

## CHAPTER 388

### COUNTY ATTORNEY

388.01 Election; qualifications; term; bond.  
 388.02 Justice of the peace ineligible.  
 388.051 Duties.  
 388.08 Prohibitions.  
 388.09 Other attorney employed.  
 388.10 Assistants.  
 388.103 Assistants and deputy sheriffs.  
 388.11 Law partner not to defend.  
 388.12 Attorney to assist.

388.13 Render account; pay over moneys.  
 388.14 Contingent fund; expenses.  
 388.15 Funds for investigation.  
 388.18 Compensation schedule, salaries.  
 388.19 County attorneys council.  
 388.20 Executive director.  
 388.21 Full time position; establishment.  
 388.22 Salary; appeal.

#### 388.01 ELECTION; QUALIFICATIONS; TERM; BOND.

There shall be elected in each county a county attorney who shall be learned in the law, and whose term of office shall be four years and until his successor qualifies. Before entering upon his duties he shall give bond to the state in the penal sum of \$1,000, to be approved by the county board, conditioned that he will faithfully and impartially discharge the duties of his office and pay over without delay to the county treasurer all moneys which come into his hands by virtue thereof, which bond and his oath shall be filed for record with the county recorder.

**History:** *RL s 563; 1943 c 355 s 1; 1959 c 189 s 1; 1965 c 749 s 1; 1973 c 524 s 6; 1976 c 181 s 2 (924)*

#### 388.02 JUSTICE OF THE PEACE INELIGIBLE.

No person who holds the office of justice of the peace shall be eligible to the office of county attorney and no person shall hold both offices at the same time.

**History:** *RL s 564 (925)*

**388.03** [ Obsolete ]

**388.04** [ Repealed, 1969 c 649 s 2 ]

**388.05** [ Repealed, 1979 c 233 s 42 ]

#### 388.051 DUTIES.

It is the duty of the county attorney to:

- (a) Appear in all cases in which the county is a party;
- (b) Give opinions and advice, upon the request of the county board or any county officer, upon all matters in which the county is or may be interested, or in relation to the official duties of the board or officer;
- (c) Prosecute felonies, including the drawing of indictments found by the grand jury, gross misdemeanors and, to the extent prescribed by law, violations of misdemeanors, municipal ordinances, charter provisions and rules;
- (d) Attend before the grand jury, give them legal advice and examine witnesses in their presence;
- (e) Request the clerk of court to issue subpoenas to bring witnesses before the grand jury or any judge or judicial officer before whom he is conducting a criminal hearing;
- (f) Attend any inquest at the request of the coroner; and
- (g) Appear, when requested by the attorney general, for the state in any case instituted by the attorney general in his county or before the United States land office in case of application to preempt or locate any public lands claimed by the state and assist in the preparation and trial.

**History:** 1979 c 233 s 3

**388.06** [ Repealed, 1965 c 749 s 5 ]

**388.07** [ Repealed, 1965 c 749 s 5 ]

**388.08 PROHIBITIONS.**

No county attorney or assistant county attorney shall receive or accept any fee or reward from, or which is paid or given on behalf of, any one for services rendered or to be rendered in the prosecution or conduct of any official duty or business. No person as an attorney who directly or indirectly advises in relation to, or aids or promotes the defense of, any action or proceeding in any court or prosecution which is carried on by a person as county attorney, with whom such attorney is directly or indirectly connected, or who, having himself prosecuted any action or proceeding as county attorney, shall afterwards advise in relation to or take any part in the defense thereof; nor shall any attorney be allowed to prosecute or assist such county attorney or assistant in any criminal prosecution or other official action where such attorney is interested in any other action or matter pending or to be commenced in which a recovery depends upon the matter involved in such prosecution or other official action. Any person offending against any provision of this section shall be guilty of a misdemeanor.

**History:** RL s 568 (929)

**388.09 OTHER ATTORNEY EMPLOYED.**

When there is no county attorney the county board may employ any competent attorney to perform such legal services for the county as may be necessary. The board may employ an attorney other than the county attorney either to assist him or to appear for the county or any officer thereof in any action in which such county or officer in his official capacity is a party, or to advise the board or its members in relation thereto, or in relation to any other matter affecting the interests of the county, and may pay such attorney out of the funds of the county.

**History:** RL s 569 (930)

**388.10 ASSISTANTS.**

The county attorney of any county in this state who has no assistant is hereby authorized to appoint, with the consent of the county board of the county, one or more attorneys to assist him in the performance of his duties. Each assistant shall have the same duties and be subject to the same liabilities as the county attorney and hold office during the pleasure of the county attorney. Each assistant shall be appointed in writing and his oath and appointment shall be filed for record with the county recorder. The county board of such county shall fix the salary of each assistant county attorney appointed pursuant to the provisions of this section, and the salary when so fixed by such county board shall thereafter be paid by the county in equal monthly installments upon the warrant of the county auditor during the period for which such salary is so fixed or during such portion thereof as an assistant county attorney continues in office.

**History:** 1921 c 444 s 1; 1925 c 15 s 1; 1941 c 96 s 1; 1951 c 117 s 1; 1965 c 749 s 2; 1967 c 718 s 1; 1976 c 181 s 2 (930 1/2)

**388.103 ASSISTANTS AND DEPUTY SHERIFFS.**

The board of county commissioners of any county in which a training camp is established for active training of military or naval forces, or of any adjoining county, may declare an emergency and, in addition to any salaries heretofore authorized by law for assistant county attorneys and deputy sheriffs, may autho-

rise, fix, and pay the salaries of such additional assistant county attorneys and deputy sheriffs as the board deems necessary during such emergency.

**History:** 1941 c 347

**388.105** [ Repealed, 1967 c 718 s 5 ]

**388.11 LAW PARTNER NOT TO DEFEND.**

No law partner of the county attorney, or attorney having his office with him, shall appear for the defendant in any criminal action which it is the duty of the county attorney to prosecute.

**History:** RL s 570 (931)

**388.12 ATTORNEY TO ASSIST.**

The judge of any district court may by order entered in the minutes at any term of court appoint an attorney of such court to act as, or in the place of, or to assist, the county attorney at such term, either before the court or grand jury. The person so appointed shall take the oath required by law of county attorneys and thereupon may perform all his duties at such term of court, but shall receive no compensation where the county attorney is present at such term, except by his consent, and to be paid from his salary.

**History:** RL s 571 (932)

**388.13 RENDER ACCOUNT; PAY OVER MONEYS.**

On or before January first, in each year, the county attorney shall file in the office of the county auditor a verified account of all moneys received by him during the preceding year by virtue of his office specifying therein the name of the person from whom received, the amount paid by each and on what account; and, unless previously paid, shall at the same time pay over such moneys to the county treasurer, and take duplicate receipts therefor, one of which he shall file with the county auditor. If he shall refuse or neglect to account for and pay over any moneys so received, the auditor shall cause an action to be instituted upon his bond to recover the same, and damages for failure to account.

**History:** RL s 572 (933)

**388.14 CONTINGENT FUND; EXPENSES.**

The county board may set apart yearly a sum, not exceeding \$3,000, as a contingent fund for defraying necessary expenses not especially provided for by law, in preparing and trying criminal cases, conducting investigations by the grand jury, and paying the necessary expenses of the county attorney incurred in the business of the county. All disbursements from such fund shall be made upon written request of the county attorney by auditor's warrant, countersigned by a judge of the district court. Any balance remaining at the end of the year shall be transferred to the revenue fund.

**History:** RL s 574; 1909 c 233 s 1; 1917 c 307; 1965 c 749 s 4 (934)

**388.15** MS 1949 [ Renumbered 388.15, subdivision 1 ]

**388.15 FUNDS FOR INVESTIGATION.**

Subdivision 1. **Appropriation.** The county board of any county in this state, upon the request of the county attorney of such county, may appropriate, for the use of the county attorney, such funds, not otherwise appropriated, as he deems necessary for the investigation and the procuring of evidence when he has reason to believe that any closed bank, savings bank, trust company, or building and loan association incorporated under the laws of the state of Minnesota, has violated any provision of law. Such amount shall be in addition to the contingent

fund of such county now allowed by law and shall be disbursed only on order of a district judge of the district in which any such county is located, approving such expenditure.

Subd. 2. **Borrowing money.** The county board, if no funds are available, may borrow such money as it deems necessary to carry out the provisions of this section, but such loan shall not run over one year.

**History:** 1925 c 264 s 1,2 (934-1, 934-2)

**388.16** [ Renumbered 388.15, subd 2 ]

**388.17** [ Repealed, 1949 c 597 s 5 ]

### **388.18 COMPENSATION SCHEDULE, SALARIES.**

Subdivision 1. **Minimum salaries.** The county attorneys in all counties in this state with less than 100,000 inhabitants, according to the 1960 federal census shall receive as compensation for services rendered by them for their respective counties annual salaries not less than the following amounts based on the population according to the then last preceding federal census:

- (a) In counties with less than 10,000 inhabitants \$4,000;
- (b) In counties with 10,000 but less than 20,000 inhabitants \$5,000;
- (c) In counties with 20,000 but less than 30,000 inhabitants \$6,000;
- (d) In counties with 30,000 but less than 40,000 inhabitants \$7,000;
- (e) In counties with 40,000 or more inhabitants \$8,000.

Subd. 2. **Set by board.** The county board of each of the counties specified in subdivision 1 annually shall set by resolution the salary of the county attorney which shall be paid to the county attorney at such intervals as the board shall determine but not less often than once each month. At the January meeting prior to the first date on which applicants may file for the office of county attorney the board shall set by resolution the minimum salary to be paid the county attorney for the term next following. In the event a vacancy occurs in the office of county attorney the board may set the annual salary for the remainder of the calendar year at an amount less than was set for that year. The board in any case specified in this section may not set the annual salary at an amount less than the minimums provided in subdivision 1 but it may set the salary in excess of such minimums. The salary of the county attorney shall not be reduced during the term for which he is elected or appointed.

Subd. 3. MS 1949 [ Repealed, 1951 c 327 s 6 ]

Subd. 3. MS 1974 [ Repealed, 1975 c 301 s 16 ]

Subd. 4. **Effect upon certain sections.** Subdivisions 1 to 3 shall not be construed as repealing any existing law which provides for a higher minimum salary in any county than the amount provided in subdivision 1, but shall be deemed to supersede the provisions of any act setting a maximum salary for the county attorney in any of the counties specified in subdivision 1.

Subd. 5. **Budget for office.** The county board by resolution shall provide the budget for (1) the salary of the county attorney, any assistant county attorneys and employees in the county attorney's office; (2) other expenses necessary in the performance of the duties of said office and (3) the payment of premiums of any bonds required of the county attorney and any assistant county attorney or employee in the county attorney's office and the board is authorized to appropriate funds therefor.

Subd. 6. **Appeal from resolution of the board.** The county attorney, if dissatisfied with the action of the county board in setting the amount of his salary or the amount of the budget for the office of county attorney, may appeal to the district court on the grounds that the determination of the county board in set-

ting such salary or budget was arbitrary, capricious, oppressive or in unreasonable disregard for the responsibilities and duties of said office. The appeal shall be taken within 15 days after the date of the resolution setting such salary or budget by serving a notice of appeal on the county auditor and filing same with the clerk of the district court. The county board may retain special counsel pursuant to section 388.09 to represent it in the appeal proceedings. The court either in term or vacation and upon 10 days notice to the chairman of the board shall hear such appeal. On the hearing of the appeal the court shall review the decision or resolution of the board in like manner as though reviewed by certiorari, except new or additional evidence may be taken. The court may order the officer appealing and the board to submit briefs or other memoranda and may dispose of the appeal on such writings. If the court shall find that the board acted in an arbitrary, capricious, oppressive or unreasonable manner it shall remand the matter to the county board for further action consistent with the court's finding.

**History:** 1945 c 525 s 1,2; 1949 c 597 s 2-4; 1951 c 327 s 6; 1967 c 718 s 2

### 388.19 COUNTY ATTORNEYS COUNCIL.

Subdivision 1. **Creation.** There is hereby created a county attorneys council hereinafter designated as the "council" to be composed of the county attorney from each of the 87 counties and the attorney general of the state of Minnesota. The members shall meet annually in November of each year and, commencing at the annual meeting in November 1973, shall elect a president, a president-elect, a secretary, and a treasurer, and such other officers and directors as the county attorneys council shall determine. Each of these officers shall hold office for a term of one year and until their successors are elected and qualified. The county attorneys council may adopt such rules as are necessary for the carrying out of its duties. A county attorney may designate in writing an assistant who may act in his stead in carrying out any function of the county attorneys council except serving as an officer. The county attorneys council may acquire and hold property, accept gifts and expend any such sums so received. The county attorneys council may charge fees for seminars, workshops and publications it conducts and produces.

Subd. 2. **First meeting.** The first meeting of the county attorneys council shall be called by the attorney general within 60 days of final enactment of Laws 1973, Chapter 564. The attorney general, the president, president-elect, secretary, treasurer and immediate past president of the Minnesota County Attorneys Association shall be the officers of the council until the meeting in November 1973, and shall be the board of governors and shall exercise all the powers and duties of the board of governors until the annual meeting in November 1973.

Subd. 3. **Governing body.** The board of governors of the county attorneys council shall be composed of the president, the president-elect, the secretary, the treasurer, the immediate past president and the attorney general. A vacancy in any office of the board of governors of the county attorneys council shall be filled by appointment of the remaining members of the board of governors of the county attorneys council.

The board of governors shall have such authority and duties as delegated to it by the council.

Subd. 4. **Duties of the council.** The council shall perform such functions as in its opinion shall strengthen the criminal justice system and strengthen and increase efficiency in county government in Minnesota, including but not limited to the following:

(a) Provide training and continuing education for county attorneys and assistants.

(b) Gather and disseminate information to county attorneys including changes in the law by regulation, case decisions, and legislative enactment.

(c) Coordinate with law enforcement, courts and corrections providing interdisciplinary seminars to augment effectiveness of the system.

**History:** 1973 c 564 s 1; 1979 c 337 s 22

### 388.20 EXECUTIVE DIRECTOR.

Subdivision 1. **Appointment.** In order to carry out the duties of the county attorneys council, the council shall employ an executive director, hereinafter referred to as the director, which office is hereby created. The board of governors of the county attorneys council shall appoint and supervise the executive director.

Subd. 2. **Term, vacancy.** The term of office of the director shall be six years and until his successor is appointed and qualified. The director shall be learned in the law. The director shall be in the unclassified service of the state. The term of office for the first director shall commence on July 1, 1973. Vacancies in the office of director shall be filled for the unexpired term by the appointing authority. The director shall devote full time to his duties and shall not engage in the private practice of law.

Subd. 3. **Employees, office space.** The director may hire such employees as are necessary to carry out his duties. Such employees shall be in the unclassified service of the state.

The commissioner of administration shall provide the director with suitable office space.

Subd. 4. **Duties.** The director shall carry out the duties assigned to the county attorneys council by Laws 1973, Chapter 564 and shall perform such other functions as may be assigned to him from time to time by the county attorneys council.

**History:** 1973 c 564 s 2 subds 1-4

### 388.21 FULL TIME POSITION; ESTABLISHMENT.

Subdivision 1. The county board of any county in Minnesota by resolution may provide that the office of the county attorney shall be a full time position and require that one elected to the office not engage in the private practice of law.

Subd. 2. If the office of county attorney is made a full time position, the action shall be taken at the January meeting prior to the first date on which applicants may file for the office of county attorney. The salary shall be set by the county board as provided in section 388.18, subdivision 2.

**History:** 1974 c 262 s 1

### 388.22 SALARY; APPEAL.

Subdivision 1. The county board shall pay the salary of the county attorney at intervals as the board shall determine but not less than once each month.

Subd. 2. The county board by resolution shall provide the budget for the salary of the full time county attorney.

Subd. 3. The county attorney, if dissatisfied with the action of the county board in setting the amount of his salary, may appeal on the same grounds and in the same manner as provided in section 388.18, subdivision 6.

**History:** 1974 c 262 s 2