

MINNESOTA STATUTES 1953 ANNOTATIONS

212.68 ELECTIONS; TOWNS, VILLAGES, CERTAIN CITIES

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Where there is a conflict between the requirements of a city charter of a city of the fourth class as to giving notices of elections and the requirement contained in MS 1949, Section 212.68, charter provision controls in view of provision contained in section 212.65 where a city has permanent registration in accordance with MS 1949, Chapter 201. There is no requirement that in fixing the date for election, council must so set the date that an opportunity be given for registration prior to the 20th day before the election. OAG May 27, 1950 (64-T).

212.68 POLLS; NOTICES OF ELECTION

Where there is a conflict between the requirements of a city charter of a city of the fourth class as to giving notices of elections and the requirement contained in MS 1949, Section 212.68, charter provision controls in view of provision contained in section 212.65 where a city has permanent registration in accordance with MS 1949, Chapter 201. There is no requirement that in fixing the date for election, council must so set the date that an opportunity be given for registration prior to the 20th day before the election. OAG May 27, 1950 (64-T).

212.70 GENERAL ELECTION LAWS TO APPLY

When a city desires to amend its charter the constitution requires a publication of the proposed amendment once each week for four successive weeks. Section 410.12 requires publication of a notice of election containing the complete amendment. Sections 205.63, 212.68, and 212.70 define the requirements for the election procedure. OAG Sept. 7, 1950 (58-M).

CHAPTER 215

PUBLIC EXAMINER

215.01 DEPARTMENT ESTABLISHED

HISTORY. 1878 c 83 s 2; GS 1878 c 6 s 90-92; GS 1894 s 411-414; 1905 c 223; RL 1905 s 1581; 1909 c 449 s 1; 1909 c 264; 1913 c 154; 1913 c 555 s 1; GS 1913 s 3227; GS 1923 s 3274; MS 1927 s 3274.

Where, in an investigation by the public examiner in connection with attempted bribery of the county attorney to permit defendant to conduct illegal gambling operations without interference, the person charged with attempted bribery was not exempt from prosecution because the public examiner secured a waiver of immunity from him and took his statement, since such investigation was not within the power or authority of the public examiner. State v Lowrie, 235 M 82, 49 NW(2d) 631.

215.02 PUBLIC EXAMINER; APPOINTMENT; SALARY, BOND

HISTORY. 1878 c 83 s 1; GS 1878 c 6 s 89; GS 1894 s 410; RL 1905 s 1580; 1907 c 409 s 1; 1909 c 449 s 1; 1913 c 400 s 4; GS 1913 s 3228; 1919 c 425 s 1; GS 1923 s 252, 3275; MS 1927 s 252, 3275; 1939 c 431 art 4 s 1; M Supp s 3286-8; 1949 c 739 s 15; 1951 c 713 s 20.

215.03 AUDIT

HISTORY. 1858 c 59 s 10; 1858 c 5 s 57; GS 1866 c 6 s 28; 1874 c 11 s 1; 1878 c 83 s 3; GS 1878 c 6 s 37, 91; 1883 c 155 s 1; 1885 c 41 s 1, 2; GS 1894 s 344, 412; 1901 c 140; RL 1905 s 50, 1582; 1909 c 449 s 1; GS 1913 s 92; GS 1923 s 96; 1925 c 150; Mason's 1927 s 96; 1953 c 14 s 1.

215.04 POWERS AND DUTIES OF PUBLIC EXAMINER

HISTORY. Amended, 1949 c 33 s 1.

215.05 DUTIES AS TO STATE OFFICES; INSTITUTIONS, PROPERTIES, INDUSTRIES, AND IMPROVEMENTS

HISTORY. 1878 c 83 s 3; GS 1878 c 6 s 91; GS 1894 s 412; 1901 c 122 s 14, 19; RL 1905 s 1582; 1909 c 499 s 1; 1913 c 555 s 3; GS 1913 s 3229; GS 1923 s 3276; MS 1927 s 1873, 3276; 1949 c 33 s 2.

215.08 INFORMATION COLLECTED FROM LOCAL GOVERNMENTS

Aggregate charges made for reimbursable examinations must be sufficient to pay all salaries and other expenses connected therewith, and liability for annual and sick leave and compensatory time incurred during the year should be considered an obligation of the fund and included as part of the salaries and other expenses for which a sufficient charge should be made for reimbursable examinations so as to reimburse the state therefor and prevent a deficit in the revenue fund at the end of each fiscal year. OAG July 29, 1948 (353-A-1).

215.09 ANNUAL REPORT

HISTORY. 1878 c 83 s 7; GS 1878 c 6 s 95; GS 1894 s 420; RL 1905 s 1589; 1909 c 449 s 1; 1907 c 128 s 1; 1913 c 555 s 12; GS 1913 c 555 s 12; GS 1913 s 3238; GS 1923 s 3285; 1927 s 3285; 1939 c 431 art 4 s 6; M Supp 1940 s 3286-13; 1945 c 338 s 1.

215.10 ACCOUNTING AND BUDGETING SYSTEM; INVESTIGATION; FORMS

HISTORY. 1878 c 83 s 3; GS 1878 c 6 s 91; GS 1894 s 412; RL 1905 s 1582; 1913 c 555 s 3; GS 1913 s 3229; GS 1923 s 3276; MS 1927 s 3276; 1939 c 431 art 4 s 7; M Supp s 3286-14; 1953 c 319 s 2.

Where the freeholders' petition for audit of the city was silent as to the period of time to be audited, the public examiner could conduct such examination as he deemed public interest demanded. OAG Nov. 3, 1951 (353-A-1).

215.11 EXAMINATION OF COUNTIES, FEES

HISTORY. 1878 c 83 s 2; GS 1878 c 6 s 91; GS 1894 s 412; RL 1905 s 1582; 1913 c 555 s 5; Mason's 1927 s 3278; 1931 c 125 s 1; 1931 c 246 s 1; Mason's Supp s 3278; 1945 c 392 s 1; 1949 c 33 s 3; 1951 c 57 s 1.

Section 215.11 imposes the duty upon the public examiner in respect to counties as that imposed upon him in respect to the state. He examines all records and acts of the counties relating to the receipts and disbursements of public funds and reports such examination. The county is required to pay to the state the total cost and expense of such examination, including the salary paid to the examiner. Whether the expense involved in the problem is necessary is a question of fact. The decision as to the amount is in the first instance within the discretion of the public examiner. If the amount charged is disputed by the county resort must be had to the courts for a decision. OAG March 27, 1951 (353-A-1).

The office of legislative post-auditor may be created and filled by the legislature for a term of such length as the legislature shall deem proper, provided the duties are made incident to legislative functions, but all the functions and duties of the public examiner cannot be transferred to a servant of the legislature because that would result in taking over by a servant of the legislature certain powers belonging to the executive department. The public examiner at present not only serves the legislature but serves the executive department in many particulars. The creation of a post-auditor selected by the legislature and transferring to him all the present duties of the public examiner would be an unconstitutional act. OAG April 13, 1953 (353-A-1).

There is no statute authorizing the public examiner to examine the records of the register of deeds and clerk of the district court to discover fees and emoluments of those offices to be used as a basis for the establishment of clerk hire. OAG March 12, 1953 (353-A-2).

215.12 CITIES OF FIRST CLASS

HISTORY. 1913 c 555 s 6; Mason's 1927 s 3279; 1949 c 206 s 1.

Aggregate charges made for reimbursable examinations must be sufficient to pay all salaries and other expenses connected therewith, and liability for annual and sick leave and compensatory time incurred during the year should be considered an obligation of the fund and included as part of the salaries and other expenses for which sufficient charges should be made for reimbursable examinations so as to reimburse the state therefor and prevent a deficit in the revenue fund at the end of each fiscal year. OAG July 29, 1948 (353-A-1).

The Miller Memorial Hospital of Duluth while operated and managed by a board of directors of trusts, created by Laws 1931, Chapter 56, is the property of the city of Duluth and the public examiner is required to audit the books and records thereof. OAG Aug. 14, 1953 (353-A-3).

215.13 CITIES OF SECOND, THIRD, OR FOURTH CLASS

HISTORY. 1909 c 264 s 1; 1913 c 154 s 1; 1913 c 555 s 7; Mason's 1927 s 3280; 1949 c 33 s 4; 1951 c 186 s 1.

215.14 SCHOOL DISTRICTS, TOWNS, AND VILLAGES

If the school board finds its necessary, the Brainerd special school district has power to employ a firm of consultants in public administration and finance to make a general survey of the operation of the school system and furnish its recommendations and without advertising for bids. The expense of such employment and the implementation of its recommendations is subject to the statutory control of the public examiner. OAG Dec. 18, 1947 (707-A-12).

215.15 Renumbered 270.083.

215.16 TESTIMONIAL POWERS

Privilege against self-incrimination; protection of. 34 MLR 1, 34.

Where inference was strong that defendants were real objects of investigation being conducted by public examiner and that they objected for that reason to being required to testify, but they yielded to insistence of public examiner and gave testimony which was asserted to have been false, the constitutional privilege and statutory immunity, if any, was for past offenses, not for such offenses as might be committed while testifying under the immunity, and, hence, defendants could not successfully plead immunity from prosecution for testifying falsely before the public examiner. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

Where, in an investigation by the public examiner in connection with attempted bribery of the county attorney to permit defendant to conduct illegal gambling operations without interference, the person charged with attempted bribery was not exempt from prosecution because the public examiner secured a waiver of immunity from him and took his statement, since such investigation was not within the power or authority of the public examiner. *State v Lowrie*, 235 M 82, 49 NW(2d) 631.

The statute providing that in every case in the statutes where it is provided that a witness shall not be excused from giving testimony tending to incriminate himself, no person shall be excused from testimony or producing any papers or documents on the ground that his testimony may tend to incriminate him or subject him to penalty or forfeiture, but he shall not be prosecuted or subjected to penalty or forfeiture, does not apply to an examination conducted under a statute providing that in all matters relating to official duties of the public examiner he shall have powers possessed by courts of law to issue subpoenas and cause them to be served and enforced. *State v Gensmer*, 235 M 72, 51 NW(2d) 680.

If the school board finds it necessary, the Brainerd special school district has power to employ a firm of consultants in public administration and finance to make a general survey of the operation of the school system and furnish its recommenda-

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PUBLIC EXAMINER 215.19

tions and without advertising for bids. The expense of such employment and the implementation of its recommendations is subject to the statutory control of the public examiner. OAG Dec. 18, 1947 (707-A-12).

215.17 REFUSAL TO ASSIST; PENALTY

One charged with attempted bribery of the county attorney to conduct illegal gambling operations was not exempt from prosecution because the public examiner secured a waiver of immunity from him and took his statement, since such investigation was not within the power or authority of the public examiner. *State v Lowrie*, 235 M 82, 49 NW(2d) 631.

215.19 EXAMINATION OF MUNICIPAL RECORDS PURSUANT TO PETITION BY FREEHOLDERS

HISTORY. 1909 c 264 s 5; 1929 c 259 s 1; Mason's Supp s 3286-1; 1937 c 415 s 1; 1951 c 185 s 1; 1953 c 689 s 1.

The duty rests upon the county auditor to determine the sufficiency of a petition for an examination by the public examiner of the books and records of a town; and an audit by the public examiner on a "fiscal year" basis is sufficient to comply with the law in the absence of a statutory provision to the contrary. Since the enactment of Laws 1947, Chapter 634, Section 24, the public examiner is required to collect the actual expenses of an audit of the books of the town and is not limited to \$10 per day as specified by section 215.21. *State v Town of Balkan*, 234 M 329, 48 NW(2d) 515.

An audit examination by the public examiner, under the provisions of section 215.19 or section 215.20, does not dispense with a charter requirement which imposes a duty on the city council to make an audit during January and February each year of the account books of the city. OAG July 18, 1951 (59-A-6).

As the statute is silent as to the scope of an audit to be performed by the public examiner upon the petition of freeholders, the examiner may conduct such an audit covering such period of time as he may deem demanded in the public interest. OAG Nov. 2, 1951 (352-A-1).

Examination of the books of the city by the public examiner is based upon the considerations specified in the above section, such examination is properly authorized, and payment for the examination must be made by the city. OAG April 6, 1951 (353-A-3).

Requests by individuals directed to the public examiner asking him to examine the affairs of a municipality must, in the case of a city, village, borough, or town, be signed by three freeholders for each 100 inhabitants thereof, and the number of signers must not be less than ten. A freeholder is one having title to real estate, the amount or value of his interest therein immaterial. OAG April 19, 1951 (353-A-3).

A petition directed to the public examiner for examination of the affairs of the school district must be by written request signed by a majority of the members of the governing body of the school district. The petition is placed with the clerk of the school district and the clerk must certify that the petition was signed by a majority of the members of the governing body and may forward the petition to the public examiner. OAG Oct. 20, 1952 (353-A-4).

The number of pupils mentioned in the specification includes nonresidents. A freeholder of the district, nonresident of the district, is eligible to sign the petition. In case where a man and wife own land in joint tenancy, each is considered a freeholder. OAG April 23, 1953 (353-A-4).

If the school board finds it necessary, the Brainerd special school district has power to employ a firm of consultants in public administration and finance to make a general survey of the operation of the school system and furnish its recommendations and without advertising for bids. The expense of such employment and the implementation of its recommendations is subject to the statutory control of the public examiner. OAG Dec. 18, 1947 (707-A-12).

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215.20 EXAMINATION OF RECORDS PURSUANT TO RESOLUTION OF GOVERNING BODY

HISTORY. 1929 c 259 s 2; Mason's Supp s 3286-2; 1943 c 188 s 1; 1953 c 689 s 2.

Where a home rule charter of the city of the fourth class gave to the city council "all powers possible for a municipal corporation to have under the constitution of the State of Minnesota," the city would have authority to employ a person who is competent to audit the books of the city even though such person is not a certified public accountant. OAG Sept. 14, 1948 (350-A-3).

The city of Benson has no authority to employ an accountant to audit the books where a member of the firm, who is a certified public accountant, is not a certified accountant in Minnesota. OAG Oct. 18, 1948 (355-A-3).

Periodic employment of a public accountant for accounting purposes in the private affairs of city council members does not disqualify him from auditing the accounts of the city of Redwood Falls unless the council determines that he is personally interested in the financial affairs of the city. The accountant for the city need not be a public accountant, notwithstanding the provisions of section 215.20. OAG Sept. 28, 1949 (353-A-3).

215.21 EXAMINATION, PAYMENT OF COST

HISTORY. 1929 c 259 s 3; Mason's Supp s 3286-3; 1949 c 33 s 5; 1951 c 187 s 1.

The duty rests upon the county auditor to determine the sufficiency of a petition for an examination by the public examiner of the books and records of a town; and an audit by the public examiner on a "fiscal year" basis is sufficient to comply with the law in the absence of a statutory provision to the contrary. Since the enactment of Laws 1947, Chapter 634, Section 24, the public examiner is required to collect the actual expenses of an audit of the books of the town and is not limited to \$10 per day as specified by section 215.21. *State v Town of Balkan*, 234 M 329, 48 NW(2d) 515.

A revolving fund established under the 1947 biennial appropriations act, providing for an adjustment of a schedule of charges for the auditing of books, records, and accounts of certain municipalities, so that the charges should be sufficient to cover all costs of examination, was a general, permanent law and not an appropriation act. It impliedly repeals the 1945 act limiting salary charges for examinations to \$10 per day. *State v City of Duluth*, M, 56 NW(2d) 416.

The revolving fund established under Laws 1947, Chapter 634, Section 24, became as permanent a law as was section 215.21, and is clearly inconsistent with it, inasmuch as it provides for reimbursement of larger fees and section 215.21 was impliedly repealed. *State v City of Duluth*, M, 56 NW(2d) 416.

Aggregate charges made for reimbursable examinations must be sufficient to pay all salaries and other expenses connected therewith, and liability for annual and sick leave and compensatory time incurred during the year should be considered an obligation of the fund and included as part of the salaries and other expenses for which sufficient charges should be made for reimbursable examinations so as to reimburse the state therefor and prevent a deficit in the revenue fund at the end of each fiscal year. OAG July 29, 1948 (353-A-1).

Since the enactment of Laws 1947, Chapter 634, Section 24, Clause (3), the public examiner in the collection of cost of reimbursable examinations is not controlled by the \$10 per diem limit set forth in section 215.21. OAG Nov. 22, 1949 (353-A-1).

The cost of auditing the books of the Hibbing water, light, power and building commission by the public examiner, at the request of the village council, may be spread as a special levy over and above the existing per capita limitation. OAG May 12, 1948 (353-A-3).

Under the provisions of Laws 1947, Chapter 634, Section 24, the public examiner may charge to the village the actual cost of making an authorized examination. OAG June 13, 1949 (353-A-3).

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RAILROAD AND WAREHOUSE COMMISSION 216.01

Where the proper number of freeholders requested examination of the city's books the examination is not unauthorized and should be paid for by the city and council members and have no personal liability. OAG April 6, 1951 (355-A-3).

Where the public examiner makes an audit of the village records, the village is liable for the cost thereof. OAG Jan. 14, 1953 (353-A-3).

If the school board finds it necessary, the Brainerd special school district has power to employ a firm of consultants in public administration and finance to make a general survey of the operation of the school system and furnish its recommendations and without advertising for bids. The expense of such employment and the implementation of its recommendations is subject to the statutory control of the public examiner. OAG Dec. 18, 1947 (707-A-12).

215.24 STATE AUDITOR TO CERTIFY AMOUNT DUE

If the village fails to pay the fees of the public examiner for costs of an examination made by him, machinery is provided under section 215.24 compelling auditor to spread the state's levy for the expenses of such examination regardless of and in addition to other levies, and such levy is not limited by per capita tax law, section 275.11. OAG Oct. 27, 1947 (353-A-3).

The legislature, by enacting section 275.44, at a session later than the one enacting section 215.24, did not manifestly intend to repeal section 215.24 but effect must be given to both sections, and the special provision in section 215.24 must be considered as an exception to the general provisions of section 275.44 so that an examination being made by the public examiner the cost thereof may be spread as a special levy over and above the \$50 per capita limitation. OAG May 12, 1948 (353-A-3).

Interest paid by a municipality on a public examiner's claim for reimbursable audit is allocated to the revolving fund created by Laws 1947, Chapter 634, Section 24. OAG Oct. 8, 1951 (454-H).

215.26 POST AUDIT; TAX LEVY

HISTORY. 1951 c 189 s 1; 1953 c 338 s 1.

Laws 1951, Chapter 189, authorizes the city of Virginia to levy taxes to pay a post audit made by the public examiner and this includes the audit of the water and light department of the city. OAG June 16, 1951 (353-A-3).

When the state auditor issues a draft as a medium of collecting the cost of an audit this cost includes the interest earned on the draft. OAG Aug. 11, 1952 (353-A-3).

Where the state auditor issues a draft as a medium of collecting the costs of an audit, the cost of the audit includes the interest earned on the draft notwithstanding the levy of the municipality to cover the cost of the audit under section 215.26. OAG Aug. 11, 1952 (353-A-3).

RAILROADS, WAREHOUSES, UTILITIES, GRAIN, LIVESTOCK

CHAPTER 216

RAILROAD AND WAREHOUSE COMMISSION

216.01 ELECTION; VACANCIES

HISTORY. 1871 c 22 s 1; 1874 c 26 s 1; 1875 c 103 s 1; GS 1878 c 6 s 67; 1885 c 188 s 1; 1887 c 10 s 9; GS 1878 Vol 2 (1888 Supp) c 6 s 771; GS 1894 s 387(a)-387(c); 1895 c 152 s 1, 2; 1899 c 39 s 1, 3; RL 1905 s 1953, 1954; 1911 c 140 s 1; GS 1913 s 4171, 4172; GS 1923 s 4628, 4629; MS 1927 s 4628, 4629.