desires a hearing upon the charges made, whereupon the governor shall cause the charges to be reduced to writing, and furnish the treasurer with a copy thereof.

(1881, c. 108, § 3; G. S. 1878, v. 2, c. 9, § 16.)

§ 907. Special commissioner to take testimony.

Upon the receipt of such notification the governor shall appoint a special commissioner to take and report testimony for and against such officer, to be used in determining his guilt or innocence.

(1881, c. 108, § 4; G. S. 1878, v. 2, c. 9, § 17.)

§ 908. Taking testimony.

The commissioner shall notify the treasurer of the time and place of taking such testimony, and also the attorney of the county, who shall appear for the county upon such examination.

(1881, c. 108, § 5; G. S. 1878, v. 2, c. 9, § 18.)

§ 909. Oath of commissioner.

Such commissioner, before entering upon his duties in taking such testimony, shall be sworn to truly and faithfully take and record the testimony of each witness, and report the same, fully and impartially, to the governor, within the time required by the commission of his appointment.

(1881, c. 108, § 6; G. S. 1878, v. 2, c. 9, § 19.)

§ 910. Witness to subscribe to testimony—Oath.

The commissioner shall administer to each witness the oath required to be administered to witnesses testifying in courts of record of this state, and each witness shall subscribe his name to his testimony when reduced to writing by the commissioner.

(1881, c. 108, § 7; G. S. 1878, v. 2, c. 9, § 20.)

§ 911. Hearing on report—Decision.

The governor shall fix the time and place of hearing on the commissioner's report, and shall give notice thereof to the treasurer. If, on such hearing, the charges are sustained, the governor shall make his order removing the treasurer from office absolutely, and the person appointed by the board of commissioners shall continue to discharge the duties of treasurer until his successor is elected and qualified. If, upon such hearing, the charges are not sustained, the treasurer shall be restored to office.

(1881, c. 108, § 8; G. S. 1878, v. 2, c. 9, § 21.)

§ 912. Effect of failure to demand a trial.

If the suspended treasurer does not, within thirty days from the date of the order of suspension, demand a trial, such neglect shall create a vacancy in the office, which shall be filled by the treasurer *ad interim*.

(1881, c. 108, § 9; G. S. 1878, v. 2, c. 9, § 22.)

§ 913. Fees of commissioners and witnesses.

The fees of commissioners for such services as are required under this act shall be the same as are now allowed by law to referees in actions brought in the district courts of this state, and the fees of witnesses shall be the same as are allowed to witnesses in the district courts of this state. Said fees shall be paid out of the county treasury upon the allowance of the county commissioners.

(1881, c. 108, § 10; G. S. 1878, v. 2, c. 9, § 23.)