

Policemen appointed by the state chief engineer under 15.77 (5), Stats. 1929, may arrest offenders both on the capitol grounds and beyond those grounds. 18 Atty. Gen. 550.

16.845 History: 1949 c. 447; Stats. 1949 s. 14.85; 1955 c. 385 s. 6; Stats. 1955 s. 20.929; 1965 c. 50; 1965 c. 66 s. 9; Stats. 1965 s. 16.92; 1967 c. 106; Stats. 1967 s. 16.845.

16.85 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.77; 1931 c. 33 s. 3; 1935 c. 535; 1943 c. 442; 1945 c. 181, 297; 1947 c. 359; 1951 c. 397; 1953 c. 61 s. 9; 1953 c. 518; 1957 c. 547; 1959 c. 228 s. 24, 25, 26, 27, 62, 65; Stats. 1959 s. 16.85; 1961 c. 191 ss. 3, 106; 1961 c. 622, 645; 1963 c. 6; 1965 c. 659; 1965 c. 695 s. 24 (3); 1967 c. 106; 1969 c. 241; 1969 c. 276 ss. 582 (16), 590 (1), 605; 1969 c. 364; 1969 c. 366 s. 117 (2) (a); 1969 c. 392 s. 87 (26), (30); 1969 c. 500 s. 30 (2) (e).

16.855 History: 1969 c. 497; Stats. 1969 s. 16.855.

16.86 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.78; 1947 c. 359; 1959 c. 228 s. 29; Stats. 1959 s. 16.86.

16.87 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.79; 1943 c. 334; 1949 c. 27; 1959 c. 228 s. 29, 62; 1959 c. 519, 659 s. 9; Stats. 1959 s. 16.87; 1969 c. 276 s. 582 (16).

Engineering surveying services are, but land surveying services are not, "engineering service" within the meaning of 16.87. 49 Atty. Gen. 70.

16.88 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.80; 1947 c. 359; 1959 c. 228 s. 29; Stats. 1959 s. 16.88; 1969 c. 392 s. 87 (26).

16.89 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.81; 1947 c. 359; 1959 c. 228 s. 29, 62; Stats. 1959 s. 16.89; 1969 c. 276 s. 582 (16); 1969 c. 364.

16.90 History: 1931 c. 67 s. 151; Stats. 1931 s. 15.83; 1947 c. 359; 1949 c. 262; 1957 c. 568; 1959 c. 228 s. 31, 32, 62; Stats. 1959 s. 16.90; 1965 c. 66 s. 8; 1969 c. 276 s. 582 (16).

16.91 History: 1931 c. 67 s. 151; Stats. 1931 s. 15.84; 1957 c. 568; 1959 c. 228 s. 33, 62; Stats. 1959 s. 16.91; 1969 c. 276 s. 582 (16).

16.93 History: 1929 c. 378; 1935 c. 71; Stats. 1937 s. 15.72, 15.74; 1939 c. 371; 1947 c. 9 s. 23; Stats. 1947 s. 15.90, 15.91; 1951 c. 294; 1953 c. 77; Stats. 1953 s. 15.90; 1959 c. 475; 1963 c. 577; 1967 c. 40, 327; Stats. 1967 s. 16.93; 1969 c. 154.

Editor's Note: In an opinion rendered in 1957 (46 Atty. Gen. 131) the attorney general advised the assembly that under the existing statutes neither the bureau of engineering nor the state chief engineer could validly contract with the city of Madison regarding control by the city of motor vehicle parking on the capitol side of streets surrounding the capitol square.

16.94 History: 1915 c. 493; Stats. 1915 s. 4444m; 1925 c. 4; Stats. 1925 s. 343.462; 1955 c. 696 s. 115, 116; Stats. 1955 s. 15.93; 1959 c. 659 s. 81; 1965 c. 66 s. 6; 1967 c. 327; Stats. 1967 s. 16.94; 1969 c. 276 s. 585 (1); 1969 c. 392 s. 87 (9).

16.95 History: 1967 c. 211; Stats. 1967 s. 16.95.

CHAPTER 17.

Resignations, Vacancies, and Removals From Office.

17.01 History: 1919 c. 362 s. 1 to 10; Stats. 1919 s. 17.01; 1965 c. 19, 20.

Editor's Note: Extensive revisor's notes giving the history and purpose of the act creating sections of this chapter are contained in the Wis. Annotations, 1930.

The resignation of a city officer is not effective until presented to the person or board designated by statute, but when so presented it requires no acceptance. 11 Atty. Gen. 706.

17.02 History: 1919 c. 362 s. 11; Stats. 1919 s. 17.02; 1959 c. 343; 1967 c. 276 s. 39.

17.025 History: 1969 c. 422; Stats. 1969 s. 17.025.

17.03 History: 1919 c. 362 s. 12 to 15; Stats. 1919 s. 17.03; 1929 c. 113; 1949 c. 566; 1955 c. 242; 1957 c. 536; 1959 c. 259.

An officer elected for a full term may signify in writing his refusal to qualify before the expiration of the time given for that purpose, and thereupon the office becomes vacant. State ex rel. Finch v. Washburn, 17 W 658.

The changes made by an apportionment of assembly districts did not create a vacancy in the office of a member of the county board although the person holding it ceased to reside in the district which he was elected to represent. State ex rel. Gill v. Milwaukee County, 21 W 443.

If the oath of office is not filed with the proper officer there is a vacancy. State ex rel. Lutfring v. Goetze, 22 W 363.

An officer who absconds and is a fugitive from justice is incapable of discharging the duties of his office. Washington County v. Semler, 41 W 374.

A city charter declared that persons elected to city offices should enter upon the duties of such offices on a day named, but further provided that "when any such officer shall refuse or neglect, for 10 days after notice of his election or appointment, to qualify and enter upon the discharge of the duties of his office, the office shall be deemed vacant". Under such charter provision, if the person elected has his legal disability removed before the close of the "10 days after notice of his election" (though that may be after the day previously named), he is then entitled (having otherwise qualified) to enter upon and hold the office. State v. Trumpf, 50 W 103, 6 NW 512.

A judge appointed to fill a supposed vacancy is a judge de facto, and a person sentenced by him as a convicted criminal has no right to a discharge on that ground. State v. Bloom, 17 W 521; Laver v. McGlavin, 28 W 364; Chicago & N. W. R. Co. v. Langlade County, 56 W 614, 14 NW 844.

The wilful and unjust refusal of the officer required to approve the official bond of a person elected or appointed to office to give it his approval cannot affect such person's right to the office or create a vacancy therein. State ex rel. Ackerman v. Dahl, 65 W 510, 27 NW 343.

The acceptance by a member of the legislature of an incompatible office operates to vacate his office as a member of the legislature. State ex rel. Johnson v. Nye, 148 W 659, 135 NW 126.

An officer whose term is during good behavior, subject to removal for cause, but without any provision to hold until his successor qualifies, resigned. The resignation became effective on filing and there was a vacancy without an acceptance of the resignation. If his resignation was later refused and he continued in office he became a de facto officer and entitled to his salary. State ex rel. Kleinsteuber v. Kotecki, 155 W 66, 144 NW 200.

The office of sheriff became vacant upon the filing of a decision by the supreme court that the election was void. State ex rel. Knutson v. Johnson, 171 W 521, 177 NW 899.

The rule that a person holding one public office vacates the same by accepting an incompatible office, is subject to the exception that, where the law provides that the incumbent of the first office shall continue to hold until his successor is chosen and qualified, his resignation will not so vacate the office as to relieve him from the discharge of his duties as such incumbent. Wonewoc v. Industrial Comm. 178 W 656, 190 NW 469.

An official oath is mandatory upon a city officer. But a person duly elected to such an office who secures possession of the office, but fails to file an official oath, is an officer de facto. State ex rel. Schneider v. Darby, 179 W 147, 190 NW 994.

Under the common law an office is vacated when the incumbent accepts an incompatible office, except in a case where the official cannot, by his own act, vacate such first office. Where an official, holding office for a term of years and "until his successor is chosen and qualifies," accepts an incompatible office, his claim to the first office terminates when the successor qualifies. State ex rel. Stark v. Hines, 194 W 34, 215 NW 447.

The office of member of a school board becomes vacant if the member ceases to be an inhabitant of the school district, but not on his removal from the ward from which he was elected to another in the same city having identical territorial limits with the school district. State ex rel. Witkowski v. Gora, 195 W 515, 218 NW 837.

Whenever ward boundaries are changed a ward officer holds for the balance of the term the same office in the new or changed ward which he held in the old ward, and in this connection a supervisor is a ward officer. All offices left without occupants are to be filled in the way vacancies are regularly filled. 9 Atty. Gen. 34.

The officer-elect having failed to qualify, a vacancy was caused in his office. It was not necessary for the former and hold-over officer to resign. 8 Atty. Gen. 18; 10 Atty. Gen. 572; 12 Atty. Gen. 7.

No one having been legally elected to succeed a supervisor of a village, and such supervisor not having been removed from office and having continued to act as such, no vacancy exists in office, and attempted appointment of another person as supervisor by village board is void. 12 Atty. Gen. 527.

A school district treasurer who served one

term without filing official bond and was re-elected and failed to file official bond was a de facto officer only. Vacancy was lawfully filled by election at next school meeting. 20 Atty. Gen. 634.

A district attorney inducted into armed forces does not cease to be inhabitant of county from which he is inducted, and the circuit judge may appoint district attorney pro tempore to attend to district attorney's duties pending his return. 30 Atty. Gen. 54.

A register of deeds and county clerk do not vacate their offices by enlisting in the armed forces and may offer themselves as candidates for reelection while serving in the armed forces. 31 Atty. Gen. 194.

Under 17.03 (4) a vacancy occurs in office of the county clerk when he has moved with his family to another county, where he has accepted position under state civil service. Such employment is not regarded as temporary in character during 6 months' probationary period. 32 Atty. Gen. 138.

The removal of a member of a board of vocational and adult education of a city of his residence to without the city limits does not in and of itself create a vacancy in that position. 39 Atty. Gen. 73.

Where after supreme court reversal but prior to entry of circuit court judgment pursuant thereto that person elected county superintendent is ineligible, said person resigns pursuant to 17.01 (7), there is a vacancy under either 17.03 (2) or (6). 39 Atty. Gen. 256.

A member of a village board, convicted of embezzlement of funds of a business of which he was employe and manager, in violation of 343.20, is thereby deprived of his right to vote until restored to civil rights, pursuant to art. III, sec. 2. His office is thereby vacated and he is thereafter ineligible for public office in this state by virtue of 17.03 (5) and art. XIII, sec. 3. 41 Atty. Gen. 181.

Compulsory retirement, under 66.906, of an elected county official produces a vacancy in office in purview of 17.03. An incumbent who has continued to perform the duties of the office after his retirement is a de facto officer holding over after the expiration of his term and may continue to serve as such until the filling of such vacancy by appointment or election of his successor. 48 Atty. Gen. 23.

17.035 History: 1943 c. 242; Stats. 1943 s. 17.035; 1951 c. 261 s. 10; 1951 c. 719; 1955 c. 10.

A member of a board of supervisors in counties other than Milwaukee county elected from a city, is a city officer within the meaning of this section. Vacancy created by entry of such supervisor into the armed forces is to be filled as a vacancy in elective city office under the provisions of ch. 17. Supervisor upon his return is entitled to reinstatement for unexpired portion of his term. 32 Atty. Gen. 404.

17.05 History: 1919 c. 362 s. 17; Stats. 1919 s. 17.05.

17.06 History: 1919 c. 362 s. 18; Stats. 1919 s. 17.06.

17.07 History: 1919 c. 362 s. 19; Stats. 1919 s. 17.07; Spl. S. 1937 c. 9; 1939 c. 413 s. 1, 4; 1945 c. 165; 1947 c. 9, 411; 1953 c. 61 s. 1; 1959 c. 228 s. 47; 1969 c. 276 ss. 592 (7), 602 (1).

The governor may remove the commissioner of insurance for cause. His errors of judgment within his jurisdiction will not be reviewed by the courts. But outside of executive authority, principles of equality before the law render him liable to judicial remedies the same as any other person, except as otherwise provided by law or required by public policy. An officer entitled to hold for a fixed term, subject to removal for cause, is by the common law entitled to protection against danger of forcible removal because he is entitled to due process of law, and that excludes interference except according to established principles of justice. Such established principles secure him the right to reasonable notice of charges, reasonable notice of a hearing, reasonable opportunity to be heard, to know the opposing evidence and oppose it with evidence and to have the final determination grounded on evidence. *Ekern v. McGovern*, 154 W 157, 142 NW 595.

17.08 History: 1919 c. 362 s. 20; Stats. 1919 s. 17.08.

17.09 History: 1919 c. 362 s. 21; Stats. 1919 s. 17.09; 1961 c. 495; 1965 c. 19, 20.

On removal of county officers see notes to sec. 4, art. VI.

Proceedings on petition for removal are quasi-judicial and absolutely privileged; no action for libel lies. *Larkin v. Noonan*, 19 W 82.

The statute gives the county board the widest judicial discretion in removing the county clerk and its action will not be revised or controlled except in the clearest case of abuse. Mere irregularities in its proceedings will not affect its decision upon quo warranto. *State ex rel. Willis v. Prince*, 45 W 610.

Charges stating that the county clerk had refused and neglected to obey the orders of the county board, in that he had refused to execute and affix the county seal to certain described instruments, and an order removing him from office stating the ground of removal as official "misconduct and wilful neglect of duty," are all that is required. *State ex rel. Prince v. McCarty*, 65 W 163, 26 NW 609.

The governor has power to remove a district attorney for acts involving moral delinquency in a prior term of office. 14 Atty. Gen. 351.

17.10 History: 1919 c. 362 s. 22; Stats. 1919 s. 17.10; 1955 c. 10; 1957 c. 97; 1961 c. 43, 205.

A statute granting to the county judge the authority to appoint a clerk (48.01 (4), Stats. 1943) contains implied authority to dismiss the clerk at the pleasure of the appointing official. 33 Atty. Gen. 22.

17.11 History: 1919 c. 362 s. 23; Stats. 1919 s. 17.11; 1953 c. 452.

17.12 History: 1919 c. 362 s. 24; Stats. 1919 s. 17.12; 1961 c. 495, 614; 1965 c. 249; 1965 c. 666 s. 22 (33).

The decision of the city council as to what is good cause for the removal of an officer is subject to judicial review. If the body which has assumed to remove cannot show by a return to a writ of mandamus for what cause the officer was removed its decision will be reversed. What is due cause is a question of law; and it must be determined with reference

to the nature and character of the office and the qualifications requisite to fill it. *State ex rel. Gill v. Watertown*, 9 W 254.

Though the power to remove is to be exercised in a judicial manner, it is administrative, not judicial. The charges are sufficient if the officer is furnished with their substance. Where it was alleged that between specified days the mayor did willfully extort sums of money from various policemen and firemen, the charge was sufficient. A mayor against whom charges are preferred cannot sit as such during the trial, and if he asserts the right to preside, his ruling may be disregarded and the president of the council may be placed in the chair. The fact that a member of the council will act as mayor if the latter is removed and that the charges were preferred by another member does not disqualify them from sitting on the trial. The members of the council need not take a special oath to try the charges; their official oath covers their duty. Oaths administered to witnesses by the chairman of the committee of the whole sitting under authority of the council to take evidence on the charges are sufficient. Where the mayor was head of the fire and police departments and had the power of removing members thereof, and the chiefs of those departments, with his approval, solicited from the members contributions to reimburse him for campaign expenses, the receipt of money so collected justified his removal. *State ex rel. Starkweather v. Common Council*, 90 W 612, 64 NW 304.

Where the health commissioner was improperly removed and his assistant appointed in his place, he may, on being restored to the office, recover the amount of his salary accruing while he was out of office. The rule that salary paid to a de facto officer while an officer de jure is entitled to the office relieves the municipality from liability to the latter does not apply because the charter did not provide for an assistant commissioner, and the council, by its unlawful act of removal, created the necessity for the appointment of a person other than the officer contemplated by law. *Kempster v. Milwaukee*, 97 W 343, 72 NW 743.

The three-fourths vote for the removal of a municipal officer required by this section is complied with by a vote of 6 out of 8 members of the common council who were present throughout the proceedings and voted for removal, although one of the other 2 withdrew after the filing against him of an affidavit of prejudice and the other of the 2 was absent during part of the proceeding. In such a proceeding aldermen act, not as judges, but as aldermen; and while the accused is entitled to a fair hearing he cannot require the precision and formality required in criminal trials at law. *State ex rel. Cleveland v. Common Council*, 177 W 537, 188 NW 601.

The mayor could not remove fire and police commissioners without cause being shown and a hearing before council and his attempt to remove them without charges and a hearing did not create vacancies, and he could not appoint new members. *State ex rel. Pieritz v. Hartwig*, 201 W 450, 230 NW 42.

A member of the board of police and fire commissioners of a city appointed under 62.13 (1) may be removed by the common council,

under 17.12, for cause, since such a commissioner is not within the exception provision of 17.12 (4) that no officer of a city "appointed according to merit and fitness under and subject to a civil service or to a police and fire commission law, or whose removal is governed by such a law, shall be removed otherwise than as therein provided." State ex rel. Kidder v. Steele, 241 W 198, 5 NW (2d) 764.

17.13 History: 1919 c. 362 s. 25; Stats. 1919 s. 17.13; 1945 c. 497; 1947 c. 239; 1957 c. 560.

Refusal to obey an unconstitutional legislative enactment is not a ground for removing an officer. State ex rel. Ballard v. Goodland, 159 W 393, 150 NW 488.

An order made by a circuit judge pursuant to this section removing a town officer is proof in a later civil action of the fact of removal, but is not evidence of the facts on which the order was based. State ex rel. Shea v. Evenson, 159 W 623, 150 NW 984.

A special act conferring on a county court jurisdiction, within limitations, concurrent with that of the circuit court, does not confer on the county judge the nonjudicial power of removal under 17.13 (3), of an officer of a school district. Blado v. Knoll, 4 W (2d) 184, 90 NW (2d) 176.

A complaint addressed to the circuit court asking removal of town officers is jurisdictionally defective, since such removal can be made only by the circuit judge in an executive capacity. Grob v. Nelson, 8 W (2d) 8, 98 NW (2d) 457.

A district attorney is not required to prosecute charges against a town officer for his removal. 15 Atty. Gen. 204.

17.14 History: 1919 c. 362 s. 27; Stats. 1919 s. 17.14; 1943 c. 275 s. 6; 1965 c. 66 s. 9.

Removal proceedings under 17.14 do not lie against persons whose terms have expired. Generally speaking an officer may not be removed for irregularities in the discharge of his duties during a prior term of office. 42 Atty. Gen. 126.

17.15 History: 1919 c. 362 s. 27; Stats. 1919 s. 17.15; 1961 c. 495.

17.16 History: 1919 c. 362 s. 28; Stats. 1919 s. 17.16; 1945 c. 34; 1961 c. 495; 1965 c. 249; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

A complaint for damages for misfeasance by town officers, verified by plaintiff's nonresident attorney, is not sufficient to support a demand for removal of the officers under 17.16 (3), even though a resident taxpayer plaintiff verified an affidavit asking that the complaint be amended to demand such removal. Grob v. Nelson, 8 W (2d) 8, 98 NW (2d) 457.

17.16 (10) does not apply to an appointive officer whose appointment was rejected by the senate and who later was reappointed by the governor. State ex rel. Reynolds v. Smith, 22 W (2d) 516, 126 NW (2d) 215.

A town chairman violates the law by acting as inspector of election at which he is a candidate for reelection; such violation is cause for removal during term in which violation occurs, but not thereafter; such violation, at least in absence of actual fraud, does not render election illegal, although he is subject to prosecution. 12 Atty. Gen. 326.

A charge in a petition for removal under this section that a sheriff made purchases and obtained delivery of automobiles "by reason of his official position as sheriff of Milwaukee county," and that he engaged in business as an automobile dealer without a license as required by 218.01, Stats. 1947, did not state a legal cause for removal. 36 Atty. Gen. 336.

17.17 History: 1919 c. 362 s. 29; Stats. 1919 s. 17.17; 1927 c. 473 s. 5; 1943 c. 275 s. 7; 1959 c. 343.

17.18 History: 1919 c. 362 s. 30; Stats. 1919 s. 17.18; 1957 c. 647; 1965 c. 666 s. 22 (19).

17.19 History: 1919 c. 362 s. 31; Stats. 1919 s. 17.19; 1927 c. 473 s. 6; 1953 c. 606; 1965 c. 666 ss. 22 (19), (21), (22); 1969 c. 392 s. 86.

On vacancies in judicial offices see notes to sec. 9, art. VII; on vacancies in other offices see notes to sec. 10, art. XIII; and on creating vacancies in public offices see notes to 17.03.

17.20 History: 1919 c. 362 s. 32; Stats. 1919 s. 17.20; 1943 c. 275 s. 8; 1957 c. 59.

Editor's Note: See revisor's notes following the history of this section in Wis. Annotations, 1930.

On appointments subject to confirmation see notes to 14.22.

A temporary adjournment of 3 months is a recess and 14.22 does not apply to appointments by the governor during the recess if taken for a proper legislative purpose. 17.20 (2) applies only to "vacancies" in office and there is no vacancy where an incumbent is holding over. State ex rel. Thompson v. Gibson, 22 W (2d) 275, 125 NW (2d) 636.

An appointee, rejected by the senate, cannot be reappointed while the legislature is in session and may not be paid until a second recess appointment is made. State ex rel. Reynolds v. Smith, 22 W (2d) 516, 126 NW (2d) 215.

Public service commissioners appointed to vacancies occurring when the legislature is not in session have power to act prior to confirmation by authority of this section. The clause prohibiting action by a commissioner until confirmation contained in 195.01 relates only to commissioners appointed for a full term or to fill a vacancy occurring while the legislature is in session. 38 Atty. Gen. 300.

17.21 History: 1919 c. 362 s. 33; Stats. 1919 s. 17.21; 1921 c. 115; 1921 c. 436 s. 1; 1923 c. 34; 1925 c. 135; 1943 c. 529; 1955 c. 2, 299; 1959 c. 19; 1961 c. 495; 1963 c. 565; 1965 c. 666 s. 22 (21).

On vacancies in offices see notes to sec. 4, art. VI, and notes to sec. 10, art. XIII; and on creating vacancies in public offices see notes to 17.03.

A person appointed to fill a vacancy must qualify within the time prescribed. State ex rel. Prince v. McCarty, 65 W 163, 26 NW 609.

The term of office of a judge appointed by the governor to fill a vacancy in the civil court of Milwaukee county is governed by this section and not by the act relating to such court. 13 Atty. Gen. 4.

Election of judges of courts created by special act which have jurisdiction throughout a county is controlled by 17.21 (2). 28 Atty. Gen. 47.

Where a county clerk dies during his term of office there is a vacancy pursuant to 17.03 (1), to be filled by the county board under 17.21 (3). Where a county clerk-elect dies prior to taking office the board may fill the vacancy in the same manner after the commencement of the term. 35 Atty. Gen. 447.

17.22 History: 1919 c. 362 s. 34; Stats. 1919 s. 17.22; 1953 c. 90 s. 164; 1955 c. 366; 1961 c. 53; 1965 c. 19; 1967 c. 26.

A county highway commissioner appointed pursuant to 17.22 (2) (b) will hold office until the first Monday of January next succeeding his appointment and thereafter until his successor is appointed and qualified. Where a regular county board meeting is adjourned to a future date, a vacancy occurring between the adjournment and the adjourned meeting may be filled at the latter. 35 Atty. Gen. 458.

17.23 History: 1919 c. 362 s. 35; 1919 c. 703 s. 2; Stats. 1919 s. 17.23; 1921 c. 591 s. 3; 1923 c. 107; 1933 c. 425; 1935 c. 255, 401; 1953 c. 245; 1955 c. 299; 1961 c. 495, 614; 1965 c. 66 s. 8; 1965 c. 666 s. 22 (33); 1967 c. 92 s. 22; 1969 c. 158.

17.24 History: 1919 c. 362 s. 36; Stats. 1919 s. 17.24; 1951 c. 560; 1965 c. 41.

17.245 History: 1943 c. 66; Stats. 1943 s. 66.11 (5); 1953 c. 540 s. 26; Stats. 1953 s. 17.245; 1961 c. 615.

17.25 History: 1919 c. 362 s. 37; 1919 c. 671 s. 4; Stats. 1919 s. 17.25; 1927 c. 473 s. 7; 1967 c. 276 s. 39.

Where there is more than one vacancy in the town board the remaining supervisor and the clerk cannot fill them. State ex rel. Carpenter v. Beloit, 21 W 280.

The town board is not required to act on the very day when the time expires for the treasurer to qualify without his having done so. Omro v. Kaime, 39 W 468.

A town treasurer appointed pursuant to 818, Stats. 1915, is "elected" within the meaning of the language of 811, Stats. 1915, "until his successor is elected or qualified." State ex rel. Schommer v. Vandenberg, 164 W 628, 160 NW 1037.

A town chairman appointed pursuant to this section, but being a member of the appointing body, holds office de facto until contrary adjudication. 36 Atty. Gen. 508.

Justice of peace election to fill vacancy may not be held at same time as regular election for the office but can only be held at annual town or village meeting in even-numbered year. Justice holds office until successor qualifies. 39 Atty. Gen. 322.

17.26 History: 1919 c. 362 s. 38; Stats. 1919 s. 17.26; 1949 c. 566; 1953 c. 90 s. 165; 1959 c. 446; 1963 c. 257, 436; 1967 c. 92 s. 22; 1969 c. 45 s. 6 (1); 1969 c. 331.

Editor's Note: Cases involving the filling of vacancies in the office of treasurer, decided before 1919, are State ex rel. Ackerman v. Dahl, 65 W 510, 27 NW 343, and Board of School Directors v. Kuhnke, 155 W 343, 144 NW 987.

Where a school district officer resigns, the

remaining members may fill the vacancy by appointment. If such appointment is not made according to law, the appointee is nevertheless a de facto officer and holds under color of title. The village clerk has no authority to pass upon the legality of an appointment made by the remaining members of the board. 10 Atty. Gen. 100.

17.27 History: 1919 c. 362 s. 39; Stats. 1919 s. 17.27; 1921 c. 422 s. 6; 1955 c. 299; 1961 c. 495.

17.27 (4) authorizes the governor to fill the vacancy in the office of lieutenant governor. State v. Ekern, 228 W 645, 280 NW 393.

The governor has no authority under 17.27 (4) to appoint a successor where the governor-elect dies, since the constitution makes other and complete provision in such case and leaves no room for operation of sec. 10, art. XIII. State ex rel. Martin v. Heil, 242 W 41, 7 NW (2d) 375.

17.28 History: 1919 c. 362 s. 40; Stats. 1919 s. 17.28.

17.29 History: 1919 c. 362 s. 41; Stats. 1919 s. 17.29; 1953 c. 61; 1955 c. 652; 1965 c. 666 s. 22 (5).

17.29, relating to vacancies in and removals from office, does not limit the application of the chapter to offices thereafter created. State ex rel. Brister v. Weston, 241 W 584, 6 NW (2d) 648.

CHAPTER 18.

Public State Debt.

18.01 History: 1969 c. 259; Stats. 1969 s. 18.01.

18.02 History: 1969 c. 259; Stats. 1969 s. 18.02.

On contracting state debts see notes to sec. 4, art. VIII; on public debt for extraordinary expense see notes to sec. 6, art. VIII; and on public debt for public defense and bonding for public purposes see notes to sec. 7, art. VIII.

18.03 History: 1969 c. 259; Stats. 1969 s. 18.03.

18.04 History: 1969 c. 259; Stats. 1969 s. 18.04.

18.05 History: 1969 c. 259; Stats. 1969 s. 18.05.

18.06 History: 1969 c. 259; Stats. 1969 s. 18.06.

18.07 History: 1969 c. 259; Stats. 1969 s. 18.07.

18.08 History: 1969 c. 259, 382; Stats. 1969 s. 18.08.

18.09 History: 1969 c. 259; Stats. 1969 s. 18.09.

18.10 History: 1969 c. 259, 382; Stats. 1969 s. 18.10.

18.12 History: 1969 c. 259; Stats. 1969 s. 18.12.

18.13 History: 1969 c. 259, 382; Stats. 1969 s. 18.13.