

GENERAL STATUTES

OF

MINNESOTA

1913

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5705. Great seal—Description, where deposited—The seal heretofore used as the seal of the state is declared to be the seal thereof; and a description of the same, in writing, shall be recorded with the secretary of state, and remain a public record in his office. (2653)

5706. Form of official seals—Upon every seal of a court or officer authorized or required to have a seal there shall be engraved the same device that is engraved on the seal of the state, and the name of the court or office in which it is to be used. Such seals shall be one and five-eighths inches in diameter. (2654)

40-65, 70, 41+459.

5707. Temporary seal, when used—When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal, or of any device by way of seal, until one is provided. (2655)

CHAPTER 46

NOTARIES PUBLIC

5708. Appointment—Fee—The governor may appoint and commission as notaries public, by and with the advice and consent of the senate, as many citizens of this state, over the age of twenty-one years, resident in the county for which appointed, as he deems necessary. The fee for each commission shall not exceed three dollars, and shall be paid to the governor's private secretary. (2656)

5709. Term—Bond—Oath—Every notary so commissioned shall hold office for seven years, unless sooner removed by the governor or the district court; and, before entering upon the duties of his office, he shall give a bond to the state in the sum of two thousand dollars, to be approved by the governor, conditioned for the faithful discharge of the duties of his office, which, with his oath of office, shall be filed with the secretary of state. (2657)

Liability on defective bond (55-187, 56+751, 43 Am. St. Rep. 487).

Liability where notary certifies to acknowledgment without personal knowledge as to identity of party (100-289, 110+966).

5710. Seal—Register—Every notary shall provide himself with an official seal, with which he shall authenticate his official acts, and upon which shall be engraved the arms of this state, the words "Notarial Seal," and the name of the county in which he resides. Such seal, with his official register, shall be exempt from execution, and, on his death or removal from office, such register shall be deposited with the clerk of the district court of his county. (2658)

Official acts of notary void unless authenticated by seal (28-118, 9+636; 39-102, 38+801, 12 Am. St. Rep. 619; 81-225, 83+835. See 36-9, 29+338, 1 Am. St. Rep. 632; 36-243, 31+211; 49-235, 51+920).

5711. Powers—Every such notary shall have power throughout the state, while residing in the county for which he was appointed, to administer all oaths required or authorized by law, to take and certify depositions, acknowledgments of deeds, and other instruments, and to receive, make out, and record notarial protests. (2659).

See following section.

May administer oath required by ordinance (84-281, 87+764). Attorney in action, if notary, may take affidavit of service of summons therein (18-90, 72).

Taking proof or acknowledgment ministerial, and not judicial (100-289, 110+966).

5712. Same—Date of expiration of commission to be indorsed—Each notary public so appointed, commissioned and qualified, shall have power throughout this state, while residing within the county for which he was appointed, to administer all oaths required or authorized to be administered in this state; to take and certify all depositions to be used in any of the courts of this state; to take and certify all acknowledgments of deeds, mortgages, liens, powers of attorney and other instruments in writing, and to receive, make out and record notarial protests. Every notary public, taking an acknowledgment of an instrument, taking a deposition, administering an oath,

or making a notarial protest, shall, immediately following his signature to the jurat or certificate of acknowledgment, indorse the date of the expiration of his commission; such indorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form: My commission expires _____, 19—. (G. S. 1894 § 2271, amended '05 c. 48 § 1)

Historical—G. S. 1894 § 2271 was G. S. 1866 c. 26 § 4, which was repealed by § 9428; its provisions being incorporated in the preceding section. So far as the above section differs from the Revised Laws, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

5713. Record of commission—Certificates—The commission of every notary shall be recorded in the office of the clerk of the district court of the county for which he is appointed, in a book kept for that purpose, on payment of a fee of one dollar; and thereafter such clerk, when requested, shall certify to his official acts in the same manner and for the same fees allowed by law for similar certificates to authenticate acts of justices of the peace. (2660)

5714. Notary in detached county—Powers—That in any county which has heretofore been detached from another county of this state, and which has been newly created and organized, any notary public residing in such newly created and organized county, who was a resident of the county from which such new county was detached and created shall have the same powers during the unexpired term of his appointment as such notary public which he was authorized by law to exercise under the commission issued to him as a resident of the county from which said new county was detached and created, and within which he was originally appointed such notary public; and all acts heretofore done by any such notary public, while residing in said newly created and organized county, otherwise in conformity of law, are hereby declared to be legal and valid and to the same effect as if said notary public had been originally commissioned as a resident of said newly created and organized county; provided, that the provisions of this section shall not apply to any action or proceeding now pending in any court in this state. ('07 c. 323 § 1)

5715. Same—Record of commission—Such notary public so residing in said newly created and organized county shall have his commission as such notary public recorded by the clerk of the district court of said newly created and organized county in which he resides, or of the county to which said newly created county is attached for judicial purposes as provided in section two thousand six hundred sixty, Revised Laws 1905 [5713], and when so recorded shall be entitled to the same certificate of and from the clerk of said district court as provided in said section two thousand six hundred sixty, Revised Laws 1905 [5713]. ('07 c. 323 § 2)

5716. Same—Seal—Such notary shall also immediately upon the adoption of this act, provide himself with an official seal as provided in and in conformity with section two thousand six hundred fifty-eight, Revised Laws 1905 [5710]. ('07 c. 323 § 3)

5717. Misconduct—Any notary who shall exercise the duties of his office after the expiration of his term, or when otherwise disqualified, or who shall append his official signature to acknowledgments or other documents when the parties executing the same have not appeared before him, shall be guilty of a misdemeanor. (2661)

Cited (100-289, 110+966).

5718. Protests—Every notary protesting any bill of exchange or promissory note for non-acceptance or non-payment shall give notice thereof in writing to each party protested against, immediately after such protest is made; and such notice may in all cases be given by depositing the same in the post-office, postage paid, and directed to the party protested against, at his reputed place of residence; and the notary shall, in such instrument of protest, certify to the time and manner of service of such notice upon the several parties protested against, and shall make a record of such instrument of protest in his

official register, which record, or a certified copy thereof, shall be prima facie evidence of the facts therein contained. (2662)

3-323, 227; 7-426, 341, 82 Am. Dec. 105; 16-68, 56; 28-337, 9+872.

See §§ 5901-5930.

5719. Instrument of protest as evidence—The instrument of protest of any notary of this state, or of any other state or territory of the United States, accompanying any bill of exchange or promissory note which has been protested by such notary for non-acceptance or for non-payment, shall be received in all the courts of this state as prima facie evidence of the facts therein certified; but any party may contradict such certificate by other evidence. (2663)

7-426, 341; 16-68, 56; 17-209, 183, 10 Am. Rep. 161; 19-396, 342; 28-337, 9+872; 31-329, 17+863; 61-291, 63+739; 69 Fed. 798, 16 C. C. A. 425.

Cited (98-302, 108+272).

See §§ 5964-5972.

5720. Taking depositions—In taking depositions, he shall have the same power to compel the attendance of and to punish witnesses for refusing to testify which may be vested by law in justices of the peace, and all sheriffs and constables shall serve and return all process issued by such notaries in taking depositions. (2664)

5721. Removal from office—Every notary who shall charge or receive a fee or reward for any act or service done or rendered by him under this chapter greater than the amount allowed by law, or who dishonestly or unfaithfully discharges his duties as notary, shall, on complaint filed and substantiated as in other civil cases in the district court of the county in which he resides, be removed from office by such court. The fact of such removal shall thereupon be certified by the clerk to the governor, and the person so removed shall thereafter be ineligible to such office. (2665)

CHAPTER 47

RESIGNATIONS—VACANCIES—REMOVALS

5722. Resignations—Resignations shall be made:

1. By incumbents of elective offices, to the officer authorized by law to fill a vacancy in such office by appointment, or to order a special election to fill the vacancy.

2. By appointive officers, to the body, board, or officer appointing them, unless otherwise specially provided. (2666)

5723. Vacancies—Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent.

2. His resignation.

3. His removal.

4. His ceasing to be an inhabitant of the state, or, if the office is local, of the district, county, city, or village for which he was elected or appointed, or within which the duties of his office are required to be discharged.

5. His conviction of any infamous crime, or of any offence involving a violation of his official oath.

6. His refusal or neglect to take the oath of office, or to give or renew his official bond, or to deposit or file such oath or bond within the time prescribed.

7. The decision of a competent tribunal declaring his election or appointment void.

8. The death of the person elected or appointed to fill a vacancy, or for a full term, before he qualifies, or before the time when by law he should enter upon the duties of the office to which he was elected or appointed, in which case the vacancy shall be deemed to take place at the time when his term of office would have begun had he lived. (2667)

Subd. 1 (15-198, 153). Subd. 4 (105-399, 117+615). Subd. 5 (21-80, 84, 18 Am. Rep. 380). Subd. 6 (29-398, 13+181; 83-194, 86+20). Cited generally (45-313, 47+971; 64-207, 66+264).