

CHAPTER 384

COUNTY AUDITOR

384.01 ELECTION; PERSONS ELIGIBLE.

HISTORY. 1858 c. 75 art. 15 ss. 8 to 11; P.S. 1858 c. 8 ss. 102 to 105; 1860 c. 2 ss. 1, 8; G.S. 1866 c. 8 ss. 111, 118; G.S. 1878 c. 8 ss. 129, 136; G.S. 1894 ss. 707, 714; 1895 c. 11; R.L. 1905 s. 481; G.S. 1913 s. 811; G.S. 1923 s. 823; M.S. 1927 s. 823.

NOTE: Election of county auditor, section 382.01.

Westerman, born in Germany in 1850, accompanied his parents who settled in Carver county in 1859 and have since resided there. The father, in 1859, declared his intention to become a citizen, served during the Civil War, but never took out naturalization papers. Forty-nine days before coming of age the relator declared his intention of becoming a citizen and thereafter was repeatedly elected to public office, took the oath, and served as such officer. Thereafter, at the November, 1894, general election he was elected county auditor. He took out his naturalization papers on January 10, 1895. Even if his declaration was invalid, it was capable of ratification on his coming of age and he fully ratified the same and was eligible to be elected to the office of county auditor. *State ex rel v. Streukens*, 60 M 325, 62 NW 250.

The county auditor rendered services to the county treasurer in making certain tax apportionments and statements. At the time the services were rendered each party believed the auditor was serving as auditor and performing his duties as such. The law will not imply a promise to pay for the services contrary to the intention of the parties. *Keough v Wendelschafer*, 73 M 352, 76 NW 46.

Under a statute creating an office, fixing the term, and making no provision for holding over until a successor is elected and qualified, the term is definite and a vacancy exists upon its expiration; but under a statute providing that the incumbent shall hold until his successor is elected and qualified, the constitution not prohibiting such a provision, and if a successor is not elected the incumbent holds over and there is no vacancy to be filled by appointment. *State ex rel v Windom*, 131 M 401, 155 NW 629.

A constitutional provision applies to both constitutional and statutory offices; it is beyond the power of the legislature either to restrict or enlarge the right given by the constitution; and so far as General Statutes 1913, Section 811, declares a county commissioner ineligible to the office of county auditor, it violates the constitution and cannot be given effect. *Hoffman v Downs*, 145 M 465, 177 NW 669.

The classification made by a general law must be "germane" to the purpose of the law, that is, there must be an evident connection between the distinctive features to be regulated and the regulations adopted. Laws 1943, Chapter 15, is unconstitutional. *Hamlin v Ladd*, 217 M 249, 14 NW(2d) 396.

384.02 BOND.

HISTORY. 1858 c. 75 art. 15 s. 9; P.S. 1858 c. 8 s. 103; 1860 c. 2 s. 2; G.S. 1866 c. 8 s. 112; G.S. 1878 c. 8 s. 130; G.S. 1894 s. 708; R.L. 1905 s. 482; G.S. 1913 s. 812; G.S. 1923 s. 826; M.S. 1927 s. 826; 1943 c. 387 s. 1; 1945 c. 437 s. 1.

Sureties upon a county auditor's bond are liable for the acts of his deputy who fraudulently issues fictitious redemptions and refundment orders, thus obtaining money from the county treasurer. *Board v Sullivan*, 89 M 68, 93 NW 1056; 94 M 201, 102 NW 723.

Sureties upon official bond are liable for improper conduct of an officer in the performance of required duties, and are liable for trespass upon person or property by an officer acting within the scope of his official capacity; but are not liable for

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his acts outside the scope of his official authority. County of Mower v American Bonding Co. 133 M 274, 158 NW 394.

Plaintiff brought action in damages against the county auditor and his sureties for his mistake in certifying on an abstract that all taxes on a piece of real estate were paid, when in fact taxes for two years were unpaid and delinquent. Plaintiff has been repaid the taxes paid by him and is not damaged, and cannot recover. Bassin v Downs, 181 M 334, 232 NW 339.

384.03 MALFEASANCE; SUSPENSION.

HISTORY. 1860 c. 2 s. 3; G.S. 1866 c. 8 s. 113; 1871 c. 89 s. 1; G.S. 1878 c. 8 s. 131; G.S. 1894 s. 709; R.L. 1905 s. 483; G.S. 1913 s. 813; G.S. 1923 s. 827; M.S. 1927 s. 827.

Where a fraudulent warrant was sold to a good-faith purchaser during one term of a county auditor and cashed during a second term, recovery can be had on the bond covering the term during which the warrant was cashed. OAG Dec. 9, 1935 (125a-6).

384.04 ACTION ON BOND.

HISTORY. 1860 c. 2 s. 4; G.S. 1866 c. 8 s. 114; G.S. 1878 c. 8 s. 132; G.S. 1894 s. 710; R.L. 1905 s. 484; G.S. 1913 s. 814; G.S. 1923 s. 828; M.S. 1927 s. 828.

A deputy county auditor, for whose official acts the auditor and his bondsmen were responsible both to the county and to any person injured by his misconduct in office, issued spurious orders which he sold to the bank. The proximate cause of any loss sustained by the bank was the individual act of the deputy in forging the assignments and selling the orders as genuine. These orders being non-negotiable, the bank has no claim to recover either from the county or the sureties on the auditor's bond. A year after the issuance of the orders they were presented to the county treasurer and paid with interest. On discovery, the county brought suit against the auditor on his bond and recovered a judgment which was paid by the sureties. The bank being primarily liable to the county for the amount received from the treasury and the sureties, having paid the county, were entitled to equitable subrogation to enforce the county's rights against the bank. National Sureties v State Savings Bank, 156 F 21; National Sureties v Arosin, 198 F 605.

384.05 FAILURE TO QUALIFY.

HISTORY. 1860 c. 2 s. 5; G.S. 1866 c. 8 s. 115; G.S. 1878 c. 8 s. 133; G.S. 1894 s. 711; R.L. 1905 s. 485; G.S. 1913 s. 815; G.S. 1923 s. 829; M.S. 1927 s. 829.

384.06 TO ATTEND MEETINGS CALLED BY COMMISSIONER OF TAXATION; EXPENSES ALLOWED.

HISTORY. 1919 c. 428 s. 112; G.S. 1923 ss. 824, 825; M.S. 1927 s. 824, 825; 1941 c. 344.

Auditors are allowed actual transportation expense attending auditor's meeting called by tax commission; and are allowed not to exceed five cents per mile for use of own automobile. 1942 OAG 194, March 12, 1941 (104A-8).

384.07 DISABILITY; TEMPORARY APPOINTMENT.

HISTORY. 1860 c. 2 s. 7; G.S. 1866 c. 8 s. 117; G.S. 1878 c. 8 s. 135; G.S. 1894 s. 713; R.L. 1905 s. 486; G.S. 1913 s. 816; G.S. 1923 s. 830; M.S. 1927 s. 830.

384.08 DEPUTIES.

HISTORY. 1865 c. 63 s. 2; G.S. 1866 c. 8 s. 119; G.S. 1878 c. 8 s. 137; G.S. 1894 s. 715; 1897 c. 44; 1903 c. 67; R.L. 1905 s. 487; G.S. 1913 s. 817; G.S. 1923 s. 831; M.S. 1927 s. 831.

A deputy of the county auditor may act for the auditor in canvassing election returns and issuing certificates of election. Crowell v Lambert, 10 M 369 (295).

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Where one assumed to act as deputy county auditor, and is permitted to do so, and fabricated certain refundment and redemption orders afterwards paid, the auditor and his sureties are liable. *Board v Sullivan*, 94 M 201, 102 NW 723.

A deputy county auditor died from blood poisoning received from a "paper cut" received while opening envelopes containing election returns. Deputy auditors are not elected nor are they appointed to "complete an unexpired portion of any regular term." They serve during the pleasure of the auditor himself. It was proper to award compensation to the widow. *Whaling v County of Itasca*, 194 M 302, 260 NW 299.

A county officer may not appoint a person under 21 years of age as a deputy, although he may be appointed as a clerk. OAG Dec. 19, 1938 (126a-33).

The county auditor issued salary warrants in advance and they were cashed and registered with the county treasurer. The auditor resigned. The warrants were good for the salary earned, but the rest were invalid and unenforceable. OAG Jan. 18, 1939 (107b-14).

384.09 CLERK OF COUNTY BOARD.

HISTORY. 1860 c. 2 s. 10; G.S. 1866 c. 8 s. 120; 1878 c. 7 s. 1; G.S. 1878 c. 8 s. 138; G.S. 1894 s. 716; R.L. 1905 s. 488; G.S. 1913 s. 818; G.S. 1923 s. 832; M.S. 1927 s. 832.

All papers which are to be submitted for the action of the board of county commissioners may be delivered, during a recess of the board, to the county auditor and are deemed submitted to the board for its action. County treasurer required to give a new bond, and the board not being in session during the time allowed by statute for filing a new bond, had the bond prepared and issued, but kept it until the board met the day after such time expired, when he tendered it to the board. Having failed to give a new bond, which he could have legally delivered to the county auditor, his office became ipso facto vacant and the commissioners could appoint another treasurer. *State ex rel v Sanderson*, 26 M 333, 3 NW 984.

The county treasurer of Ramsey county was not authorized to pay the amount of the judgment against the county upon presentation to him of a certified copy of the judgment and a voucher for the payment thereof. He can pay only upon an order or warrant of the county auditor. *State ex rel v Foot*, 98 M 467, 108 NW 932.

A resolution by the county board, and a contract growing out of the resolution, are valid though not entered in the minutes and not published. *County of Mahnomen v Klyver*, 180 M 423, 230 NW 891.

The granting of seed loans must be published in the official proceedings. OAG May 8, 1935 (8331).

384.10 CERTAIN RECORDS TRANSCRIBED.

HISTORY. 1905 c. 295 s. 1; G.S. 1913 s. 819; 1923 c. 278; G.S. 1923 s. 833; M.S. 1927 s. 833.

Where pages in the deed records in the office of register of deeds become faded, the commissioners have no power under this section to have those pages transcribed, but they probably have power under section 375.15. 1940 OAG 202, June 24, 1940 (851p).

384.11 DELIVERY TO SUCCESSOR.

HISTORY. 1860 c. 2 s. 11; G.S. 1866 c. 8 s. 121; G.S. 1878 c. 8 s. 139; G.S. 1894 s. 717; R.L. 1905 s. 489; G.S. 1913 s. 820; G.S. 1923 s. 834; M.S. 1927 s. 834.

384.12 ACCOUNT WITH TREASURER.

HISTORY. 1860 c. 2 s. 12; G.S. 1866 c. 8 s. 122; G.S. 1878 c. 8 s. 140; G.S. 1894 s. 718; R.L. 1905 s. 490; G.S. 1913 s. 821; G.S. 1923 s. 835; M.S. 1927 s. 835.

In construing a county treasurer's bond his responsibility is not that of an ordinary bailee, but is imposed by the express terms of his bond; that is, an ab-

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solute responsibility for all moneys coming into his hands as treasurer. County Commissioners v Jones, 18 M 199 (182); State ex rel v Foot, 98 M 467, 108 NW 932.

384.13 CLAIMS, HOW PAID; DISBURSEMENTS; WARRANTS.

HISTORY. 1860 c. 2 s. 13; G.S. 1866 c. 8 s. 123; G.S. 1878 c. 8 s. 141; 1879 c. 13 s. 1; G.S. 1894 s. 719; R.L. 1905 s. 491; G.S. 1913 s. 822; G.S. 1923 s. 836; M.S. 1927 s. 836; 1929 c. 66 s. 1.

The county treasurer of Ramsey county is not authorized to pay the amount of a judgment against the county without an order or warrant of the county auditor. State ex rel v Foot, 98 M 467, 108 NW 932.

In undisputed agreements, acts and conduct of the county board, acting lawfully for the county, show a waiver and equitable estoppel of and against the claim of the county to offset the indebtedness of the bank against the county warrants here in question. County of Mahnomen v Klyver, 180 M 423, 230 NW 891.

A county auditor wrongfully issued certain county warrants to his own order described as "county auditor's salary." The illegal warrants cashed by the plaintiff's bank largely overdraw his salary. County was not liable on the warrants except so far as they were covered by his services to the time of his resignation. The auditor has no defense and the surety was not entitled to judgment non obstante based on the claim that the warrants were void on their face because of non-compliance with section 384.13. State Bank v Billstrom, 210 M 497, 299 NW 199.

If the number of county warrants and checks are large, a mechanical check and warrant signer may be used. OAG Sept. 17, 1934 (104b-2).

County warrants must be paid in order of registration. OAG May 19, 1933.

384.14 DESTRUCTION OF RECORDS.

HISTORY. 1927 c. 275; M.S. 1927 s. 836-1; 1939 c. 201.

Notwithstanding the wording of this section, all real and personal property assessment and tax books should be preserved. OAG Sept. 19, 1939 (851f).

NOTE: See section 205.81 regarding the destruction of ballots.

Old village bills and records which have outlived their usefulness and represent transactions long since closed and more than ten years old need not be preserved, but ledger and other books showing fund balances and anything in the nature of a permanent record, whether of financial nature or otherwise, should be preserved. 1934 OAG 131, April 7, 1933 (851f).

Assessment books should not be destroyed, but the personal property returns of citizens may be. OAG March 1, 1944 (751f).

384.15 SALARIES AND CLERK HIRE.

HISTORY. 1860 c. 2 s. 55; G.S. 1866 c. 8 s. 124; 1877 c. 120 ss. 1, 2; 1878 c. 47 s. 1; G.S. 1878 c. 8 ss. 129, 136; 1881 c. 68 s. 1; Ex. 1881 c. 44 s. 1; 1887 c. 23; G.S. 1894 ss. 720, 721; 1895 cc. 288, 291, 292; 1897 cc. 8, 273; 1901 cc. 142, 318, 376; 1903 cc. 210, 229; 1905 cc. 206, 259; R.L. 1905 s. 492; G.S. 1913 s. 823; 1919 c. 269; 1921 c. 494; G.S. 1923 s. 837; 1925 c. 146; 1927 c. 383; M.S. 1927 s. 837.

A deputy county auditor not being elected or appointed for a regular term, may be entitled to the benefits of the workmen's compensation act. Whaling v County of Itasca, 194 M 302, 260 NW 299.

A purchaser of an illegally issued salary warrant issued by the county auditor for his own alleged salary may recover judgment against the auditor and his sureties, although the warrant may have been void on its face because of non-compliance with section 384.13. State Bank v Billstrom, 210 M 500, 299 NW 199.

The registrar of titles of Hennepin county may employ a chief deputy registrar of titles at a salary of \$3,600 per year, if authorized by the county board. 1934 OAG 256, March 20, 1933 (104b-9).

The value of tax exempted real estate cannot be included in total assessed value for the purpose of determining salaries of county officers. OAG July 27, 1939 (104a-9).

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Where the county auditor has a surplus at the end of the year in the clerk hire account, such balance cannot be used for clerk hire during the succeeding year. OAG Feb. 28, 1939 (18e).

If the board has once fixed the salary of the county auditor such salary may not be reduced during his term of office. OAG June 21, 1935 (22).

The county auditor cannot draw pay for services rendered in proceedings under Laws 1923, Chapter 345, as amended. OAG July 8, 1933.

To find the assessed valuation of property for county salary purposes, it is not necessary to go behind the determination by the tax commission. Lands which the state has acquired through rural credit foreclosures or settlements should not be included, but the \$100.00 exemption of personal property should. OAG Dec. 27, 1934 (104a-9).

Classification of counties for legislative purposes. 11 MLR 209.

384.151 AUDITORS IN COUNTIES OF LESS THAN 50,000 INHABITANTS.

HISTORY. 1945 c. 281 s. 1.

384.152 DUTIES OF COUNTY BOARD IN CERTAIN INSTANCES.

HISTORY. 1945 c. 281 s. 2.

384.153 LIMITATION UNDER LAWS 1943, CHAPTER 597.

HISTORY. 1945 c. 281 s. 3.

384.154 REPEAL.

HISTORY. 1945 c. 281 s. 5.

384.155 FEES IN ADDITION TO SALARY.

HISTORY. 1945 c. 281 s. 6.

384.16 CLERK HIRE IN CERTAIN COUNTIES; MINIMUM CLERK HIRE IN ALL COUNTIES.

HISTORY. 1911 c. 325 s. 1; 1915 c. 108 s. 1; M.S. 1927 s. 837-1.

In computing the assessed valuation for salary purposes, lands which the state has acquired through the rural credit department are exempted from taxation and should not be included; moneys and credits are personal property and should be included; and the \$100.00 personal property exemption should be included. As to value, it is not necessary to go behind the determination reported by the state tax commission. 1934 OAG 257, Dec. 27, 1934 (104a-9).

384.17 VERIFIED STATEMENT IN CERTAIN COUNTIES.

HISTORY. 1895 c. 291 s. 5; R.L. 1905 s. 493; G.S. 1913 s. 840; G.S. 1923 s. 838; M.S. 1927 s. 838.