

MINNESOTA STATUTES 1953 ANNOTATIONS

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COUNTY ATTORNEY 388.05

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 Repealed, 1947 c 457 s 3.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).

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388.08 COUNTY ATTORNEY

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The county hospital board may not direct or manage litigation. That duty devolves upon the county attorney. OAG Sept. 22, 1953 (121-B-4).

The county attorney is obligated to conduct litigation on behalf of the county. There is no authority in law for extension of credit by the manager of a county hospital. If the county or its hospital has given credit and has accounts to collect, the county attorney has no obligation so far as collection thereof is concerned. OAG Sept. 30, 1953 (121-B-4).

If proceedings upon appeal involve the validity of any action taken by the county board in connection with the establishment of a cartway, the county attorney must appear and represent the county. OAG Nov. 26, 1952 (121-B-18).

A common school district which does not maintain a school within its boundaries but educates the pupils of the district at schools outside its boundary, must provide transportation for such pupils. The cost of transportation is paid in part by the school district and the balance from state public funds. The revenue from both sources is derived from taxation. A large percentage of the pupils are transported to parochial schools. Should it be determined that public funds are being wrongfully disbursed the following laws may apply: (1) if officials disburse public funds without authority of law a forfeiture may be imposed (126.11); (2) should public officers wilfully disobey the law they would be guilty in some cases of a felony and in others of a gross misdemeanor (620.01, 620.02); (3) as the duties of the county attorney are statutory and the statute has imposed no duties upon him applicable to the recent situation, the duty of prosecution is not imposed upon him but it is his duty to appear for the county in all cases in which the county is a party. (S. 388.05). State officers have no duty to perform. (S. 128.087, 128.088). A taxpayer may bring a taxpayer's suit under section 126.11 in the manner outlined in Regan v Babcock, 196 M 243. OAG Dec. 13, 1949 (494-B-23) (121-B-20).

It is the duty of the county attorney to advise public officers that proposed conduct on their part is unauthorized. It is not the county attorney's function to advise public officers what they may do to protect themselves against the consequences of unauthorized acts. OAG Aug. 1, 1947 (166-A-7).

A school survey committee may not employ legal counsel to represent it before the appeal board. It is not the legal duty of the county attorney to represent the survey committee upon appeal. OAG July 29, 1949 (170-J).

388.08 PROHIBITIONS

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

388.09 OTHER ATTORNEY EMPLOYED

HISTORY. RS 1851 c 8 art 5 s 6; PS 1858 c 7 s 71; 1860 c 5 s 4; 1862 c 31 s 1; GS 1866 c 8 s 183; 1875 c 29 s 1; GS 1878 c 8 s 213a; GS 1894 s 811; 1895 c 282; RL 1905 s 569; MS 1927 s 930.

388.10 ASSISTANTS

HISTORY. Amended, 1951 c 117 s 1.

A county attorney may be in partnership with a person who is city attorney and an assistant county attorney may accept employment from the city not incompatible with his office. OAG Feb. 25, 1948 (358-A-1).

388.105 CLERK HIRE

HISTORY. 1941 c 483; 1949 c 597 s 1.

Statute authorizing county board to appropriate not to exceed \$720 per year to provide clerk hire for county attorney is permissive and not mandatory, and no appeal will lie from action of county board in allowing or refusing to allow clerk

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COUNTY SURVEYOR 389.013

hire for county attorney's office. The right to appeal is statutory. *Wallace v County Board of Commissioners*, 227 M 212, 35 NW(2d) 343.

Where the county attorney employs a clerk whose wages are paid in part by the county, the county part of the salary is paid directly to the employee and not to the county attorney. OAG Dec. 15, 1953 (121-A-4).

388.11 LAW PARTNER NOT TO DEFEND

HISTORY. 1879 c 88 s 1; GS 1878 Vol 2 (1888 Supp) c 8 s 213b; GS 1894 s 812; RL 1905 s 570; MS 1927 s 931.

Attorney conducting trial where partner is a witness. 36 MLR 155.

The law partner of a municipal judge may act as city attorney. OAG April 30, 1948 (306-A-5).

388.14 CONTINGENT FUND; EXPENSES

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, 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).

388.15 Renumbered 388.15, subdivision 1.

388.16 Renumbered 388.15, subdivision 2.

388.15 FUNDS FOR INVESTIGATION

HISTORY. 1925 c 264 s 1, 2; MS 1927 s 934-1, 934-2.

388.17 Repealed, 1949 c 597 s 5.

388.18 COMPENSATION SCHEDULE, SALARIES

HISTORY. 1945 c 525 s 1, 2; 1949 c 597 s 2, 3, 4; 1951 c 327 s 6.

CHAPTER 389

COUNTY SURVEYOR

389.01 ELECTION; TERM; BOND

HISTORY. RS 1851 c 8 art 7 s 1, 8; 1853 c 2 s 1; PS 1858 c 7 s 83, 90; GS 1866 c 8 s 199, 206; 1875 c 30 s 1; GS 1878 c 8 s 230, 238; 1881 c 46 s 1; 1887 c 32; 1889 c 56, 175; GS 1894 s 829, 837; RL 1905 s 575; 1913 c 458 s 1, 2; 1915 c 168 s 1, 2; MS 1927 s 820, 821, 936.

389.013 RAMSEY COUNTY, OFFICE OF COUNTY SURVEYOR ABOLISHED

HISTORY. 1953 c 509 s 2.