

18.14 History: 1969 c. 259, 382; Stats. 1969 s. 18.14.

18.15 History: 1969 c. 259; Stats. 1969 s. 18.15.

18.16 History: 1969 c. 259, 382; Stats. 1969 s. 18.16.

18.17 History: 1969 c. 259; Stats. 1969 s. 18.17.

CHAPTER 19.

Official Oaths and Bonds; Custody of Official Property.

19.01 History: 1919 c. 93 s. 3; 1919 c. 679 s. 3, 4; Stats. 1919 s. 19.01; 1927 c. 135; 1927 c. 523 s. 40; 1929 c. 262 s. 2; 1931 c. 45; 1935 c. 275; 1937 c. 429; 1943 c. 351; 1949 c. 90; 1951 c. 206; 1957 c. 110; 1961 c. 614; 1963 c. 6, 407; 1965 c. 66 s. 8; 1965 c. 249, 617; 1967 c. 276 s. 39.

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

On oath of office see notes to sec. 28, art. IV, and 19.10; and on bonds see notes to 19.11.

An official oath is mandatory upon a city officer. But a person duly elected to a city office who secures possessions 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.

An official bond dated November 7, 1923, which recited that the principal had been elected school district treasurer "for a term of 3 years commencing on the third day of July, 1922" is construed to fairly contemplate coverage for the full term. *School Dist. v. Larson*, 196 W 211, 218 NW 847.

No consideration need be expressed in a bond executed pursuant to and in substantial conformance with the requirements of a statute. *Stockton v. Dombrowski*, 207 W 71, 240 NW 774.

The receipt of money from the state by the superintendent of a state school through his improper certification of a pay roll which included the name of a teacher who was on an unauthorized leave of absence constituted a breach of the superintendent's official bond securing the performance of his duties, although he may have acted in good faith and did not use the money personally, and the surety on such bond was entitled to recover from the superintendent the amount paid to the state in compromise settlement of the state's claim on account of such breach. *United States F. & G. Co. v. Hooper*, 219 W 373, 263 NW 184.

The paragraph of the city's complaint charging a wholly illegal and unauthorized use of city funds by the deceased city treasurer and a broker did not state a cause of action against the sureties on the treasurer's official bonds, since the resulting profits did not attach as an accretion to the funds for which the treasurer was officially accountable, and hence the failure to account for the profits was not a breach of the bonds; but the paragraph of the complaint charging the realization of unaccounted profits from the sale of se-

curities lawfully purchased with city funds did state a cause of action against the sureties on the treasurer's bonds, since such profits did attach as an accretion to the funds lawfully invested so as to make the failure to account for the profits a breach of the bonds. *Milwaukee v. Drew*, 220 W 211, 265 NW 683.

A bond of a special deputy commissioner of banking, for the faithful discharge of the duties of his office in assisting in liquidating and distributing the assets of a delinquent bank under 220.08 is an "official bond." *Banking Comm. v. Nat. Surety Corp.*, 243 W 542, 11 NW (2d) 171.

An official bond of a public officer, in the form prescribed by 19.01 (2), is not a "sealed instrument"; and the mere fact that the corporate seal of the surety company was affixed to the official bond of an assistant city treasurer did not, without anything further, make the bond a sealed instrument, in respect to application of the statute of limitations. *Maxwell v. Stack*, 246 W 487, 17 NW (2d) 603.

An official bond should contain only such provisions as are found in 19.01 (2), together with such additional provisions as are authorized by the statute providing for bond. 13 Atty. Gen. 616.

A public officer is an insurer of public funds lawfully in his possession and is liable for losses which occur even without his fault. 26 Atty. Gen. 227.

The bond required by 19.01, Stats. 1949, covers nonfeasance, as well as malfeasance and misfeasance. 30 Atty. Gen. 440.

A county has authority to pay premiums on surety bonds of officers and employes where such bonds are required by some provision of the statutes or by some appropriate action of the county board or by some duly delegated agency thereof. 39 Atty. Gen. 258.

A county may properly pay bond premiums for deputy county clerks appointed for the sale of hunting and fishing licenses. 39 Atty. Gen. 579.

19.015 History: R. S. 1858 c. 13 s. 90; R. S. 1858 c. 15 s. 64, 70; R. S. 1858 c. 120 s. 201; 1863 c. 155 s. 126, 132; R. S. 1878 s. 984; 1893 c. 268; Stats. 1898 s. 984; 1917 c. 152 s. 2; Stats. 1917 s. 19.01; 1919 c. 93 s. 2; Stats. 1919 s. 19.015; 1965 c. 66 s. 8.

Under 984, Stats. 1898, it was the duty of the chairman of the county board to prosecute a claim against a treasurer and his bondsmen to judgment and to see that all legal remedies for its collection were exhausted, but no further power to collect the claim was given to such chairman but such power rested, if at all, in the county board. *Washburn County v. Thompson*, 99 W 585, 75 NW 309.

Although it is the duty of the chairman of a county board to see that an action on an official bond is prosecuted, there is no requirement that the action be brought in his name but it is properly brought in the name of the county. *Forest County v. United S. Co.* 149 W 323, 136 NW 335.

19.02 History: 1860 c. 196 s. 1, 2; R. S. 1878 s. 985; Stats. 1898 s. 985; 1917 c. 152 s. 4; Stats. 1917 s. 19.02.

If it is the duty of an officer to pay over money to his successor in office, the latter is the trustee of an express trust and may sue

upon the former's bond for the breach thereof resulting from the nonpayment. *Mulholland v. Estate of Gerry*, 81 W 647, 51 NW 960.

An action on an official bond of the state treasurer to recover for unauthorized surrender of securities whereby individuals were injured need not be brought by the state itself represented by the attorney general but may be brought by such individuals in the name of the state. *State ex rel. Sheldon v. Dahl*, 150 W 73, 135 NW 474.

19.03 History: 1860 c. 196 s. 1, 2; R. S. 1878 s. 985, 987; Stats. 1898 s. 986, 987; 1917 c. 152 s. 6; Stats. 1917 s. 19.03; 1969 c. 87.

The provision requiring security for costs is mandatory. No notice of motion for dismissal of an action on the ground that security has not been furnished is necessary; so 269.31 is inapplicable. *Sheldon v. Nick & Sons, Inc.* 253 W 162, 32 NW (2d) 260.

The requirements in 19.03 that a person commencing an action against an officer and his surety on his official bond shall give security for costs by an undertaking as prescribed in 271.28 (3) or 307.09, and serve a copy thereof on the defendants at the time of the service of the summons, are neither conditions precedent to the court's obtaining jurisdiction nor absolute requirements which can never be waived, but prescribe the procedure to be followed in bringing the lawsuit. *Broadbent v. Hegge*, 44 W (2d) 719, 172 NW (2d) 34.

Waiver of the requirements of 19.03 must be express or necessarily implied from acts entirely inconsistent with raising the issue of noncompliance with statutory requirements. *Broadbent v. Hegge*, 44 W (2d) 719, 172 NW (2d) 34.

19.04 History: 1860 c. 196 s. 3; R. S. 1878 s. 988; Stats. 1898 s. 988; 1917 c. 152 s. 7; Stats. 1917 s. 19.04.

19.05 History: 1860 c. 196 s. 1, 2; R. S. 1878 s. 989; Stats. 1898 s. 989; 1917 c. 152 s. 8; Stats. 1917 s. 19.05.

19.06 History: 1860 c. 196 s. 3, 4; R. S. 1878 s. 990; Stats. 1898 s. 990; 1917 c. 152 s. 9; Stats. 1917 s. 19.06.

19.07 History: 1925 c. 113; Stats. 1925 s. 19.07; 1937 c. 429; 1953 c. 245.

A schedule bond covering all county officers and employes may not be filed under 19.07 (1) (b), in lieu of the official bonds required of county officers by 59.13 (1) and 19.01 (2). 37 Atty. Gen. 521.

19.10 History: R. S. 1849 c. 9 ss. 9, 27, 42, 44, 45; R. S. 1858 c. 10 ss. 16, 39, 53, 59, 60; R. S. 1878 ss. 138, 153, 161, 164; Stats. 1898 ss. 138, 153, 161, 164; 1903 c. 37 s. 1; 1903 c. 101 s. 1; 1905 c. 271 s. 1; Supl. 1906 ss. 153, 164; 1913 c. 772 s. 130; 1917 c. 622 s. 3; Stats. 1917 s. 14.03; 1969 c. 276 ss. 9, 605; Stats. 1969 s. 19.10.

The term of office of the state superintendent starts when he qualifies and assumes duties of office. State superintendent-elect, who fails to take the oath required by sec. 28, art. IV, and 14.03, Stats. 1949, and assume duties at the time required by sec. 1, art. X, and 14.02, causes a vacancy in the office. The governor's appointment of the same person for the unexpired term is valid, and since he

qualified under this appointment and assumed the duties of the office after ch. 405, Laws 1949, increased the salary incident to the office, he is entitled to increased salary. 38 Atty. Gen. 445.

19.11 History: R. S. 1849 c. 9 ss. 9, 27, 30, 42; R. S. 1849 c. 24 s. 104; R. S. 1858 c. 10 ss. 16, 39, 42, 53; R. S. 1858 c. 28 s. 124; R. S. 1878 ss. 138, 153, 154, 161; Stats. 1898 ss. 138, 153, 154, 161; 1903 c. 101 s. 1; 1905 c. 271 s. 1; Supl. 1906 s. 153; 1913 c. 772 s. 130; 1917 c. 622 ss. 4, 5, 14; Stats. 1917 ss. 14.04, 14.06, 14.16; 1947 c. 472; 1969 c. 276 ss. 9, 11, 19, 588 (2); Stats. 1969 s. 19.11.

An indemnity contract by which the state treasurer agreed to reimburse a corporate surety for costs, damages and charges which it might incur in consequence of executing his bond is not void as against public policy, and attorneys' fees, disbursements and charges paid by the surety in defending an action on the bond may be recovered on the indemnity agreement. *Fidelity & Cas. Co. v. Johnson*, 190 W 199, 208 NW 791; *Maryland Cas. Co. v. Johnson*, 190 W 202, 208 NW 793.

The liability of the surety under a depository bond, for state funds deposited by the state treasurer without compliance with the depository law and for funds deposited in excess of the statutory limit, and the liability of the surety under the state treasurer's official bond, for the treasurer's noncompliance with the depository law and his failure to keep the deposit within the statutory limit, were not "common liabilities" so as to entitle the surety on the depository bond to contribution from the surety on the official bond; the liability of the surety on the depository bond arose out of the failure of the depository bank to repay deposited state moneys, but the liability of the surety on the official bond arose out of the failure of the state treasurer to perform his official duty. *United States F. & G. Co. v. Commercial Cas. Ins. Co.* 222 W 151, 268 NW 111.

19.21 History: 1917 c. 178 s. 2; Stats. 1917 s. 18.01; 1955 c. 329; 1957 c. 623; 1961 c. 567; 1963 c. 234, 397; 1969 c. 219; 1969 c. 259 s. 6; 1969 c. 276 ss. 582 (11), 596; Stats. 1969 s. 19.21.

The penalty under sec. 977, Stats. 1898, is recoverable in a civil action and cannot be enforced by an order of imprisonment in a proceeding under the next 3 sections. *State ex rel. Velie v. Morgan*, 130 W 293, 110 NW 245.

18.01 (1) was intended to cover all property, papers, records, etc., specifically required by statute to be filed, deposited, or kept, or so required by some rule enacted under a valid rule-making power. The words "as such officer" at the end of this section relate back to the provision requiring an officer to keep and to deliver to his successor all property, etc., in his possession, as well as to the immediately preceding provision. This provision does not require every paper or communication to be delivered to a successor without respect to the relation of such papers to the functions of the office, but the quoted words were intended as a limitation and give some power to an officer to dispose of purely fugitive papers having no relation to the functions of the office. Independently of statute, public records include all written memorials made by a

public officer within his authority where such writings constitute a convenient, appropriate, or customary method of discharging the duties of the office. *International Union v. Gooding*, 251 W 362, 29 NW (2d) 730.

A report of an investigation of the police department by the city attorney in the hands of the mayor may be kept confidential if the harmful effect of publication on the public interest outweighs the benefit to be gained. The decision is to be made by the person having the documents and, if action is brought, reviewed by the court in camera. *State ex rel. Youmans v. Owens*, 28 W (2d) 672, 137 NW (2d) 470, 139 NW (2d) 241. See also *State ex rel. Youmans v. Owens*, 32 W (2d) 11, 144 NW (2d) 793.

Traffic citations are public records in the custody of the chief of police and unless the chief gives valid reasons for denying inspection, a writ of mandamus should issue as a matter of course. *Beckon v. Emery*, 36 W (2d) 510, 153 NW (2d) 501.

The decisions in *State ex rel. Youmans v. Owens*, 28 W (2d) 672, and *Beckon v. Emery*, 36 W (2d) 510, taken together, stand for the proposition that a right to inspection of documents asserted under 18.01 is subject to the common-law limitation that the inspection not be permitted if there is a specific showing that the public interest would be adversely affected. *State ex rel. Journal Co. v. County Court*, 43 W (2d) 297, 168 NW (2d) 836.

The right of public inspection of property and things referred to in this section is limited to such as the officer having the custody thereof is under legal duty to preserve, and does not embrace such documents as he may lawfully have in his possession merely from a desire to retain them for his convenience or that of his deputies. 11 Atty. Gen. 7.

A county clerk is required to preserve in his office and not destroy tally sheets and poll lists delivered to him under 6.59, Stats. 1925. 14 Atty. Gen. 476.

Health records of public school pupils and consents to vaccination and immunization are not public records and matter of their preservation is one of policy. 27 Atty. Gen. 255.

If it is administratively desirable the annuity board may disclose to third party accumulations to credit of member of retirement system and amount of monthly annuity which such member could receive upon retirement. 31 Atty. Gen. 195.

The board of medical examiners is not required to preserve examination papers indefinitely. These do not constitute public records under 18.01 (1) or 327.18, Stats. 1945, and together with routine correspondence may be destroyed after a reasonable time. However, no official records may be destroyed without legislative permission and this applies to such correspondence as may partake of the nature of an official record. 35 Atty. Gen. 279.

Notwithstanding 18.01, 59.14 (1) and 59.23, Stats. 1951, the public enjoys no right of inspection of telephone and radio logs, criminal complaint reports, criminal investigation reports, automobile accident reports, or other papers, documents and physical evidence relating to law enforcement activities in the office of sheriff or of a city police department. 41 Atty. Gen. 237.

For discussion of the confidentiality of various types of reports and records filed in public offices, see 52 Atty. Gen. 242.

Under 18.01, Stats. 1967, tape recordings of county board proceedings must be made available to the public except in those instances where harm to the public interest would outweigh the benefits. 56 Atty. Gen. 206.

It is improper to subpoena public records, for use in court proceedings, where certified copies of such records can be obtained under 889.18, Stats. 1967. 57 Atty. Gen. 138.

19.22 History: 1917 c. 178 s. 3; Stats. 1917 s. 18.02; 1969 c. 259 ss. 6, 27 (2); Stats. 1969 s. 19.22.

19.23 History: 1917 c. 178 s. 4; 1917 c. 671 s. 4; Stats. 1917 s. 18.03; 1947 c. 67, 316; 1951 c. 457; 1969 c. 259 s. 6; 1969 c. 276 ss. 582 (11), 596; Stats. 1969 s. 19.23.

19.24 History: R. S. 1849 c. 12 s. 45; R. S. 1858 c. 15 s. 51; R. S. 1878 s. 4553; Stats. 1898 s. 4553; 1925 c. 4; Stats. 1925 s. 348.32; 1955 c. 696 s. 247; Stats. 1955 s. 18.04; 1969 c. 259 s. 6; Stats. 1969 s. 19.24.

19.25 History: R. S. 1849 c. 131 s. 41; R. S. 1858 c. 133 s. 62; R. S. 1878 s. 2963; Stats. 1898 s. 2963; 1925 c. 4; Stats. 1925 s. 271.49; 1935 c. 541 s. 217; Stats. 1935 s. 14.66; 1969 c. 259 s. 6; 1969 c. 276 s. 51; Stats. 1969 s. 19.25.

CHAPTER 20.

Appropriations and Budget Management.

20.001 History: 1967 c. 291; Stats. 1967 s. 20.001; 1969 c. 55, 259.

20.002 History: 1967 c. 291; Stats. 1967 s. 20.002.

On the public-purpose doctrine see notes to sec. 1, art. IV; and on limitations respecting appropriations see notes to sec. 2, art. VIII.

The allotment for permanent improvements made from a nonlapsible appropriation continues available for the purpose of the allotment, and for that purpose only, until expended. The sum annually appropriated includes not merely the stated amount, but also such increase as may be made thereto in the discretion of the executive, up to the expressed limitation, where the entire amount is referred to as appropriated annually. 9 Atty. Gen. 465.

When an order for goods has been given and accepted an "indebtedness" has been "incurred" within the meaning of 20.77 (5), Stats. 1921. 10 Atty. Gen. 1084.

Where goods are ordered by a department of the state, and the order is accepted, but the goods are not delivered until the ensuing fiscal year, the bill is payable out of the appropriation for the year in which they were ordered. 10 Atty. Gen. 1125.

Under 20.77 (5), Stats. 1937, any indebtedness incurred under the appropriation which reverts to the general fund, where such indebtedness is incurred prior to the time such fund reverts, is to be paid from the appropriation or balance thereof which reverts unless