

# GENERAL STATUTES

OF

# MINNESOTA

1913

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official register, which record, or a certified copy thereof, shall be prima facie evidence of the facts therein contained. (2662)

3-323, 227; 7-426, 341, 82 Am. Dec. 105; 16-68, 56; 28-337, 9+872.  
See §§ 5901-5930.

**5719. Instrument of protest as evidence**—The instrument of protest of any notary of this state, or of any other state or territory of the United States, accompanying any bill of exchange or promissory note which has been protested by such notary for non-acceptance or for non-payment, shall be received in all the courts of this state as prima facie evidence of the facts therein certified; but any party may contradict such certificate by other evidence. (2663)

7-426, 341; 16-68, 56; 17-209, 183, 10 Am. Rep. 161; 19-396, 342; 28-337, 9+872; 31-329, 17+863; 61-291, 63+739; 69 Fed. 798, 16 C. C. A. 425.

Cited (98-302, 108+272).

See §§ 5964-5972.

**5720. Taking depositions**—In taking depositions, he shall have the same power to compel the attendance of and to punish witnesses for refusing to testify which may be vested by law in justices of the peace, and all sheriffs and constables shall serve and return all process issued by such notaries in taking depositions. (2664)

**5721. Removal from office**—Every notary who shall charge or receive a fee or reward for any act or service done or rendered by him under this chapter greater than the amount allowed by law, or who dishonestly or unfaithfully discharges his duties as notary, shall, on complaint filed and substantiated as in other civil cases in the district court of the county in which he resides, be removed from office by such court. The fact of such removal shall thereupon be certified by the clerk to the governor, and the person so removed shall thereafter be ineligible to such office. (2665)

## CHAPTER 47

### RESIGNATIONS—VACANCIES—REMOVALS

**5722. 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. (2666)

**5723. 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, city, or village 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 offence 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. (2667)

Subd. 1 (15-198, 153). Subd. 4 (105-399, 117+615). Subd. 5 (21-80, 84, 18 Am. Rep. 380). Subd. 6 (29-398, 13+181; 83-194, 86+20). Cited generally (45-313, 47+971; 64-207, 66+264).

**5724. Removal by governor.**—The governor may remove from office any clerk of the supreme or a district court, judge of probate, judge of any municipal court, justice of the peace, court commissioner, sheriff, coroner, auditor, register of deeds, county attorney, county superintendent of schools, county commissioner, county treasurer, or any collector, receiver, or custodian of public moneys, whenever 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. (R. L. § 2668, amended '13 c. 462 § 1)

36-141, 30+462; 85-41, 88+412, 89 Am. St. Rep. 534. See § 5729.

County commissioners have no power to remove county superintendent (105-399, 117+615).  
Certiorari to review decision of governor (116-313, 133+857, 39 L. R. A. [N. S.] 788, Ann. Cas. 1913B, 785).

**5725. Special commissioner to take testimony.**—Whenever 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. (2669)

84-130, 86+890; 85-41, 88+412, 89 Am. St. Rep. 534.

Cited (116-313, 133+857, 39 L. R. A. [N. S.] 788, Ann. Cas. 1913B, 785).

**5726. Vacancy during recess of legislature.**—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, 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 shall hold office until the vacancy is regularly filled as provided by law. (2670)

**5727. Appointment—How long to continue—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 qualified. 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, 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 shall receive the compensation provided by law for such office. (2671)

15-198, 153; 29-398, 13+181.

**5728. Habitual drunkenness.**—The habitual drunkenness of any person holding office under the constitution or laws of the state shall be good cause for his removal from office by the authority and in the manner provided by law. (2672)

**5729. Suspension of treasurer—Treasurer ad interim.**—Whenever it shall appear from the report of the public examiner that any county treasurer 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 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. Said board shall meet at the time specified, and appoint a treasurer ad interim, who shall qualify according to law, whereupon the suspended treasurer shall deliver to such treasurer ad interim all the public property, money, books, accounts, papers, and documents in his possession. (2673)

50-239, 52+655; 57-261, 59+190; 82-431, 85+214; 85-41, 88+412, 89 Am. St. Rep. 534.

**5730. Charges—Commissioner—Witnesses—**The suspended 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 such treasurer. He shall appoint a special commissioner to take and report the testimony for and against such officer. Such 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 such examination. (2674)

85-41, 88+412, 89 Am. St. Rep. 534.

**5731. Hearing—Decision—Demand, when made—**The governor shall fix the time and place of hearing on the report, and give the treasurer notice thereof. If, upon hearing, the charges are sustained, the governor shall make his order removing said treasurer from office absolutely, and the treasurer ad interim shall continue to discharge the duties of treasurer until his successor is elected and qualified; but if, upon such hearing, the charges are not sustained, the treasurer shall be restored to office: Provided, that if the suspended treasurer shall not, within thirty 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. (2675)

85-41, 88+412, 89 Am. St. Rep. 534.

**5732. 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 cases of removal by the governor of state officers, such fees shall be paid by the state out of moneys not otherwise appropriated, on the order of the governor. On presentation of such order to the state auditor, 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 ten dollars per day for the time actually engaged before the commissioner (2676)

84-130, 86+890; 85-41, 88+412, 89 Am. St. Rep. 534.

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## CHAPTER 48

### OATHS AND ACKNOWLEDGMENTS

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#### OATHS

**5733. Oath of office—**The oath of office to be taken by members and officers of either branch of the legislature shall be that prescribed by sec. 29 of art. 4 of the constitution. Every person elected or appointed to any other public office whatsoever, including every official commissioner, or member of any public board or body, before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in sec. 8 of art. 5 of the constitution. (2677)

82-420, 85+155; 83-194, 86+20.

Sufficiency of oath (104-252, 116+486, 16 L. R. A. [N. S.] 1058).

Cited (109-360, 123+1074).

**5734. Trustees, referees, etc.—**Unless otherwise provided by law, every executor, administrator, guardian, trustee, referee, arbitrator, viewer, assessor,