

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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Publisher's
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SAINT PAUL 1, MINNESOTA

1944

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CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

Resignation by member of school board which has not become effective by an acceptance or by some act of relinquishment may be withdrawn. Op. Atty. Gen. (161a-22), Sept. 13, 1940.

6953. Vacancies.

Offices of school board member and president of village council are incompatible, and acceptance of a second incompatible office automatically vacates the first. Op. Atty. Gen., (358f), Feb. 9, 1940.

A city councilman may be a candidate for office of mayor without resigning, but election and acceptance of later office would work an automatic vacation of first office. Op. Atty. Gen., (358e-1), Feb. 16, 1940.

City attorney of South St Paul need not be a resident of the city. Op. Atty. Gen., (59a-5), May 19, 1941.

School board member accepting incompatible office does not vacate his office until his term of office actually commences. Op. Atty. Gen. (358f), Dec. 23, 1941.

Section applies to town officers. Op. Atty. Gen. (12C-4), Feb. 26, 1942.

Alderman entering armed forces does not thereby vacate his office, but there is a vacancy if he resigns, and it is a question of fact whether there is a vacancy when an alderman accepts a defense job which makes it impossible to attend council meetings, and if there is a vacancy it must be filled by proper authority. Op. Atty. Gen. (63a-11, 310h-1-a), Sept. 21, 1942.

Election of assessor while absent from the state. Op. Atty. Gen. 12(e), Apr. 26, 1943.

Subd. 2.

Resignation from town office does not become effective and no vacancy is created until accepted by town board. Op. Atty. Gen., (437a-18), March 9, 1940.

Where two of three town supervisors are absent from the state for a temporary but prolonged period, resignation of either of absent supervisors cannot be accepted by town board in as much as there is no quorum. Op. Atty. Gen. (437A-21), Aug. 19, 1941.

Subd. 3.

Absence of chairman of town board in Canada or Alaska without abandonment of residence does not create a vacancy and board of audit may call in justice of the peace as substitute. Op. Atty. Gen. (437b-1), March 1, 1943.

Subd. 4.

Whether absence of village president for six months in Florida vacates office is a question of fact. Op. Atty. Gen., (471h), Dec. 20, 1939.

If a vacancy in office of village president has been created by removal from village, no judicial action looking to removal is necessary, but council may adopt a resolution declaring a vacancy and appointing a new president for remainder of term. Id.

Where a village president permanently removes outside village he automatically vacates his office and leaves a vacancy to be filled by council by appointment for balance of unexpired term. Op. Atty. Gen., (471h), Jan. 30, 1940.

Townships are included within meaning of statute. Op. Atty. Gen., (12c-4), March 21, 1940.

A supervisor who removes from township he serves thereby vacates his office, unless removal is only temporary. Op. Atty. Gen., (437a-21), April 1, 1940.

Mere incorporation of an area within a township as a village does not automatically affect a separation of such area from town, but separation must be voted on, and until there is such a vote town clerk residing in village may continue to act as town clerk. Op. Atty. Gen. (440f), June 10, 1940.

Whether temporary but prolonged absence of town supervisor from state vacates office is a question of fact. Op. Atty. Gen. (437A-21), Aug. 19, 1941.

Removal of alderman from ward of city for which elected creates a vacancy. Op. Atty. Gen. (63A-1), Sept. 20, 1941.

Nonresidents may not be appointed as special deputy sheriffs. Op. Atty. Gen. (390b-1), Dec. 17, 1941.

Treasurer of school district vacated office when he removed permanently from district. Op. Atty. Gen. (768j), Apr. 22, 1942.

Right of adjoining villages to maintain a joint policing service is doubtful, because of residential requirement. Op. Atty. Gen. (785-s), June 9, 1942.

Where judge of probate elected for term expiring first Monday of January 1943 died in February 1942, and vacancy was filled by appointment, person elected judge at election in November 1943 will hold office for full term of four years, and there may not be any election of a judge to serve for remainder of unexpired term of deceased officer, and filing for such a period should not be accepted. Op. Atty. Gen. (347k), July 20, 1942.

Member of school board by change of residence to place outside district vacates office, and inattention to duties of office is ground for removal. Op. Atty. Gen. (161a-25), March 25, 1943.

If the county commissioner has ceased to be an inhabitant of the state his office is vacant, but if he is still a resident of the county, his absence for any length of time does not create a vacancy, but his nonperformance of the duties of the office might be cause for his removal by the governor. Op. Atty. Gen. (104a-14), May 5, 1943.

Whether absence of county treasurer in Alaska where he is employed, with deputy running office for him, creates a vacancy is a question of fact. Op. Atty. Gen. (450a-15), July 8, 1943.

Sheriff may not appoint deputy residing in another county. Op. Atty. Gen. (390b-1), Aug. 10, 1943.

Subd. 5.

Violation of game and fish laws does not require removal of town supervisor. Op. Atty. Gen., (475G), April 25, 1940.

School board member convicted of misdemeanor of slander of women is not subject to removal. Op. Atty. Gen., (475E), May 2, 1940.

A county commissioner auditing and allowing a fraudulent claim is guilty of a felony and an infamous crime, and on conviction his office is automatically vacated. Op. Atty. Gen. (126G), Oct. 11, 1940.

An infamous crime is one punishable by imprisonment in state prison, and whether compounding a crime is an offense involving a violation of official oath is dependent upon connection of offense with official duties, and vacation of office is automatic in case of conviction of proper crime, and town board has no power to remove a person merely because of his conduct. Op. Atty. Gen. (475g), Dec. 2, 1940.

There is no statutory procedure for removal of elective village officers for malfeasance or nonfeasance in office, but any public office becomes vacant when incumbent is convicted of an infamous crime, or of any offense involving a violation of official oath of office. Op. Atty. Gen. (359a-20, 475h), Dec. 6, 1940.

Person pleading guilty to federal offense forfeits his office though sentence is suspended. Op. Atty. Gen. (490d), Jan. 20, 1941, overruling Op. Atty. Gen. (490d), Aug. 21, 1934.

One vacating office by conviction for crime cannot be appointed to fill such vacancy. Op. Atty. Gen. (471M), Jan. 4, 1941.

A plea of guilty followed by suspension of "imposition" of sentence in federal court is not a "conviction" of a crime. Op. Atty. Gen., (490d), May 29, 1941.

The only way to remove a village clerk for incompetency in office would be by conviction under the provisions of this subdivision. Op. Atty. Gen., (475-H-2), July 2, 1941.

Subd. 6.

Where one after election as town clerk fails to qualify within time required by law, a vacancy results to be filled by appointment until next annual town meeting, at which time a successor may be elected for balance of unexpired term. Op. Atty. Gen. (436p), April 30, 1940.

6954. Removal by governor.

Justices of the peace are state officers and their courts are state courts, and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 206M446, 288NW 845. See Dun. Dig. 8011.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesembrink, 211M114, 300NW398. See Dun. Dig. 8011.

Section does not apply to municipal officers or school officers, being removal proceedings by the governor. Op. Atty. Gen., (475E), May 2, 1940.

Governor has no power to remove a clerk of a school district, and the only school officer that he could remove would be a county superintendent of schools or any collector, receiver or custodian of public moneys. Op. Atty. Gen. (213G), June 22, 1940.

This section would not cover removal from office of a village clerk unless such officer could be held to be a collector, receiver, or custodian of public moneys. Op. Atty. Gen., (475-H-2), July 2, 1941.

Member of school board by change of residence to place outside district vacates office, and inattention to duties of office is ground for removal. Op. Atty. Gen. (161a-25), March 25, 1943.

If the county commissioner has ceased to be an inhabitant of the state his office is vacant, but if he is still a resident of the county, his absence for any length of time does not create a vacancy, but his nonperformance of the duties of the office might be cause for his removal by the governor. Op. Atty. Gen. (104a-14), May 5, 1943.

Whether absence of county treasurer and employment in Alaska is grounds for removal by governor is a question of fact, deputy having been appointed to perform official duties. Op. Atty. Gen. (450a-15) July 8, 1943.

6955. Special commissioner to take testimony.

Appointment by a state board of special counsel who represented in a proceeding to remove an appointed officer, if unauthorized, would not taint proof submitted or otherwise affect validity of the proceedings, and its sole effect would be to deprive attorney of his right to compensation from the state, and no prejudice could result to officer being tried, since evidence is not rendered incompetent by fact that it was wrongfully or illegally procured. *State v. State Board of Education*, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 3239.

No statutory authority is necessary for appointment of a referee to receive and file charges and to take testimony in proceedings to remove an appointive officer pending before an administrative board. *State v. State Board of Education*, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 8010, 8311.

Original specifications of charges against an official charged with misconduct in office may be supplemented or amended during progress of removal proceedings before a referee, proper opportunity to meet such additional or amended charges having been given. Id. See Dun. Dig. 8010.

Under any definition of "cause", removal of an officer is not justified unless the charge is substantial, as opposed to trivial or inconsequential. Id. See Dun. Dig. 8010.

Appointment of a referee by an administrative board in proceedings to remove an appointee, with limited power of hearing and reporting testimony, a diversion or delegation of "power to remove" from administrative body to referee, acting in strict subordination to board itself and being its alter ego only in a very limited sense. Id. See Dun. Dig. 8010.

While proceedings by an administrative board in exercise of its power of removal of an appointee are quasi judicial in nature, yet such board does not, at any stage of removal proceedings, lose its identity as an administrative body and become a court, and the regularity of such proceedings must be considered along with the intrinsic nature of administrative bodies and the fundamental purposes for which they were created must be kept constantly in mind; they must not be tested by strict legal rules which prevail in courts of law. Id. See Dun. Dig. 8010.

Where no tenure is fixed by law, power of removal of appointive officer is inseparably incident to power of appointment and may be exercised arbitrarily at will of appointing power, and the only effect of fixing tenure by statute is that appointing power cannot remove official arbitrarily, but only for cause and after due notice and hearing. Id. See Dun. Dig. 8010.

Where administrative board fully exercised its right of removal of an appointive officer at time of repeal of statute giving it right of removal, repealing statute

could not be given retroactive effect so as to destroy the fully executed right of removal, but legislature would have constitutional right to qualify board's right of removal during pendency of removal proceeding. Id. See Dun. Dig. 8010.

While an order of state board of education removing commissioner of education from office may be reviewed by supreme court by certiorari, inquiry in that court is not whether findings of board are sustained by a preponderance of the evidence, but whether there is any evidence whatsoever to sustain the order of removal. Id. See Dun. Dig. 8010.

To justify an order removing a public officer, substantial grounds specially relating to and affecting the administration of his office and directly affecting rights and interests of public must exist. Id. See Dun. Dig. 8010.

Statutes authorize issuance of subpoenas by any clerk of court of record or by any justice of the peace of the state for witnesses in proceedings before state board of education to remove the commissioner of education for inefficiency and misconduct. Id. See Dun. Dig. 8010.

"Inefficiency" denotes incapability for office, and in proceeding to remove an appointive officer any evidence tending to show such incapability is relevant to issue of present inefficiency, even though period to which evidence relates may have been a prior term in office. Id. See Dun. Dig. 8010.

Validity of proceedings to remove an appointive officer pending before state board of education is not affected by its appointment of special counsel to represent it thereat where such appointment was made with consent and acquiescence of attorney general. Id. See Dun. Dig. 8010.

6957. Appointment—How long to continue—Impeachment.

Appointee to fill vacancy in office of county commissioner holds office until beginning of official year following next ensuing general election. *Op. Atty. Gen.*, (126a), Dec. 1, 1939.

"Next general election," means the one occurring after there is sufficient time, after the vacancy, to give notice required by law that vacant office is to be filled at election, and four days is not sufficient time to give notice. *Op. Atty. Gen.* (126h), Oct. 11, 1940.

Appointment to fill vacancies in office of county commissioner are governed by this section. Id.

One vacating office by conviction for crime cannot be appointed to fill such vacancy. *Op. Atty. Gen.* (471m), Jan. 4, 1941.

Where either a district judge or a probate judge has been appointed to fill a vacancy, there is no short term to be filled between November election and first of following year. *Op. Atty. Gen.* (911s), July 27, 1942.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oaths of office.

Village president reelected to office may file his oath of office by mail. *Op. Atty. Gen.*, (471h), Dec. 20, 1939.

6967. By whom and how administered.

Town clerks do not have an official seal and it is not essential to the validity of an acknowledgment taken by a town clerk that he attach the seal thereto, and a town clerk is empowered to administer oaths and take affidavits even when not in connection with the duties of his office. *Op. Atty. Gen.* (834a), May 5, 1943; (436a), May 24, 1943.

Oath attached to application of man in armed service other than Alaska and Island Possessions of the United States may be sworn to before a commissioned officer in active service, and such an officer may also be the attesting witness on ballot envelope. *Op. Atty. Gen.* (639e), Nov. 20, 1943.

6968. Officials may administer, when.

County board is authorized to administer oath to witnesses in a hearing of charges against a veteran under the Preference Act. *Op. Atty. Gen.* (85E), Mar. 6, 1942.

A supervisor of a soil conservation district may administer oaths of verification on small claims against district, but secretary has no authority to administer oaths. *Op. Atty. Gen.* (705a-8), July 20, 1942.

Chairman of board of supervisors of a soil conservation district has authority to administer oath of office to a newly appointed or elected supervisor. *Op. Atty. Gen.* (705a-8), July 20, 1942.

Oath of supervisor of a soil conservation district for expense incurred by him may be taken by another supervisor, but a supervisor cannot administer an oath to himself. *Op. Atty. Gen.* (705a-8), July 23, 1942.

Op. Atty. Gen. (436a, 834a), May 5, 1943, May 24, 1943; note under §6967, 358.09.

ACKNOWLEDGMENTS

6970. Form of certificate.

Acknowledgment is only prima facie evidence and can be assailed by one claiming deed was forged. *Amland v. G.*, 208M596, 296NW170. See Dun. Dig. 78.

A conveyance of land by state auditor with an acknowledgment omitting customary statement of venue preceding acknowledgment should be recorded when presented to a register of deeds, but in order to avoid any question as to validity of conveyances an appropriate curative act is suggested. *Op. Atty. Gen.* (24D), (320F), Jan. 24, 1942.

A defect in an acknowledgment, or even entire omission of an acknowledgment, does not vitiate a conveyance, but merely disqualifies it for recording purposes. *Op. Atty. Gen.* (320F), Jan. 24, 1942.

6973. By whom taken in this state.

Officers in armed forces. *Laws 1943, c. 445.*
Fact that chattel mortgage was acknowledged in county other than that in which mortgagor maintained a garage and kept mortgaged car on display for sale did not raise a jury question as to good faith of finance company taking mortgage, and which took possession of automobile under process on default of payments, while it was in possession of mortgagor, as against pledgee of automobile who had paid slight draft accompanying bill of lading and received delivery of car and had permitted pledgor to retain for purposes of sale. *Goemmel v. Heesch*, 212M424, 4NW(2d)104. See Dun. Dig. 70, 1431, 7740.

Town clerks do not have an official seal and it is not essential to the validity of an acknowledgment taken by a town clerk that he attach the seal thereto, and a town clerk is empowered to administer oaths and take affidavits even when not in connection with the duties of his office. *Op. Atty. Gen.* (834a), May 5, 1943; (436a), May 24, 1943.