

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

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WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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CHAPTER 9.

RESIGNATIONS, VACANCIES, AND REMOVALS.

§ 2. When office becomes vacant.

This section has reference to an *incumbent* of an office, *i. e.*, to a person *in possession* of the office; not to one elected, but who has not qualified or entered into possession. *State v. Benedict*, 15 Minn. 198, 201, (Gil. 153, 156.)

See *County of Scott v. Ring*, 29 Minn. 398, 403, 13 N. W. Rep. 181.

Subd. 5. A slanderous charge that plaintiff (a justice) perjured himself in deciding a suit against the defendant, while it does not charge a technical perjury, does charge that the plaintiff violated his official promissory oath. *Gove v. Blethen*, 21 Minn. 80, 84.

§ 3. Removals by governor.

The governor may remove from office any clerk of the supreme or district court, judge of probate, court commissioner, sheriff, coroner, auditor, register of deeds, county attorney, county superintendent of schools, or county commissioner, county treasurer, or any collector, receiver, or custodian of public moneys, whenever it appears to him, by competent evidence, that either of such officers have been guilty of malfeasance or nonfeasance in the performance of his official duties; first giving to such officer a copy of the charges against him, and an opportunity to be heard in his defense. (*As amended* 1868, c. 45, § 1; 1881, c. 21, § 1.)

§ 11. (Sec. 6.) Appointment—How long to continue.

In all offices not otherwise provided for, when a vacancy is authorized to be filled by appointment, such appointment shall continue until the next general election occurring after there is sufficient time to give the notice prescribed by law, and until a successor is elected and qualified. All county officers now holding by virtue of an election shall hold their office for the full term thereof, as now prescribed by law for such county officers. (*As amended* 1879, c. 53, § 1.)

Should no one be elected and qualify at the succeeding election, the appointee would continue to hold the office. *Territory v. Smith*, 3 Minn. 240, 245, (Gil. 164, 168.)

See *County of Scott v. Ring*, 29 Minn. 398, 403, 13 N. W. Rep. 181; *State v. Benedict*, 15 Minn. 198, 202, 203, (Gil. 153.)

COUNTY TREASURERS.*

*§ 14. Suspending county treasurer.

Whenever it shall appear from the report of the public examiner that the treasurer of any county has been guilty of malfeasance or nonfeasance in the performance of his official duties, the governor may suspend such treasurer from office, if he shall deem the public interests so to require. (1881, c. 108, § 1.)

*§ 15. Notice of suspension—Treasurer *ad interim*.

In case of such suspension, the governor shall immediately notify the auditor of the county, who shall at once give notice to the commissioners of said county of such suspension, and call a meeting of the board, to be held at the earliest possible date, and within five days from date of said notice. It shall be the duty of said board of commissioners to convene at the time mentioned in such notice, and to appoint a county treasurer *ad interim*, and such person

* "An act providing for the suspension and removal of county treasurers for malfeasance or nonfeasance in office, and the appointment of county treasurers *ad interim*."

shall qualify according to the provisions of section one hundred and forty-five of chapter eight of the General Statutes of one thousand eight hundred and seventy-eight, whereupon the suspended treasurer shall deliver to such treasurer *ad interim* all the public property, money, books, accounts, papers, and documents in his possession. (1881, c. 108, § 2.)

***§ 16. Hearing—Charges.**

The suspended treasurer may notify the governor that he desires a hearing upon the charges made, whereupon the governor shall cause the charges to be reduced to writing, and furnish the treasurer with a copy thereof. (*Id.* § 3.)

***§ 17. Commissioner to take testimony.**

Upon the receipt of such notification the governor shall appoint a special commissioner to take and report testimony for and against such officer, to be used in determining his guilt or innocence. (*Id.* § 4.)

***§ 18. Taking testimony—Notice.**

The commissioner shall notify the treasurer of the time and place of taking such testimony, and also the attorney of the county, who shall appear for the county upon such examination. (*Id.* § 5.)

***§ 19. Oath of commissioner.**

Such commissioner, before entering upon his duties in taking such testimony, shall be sworn to truly and faithfully take and record the testimony of each witness, and report the same, fully and impartially, to the governor, within the time required by the commission of his appointment. (*Id.* § 6.)

***§ 20. Witness—Oath—Subscribing testimony.**

The commissioner shall administer to each witness the oath required to be administered to witnesses testifying in courts of record of this state, and each witness shall subscribe his name to his testimony when reduced to writing by the commissioner. (*Id.* § 7.)

***§ 21. Hearing on report—Decision.**

The governor shall fix the time and place of hearing on the commissioner's report, and shall give notice thereof to the treasurer. If, on such hearing, the charges are sustained, the governor shall make his order removing the treasurer from office absolutely, and the person appointed by the board of commissioners shall continue to discharge the duties of treasurer until his successor is elected and qualified. If, upon such hearing, the charges are not sustained, the treasurer shall be restored to office. (*Id.* § 8.)

***§ 22. Failure to demand a trial.**

If the suspended treasurer does not, within thirty days from the date of the order of suspension, demand a trial, such neglect shall create a vacancy in the office, which shall be filled by the treasurer *ad interim*. (*Id.* § 9.)

***§ 23. Fees of commissioners and witnesses.**

The fees of commissioners for such services as are required under this act shall be the same as are now allowed by law to referees in actions brought in the district courts of this state, and the fees of witnesses shall be the same as are allowed to witnesses in the district courts of this state. Said fees shall be paid out of the county treasury upon the allowance of the county commissioners. (*Id.* § 10.)