

MINNESOTA STATUTES 1953 ANNOTATIONS

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RESIGNATIONS; VACANCIES; REMOVALS 351.01

The compensation for the use of a private automobile by county officers other than sheriffs or deputy sheriffs is 6 cents per mile. The board may fix the rate by a resolution but it is not necessary to do so, the matter being covered by statute. OAG Aug. 9, 1949 (104-A-8).

When the county attorney presents to the district judge a bill for allowance involving travel expense by the county attorney when using his own automobile and such disbursements are to be paid out of the county attorney's contingent fund, the district judge is controlled by section 350.11 without any action on the part of the county board. If the county attorney uses his automobile in the performance of his duties in litigation or in other work in which the county is interested where his reimbursement should be audited and allowed by the county board, the board is guided by the same section, section 350.11 and in any event he is paid out of the county attorney's contingent fund under the provisions of section 388.14. OAG Aug. 18, 1949 (121-C-4).

Section 375.06 allows mileage to the commissioner for committee work as an emolument of office, not as compensation or reimbursement for use of his own automobile in performance of duty. Section 350.11 does not apply. OAG July 29, 1947 (124-J).

Section 350.11 defines the compensation of employees of the county welfare board in using their personal automobile and no extra compensation may be allowed. OAG Jan. 6, 1950 (125-A-64).

The compensation for a member of the interim tax commission for using his car in his duties is limited to seven and one-half cents per mile. As to other expenses, members of the commission are allowed such amount as is necessarily incurred in the performance of their duties. In presenting their expense bill, the provisions of Laws 1953, Chapter 736, Section 6, must be complied with. OAG Dec. 31, 1953 (280-C).

When necessary for the county treasurer to use his own car when inspecting safety deposit boxes, he may charge five cents per mile mileage. OAG Jan. 26, 1948 (450-F-3).

Members of the veterinary examining board may be paid six cents per mile for the use of their automobiles in going to and returning from board meetings. OAG Aug. 24, 1949 (980-A-15).

Under the provisions of Laws 1949, Chapter 681, the mileage allowance for the personal automobiles of state officers and employees while engaged in state business is fixed at six cents per mile. OAG Aug. 1, 1949 (980-A-15).

The 1951 amendment did not state when it became effective and under the provisions of section 645.20 it took effect at the beginning of the next day following its final enactment and was effective at 12.01 a.m. on that date. OAG June 15, 1951 (980-A-15).

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351.01 RESIGNATIONS

HISTORY. RS 1851 c 10 s 1; PS 1858 c 10 s 1; GS 1866 c 9 s 1; GS 1878 c 9 s 1; GS 1894 s 891; RL 1905 s 2666; GS 1913 s 5722; GS 1923 s 6952; MS 1927 s 6952.

On June 30 the chairman of the county welfare board sent his resignation asking that it become effective on July 1. At a meeting of the board on July 9 the resignation was accepted, effective as of July 1. The former chairman was not a county officer on July 8 and a contract between the county and the firm, of which the former chairman was a member, was valid. OAG July 22, 1948 (90-B-3).

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A notary public may resign from his office at any time by placing his resignation in the hands of the governor. Thereafter he may be re-commissioned a notary public and perform the duties of that office by complying with the statutory duties of such appointment. OAG Sept. 15, 1952 (320-B).

The village council has authority to accept the resignation of the justice of the peace and appoint a successor for the balance of the unexpired term. OAG Oct. 30, 1952 (266-A-12).

351.02 VACANCIES

HISTORY. RS 1851 c 10 s 2; PS 1858 c 10 s 2; GS 1866 c 9 s 2; 1869 c 81 s 1; GS 1878 c 9 s 2; GS 1894 s 892; RL 1905 s 2667; GS 1913 s 5723; GS 1923 s 6953; MS 1927 s 6953.

A voluntary permanent removal by an alderman from the ward from which he was elected whereby he intentionally abandons his office creates a vacancy. He cannot legally serve out the term for which he was elected. If he does continue to serve and no successor is legally appointed, he would be an alderman de facto. The city council has the power to fill the vacancy. OAG Oct. 1, 1948 (63-A-11).

The removal of an alderman from the ward from which he was elected to another ward does not under the charter of the city of Wabasha cause a vacancy in the office. He may continue to serve. OAG March 28, 1949 (63-A-11).

On June 30 the chairman of the county welfare board sent his resignation asking that it become effective on July 1. At a meeting of the board on July 9 the resignation was accepted, effective as of July 1. The former chairman was not a county officer on July 8, and a contract between the county and the firm, of which the former chairman was a member, was valid. OAG July 22, 1948 (90-B-3).

A county official may resign at any time he wishes. OAG June 20, 1947 (125-A-33).

A vacancy occurring in the office of justice of the peace by reason of the failure of the person elected to qualify must be filled by the council or by the mayor for the unexpired term. OAG April 4, 1952 (266-A-12).

Where a commissioner of the housing authority of the City of Virginia moves to another part of the county outside of the housing authority area, such removal creates a vacancy in the office. Under the law the commissioner must have residence in the area of operation. OAG Aug. 13, 1953 (430).

Where a town supervisor failed to qualify within the time allowed by law and a vacancy was declared the vacancy could be filled by the remaining supervisors and the town clerk under the provisions of section 367.03 or at a special town meeting under section 212.03. OAG April 3, 1951 (437-A-21).

Failure to take the oath of office within the time prescribed by law does not ipso facto create a vacancy which will prevent an officer from qualifying thereafter, if it is done before any steps are taken to declare a vacancy. OAG April 3, 1951 (437-A-21).

Upon the organization of a village the town clerk and town supervisor who live within the village cease to be town officers by operation of law upon the selection and qualification of the first village officers. It is not necessary to file a resignation. Vacancies in town offices are filled by appointment under section 367.03, or by election under section 212.03; upon effective voluntary resignation of one town officer, if the appointment method of section 367.03 is followed, the remaining members of the board may fill the vacancy by appointment. OAG Nov. 2, 1953 (1436-P) (437-A-21).

Upon the organization of a village the town clerk and town supervisor who live within the village cease to be town officers by operation of law upon the selection and qualification of the first village officers. It is not necessary to file a resignation. Vacancies in town offices are filled by appointment under section 367.03, or by election under section 212.03; upon effective voluntary resignation of one town

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officer, if the appointment method of section 367.03 is followed, the remaining members of the board may fill the vacancy by appointment. OAG Nov. 2, 1953 (1436-P) (437-A-21).

As to town offices occupied by persons who become residents of the newly incorporated village, such offices become vacant when the office holders cease to be inhabitants of the election district for which they were elected. The vacancies may be filled by appointment pursuant to section 367.03. OAG Sept. 12, 1951 (440-F).

A public office becomes vacant when the incumbent has been found guilty by the verdict of the jury upon the trial of an indictment or information accusing him of an infamous crime. OAG Nov. 18, 1952 (490-D).

When a supervisor of a soil conservation district ceases to be an inhabitant of the district, a vacancy occurs. Such vacancy should be filled in accordance with the provisions of section 40.05, subdivision 4. OAG Jan. 21, 1950 (705-A-8).

A member of a village hospital board must be a resident of the village. OAG Nov. 16, 1949 (1001-H).

Where a vacancy occurs in the office of the town assessor the town board should fill the vacancy by the appointment of a town inhabitant. Where a vacancy occurs in the office of the town treasurer the board may fill the office by appointment or a special town meeting may be held. OAG March 24, 1952 (440-F) (12-C-2).

A justice of the peace holds an elective office. His office becomes vacant upon resignation. The village council may accept the resignation and may appoint a successor for the unexpired term. OAG Oct. 30, 1952 (266-A-12).

351.03 REMOVAL BY GOVERNOR

HISTORY. RS 1851 c 10 s 4, 5; PS 1858 c 10 s 4, 5; GS 1866 c 9 s 3; 1868 c 45 s 1; GS 1878 c 9 s 3; 1881 c 21 s 1; GS 1894 s 893; RL 1905 s 2668; 1913 c 462 s 1; GS 1913 s 5724; GS 1923 s 6954; MS 1927 s 6954.

County officials who permit the operation of slot machines in their county may be removed by the governor. OAG April 16, 1947 (475-B).

The only conviction of the incumbent of a public office which results in vacating the office must be either a conviction of an infamous crime or one involving a violation of the sheriff's official oath. Before the governor is authorized to act in the matter of the removal of the sheriff a proper petition must be filed with the governor. In the event of a vacancy in the office of the sheriff the county board may fill the vacancy. There is no provision of law empowering the county board to remove the sheriff. OAG March 30, 1948 (475-B).

Before the governor is authorized to remove a sheriff a proper petition must be filed with the governor showing that the sheriff has been guilty of malfeasance or nonfeasance in the performance of his duties. OAG March 30, 1948 (475-B).

351.05 VACANCY DURING RECESS OF LEGISLATURE

HISTORY. RS 1851 c 10 s 6; PS 1858 c 10 s 6, 8; GS 1866 c 9 s 4, 5; GS 1878 c 9 s 9, 10; GS 1894 s 899, 900; RL 1905 s 2670; GS 1913 s 5726; GS 1923 s 6956; MS 1927 s 6956.

351.06 APPOINTMENT; CONTINUANCE OF TERM; IMPEACHMENT

HISTORY. 1860 c 14 art 1 s 6; GS 1866 c 9 s 6; 1873 c 30 s 1; GS 1878 c 9 s 11, 12; 1879 c 53 s 1; GS 1894 s 901, 902; RL 1905 c 2671; GS 1913 s 5727; GS 1923 s 6957; MS 1927 s 6957.

When a vacancy occurs in the office of county commissioner the appointment should be made pursuant to section 351.06 and not under section 375.03. The appointee holds office until the next general election and until his successor is elected and has qualified. OAG April 28, 1950 (126-H).

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A commissioner appointed to fill a vacancy holds office until the next general election occurring after there is sufficient time to give the prescribed notice. He holds office until a successor has been elected and has qualified. Any eligible person, including the incumbent, may file as a candidate for that office in the primary. OAG March 19, 1952 (126-G).

Vacancy by death of a member of the county board occurring less than thirty days before the election is filled by appointment under the provisions of section 375.10. OAG Oct. 17, 1950 (126-H).

351.12 PAY TO EMPLOYEE ANNUAL LEAVE ALLOWANCE

The board of county commissioners does not have authority to pay vacation pay to a county officer even though the officer may have been entitled to a vacation prior to his death. Under this section allowances of this kind are made only to state employees. OAG Aug. 24, 1951 (125-A-33).

Whether or not an employee of a legislative commission is entitled to accumulated vacation leave benefits upon termination of his employment is a question of fact depending upon the terms of his employment. OAG May 28, 1951 (280-C).

The director of the tourist bureau whose salary was fixed by law, and who was in the unclassified service, may be paid for his 24 days accumulated leave allowance when transferred to the department of business research and development. OAG Sept. 8, 1947 (644-D).

The superintendents of the several state hospitals are employed upon an agreed salary for full time employment with a vacation of one month each year. If because of shortages of personnel it has been impossible for a superintendent to take his vacations annually, upon his resignation from state service he is entitled to pay for the two months of unused vacation. OAG Oct. 19, 1948 (644-D).

Employees of the department of rural credit who were not retained as employees after June 30, 1947, should be paid their accumulated vacation and overtime allowance out of the appropriation for the fiscal year ending June 30, 1947. OAG May 12, 1947 (644-T).

CHAPTER 352

STATE EMPLOYEES RETIREMENT ASSOCIATION

352.01 DEFINITIONS

HISTORY. 1929 c 191 s 1; 1931 c 351 s 1; 1933 c 326 s 1; 1935 c 238 s 1; 1939 c 432 s 1; Mason's Supp s 254-1; 1941 c 391 s 1; 1943 c 622 s 1; 1945 c 38 s 1; 1945 c 284 s 1, 2; 1947 c 631 s 2-6; 1949 c 644 s 2, 3; 1951 c 441 s 2-8; 1953 c 320 s 1.

The retirement board determines whether or not an employee is entitled to membership by the presence or absence of the symbol on the payroll abstract. OAG Sept. 22, 1948 (331-A-1).

A university professor who has withdrawn from the faculty retirement plan to become a member of the federal retirement system does not thereby become ineligible to draw an annuity from the state employees retirement association. OAG Aug. 9, 1949 (331-A-1).

A state employee may accept employment by a legislative interim committee without losing retirement privileges and allowances. OAG Aug. 29, 1952 (331-A-1).

Employees of state teacher colleges or of the University of Minnesota, employed on a yearly basis, and who may or may not receive compensation every month of the year, under the term "allowable service" are given credit for 12 months each year. OAG May 8, 1947 (331-A-2).