

## CHAPTER 387

## SHERIFF

## 387.01 BOND; OATH

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).

## 387.03 POWERS, DUTIES

HISTORY. Amended, 1951 c 302 s 1.

Where the right to enjoin payment of the salary annexed to a public office depends upon a determination of title to the office, and the title to the office is disputed and has not been determined in quo warranto proceedings, an injunction should not issue to restrain payment of salary. *Ryan v Hennepin County*, 224 M 444, 29 NW(2d) 385.

The protection, afforded the sheriff, from liability for malicious prosecution, and abuse of powers in consequence of his faithful discharge of duty to execute process fair on its face and emanating from a court having jurisdiction of the subject matter cannot be avoided by pleading that his performance of such duty resulted from conspiracy previously entered into, but such rule affords him no protection when he is a party to or complainant in causing wrongful issuance of process solely for his own benefit. *Hoppe v Klapperich*, 225 M 224, 28 NW(2d) 782.

No statutory authority exists for payment of compensation to a person assisting the sheriff in dragging for drowned persons. OAG July 28, 1952 (390-A-1).

The probation officer serves the juvenile court. If the sheriff performs these duties his fees must be those provided for the probation officer. OAG Jan. 23, 1948 (390-A-11).

A county may cooperate with a city within the county in the erection and operation of a broadcasting station, the services of which are to be made available to the police of the city and to the sheriff of the county. OAG Sept. 1, 1950 (785).

## 387.045 PISTOL RANGE; ESTABLISHMENT

HISTORY. 1953 c 367 s 1-3.

## 387.12 MAY CONVEY PRISONERS

A warden conveying a convict from Minnesota state prison to another penal institution in the state or to a court, acts as prison warden and not as a deputy sheriff and is not entitled to sheriff's mileage. OAG May 5, 1949 (342-G).

## 387.13 PROHIBITIONS

Eligibility to appointment to the position of deputy sheriff is not destroyed by the circumstances alone that the appointee is an attorney at law, but if an attorney is appointed as deputy sheriff and qualifies as such, limitations imposed by section 387.13 upon his practice as an attorney attach and those limitations imposed by statute are not restricted in an application to only those legal matters in con-

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nection with which the deputy sheriff or his principal has performed some official act or service. OAG July 18, 1951 (390-B-1).

## 387.14 DEPUTIES

Any person who is entitled to vote in Minnesota is eligible to hold the office of sheriff and no greater qualifications are required of the deputy sheriff than of a sheriff. The sheriff in his discretion may deputize and swear in local police agents of a railway company as special deputy sheriffs. OAG June 12, 1951 (390-B-1).

## 387.18 SALARIES IN LIEU OF FEES

As Laws 1953, Chapter 451, disregarded entirely the decision of the supreme court in *Hamlin v Ladd*, 217 M 249, it is held to be ineffective and the county board may fix the salary of the sheriff in accordance with the provisions of section 375.43 notwithstanding the enactment of Chapter 451. OAG June 18, 1953 (390-A-18).

The services of a sheriff in posting a notice in proceedings for the annexation of land to a school district under section 122.15 constitutes services to the county and are covered by a salary payable to him under section 387.18. OAG July 14, 1953 (390-C-8).

## 387.20 SALARIES

Under the provisions of section 387.20 the expenses of the sheriff in attending a law-enforcement conference called by the governor are legal charges against the county. OAG July 11, 1947 (104-A-6).

## 387.21 SALARY INCREASES

Section 387.21 is not unconstitutional and does not offend against the provisions of Minnesota Constitution Article III, Section 1. In determining the amount of the sheriff's salary the court is vested with wide discretion and on appeal has the power to fix the salary in an amount greater than that suggested by the county board. *Cahill v Beltrami County*, 224 M 564, 29 NW(2d) 444.

The sheriff's salary may not be decreased during his term. OAG March 6, 1953 (390-A-18).

## 387.22 JAILER DEPUTIES, COMPENSATION FIXED BY DISTRICT COURT

The duties of the office of sheriff do not usually require that he act as jailer but there is no reason why the office of sheriff and of jailer should not be held by the same person at the same time and compensated for each duty. OAG Jan. 13, 1951 (390-A-18).

In the event of riot or impending violation of the law, the sheriff may appoint as many deputies as he may require and may apply to a judge of the district court to determine upon and fix the compensation of such special deputies who shall be paid the compensation so fixed by the judge in the same manner as deputies in attendance upon terms of court. OAG May 13, 1948 (390-B-1).

## 387.23 DEPUTIES AND OTHERS; COMPENSATION IN SPECIAL CASES HISTORY. 1917 c 312 s 6; MS 1927 s 920-6; 1953 c 366 s 1.

Deputy sheriffs are entitled to payment at the rate of \$5 per day when aiding the sheriff in criminal matters or acting as guards, bailiffs, attendants for mentally ill, mentally deficient, epileptic, senile, and inebriate persons. OAG July 7, 1953 (390-B-2).

## 387.24 PAYMENT OF DEPUTY SHERIFF

Where the deputy sheriff's compensation is fixed by the court's order such determination is binding upon the county board, but the order may be reviewed by certiorari. OAG Jan. 24, 1947 (390-B-1).

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## 387.26 DEPUTIES ATTENDING COURT

HISTORY. 1893 c 153 s 1, 2; GS 1894 s 798, 799; RL 1905 s 561; MS 1927 s 922; 1941 c 468 s 1; 1953 c 525 s 1.

The sheriff may act as jailer and there is nothing incompatible between the two positions, nor the payment of his services in each. OAG Jan. 13, 1951 (390-A-18).

## 387.27 JAILERS, COMPENSATION

HISTORY. 1873 c 43 s 2; GS 1878 c 8 s 209; 1887 c 36; GS 1894 s 800; RL 1905 s 562; GS 1913 s 940; GS 1923 s 923; MS 1927 s 923.

387.28. Repealed, 1947 c 457 s 3.

## 387.29 REIMBURSEMENT FOR PUBLIC USE OF HIS AUTOMOBILE

HISTORY. 1947 c 88 s 1; 1949 c 499 s 1.

A sheriff may receive from the county for use of his automobile in the performance of his official duties for the county not to exceed ten cents per mile. OAG June 28, 1951 (390-A-12), OAG July 12, 1951 (390-A-12), OAG Feb. 15, 1952 (390-A-12).

In transporting juveniles to public institutions the sheriff acts as a probation officer and not in his capacity as sheriff, and when appointed by the court is entitled to the compensation prescribed by section 357.12. OAG May 23, 1947 (390-E-12).

## CHAPTER 388

### COUNTY ATTORNEY

#### 388.01 ELECTION; TERM; BOND

Statutory misdemeanors occurring within a city should be prosecuted by the city attorney; but, unless specially imposed upon him by statute, the county attorney is excused from such service. OAG May 3, 1949 (59-A-5).

388.03 Obsolete.

#### 388.05 DUTIES

HISTORY. 1860 c 5 s 2; 1864 c 65 s 4; GS 1866 c 8 s 181; GS 1878 c 8 s 212; GS 1894 s 803; RL 1905 s 565; MS 1927 s 926.

The county attorney is not obliged to prosecute statutory misdemeanors, unless the misdemeanor is of a class which it is made the duty of the county attorney by statute to prosecute. It is his duty to appear if the charge is a gross misdemeanor but not to prosecute common misdemeanors such as assault and battery or petit larceny. OAG May 3, 1949 (59-A-5).

There is no statute prohibiting the county attorney from appearing in trunk highway condemnation appeals for landowners or persons having an interest adverse to that of the state. OAG Nov. 16, 1953 (59-A-40).

The duties of the county attorney are purely statutory and are specified in section 388.05. OAG Feb. 19, 1949 (121-B-3).

It is not the duty of the county attorney to attempt collection of accounts due the county arising from the operation of a hospital. It is his duty to conduct litigation on behalf of the county if suit is brought thereon. OAG May 16, 1949 (121-B-4).