

CHAPTER 784

QUO WARRANTO

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784.01 Remedy by civil action; forms. The remedies heretofore obtainable by writs of scire facias and quo warranto and by proceedings by information in the nature of quo warranto may be obtained by civil action, and it shall not be necessary to sue out such writs in form; but this section shall not prevent the use by the supreme court of writs and proceedings in the forms hitherto used in such cases in such court.

History: 1979 c. 32 s. 61; Stats. 1979 s. 784.01.

784.02 How tried. In actions of quo warranto and scire facias, the court may summon a jury and prescribe the manner of summing the jury.

History: 1977 c. 449; 1979 c. 32 s. 61; Stats. 1979 s. 784.02.

784.03 Relator, when to be joined as plaintiff. When an action shall be brought by the attorney general by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the state as plaintiff.

History: 1979 c. 32 s. 61; Stats. 1979 s. 784.03.

784.04 When action may be brought. (1) An action may be brought by the attorney general in the name of the state, upon his or her own information or upon the complaint of any private party, against the parties offending in the following cases:

(a) When any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state; or

(b) When any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of office; or

(c) When any association or number of persons shall act, within this state, as a corporation without being duly incorporated.

(2) Such action may be brought in the name of the state by a private person on personal complaint when the attorney general refuses to act or when the office usurped pertains to a county, town, city, village, school district or technical college district.

History: 1971 c. 154; 1979 c. 32 s. 61; 1979 c. 176; Stats. 1979 s. 784.04; 1993 a. 399.

A competitive interest is sufficient to confer standing to sue in quo warranto. *State ex rel. 1st Nat. Bank v. M & I Peoples Bank*, 95 Wis. 2d 303, 290 N.W.2d 321 (1980).

Both a neighboring city and a landowner–taxpayer in a town had standing in a quo warranto challenge to the incorporation of a town. *City of Waukesha v. Salbashian*, 128 Wis. 2d 334, 382 N.W.2d 52 (1986).

A recount under s. 9.01 is the exclusive remedy for challenging mistakes in canvassing an election. Actions in quo warranto are precluded. *Shroble v. Prusener*, 185 Wis. 2d 103, 517 N.W.2d 169 (1994).

784.05 When defendant held to bail. If the action is brought against a person for usurping an office, the attorney general or person complaining, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of the person's right to the office. In such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his or her usurpation of the office, an order

may be granted by a judge of the circuit court, by a judge of the court of appeals or by a justice of the supreme court, if the action is pending therein, for the arrest of the defendant and holding him or her to bail; and thereupon the defendant shall be arrested and held to bail in the manner and with the same effect and subject to the same rights and liabilities as in other civil actions when the defendant is subject to arrest.

History: 1977 c. 187; 1979 c. 32 s. 61; Stats. 1979 s. 784.05.

784.06 Pleading. In an action brought to determine the right to any office, in every case where the defendant has the official certificate of election to the office, the complaint shall state in what respect such certificate was improperly or illegally issued; and if any party claims that illegal votes were cast at the election for the office, that party shall state in the pleading the names of the persons whom the party claims cast illegal votes which were counted, and in what such illegality consists, and the election district where such illegal votes were cast, and the number of legal votes cast for each claimant, respectively; if the party claims that lawful votes were tendered and not received, the names of such voters and the election district where tendered shall be alleged; if the party claims lawful votes were rejected by the canvassers, the number and election district where so rejected shall be alleged, together with the number which it is claimed should have been counted for claimant. And if it be alleged by either party that the entire vote of any town, municipal corporation or election district was illegal, that party's pleading shall specify the grounds of such alleged illegality.

History: 1971 c. 304; 1979 c. 32 s. 61; 1979 c. 176; Stats. 1979 s. 784.06.

784.07 Proceedings on motion to dismiss; continuance. In all such actions brought to determine the right to an office in the circuit courts, if the defendant moves to dismiss the complaint under s. 802.06 (2) the issue raised by the motion shall have preference upon the calendar and be tried before the other issues thereon. If the motion is sustained the plaintiff or relator may amend the complaint within 24 hours. If the motion is overruled the defendant shall serve an answer to the complaint within 24 hours unless, upon cause shown, further time therefor is granted to either party by the court. The issue as finally made shall be tried. No continuance of any such cause may be granted upon the defendant's application unless the defendant shows the absence of a witness or other testimony and the facts which the defendant expects to prove by the witness or other testimony and they are deemed material by the court. The plaintiff or relator may traverse or offer counterevidence to the facts set forth in the application for a continuance.

History: Sup. Ct. Order, 67 Wis. 2d 585, 763 (1975); 1975 c. 218; 1977 c. 449; 1979 c. 32 s. 61; Stats. 1979 s. 784.07.

784.08 Judgment. In every such case such judgment shall be rendered upon the right of the defendant and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require. When the action shall not be terminated during the term of the office in controversy it may notwithstanding be prosecuted to completion and judgment ren-

dered, which shall determine the right which any party had to the office.

History: 1979 c. 32 s. 61; Stats. 1979 s. 784.08.

784.09 Relator to take office and demand books. If judgment is in favor of the person alleged to be entitled the person is entitled, after taking the oath of office and executing the official bond required by law, to assume the execution of the office. It is the person's duty immediately thereafter to demand of the defendant in the action all the books and papers in the defendant's custody or power belonging to the office.

History: 1979 c. 32 s. 61; 1979 c. 176; Stats. 1979 s. 784.09.

784.10 Delivery of books, etc. If the defendant shall refuse or neglect to deliver over such books or papers pursuant to the demand the defendant is guilty of a misdemeanor, and the same proceedings shall be had and with the same effect to compel the delivery of such books and papers as are provided by law.

History: 1979 c. 32 s. 61; 1979 c. 176; Stats. 1979 s. 784.10.

784.11 Damages. If the judgment be rendered upon the right of the person so alleged to be entitled in favor of such person the

person may recover by action the damages the person has sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

History: 1979 c. 32 s. 61; 1979 c. 176; Stats. 1979 s. 784.11.

784.12 Parties defendant. When several persons claim to be entitled to the same office or franchise one action may be brought against all such persons in order to try their respective rights to such office or franchise.

History: 1979 c. 32 s. 61; Stats. 1979 s. 784.12.

784.13 Judgment if office, franchise or privilege usurped. When a defendant against whom an action has been brought under this chapter shall be adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that the defendant be excluded from the office, franchise or privilege and that the plaintiff recover costs against the defendant. The court may also, in its discretion, fine the defendant a sum not exceeding \$2,000, which fine, when collected, shall be paid into the treasury of the state.

History: 1979 c. 32 s. 61; Stats. 1979 s. 784.13; 1997 a. 254.