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To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

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CHAPTER 46

Notaries Public

6938. Term—Bond—Oath.

Owner of property had no cause of action against a notary public for wrongful and false certificate of the execution of a bill of sale which was forged, the plaintiff not being divested of his title by the forged instrument. *Zitlow v. C.*, 175M615, 221NW244.

Official action of notary public is not affected by insolvency of surety, but impairment of bonds does not affect liability of principal. *Op. Atty. Gen.*, Oct. 25, 1933.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. *Op. Atty. Gen.* (320j), Dec. 13, 1934.

Commission of notary public does not automatically terminate upon insolvency of bonding company or surety, but he should be notified to furnish a new bond, but the furnishing of a new bond does not extend term for which originally appointed. *Op. Atty. Gen.* (320b), May 15, 1937.

6939. Seal—Register.

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in good faith. *Hartkopf v. F.*, 191M595, 256NW169. See *Dun. Dig.* 71, 1445.

Great seal of Minnesota is not necessary on tax deed. *Op. Atty. Gen.* (410), Sept. 1, 1939.

Certificate of acknowledgment without official seal is a nullity. *Op. Atty. Gen.* (320f), Sept. 8, 1939.

6940. Powers.

Certificate of acknowledgment stating that grantor acknowledged deed is some proof of genuineness of instrument. *Craig v. W.*, 190M499, 252NW332. See *Dun. Dig.* 78.

Where notary of one county takes acknowledgment in another county the venue of the certificate should be entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. *Op. Atty. Gen.*, Feb. 10, 1933.

Notary public has power to take acknowledgment in county other than that in which he resided at time his commission was issued. *Op. Atty. Gen.*, July 24, 1933.

An acknowledgment on a tax deed taken in Ramsey County before a Notary Public who resides in Hennepin County is valid. *Op. Atty. Gen.* (410), Sept. 1, 1939.

6942. Record of commission—Certificates.

Acknowledgments taken by a notary who has not filed his commission with clerk of district court are valid. *Op. Atty. Gen.* (320f), Dec. 8, 1938.

6945. Seal.

Mortgages legalized where notarial seal did not bear county name. *Laws* 1939, c. 151.

6946. Misconduct.

The violation of this section as well as section 10323 did not prevent a prosecution under that section. 171 M345, 214NW262.

6951-3. Certain acknowledgments legalized.—All acknowledgments within and upon legal documents of every kind and nature heretofore taken by persons as notaries public residing in any one of the counties of this state, who were not citizens of the United States, acting in good faith under a void appointment to the office of notary public by the governor of this state between April 18, 1932, and the date of the approval of this act, together with the record of such acknowledgments and the documents containing the same, are hereby legalized and made valid and effective to all intents and purposes as though the appointment of such persons to the office of notary public had been in all respects lawful and valid. (Act Mar. 4, 1939, c. 47, §1.)

6951-4. Not to apply to pending actions.—This act shall not apply to any pending actions and no action shall be maintained questioning the validity of any acknowledgment coming within the purview of Section 1 of this act unless said action be brought within 6 months after its enactment. (Act Mar. 4, 1939, c. 47, §2.)

CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

A resignation of public office is not complete and operative unless there be an intention to relinquish a part of term, accompanied by act of relinquishment. *Hosford v. B.*, 201M1, 275NW81. See *Dun. Dig.* 7989.

Offices of alderman and constable in city of Le Sueur are incompatible, and where one qualified for office of constable, he automatically vacated his office as alderman, and no resignation was necessary. *Op. Atty. Gen.*, May 9, 1933.

Resignation of a state senator may be accepted by the governor, but he need not issue a writ of election if there is to be no session of the legislature before expiration of term for which senator was elected. *Op. Atty. Gen.* (2801-2), Apr. 30, 1934.

Resignation of member of dental board must be submitted to governor in order to be effective. *Op. Atty. Gen.* (139b), Jan. 12, 1938.

Acceptance of second incompatible office vacates first office. *Op. Atty. Gen.* (358f), Jan. 18, 1938.

6953. Vacancies.

Where village recorder resigned a few weeks before regular election, and trustee of village was appointed to perform duties of recorder until election, and he accepted only on understanding that he did not have to vacate his office as trustee and did not take oath of office of recorder or accept compensation, court did not abuse its discretion in denying petition for leave to file an information in nature of quo warranto on ground that respondent forfeited his office as trustee by performing incompatible duties of office of recorder. *State v. Ingelbretson*, 201M222, 275NW686. See *Dun. Dig.* 7990(35).

Const., art. 6, §10, furnishes the only guide in determining when and under what circumstances governor may appoint a judge to fill a vacancy, but power to fill va-

cancy does not include power to declare one. *State v. Holm*, 202M500, 279NW218. See *Dun. Dig.* 4954, 7990.

Failure of town treasurer to qualify creates a vacancy which may be filled by appointment. *Op. Atty. Gen.*, Mar. 21, 1929.

Whether village treasurer who has obtained a position in another state may still hold the office depends upon whether or not he has ceased to be an inhabitant of the village. *Op. Atty. Gen.*, Mar. 4, 1931.

Removal from office takes effect irrevocably upon conviction and imposition of sentence, and the officer is not restored upon the entry of a stay of execution of the taking of an appeal. *Op. Atty. Gen.*, Sept. 1, 1931.

With the possible exception of officers in certain villages operating under special laws, there is no provision for the removal of an elective village officer for misconduct except by securing his conviction of a felony or of an offense involving a violation of his official oath. *Op. Atty. Gen.*, Sept. 1, 1931.

Vacancy in office of justice of the peace of city of Wayzata is to be filled by appointment of governor. *Op. Atty. Gen.* (266a-12), Apr. 20, 1934.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. *Op. Atty. Gen.* (320j), Dec. 13, 1934.

Whether acceptance of federal appointment in another city creates vacancy in office of city justice depends upon whether he has ceased to be an inhabitant of his city. *Op. Atty. Gen.* (266a-12), Oct. 17, 1935.

Village counsel has no power to remove one of its members, such as the recorder, proper procedure being appropriate action in district court. *Op. Atty. Gen.* (475), Mar. 26, 1936.

Civil service rule requiring chief of police to be resident of city is valid. *Op. Atty. Gen.* (735b-3), June 25, 1936.

Commission of notary public does not automatically terminate upon insolvency of bonding company or surety, but he should be notified to furnish a new bond, but the furnishing of a new bond does not extend term for which originally appointed. Op. Atty. Gen. (320b), May 15, 1937.

Where at end of two-year term mayor reappoints chief of police, and council refuses to confirm it and refuses to pay such officer, such officer holds over until his successor is elected or appointed and is entitled to compensation therefor. Op. Atty. Gen. (785d), Jan. 31, 1938.

Proper procedure for removal of elective village officers is by action in district court. Op. Atty. Gen. (469b), Feb. 15, 1938.

Where two offices are incompatible the acceptance of the second operates as a resignation of the first. Op. Atty. Gen. (358f), March 14, 1939.

Mere election to a second incompatible office does not vacate prior office, but acceptance of incompatible office vacates first office. Op. Atty. Gen. (358e-6), August 10, 1939.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

Subd. 1.

Person appointed to fill vacancy in office of county commissioner holds only until beginning of official year next following the next ensuing general election. Op. Atty. Gen., Feb. 13, 1934.

Person appointed to fill vacancy in office of county commissioner holds until beginning of official year next following the next ensuing general election. Op. Atty. Gen. (126h), May 2, 1934.

Subd. 2.

Where judge presented to governor his petition for retirement on Sept. 30, 1936, and requested that his retirement, if granted, be made effective prior to Nov. 15, 1936, and he found facts required by retirement act and made an order directing retirement to become effective at close of Nov. 15, 1936, no vacancy existed until Nov. 15, which governor could fill by appointment, and no new judge was elected at general election held on Nov. 3, where no notice was given and only a negligible number of electors exercised right to vote for that office. State v. Holm, 202M500, 279NW218. See Dun. Dig. 4954.

Question whether resignation of president of council of the village of Buhl would become effective immediately without any action on the part of the board discussed. Op. Atty. Gen., Mar. 3, 1932.

Village council may not fill vacancy upon resignation of officer until resignation becomes effective. Op. Atty. Gen. (471m), July 14, 1938.

Necessity of acceptance of resignation. 23MinnLawRev 245.

Subd. 3.

Eligibility to remain in office is coordinate with right to vote in election district. Op. Atty. Gen. (63a-1), Mar. 29, 1938.

Subd. 4.

Member of water, light, power and building commission must be an inhabitant and resident of the city. Op. Atty. Gen., Feb. 2, 1934.

Whether absence of village trustee from village for six months for purpose of obtaining employment constitutes abandonment of office and right to compensation is a question of fact. Op. Atty. Gen. (359a-21), Dec. 19, 1935.

Whether a female county treasurer marrying a non-resident of state and apparently maintaining a home in other state, has ceased to be an inhabitant of county is a question of fact, but for purpose of determining creation of vacancy, one may cease to be an inhabitant without actually losing residence or right to vote. Op. Atty. Gen. (450a-15), Aug. 30, 1937.

Office of township clerk became vacant when clerk moved into a village located within township, if such village was separated from town for election and assessment purposes. Op. Atty. Gen. (436n), March 1, 1938.

Office of village justice becomes vacant on his removal from village, unless his new residence is in town in which village is located and town and village are not separated for election purposes. Op. Atty. Gen. (266a-9), Oct. 1, 1938.

Office of town treasurer becomes vacant when incumbent moves into village entirely surrounded by town. Op. Atty. Gen. (439f), Feb. 28, 1939.

Office of alderman elected for a particular ward becomes vacant upon his removal to another ward. Op. Atty. Gen. (63a-11), March 11, 1939.

Subd. 5.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

A village recorder wilfully failing to perform the duties of his office may be convicted under §10028, and thus create a vacancy in his office under this section. Op. Atty. Gen., Oct. 20, 1931.

One acting as assistant assessor in city of Eveleth was not officer and there was no vacation of office by reason of his conviction of crime. Op. Atty. Gen., May 14, 1932.

There is no provision of law for removal of village trustee but his office becomes vacant upon conviction of an infamous crime or any offense involving a violation of his official oath. Op. Atty. Gen., Apr. 6, 1933.

The term "infamous crime" would not apply to a conviction of a misdemeanor such as the illegal sale of liquor. Op. Atty. Gen. (61f), Aug. 21, 1934.

Whether illegal sale of liquor by mayor of a city involves a violation of his official oath depends on the nature of his oath and the place of the sale. Id.

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. Op. Atty. Gen. (707b-6), Feb. 11, 1936.

City council has no authority to remove members of water and light commission, at least in absence of a conviction of an offense involving violation of official oath. Op. Atty. Gen. (358e-1), May 15, 1937.

County auditors and other officers issuing certificates for payment of wolf bounties on fox violate both §6258 and §10053, and may be removed from office. Op. Atty. Gen. (47f), March 17, 1938.

Removal of sheriff from office is automatic if he is found guilty of felony with reference to his office. Op. Atty. Gen. (390a-3), Sept. 22, 1938.

Subd. 6.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.

Person receiving next highest number of votes for justice of the peace is not elected to the office because person who did receive highest number failed to qualify. Op. Atty. Gen. (266a-5), Dec. 10, 1935.

Where candidate receiving highest number of votes for mayor of a village was not eligible because he was a citizen of the United States for less than 3 months, a vacancy in office resulted, but the city council after passage of sufficient time could appoint such previously ineligible candidate to office. Op. Atty. Gen. (1841), Dec. 12, 1935.

There is no specific time limit within which village officers must qualify, but a vacancy occurs if they do not qualify within a reasonable time. Op. Atty. Gen. (471h), Jan. 7, 1936.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. Op. Atty. Gen. (469b-5), Feb. 21, 1936.

Where one elected to office of president of a village refuses to qualify within a reasonable time, a vacancy exists, and former officer does not hold over. Op. Atty. Gen. (471m), Jan. 13, 1937.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. Op. Atty. Gen. (456g), Feb. 18, 1937.

A vacancy existed in office of treasurer in common school district where he filed his acceptance and oath, but failed to furnish a bond, claiming that clerk stated that she would apply for a surety bond for him. Op. Atty. Gen. (451a-23), August 10, 1939.

Subd. 8.

Where register of deeds who was also register of deeds elected died before beginning of new term, office became vacant on his death, and a second vacancy took place on first day of new term, and county commissioners had power to appoint a register of deeds for balance of first term to first Monday of January and also to appoint a register of deeds to fill four year term commencing on first Monday of January. Op. Atty. Gen. (373a-4), April 11, 1939.

On death of newly elected councilman of city of St. Paul before term of office began, there was a vacancy to be filled by the council, and deceased was not automatically succeeded by losing candidate receiving highest number of votes, vacancy being deemed to take place at time term of office would have begun. Op. Atty. Gen. (63a-1), April 14, 1939.

6954. Removal by governor.

The duties of the governor under this section are not mandatory, are not merely ministerial, and cannot be coerced by mandamus. 179M337, 229NW313.

Protracted absences of justice from his town might amount to nonfeasance in office. Op. Atty. Gen., Mar. 19, 1929.

If municipal judge neglects his duties or corruptly violates his oath of office, his removal should be sought by petition to governor. Op. Atty. Gen., June 26, 1933.

Governor cannot remove village constable. Op. Atty. Gen., Aug. 31, 1933.

Persistent refusal or neglect to enforce sentence imposing fine may be made basis for removal of justice of peace. Op. Atty. Gen. (266b-9), Nov. 26, 1934.

Conviction of a crime is not essential in order that governor may exercise powers of removal, nor is it a sufficient defense that accused officer has already been acquitted in a previous criminal proceeding on same charge. Op. Atty. Gen. (47f), March 17, 1938.

County auditors and other officers issuing certificates for payment of wolf bounties on fox violate both §6258 and §10053, and may be removed from office. Op. Atty. Gen. (47f), March 17, 1938.

The effect of an unconstitutional statute in the law of public officers: Effect on official status. 13MinnLaw Rev439.

Removal from public office in Minnesota. 20MinnLaw Rev 721.

Governor's constitutional powers of appointment and removal. 22MinnLawRev451.

Evidence before administrative tribunals. 23MinnLaw Rev68.

6955. Special commissioner to take testimony.
179M337, 229NW313.

6957. Appointment—How long to continue—Impeachment.

Vacancies in elective county, municipal or school district offices may not be filled by the person having the power of appointment. Laws 1939, c. 249.

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of Janu-

ary following such election. State v. Borgen, 189M216, 248NW744.

"Next general election" means one occurring after there is sufficient time after vacancy to give notice required by law that vacant office is to be filled at election. State v. A., 202M50, 277NW357. See Dun. Dig. 7988(27).

There must be a vacancy before an election to fill it can be ordered, and an election to fill an anticipated vacancy may not be validly held unless there be constitutional or statutory authority for it. State v. Holm, 202M500, 279 NW218. See Dun. Dig. 7990.

The provisions of Laws 1929, c. 413, prevail over this section, and a person appointed to fill a vacancy in a village office holds until the expiration of the term, and not merely until the next municipal election. Op. Atty. Gen., Nov. 13, 1931.

Vacancy in office of county commissioner is to be filled by full membership of city council where district lies wholly within city, though only part of council are elected from district, and term of appointee expires at beginning of official year next following next general election. Op. Atty. Gen. (124k), Aug. 25, 1934.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oath of office.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. Op. Atty. Gen. (456g), Feb. 18, 1937.

Executive secretary of county welfare may not be required to execute a fidelity bond, but it would not be unlawful for board of control to pass a resolution providing that it is desirable that such secretary give a fidelity bond to be filed as other bonds and paid for by county, and a bond so voluntarily given would be enforceable. Op. Atty. Gen. (104a-2), Aug. 25, 1937.

6965. Forms of oath, etc.

Attorneys suspended for misconduct. 177M203, 225 NW97.

6967. By whom and how administered.

When signatures are proved it is presumed that an affidavit was actually sworn to by person who signed as affiant, and if proof does not embrace a fact necessary to negative taking of affidavit, presumption will save it. Siewert v. O., 202M314, 278NW162. See Dun. Dig. 139.

List of officers authorized to administer oaths and take acknowledgments and requirements as to attachment of seal stated. Op. Atty. Gen., Mar. 23, 1933.

ACKNOWLEDGMENTS

6970. Form of certificate.

Bond of city officer held sufficient to require its acceptance by city council though it contained no provision "for the use of all persons interested" and was executed for surety by "attorney" instead of "attorney-in-fact." State v. City of Eveleth, 196M307, 265NW30. See Dun. Dig. 82.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

A deed written in English language except as to acknowledgment which is in a foreign language, is not entitled to record. Op. Atty. Gen. (373b-9(a)), Jan. 7, 1937.

6971. Corporate acknowledgment—Evidence.

State v. City of Eveleth, 196M307, 265NW30; note under §6970.

Op. Atty. Gen., March 23, 1933; note under §6967.

6973. By whom taken in this state.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

Wheat inspectors and supervisors of wheat inspectors do not have authority to take acknowledgment for purpose of presenting verified claim for weed eradication. Op. Atty. Gen. (322a-1), Nov. 1, 1937.

Oath may not be administered by a postmaster on claim for gasoline tax refund. Op. Atty. Gen. (834), Jan. 16, 1939.

6974. Instruments legalized.

Acknowledgments legalized. Laws 1939, c. 47, app. March 4.

6977. In other states—By whom taken.

There is no requirement that fact of residence of notary be specifically stated in acknowledgment. Op. Atty. Gen. (410), Sept. 1, 1939.

6979. In foreign countries.

A deed written in English language except as to acknowledgment which is in a foreign language, is not entitled to record. Op. Atty. Gen. (373b-9(a)), Jan. 7, 1937.

6981. Execution according to foreign law.—All deeds and other instruments may be executed and acknowledged in a foreign country in accordance with the laws of the place of execution.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws, shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one.

3. If there be no such officer of the United States therein, then by the certificate of a counselor or diplomatic officer of any other nation with which the United States has diplomatic relations, in which case, the seal of such consular or diplomatic officer shall be certified by his Foreign Office or by the diplomatic representative of such nation in the United States.

4. Any instrument heretofore or hereafter executed, acknowledged and certified as provided herein, shall entitle such instrument to be admitted and read in evidence in all courts and elsewhere without other proof of execution. (R. L. '05, §2691; G. S. '13, §5748; Apr. 18, 1931; c. 201.)

(1).

If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. Op. Atty. Gen., Aug. 7, 1931.

6983. Acknowledgments after expiration of commission—Curative.

Laws 1929, c. 169, and Laws 1929, c. 214, legalizes acknowledgments taken by person after expiration of term.