

CHAPTER 388

COUNTY ATTORNEY

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388.01 ELECTION; TERM; BOND. There shall be elected in each county a county attorney, whose term of office shall be two 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 to the secretary of state.

[R. L. s. 563] (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 COUNTY ATTORNEY AND COMMISSIONER OF CONSERVATION NOT INCOMPATIBLE. The office of county attorney and the conservation commissioner may be held by the same person and shall not be deemed incompatible.

[1933 c. 317] (925-1)

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 REGISTER OF CRIMINAL ACTIONS. Every county attorney shall keep a register, to be known as the register of criminal actions, in which he shall

enter the title of all criminal actions prosecuted by him, or reported to him by any justice of the peace, including preliminary examinations, immediately upon the conclusion of such trial or examination, or receipt of such report if the action is in justice court, and within ten days after the adjournment of the term if in district court, giving the date when the prosecution was begun, the date of finding an indictment or of filing an appeal in the district court, the nature of the accusation, and the result of the examination or prosecution; if convicted, the nature and extent of the punishment inflicted, and whether the defendant was under the influence of intoxicating liquor when the crime was committed; also the amount of costs taxed and fines imposed and the amount paid in each case.

[R. L. s. 566] (927)

388.07 TRANSCRIPT TO ATTORNEY GENERAL. On or before January tenth each year, the county attorney shall transmit to the attorney general a transcript of the register of criminal actions kept by him, certified by him for the preceding calendar year, which the attorney general shall file and forthwith receipt for. Upon the delivery of the receipt to the county auditor, and not otherwise, he shall issue to the county attorney a warrant for his salary for the preceding month.

[R. L. s. 567] (928)

388.08 NOT TO RECEIVE FEES; PROHIBITIONS; MISDEMEANOR. 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 COUNTY ATTORNEYS MAY APPOINT ASSISTANTS IN CERTAIN CASES. 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, an attorney to assist him in the performance of his duties. Such 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. Such assistant shall be appointed in writing and, before entering upon the duties of his office, shall give bond to the county in the penal sum of \$500.00, to be approved by the county board, conditioned in the same manner as the bond required of the county attorney, which bond, with his oath and appointment, shall be filed for record with the register of deeds. Such assistant county attorney shall receive no compensation from the county but shall be paid for his services by the county attorney appointing him. In all counties in this state having a population of not less than 28,100, and not more than 30,600, and in which there is a city of the third class or of larger size, and in all counties in this state having a population of not less than 38,500, nor more than 41,000, according to the last federal census, and containing not less than 24, nor more than 25, full and fractional congressional townships, the county board of such county may fix the salary of the 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 instalments upon the warrant of the county auditor during the period for which such salary is so fixed or during such portion thereof as the assistant county attorney shall continue in office.

[1921 c. 444; 1925 c. 15 s. 1; 1941 c. 96] (930½)

388.103 ASSISTANT COUNTY ATTORNEYS AND DEPUTY SHERIFFS IN CERTAIN CASES. 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 CLERK HIRE FOR COUNTY ATTORNEYS IN CERTAIN COUNTIES. The county board may annually appropriate a sum not to exceed \$720.00 to be used for providing clerk hire for the county attorney. The amount to be allowed for such purpose shall be determined by the county board but shall not exceed the sum of \$60.00 per month. All disbursements from such funds shall be made in the manner provided by law. This section shall not apply in any county now or hereafter having a population of 150,000 or more or in any county wherein clerk hire for the county attorney is provided for by any other law.

[1941 c. 483]

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 RENDER 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)

388.14 CONTINGENT FUND; EXPENSES. The county board may set apart yearly a sum, not exceeding \$2,000, 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. In counties now having, or that may hereafter have, a population of not less than 45,000, nor more than 60,000, and containing an area of not less than 35, nor more than 55, congressional townships, the maximum limit for the contingent fund of the county attorney appropriated by the county board shall not exceed the sum of \$1,000.

[R. L. s. 574; 1909 c. 233 s. 1; 1917 c. 307] (934)

388.15 FUNDS GIVEN FOR HIS INVESTIGATION OF LAW VIOLATIONS BY BANKS, TRUST COMPANIES, AND BUILDING AND LOAN ASSOCIATIONS. 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.

[1925 c. 264 s. 1] (934-1)

388.16 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. 2] (934-2)

388.17 COMPENSATION IN CERTAIN COUNTIES. In all counties in which the compensation of the county attorneys is not fixed by special law, or by law classifying counties otherwise by population alone, the salary of the county attorney shall be as follows:

In counties whose population, according to the last completed state or national census, is less than 45,000, the salary of the county attorney shall be fixed by the county board in an amount not exceeding \$2,500 per year, and not less than \$1,000 per year; if dissatisfied with the amount so fixed, any county attorney may appeal to the district court within 30 days by filing with the auditor a notice thereof. The court, either in term or vacation and upon eight days' notice to the chairman of the board, shall hear such appeal and summarily determine the amount of such salary for the term of office by an order, a copy of which shall be filed with the auditor.

In counties whose population is 45,000 or more, and less than 75,000, the salary shall be \$2,500 per year, which shall be paid monthly by the county. The provisions of this section shall not apply to counties having more than 75,000 inhabitants.

[R. L. s. 573; 1909 c. 313; 1911 c. 214 s. 1; 1927 c. 415] (935)