

CHAPTER 367

TOWN OFFICERS

367.01 DELIVERY TO SUCCESSOR.

HISTORY. 1858 c. 75 art. 13 ss. 5 to 8; P.S. 1858 c. 8 ss. 87 to 90; 1860 c. 14 art. 14 ss. 5 to 8; G.S. 1866 c. 10 ss. 102 to 105; G.S. 1878 c. 10 ss. 106 to 109; G.S. 1894 ss. 1023 to 1026; R.L. 1905 s. 681; G.S. 1913 s. 1176; G.S. 1923 s. 1088; M.S. 1927 s. 1088.

367.02 RESIGNATIONS.

HISTORY. 1858 c. 75 art. 7 s. 1; P.S. 1858 c. 8 s. 47; 1860 c. 14 art. 7 s. 1; 1861 c. 7 s. 3; G.S. 1866 c. 10 s. 48; G.S. 1878 c. 10 s. 52; G.S. 1894 s. 967; R.L. 1905 s. 678; G.S. 1913 s. 1173; G.S. 1923 s. 1085; M.S. 1927 s. 1085.

The chairman of a board may resign. The board may accept such resignation and fill the vacancy. In resigning as chairman he does not resign his office of town supervisor. 1936 OAG 435, April 29, 1936 (439e).

367.03 VACANCIES.

HISTORY. 1858 c. 75 art. 7 ss. 1, 2; P.S. 1858 c. 8 s. 47, 48; 1860 c. 14 art. 7 ss. 1, 2; 1861 c. 7 s. 1; G.S. 1866 c. 10 ss. 45, 46; G.S. 1878 c. 10 ss. 48, 49; G.S. 1894 ss. 962, 963; 1903 c. 64; R.L. 1905 s. 679; G.S. 1913 s. 1174; G.S. 1923 s. 1086; M.S. 1927 s. 1086.

The justices of the peace and supervisors of a town constitute a board to fill vacancies occurring in any town office. Every member must receive notice of the meeting and a vacancy can only be filled by meeting together as a board. *State ex rel v Guney*, 26 M 313, 3 NW 977.

This section is controlling when filling a vacancy occurring in the office of town treasurer. 1934 OAG 876, April 3, 1933 (434b-16); 1934 OAG 880, March 19, 1934 (440f).

Where there is a tie vote for the office of supervisor and the judges of election fail upon election day to choose by lot, there is a vacancy which may be filled under provisions of this section. 1936 OAG 214, March 14, 1936 (185a-7); OAG March 17, 1939 (434b-23).

Where a justice of the peace resigns, the person appointed to fill the vacancy does not hold over until the end of the term of his predecessor. There must be an election at the next annual meeting. 1938 OAG 173, Jan. 20, 1937 (266a-12); OAG April 20, 1938 (12c-4).

A resident of a village entirely surrounded by a township and separated from the township for assessment and election purposes, is not qualified to hold the office of township justice of the peace. OAG July 27, 1935 (266a-12).

A town supervisor does not hold over on failure of a newly elected member to qualify. A vacancy exists which must be filled under the provisions of this section. OAG June 21, 1935 (437a-15).

367.04 AUDITOR TO APPOINT ASSESSOR.

HISTORY. 1872 c. 34 s. 1; G.S. 1878 c. 10 s. 50; G.S. 1894 s. 964; R.L. 1905 s. 680; G.S. 1913 s. 1175; G.S. 1923 s. 1087; M.S. 1927 s. 1087.

The town assessor elected in March, 1935, being unable to serve, the board with the approval of the county auditor appointed a deputy assessor and when the assessor died in June, 1935, the deputy continued the duties of the office and no appointment was made. A vacancy existed which should have been filled by ap-

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pointment under section 367.03 and the party elected assessor in the even-numbered year was not entitled to the office. OAG April 9, 1936 (12c-4).

A non-resident may not be appointed assessor. OAG March 21, 1944 (12c-2).

367.05 COMPENSATION; PER DIEM, MILEAGE; ANNUAL BASIS; CERTAIN TOWNS; FEES; ROAD OVERSEER; CHANGE AT TOWN MEETING; OTHER LAWS NOT REPEALED.

HISTORY. 1858 c. 75 art. 11 ss. 1, 2; P.S. 1858 c. 8 ss. 71, 72; 1860 c. 14 art. 12 ss. 1, 2; G.S. 1866 c. 10 s. 82; G.S. 1878 c. 10 s. 86; G.S. 1894 s. 1003; 1895 c. 13; R.L. 1905 s. 682; 1907 c. 402; 1911 c. 37; 1913 c. 558; G.S. 1913 s. 1177; 1919 c. 384; 1923 c. 219; G.S. 1923 s. 1089; 1927 c. 403 ss. 1, 2; M.S. 1927 s. 1089; 1933 c. 411; 1935 c. 151 s. 2; 1935 c. 375; 1937 c. 158 s. 1; 1937 c. 249 s. 1; Ex. 1937 c. 16; M. Supp. s. 1089½; 1945 c. 481 s. 2.

Villages may be held to be governed by certain applicable provisions of the general statutes relating to townships, when not otherwise provided in the general laws relating to villages or in the statute constituting the charters of such villages. The village assessor is an officer under the provisions of Laws 1885, Chapter 145, and the council has authority to fix the assessor's compensation. *Vesely v Village of Hopkins*, 190 M 318, 251 NW 680.

The basis of compensation of an assessor is fixed by the day. The statutory provision is \$4.00 per diem; and while the electors at the annual town meeting may decrease the compensation of the town assessor it must be upon a per diem basis, and an attempt to fix an arbitrary sum such as \$80.00 would be ineffective. 1934 OAG 867, July 31, 1934 (12c-1); 1934 OAG 868, July 5, 1933 (12c-3).

A town clerk is entitled to ten cents per folio for recording township warrants in the township books kept for that purpose, but he is not entitled to a fee for writing township warrants or to a per diem in addition to the statutory fee. 1934 OAG 870, April 4, 1933 (436h).

The compensation per diem of supervisors, as well as the maximum to be received in one year, may be increased 50 per cent by the annual town meeting, if such increase is provided for by resolution before the balloting for officers begins. 1934 OAG 871, April 19, 1934 (439b-1).

A town supervisor is entitled to his maximum annual compensation in addition to whatever per diem he receives as judge of election. OAG Feb. 24, 1937.

Town clerks are not subject to the same limitations as to compensation as are supervisors. 1940 OAG 207, March 15, 1940 (436c).

The assessor is not entitled to mileage while assessing property. OAG July 6, 1932.

The voters at the annual town meeting have no power to lower the wages of town officers below the wages fixed by this section. OAG April 3, 1933.

The compensation of a town clerk is \$3.00 per diem for services in connection with his official duties within or without the town, but such compensation may not exceed \$90.00 per year unless the voters by resolution increase the compensation not to exceed 50 per cent. OAG April 11, 1933.

The town clerk is entitled to \$4.00 for each day's services, including time spent in taking the farm census. OAG July 5, 1933.

The maximum limit as to the amount the township assessor would receive is \$240.00. OAG July 14, 1933.

Per diem compensation of village assessor can only be for days worked during May and June, unless the auditor requires additional work by reason of omission of property. OAG Feb. 19, 1934.

Compensation of assessor may not be fixed at an arbitrary sum per year, and where the electors fail to take formal action he is entitled to receive \$4.00 for each day's service. OAG July 10, 1934 (12c-1).

Filing fee which is paid to town clerk by candidate for office at the time he files his application, should be turned in to the town treasurer and placed in the general town fund. OAG Feb. 5, 1935 (442a-12).

Where warrants for salaries are drawn in excess of maximum provided by statute, warrants issued up to the amount of legal warrants are valid and the remaining warrants are invalid. OAG March 8, 1935 (442b-6).

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Members of town boards are not entitled to additional compensation for administering of the seed loan act, but are allowed expenses necessarily incurred. OAG April 6, 1935 (833k).

Laws 1935, Chapters 151 and 375, are not inconsistent and an assessor may now be compensated on an annual basis. OAG June 20, 1936 (12c-1).

A vote to decrease the compensation of assessor is only effective for one year, and unless a vote is taken at the next annual meeting the compensation for the following year reverts to the statutory schedule. OAG July 6, 1937 (12c-1).

Supervisors may not be employed on town road work. OAG May 7, 1938 (437a-19).

The assessor may be paid per diem or by total contract so that the maximum is not exceeded. The salary may differ in odd or even numbered years. 1942 OAG 86, July 16, 1941 (12B-1).

The expense of the assessor in attending the school for assessors at the university may be paid by the city, village or borough. 1942 OAG 187, Nov. 13, 1941 (12B-1).

There is no authority to pay an assessor for setting up a new system of records. OAG July 25, 1944 (12B-1).

Except for additional assessment ordered by the county auditor, the per diem can be paid only in May and June. OAG Aug. 10, 1944 (12c-1).

This section prescribes but does not limit the total compensation of the clerk. OAG Sept. 22, 1944 (455d).

367.06 SALARIES OF TOWN OFFICERS IN CERTAIN TOWNS.

HISTORY. 1927 c. 344 s. 1; M.S. 1927 s. 1089-1.

Laws 1907, Chapter 316, remains in force as to townships not coming within the classification described in this section. OAG March 8, 1933.

Salaries, except as fixed by town meetings are governed by provisions of Section 367.05. OAG Sept. 22, 1944 (437c).

367.07 POPULATION AND VALUATION, HOW DETERMINED.

HISTORY. 1927 c. 344 s. 2; M.S. 1927 s. 1089-2.

367.08 APPLICATION.

HISTORY. 1927 c. 344 s. 3; M.S. 1927 s. 1089-3.

367.09 SUPERVISORS' COMPENSATION NOT TO EXCEED \$60.00.

HISTORY. 1907 c. 316 s. 1; M.S. 1927 s. 1089-6.

Members of the town board in those townships consisting of 40 or more sections are entitled to receive a per diem of \$3.00 for each day consumed in the transaction of township business, but not to exceed a maximum of \$60.00 per year. OAG March 30, 1933.

367.10 TOWN CLERK; BOND; OATH.

HISTORY. 1858 c. 75 art. 9 s. 3; P.S. 1858 c. 8 s. 62; 1860 c. 14 art. 9 s. 3; G.S. 1866 c. 10 s. 65; G.S. 1878 c. 10 s. 69; G.S. 1894 s. 984; 1897 c. 247; R.L. 1905 s. 658; G.S. 1913 s. 1150; G.S. 1923 s. 1062; M.S. 1927 s. 1062.

A person cannot be county commissioner and town clerk. The offices are incompatible. OAG Jan. 6, 1933.

The failure by the township clerk to take his oath of office within ten days after receiving his notice of election or appointment and to file an official bond, results in a vacancy in the office. OAG March 5, 1935 (104b-13).

367.11 DUTIES.

HISTORY. 1858 c. 72 art. 3 s. 1; 1858 c. 75 art. 9 ss. 1, 2, 4; P.S. 1858 c. 8 ss. 13, 60, 61, 63; 1860 c. 14 art. 3 s. 1; 1860 c. 14 art. 9 ss. 1, 2, 4, 5, 8; 1860 c. 14 art. 10

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s. 7; G.S. 1866 c. 10 ss. 12, 63, 64, 66, 67, 69, 76; 1870 c. 99; 1871 c. 73; G.S. 1878 c. 10 ss. 13, 67, 68, 70, 71, 73, 80; 1879 c. 47; G.S. 1894 ss. 927, 982, 983, 985, 986, 988, 997; R.L. 1905 s. 660; G.S. 1913 s. 1152; G.S. 1923 s. 1064; M.S. 1927 s. 1064.

The record of an annual town meeting showing that the question of issuing licenses for the sale of intoxicating liquor was submitted to the meeting to be determined by ballot, and that the ballots were canvassed showing 24 for licenses and 105 against, is competent and sufficient evidence to sustain a finding that the electors of the town voted against the issuance of such licenses. *State v Bollenbach*, 98 M 480, 108 NW 3.

The determination of the industrial commission that petitioner's husband employed in grading a road was an employee of the township, and that petitioner was entitled to compensation for her husband's death under the workmens compensation law, is supported by the evidence. *Dahnert v Township*, 196 M 478, 265 NW 291.

The township clerk is not entitled to any fee for writing township warrants, nor is he entitled to a per diem. For recording the warrants he is entitled to a fee of ten cents per folio. 1934 OAG 870, April 4, 1933 (436h).

After claim has been duly allowed by the board of audit it is the duty of the chairman of the board and the town clerk to sign the warrant. 1934 OAG 875, Jan. 4, 1934 (442-11).

While a bailee, the town clerk is not an insurer of the safety of books, papers, and records. OAG April 13, 1929.

There is no authority for destruction of town records. OAG March 8, 1939 (442b-1).

The town clerk is privileged to be present at all meetings of the board, but business transacted in his absence is legal. OAG April 11, 1933.

367.12 DEPUTY.

HISTORY. 1858 c. 75 art. 9 s. 1; P.S. 1858 c. 8 s. 60; 1860 c. 14 art. 9 s. 1; G.S. 1866 c. 10 s. 63; 1871 c. 73; G.S. 1878 c. 10 s. 67; G.S. 1894 s. 982; R.L. 1905 s. 659; G.S. 1913 s. 1151; G.S. 1923 s. 1063; M.S. 1927 s. 1063.

367.13 LOCATION OF OFFICE.

HISTORY. 1905 c. 98 s. 1; G.S. 1913 s. 1153; G.S. 1923 s. 1065; M.S. 1927 s. 1065.

The office of the township clerk becomes vacant when the clerk moves into a village within the township, but separated from the town for election and assessment purposes. OAG March 1, 1938 (436n).

367.14 NEW TOWN.

HISTORY. R.L. 1905 s. 661; G.S. 1913 s. 1154; G.S. 1923 s. 1066; M.S. 1927 s. 1066.

367.15 TOWN TREASURER; BOND.

HISTORY. 1858 c. 75 art. 6 ss. 6, 7; P.S. 1858 c. 8 ss. 37, 38; 1860 c. 14 art. 6 ss. 6, 7; G.S. 1866 c. 10 ss. 38, 39; G.S. 1878 c. 10 ss. 40, 41; G.S. 1894 ss. 954, 955; R.L. 1905 s. 662; G.S. 1913 s. 1155; G.S. 1923 s. 1067; M.S. 1927 s. 1067.

When a written statement is filed requesting a special town meeting, the question whether the persons subscribing such statement are freeholders is one for the town clerk to determine prior to giving notice of the meeting, and his decision is conclusive. *State ex rel v Town of Lime*, 23 M 521.

Where a person holds a public office for two or more successive terms and executes a new bond with new sureties for each term and a defalcation occurs, the sureties on the bond given for the term during which the defalcation occurs are alone liable. *Board of Education v Robinson*, 81 M 305, 84 NW 105; *Township v. Campion*, 183 M 9, 235 NW 615.

The expense of recording a town treasurer's bond should be paid by the county. 1934 OAG 866, May 1, 1933 (45a-4).

If there exists a reasonable ground to doubt the legality of the town claim against the treasurer, or if the bondsmen are of doubtful financial responsibility,

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the township may legally compromise a shortage, but unless the above conditions exist no compromise may be made. OAG March 22, 1939 (455).

367.16 DUTIES.

HISTORY. 1860 c. 14 art 11 ss. 1 to 4; G.S. 1866 c. 10 ss. 77 to 80; G.S. 1878 c. 10 ss. 81 to 84; 1881 c. 114 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 79a; 1889 c. 177 s. 1; G.S. 1894 ss. 995, 998 to 1001; R.L. 1905 s. 663; G.S. 1913 s. 1156; G.S. 1923 s. 1068; M.S. 1927 s. 1068.

Beginning as of the date the money is available for its payments, the six-year statutory limitation runs against a warrant. OAG Aug. 21, 1935 (442b-10).

Offices of village recorder and town clerk are not incompatible. 1942 OAG 229, March 6, 1941 (358-E-7).

367.17 NEGLECT OF DUTY.

HISTORY. 1860 c. 14 art. 11 s. 5; G.S. 1866 c. 10 s. 81; G.S. 1878 c. 10 s. 85; G.S. 1894 s. 1002; R.L. 1905 s. 664; G.S. 1913 s. 1157; G.S. 1923 s. 1069; M.S. 1927 s. 1069.

367.18 PAY AUDITED ACCOUNTS

HISTORY. 1860 c. 14 art. 10 s. 6; G.S. 1866 c. 10 s. 75; G.S. 1878 c. 10 s. 79; G.S. 1894 s. 994; R.L. 1905 s. 665; G.S. 1913 s. 1158; G.S. 1923 s. 1070; M.S. 1927 s. 1070.

Evidence justified the conclusion of the trial court that the town order sued upon was paid prior to the bringing of this action. *Robertson v Town of Middle River*, 162 M 249, 202 NW 488.

This action involves the payments of certain indebtedness evidenced by four certain town orders and subsequently a fifth one given in exchange for the four. The original four orders were issued by the clerk who signed his own name and also the name of the chairman. Held: the execution of the four orders pursuant of a long established custom and acquiesced in by the chairman is sufficient to validate the four orders; the plaintiff, an assignee of the fifth order, was the equitable owner of the four original unpaid orders. *State ex rel v Johnson*, 181 M 510, 233 NW 236.

After a claim has been duly allowed by the board of audit, it is the duty of the chairman and clerk to sign it. 1934 OAG 875, Jan. 4, 1934 (442b-11).

367.19 ORDER OF PAYMENT; INTEREST.

HISTORY. 1881 c. 114 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 79a, 79b; G.S. 1894 ss. 995, 996; R.L. 1905 s. 666; G.S. 1913 s. 1159; G.S. 1923 s. 1071; M.S. 1927 s. 1071; 1943 c. 254 s. 1.

In an action on township warrants the complaint need not allege that there have been or are funds available for payment. Absence of funds and consequent statutory inability to pay are matters of defense to be pleaded and proved by the defendant. *McKinney v Town of Great Scott*, 160 M 437, 200 NW 478.

Six per cent is the maximum rate of interest that may be paid on town orders. OAG June 26, 1933.

Warrants must be paid in the order in which they are registered by the treasurer. This includes election expense warrants. OAG June 25, 1934 (442b-10).

There is no way by which a town may give notice or otherwise may stop the running of interest on outstanding town orders owned by unknown holders. 1940 OAG 227, Aug. 15, 1939 (442b-9).

The statute of limitation bars the payment of town orders six years from the time the money is available for those payments. 1940 OAG 227, Aug. 15, 1939 (442b-9).

Orders which were issued and presented prior to April 2, 1943, bear interest at six per cent; and after that date at not to exceed five per cent. If the town board wish to pay less than five per cent, they must pass a resolution setting the rate. OAG Aug. 18, 1944 (442b-5).

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367.20 FEES.

HISTORY. 1860 c. 14 art. 11 s. 3; G.S. 1866 c. 10 s. 79; G.S. 1878 c. 10 s. 83; 1889 c. 177 s. 1; G.S. 1894 s. 1000; R.L. 1905 s. 667; G.S. 1913 s. 1161; G.S. 1923 s. 1073; M.S. 1927 s. 1073.

The authority given by the 1885 village law to the village council to fix the compensation of village officers was done away with by the 1905 code. In the instant case the council has no authority to fix the compensation of the treasurer and his compensation is governed by the general statutes relating to the compensation of town treasurer. 1936 OAG 49, Oct. 18, 1935 (456f-2).

In towns having an assessed valuation of over \$1,000,000 the salary of the treasurer should be computed on the basis of two per cent of the money paid into the treasury, subject to a \$100.00 maximum limitation. OAG Aug. 6, 1935 (455d).

Interest received on loan of township funds belongs to the township. OAG March 13, 1936 (442a-16).

The town treasurer is entitled to two per cent of town telephone and toll charges handled by him. OAG March 25, 1938 (434a-8).

The town treasurer's compensation is two per cent of moneys collected. In certain towns there is a \$100.00 limitation. OAG Sept. 22, 1944 (455d).

367.21 JUSTICE'S BOND.

HISTORY. 1858 c. 75 art. 6 s. 8; P.S. 1858 c. 8 s. 39; 1860 c. 14 art. 6 s. 9; G.S. 1866 c. 10 s. 41; G.S. 1878 c. 10 s. 43; G.S. 1894 s. 957; R.L. 1905 s. 675; G.S. 1913 s. 1170; G.S. 1923 s. 1082; M.S. 1927 s. 1082.

The words "judicial duties" in a bond given by the justice of the peace for the faithful performance of his duties are construed as meaning official duties; and where a justice of the peace neglects to enter a judgment in his docket within three days after the action is submitted to him for decision, and damages thereby result to the prevailing party, the justice and his sureties are liable therefor. *Larson v Kelly*, 64 M 51, 66 NW 130; *Larson v Kelly*, 72 M 116, 75 NW 13.

The bond and oath of a village justice should be approved by the village council and filed with the clerk of the district court. OAG Dec. 19, 1938 (266a-2).

367.22 CONSTABLE'S BOND.

HISTORY. 1858 c. 75 art. 6 s. 8; P.S. 1858 c. 8 s. 39; 1860 c. 14 art. 6 s. 8; G.S. 1866 c. 10 s. 40; G.S. 1878 c. 10 s. 42; G.S. 1894 s. 956; R.L. 1905 s. 676; G.S. 1913 s. 1171; G.S. 1923 s. 1083; M.S. 1927 s. 1083.

In bringing suit on a constable's bond leave must be obtained from the district court. *Litchfield v McDonald*, 35 M 167, 28 NW 191.

367.23 BONDS, HOW EXECUTED.

HISTORY. R.L. 1905 s. 677; G.S. 1913 s. 1122; G.S. 1923 s. 1084; M.S. 1927 s. 1084.

The town assessor's bond should be filed with the county auditor. 1938 OAG 464, April 16, 1937 (439a).

367.24 FEES AND DUTIES OF POUNDMASTERS.

HISTORY. 1858 c. 75 art. 13 s. 1; P.S. 1858 c. 8 ss. 83, 84; 1860 c. 14 art. 12 s. 3; G.S. 1866 c. 10 s. 83; G.S. 1878 c. 10 s. 87; G.S. 1894 s. 1004; R.L. 1905 s. 683; G.S. 1913 s. 1182; G.S. 1923 s. 1090; M.S. 1927 s. 1090.

This section relating to the fees of poundmasters governs proceedings in the case of animals impounded under township regulations and is not inconsistent with the provisions of the statute in reference to estrays, respecting the impounding of animals found doing damage. *Johnston v Kirshoff*, 31 M 451, 18 NW 315.