

CHAPTER 17.

RESIGNATIONS, VACANCIES, AND REMOVALS FROM OFFICE.

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17.01 Resignations to whom made; when effective. Resignations of public officers shall be made as follows:

(1) By the governor, lieutenant governor or any officer appointed by the legislature, to the legislature, if in session; otherwise by the governor or lieutenant governor, to the secretary of state, and by an officer appointed by the legislature, to the governor.

(2) By the secretary of state, treasurer, attorney-general, state superintendent, and all officers appointed by the governor alone or by him by and with the advice and consent of the senate, to the governor.

(3) By senators and members of the assembly, to the presiding officers of their respective houses, who shall immediately transmit the same to the governor, and to the governor during the recess of the legislature.

(4) By the justices of the supreme court, circuit and county judges, to the governor.

(5) By a sheriff, to the county clerk, who shall immediately transmit notice thereof to the governor.

(6) By a clerk of the circuit court, to the circuit judge.

(7) By county clerk, county treasurer, coroner, district attorney, register of deeds, county surveyor or county superintendent of schools, to the sheriff, who shall immediately transmit a notice thereof, in case of a coroner, district attorney or register of deeds, to the governor; in case of a county superintendent of schools, to the state superintendent; and in case of a county clerk, county treasurer or surveyor, to the chairman of the county board. And after such notices the sheriff shall file such resignations with the county clerk.

(8) By the mayor or alderman or councilman of a city, however organized, to the council; by other elective officers thereof, to the mayor; and by other city officers, to the officer or body having power to appoint in their stead.

(9) By a town officer, to the town board.

(10) By officers of a village, however organized, to the village board.

(11) By a school district officer, to the district board.

(12) By all other officers, to the officer or body having power to appoint in their stead.

(13) Resignations shall be made in writing, shall be addressed and delivered to the officer or body prescribed in this section and shall take effect, in the case of an officer whose term of office continues by law until his successor is chosen and qualifies, upon the qualification of his successor; and in the case of other officers, at the time indicated in the written resignation, or if no time is therein indicated, then upon delivery of the written resignation. Delivery shall be made by leaving a copy of the written resignation with the officer to whom it is required to be addressed and delivered at his public office or his usual place of business, or if required to be addressed and delivered to a body, by leaving a copy with the following officer at his public office or his usual place of business:

(a) If required to be addressed and delivered to the legislature, with the presiding officer of each house, or if required to be addressed and delivered to but one house, to the presiding officer of that house.

(b) If required to be addressed and delivered to the county board, city council or to the village, town or school district board, to the clerk thereof, except the resignation of the county, city, village, town or school district clerk which shall be delivered to the chairman of the county board, mayor, village president, town chairman, or director, as the case may be.

(c) If required to be addressed and delivered to any other body, to the secretary or clerk thereof, if any, and if none, to any member of such body.

17.02 Notice of resignations. Notice of resignations, in addition to those provided for in section 17.01, shall be given forthwith as follows:

(1) **SENATORS AND MEMBERS OF CONGRESS.** Of the resignation of a United States senator or member of congress from this state, by him to the secretary of state.

(2) **NOTARIES PUBLIC.** Of the resignation of a notary public, by the secretary of state to the clerk of the circuit court of the county wherein such officer resided when appointed.

(3) **JUSTICES OF THE PEACE.** Of the resignation of justices of the peace in any city or village, however organized, or in any town, by the city, village or town clerk, as the case may be, to the clerk of the circuit court for his county.

17.03 Vacancies, how caused. Any public office, including offices of cities, villages and school districts, however organized, shall become vacant upon the happening of either of the following events:

(1) The death of the incumbent.

(2) His resignation.

(3) His removal.

(4) His ceasing to be an inhabitant of this state; or if the office is local, his ceasing to be an inhabitant of the district, county, city, village, town, ward or school district for which he was elected or within which the duties of his office are required to be discharged; and in the case of a school district officer, and in addition to the foregoing, his being and remaining absent from the district for a period exceeding sixty days. But no office shall become vacant because the territory in which any officer resides is annexed to or consolidated with another governmental unit, and in such event such officer shall hold office until the expiration of his term; provided that this exception shall not apply to village or city officers when a part or the whole of such city or village is annexed to or consolidated with another governmental unit, or to district school officers when the whole of such district is annexed to or consolidated with another governmental unit.

(5) His conviction by a state or United States court of and sentence for treason, felony or other crime of whatsoever nature punishable by imprisonment in any jail or prison for one year or more, or his conviction by any such court of and sentence for any offense involving a violation of his official oath, in either case whether or not sentenced to imprisonment. A vacancy so created shall in no case be affected by a stay of execution of judgment. Reversal of the judgment against such officer shall forthwith restore him to office, if the term for which he was elected or appointed has not expired, but, in any event, shall entitle him to the emoluments of the office for all the time he would have served therein had he not been so convicted and sentenced; but pardon shall not restore him to office or entitle him to any of the emoluments thereof.

(6) The decision of a competent tribunal declaring void his election or appointment; or adjudging him insane.

(7) The neglect or refusal of any person elected or appointed or re-elected or reappointed to any office to take and file his official oath or to execute or renew his official bond, if required, or to file the same or either thereof in the manner and within the time prescribed by law.

(8) The neglect or refusal of any officer in office to execute and file an additional bond, when lawfully required, in the manner and within the time so required or prescribed by law.

(9) The death or declination in writing of any person elected or appointed to fill a vacancy or for a full term before he qualifies, or his death or such declination before the time when, by law, he should enter upon the duties of his office to which he was elected or appointed.

(10) On the happening of any other event which is declared by any special provision of law to create a vacancy.

Note: As to who succeeds to the office of governor if the governor-elect dies, see note to sec. 7, art. V, Const. citing *State ex rel. Martin v. Heil*, 242 W 41, 7 NW (2d) 375.

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

District attorney inducted into armed forces of United States under selective service act does not cease to be inhabitant of county from which he is inducted within 17.03, and circuit judge may appoint district attorney pro tempore to attend to district attorney's duties pending his return under 59.44 (1). 30 Atty. Gen. 54.

Register of deeds and county clerk do not vacate their offices by enlistment in armed

forces of United States. Register of deeds armed forces of United States. 31 Atty. Gen. and county clerk may offer themselves as 194. candidates for re-election while serving in

17.035 Vacancies; military leaves. (1) If an elected or appointed official or employe of any city or village or school district however organized shall enter the armed forces of the United States and shall remove himself temporarily from the municipality or district for which he is an officer or employe such temporary removal shall constitute a temporary vacancy in such office or position.

(2) Such officer or employe may apply for a leave of absence under section 66.52 (1) and if the same is granted shall be entitled to the benefits of section 66.52 (1) to (6). Whether he applies for a leave of absence or not he shall be entitled to all the benefits of section 21.70.

(3) Such temporary vacancies shall be filled as other vacancies are filled, except that no election need be held to fill any part of such temporary vacancy, but the term of the person appointed temporarily shall not extend beyond the expiration of the term of the officer or employe who entered federal service, and such temporary term shall be terminated sooner in case and at such time as the original officer or employe shall return to such district or municipality during his original term of office after completing his federal service and upon his filing within 40 days of such termination with the clerk of the city, village, or school district, his statement under oath of such termination, and that he elects to resume his office or position. On filing such statement the term of the temporary officer or employe shall cease, and the returning officer or employe shall be entitled to resume the duties of his office.

(4) In cities, villages or school districts in which a vacancy as described in this section does exist and no appointment has been made to fill such vacancy before June 4, 1943, the vacancy therein shall be considered as commencing on said date.

(5) If any provisions of this section or the application thereof to any person or circumstance is held invalid, the remainder of such subsections or provisions thereof and the application of such provisions to other persons or circumstances shall not be affected thereby. [1943 c. 242]

17.04 Notaries public; office how vacated. If a notary public removes out of the county in which he resided at the time of appointment he shall be deemed to have resigned his office; and his power to act as such notary public shall cease immediately upon such removal.

17.05 Governor may declare vacancies. The governor may declare vacant the office of any state officer required by law to execute an official bond whenever a judgment is obtained against such officer for a breach of the conditions of such bond.

17.06 Removal state officers; impeachment; address. Any civil officer of this state may be removed from office by impeachment for corrupt conduct in office, or for crimes and misdemeanors as provided in section 1, article VII of the constitution; and any supreme court justice or circuit court judge may also be removed from office by address of both houses of the legislature as provided in section 13, article VII of the constitution.

17.07 Removals; legislative and appointive state officers. Removals from office of legislative and appointive state officers may be made as follows:

(1) Officers elected by either house of the legislature, by the house that elected them, at pleasure.

(2) State officers appointed by the legislature, by that body, at pleasure; or by the governor during the recess of the legislature, for cause.

(3) State officers appointed by the governor by and with the advice and consent of the senate, or appointed by any other officer or body subject to the concurrence of the governor, by the governor at any time, for cause; but the commissioners of banking may be so removed only by and with the consent of a majority of the members of the senate.

(4) State officers appointed by the governor alone for a fixed or indefinite term or to supply a vacancy in any office, elective or appointive, except justices of the supreme court and judges, by the governor at pleasure; and all officers appointed by the governor during the recess of the legislature whose appointments are required to be later confirmed by the senate shall be deemed to be appointed by the governor alone until so confirmed.

(5) Other state officers appointed by any officer or body without the concurrence of the governor, by the officer or body that appointed them, at pleasure, except officers appointed according to merit and fitness under and subject to or whose removal is governed by chapter 16 of the statutes who may be removed only in conformity with the provisions of said chapter.

(6) A member of the board of normal regents, in addition to being subject to removal as provided in subsection (4), may be removed from office by the normal regents, for cause, by a vote of two-thirds of all the regents. [SpL. S. 1937 c. 9; 1939 c. 413, s. 1, 4]

17.08 Suspension of receiver of moneys. (1) The governor may summarily suspend from office any appointive state officer who collects, receives or handles public moneys, if it appears to him by reason of action, proceedings, charges or credible information that the officer has in any particular wilfully neglected his duty in connection with such moneys. The suspension shall continue until the final determination of the action or proceedings or of the investigation of such charges or information, or pending any proceedings to remove such officer from office as provided by law for any such neglect of duty, and a competent person shall be appointed, in the manner and by the appointing power prescribed for filling vacancies in such office, to discharge the duties of such officer during his suspension. If it is determined in the action or proceedings or is found upon investigation that the officer has not in any particular wilfully neglected his duty in connection with such moneys, and such fact is certified to the secretary of state by the judge, governor or other officer who conducted such action, proceedings or investigation, the suspended officer, unless he has been removed from office for any cause provided by law, shall thereby be restored to office, if the term for which he was elected or appointed has not expired, and shall thereby become entitled to the emoluments of the office for all of the time he would have served therein had he not been suspended as herein provided.

(2) This section in no manner impairs or restricts the power of the governor or other officer or body to remove any officer from office as provided by law.

17.09 Removal of elective county officers. Elective county officers may be removed from office as follows:

(1) **COUNTY CLERK; TREASURER; SURVEYOR.** The county clerk, county treasurer or surveyor, by the county board, for cause, by a vote of two-thirds of all the supervisors entitled to seats on such board.

(2) **CLERK OF CIRCUIT COURT.** The clerk of the circuit court, by the judge or a majority of judges of the circuit court for his county, in term time or vacation, for cause.

(3) **COUNTY SUPERINTENDENT.** The county or district superintendent of schools, by the judge or any judge of the circuit court for the county in which such superintendent was elected, in term time or vacation, for cause as defined in section 17.16 or for acting as agent for or receiving any fee or reward from any author, publisher, bookseller, or dealer in schoolbooks, maps or charts or school library books or school furniture or apparatus.

(4) **JUDGES.** The county judge, by address of both houses of the legislature in the manner provided in the constitution for the removal of justices of the supreme court or judges of the circuit courts. The judge of any municipal, superior, district, civil or other special court, created by special act or under the general law, with jurisdiction throughout the county, by the governor, for cause.

(5) **OTHER ELECTIVE COUNTY OFFICERS.** The sheriff, coroner, register of deeds or district attorney, by the governor, for cause.

17.10 Removal of appointive county officers. Appointive county officers may be removed as follows:

(1) **APPOINTED BY GOVERNOR.** County officers of any county appointed by the governor, by him, for cause.

(2) **APPOINTED BY COUNTY BOARD.** County officers appointed by the county board, by that body, for cause, except the county superintendent of the poor who may be removed by the board at pleasure. All such removals may be made by an affirmative vote of two-thirds of the supervisors entitled to seats on such board. The county highway commissioner may also be removed by the state highway commission, for cause.

(3) **APPOINTED BY CHAIRMAN OF COUNTY BOARD.** County officers appointed by the chairman of the county board and confirmed by the said board, or appointed by him alone, by such chairman, for cause, except members of the county civil service commission who may be removed by the county board, for cause, as provided in subsection (2). A county commissioner of elections so removed may appeal to the county board within ten days after such removal, and the county board shall conduct a hearing in such manner as shall be determined by it and determine the question of removal on such appeal.

(4) **APPOINTED BY THE CIRCUIT JUDGE.** County officers appointed by a judge or judges of the circuit court, by the judge or a majority of the judges authorized to appoint their successors, at pleasure.

(5) **APPOINTED BY THE COUNTY JUDGE.** County officers appointed by the county judge, by him, at pleasure, except side path commissioners who may be removed for cause only.

(6) **OTHERS.** All other appointive county officers, by the officer, or body that appointed them, at pleasure, except probation officers and their substitutes appointed pursuant to chapter 48 of these statutes who may be removed for cause only. Removals by a body, other than the county board, consisting of three or more members may be made by an affirmative vote of two-thirds of all the members thereof.

(7) **GENERAL EXCEPTION.** But no county officer appointed according to merit and fitness under and subject to a civil service law, or whose removal is governed by such a law, shall be removed otherwise than as therein provided.

17.11 Suspension of district attorney. (1) If any district attorney is arrested for or charged with any offense against the laws of this state, or if the governor is credibly informed that any district attorney is guilty of any such offense, or that proceedings are pending before any court or officer involving any criminal charge against him, or that any district attorney wilfully neglects or refuses to perform his duties, the governor shall suspend him from office until such charge shall be investigated and finally determined, and shall appoint the attorney-general or one of his assistants or some competent attorney of the state to discharge the duties of such office during such suspension.

(2) The county in which an attorney is so temporarily appointed district attorney shall pay such appointee for his services and expense, such amount as is determined and fixed by the governor and certified by him to the county clerk of such county.

(3) Any attorney so temporarily appointed shall have all the power and discharge all the duties of the district attorney and he shall speedily bring to a hearing and determination any charges made against the district attorney so suspended.

(4) If it is determined in such action or proceedings or is found upon such investigation that the district attorney so suspended is not guilty of any offense, or has not wilfully neglected or refused to perform his duties, as charged, and such fact is certified to the county clerk by the governor, he shall thereby become entitled to the emoluments of his office for all of the time he would have served therein had he not been suspended as herein provided, and shall be restored to office if the term for which he was elected or appointed has not expired.

(5) This section in no manner affects provisions of law relating to the removal from office of the district attorney.

17.12 Removal and suspension of city officers. (1) **GENERAL AND SPECIAL CHARTER.** Officers of cities operating under the general law or under special charter including school officers, may be removed as follows:

(a) *Elective.* Elective officers, except judges of municipal courts created by special act and with jurisdiction throughout the city only, by recall as provided in section 10.44, or by the common council, for cause.

(b) *Judges special courts.* Judges of municipal courts, included within the exception of paragraph (a), by the governor, for cause.

(c) *Appointive.* Appointive officers, by whomsoever appointed, by the common council, for cause, except officers appointed by the council who may be removed by that body, at pleasure. Officers appointed by any other officer or body without confirmation or concurrence by the council, by the officer or body that appointed them, at pleasure, except commissioners of election in cities of the first class who may be removed by the mayor for cause only, and any such commissioner may appeal to the common council within ten days after removal. The council may conduct a hearing thereon by a committee which committee shall proceed in such manner as may be determined by it and make full report to the council, which shall determine the question upon such appeal.

(d) *Votes required.* Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of three or more members, by an affirmative vote of two-thirds of all the members thereof.

(2) **COMMISSION FORM.** Officers of cities operating under the commission form of government may be removed as follows:

(a) *Elective.* Elective officers, except judges of municipal courts created by special act and with jurisdiction throughout the city only, by recall as provided in section 10.44.

(b) *Judges special courts.* Judges of municipal courts included within the exception of paragraph (a), by the governor, for cause.

(c) *Appointive.* Appointive officers, by whomsoever appointed, by the council, at pleasure, by a majority vote; and officers appointed by any officer or body other than the council may also be removed from office by the officer or body that appointed them, at pleasure, by vote as provided in paragraph (c) of subsection (1).

(3) **SUSPENSION.** The mayor of any city may summarily suspend from office any officer thereof whose removal is sought and against whom charges have been preferred therefor, and may appoint an officer to discharge the duties of such office until such charges have been disposed of. If such charges are dismissed, the officer so suspended shall thereby be restored to office and be entitled to the emoluments of the office for all of the time he would have served therein had he not been suspended.

(4) **GENERAL EXCEPTION.** But no officer of any 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.

Note: 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 Removal of village, town and school district officers. Officers of towns, and of villages and school districts, however organized, may be removed as follows:

(1) **APPOINTIVE OFFICERS.** Any appointive village, town or school district officer, by the officer or body that appointed him, at pleasure. Removal of any such officer by a body shall be by a majority vote of all the members thereof.

(2) **VILLAGE JUSTICES.** The village police justice or justice of the peace, by the trustees, for cause, by a vote of the president and four trustees.

(3) **ALL OFFICERS.** Any village, town or school district officer, elective or appointive, including those embraced within the provisions of subsections (1) and (2), by the judge of the circuit court of the circuit wherein the village, town or school district is situated, in term time or vacation, for cause.

17.14 Removal; assessors; boards of review; county boards; procedure. Any assessor and any member of a board of review or of a county board of supervisors, in addition to being removable as otherwise provided, may be removed by the presiding judge of the circuit court for his county, in term time or vacation, as follows:

(1) **ASSESSORS.** Any assessor for one or more of the following causes:

(a) Wilful or intentional assessment of property at other than its true cash value with the intent to subject such property to more or less than its lawful share of taxes.

(b) Wilful or intentional omission of taxable property from the assessment roll with intent to permit the same to escape taxation.

(c) Wilful or intentional assessment of the property of one person at a lower value than the property of another or others whereby favoritism or discrimination between taxpayers in the district is shown.

(d) Solicitation or receipt of any favor, reward, money or other thing of value of or from the owner of any taxable property in his assessment district for the assessment or valuation of property at other than its true cash value.

(e) Solicitation or demand by any assessor of any owner of property liable to assessment in his assessment district to aid, assist or promote the business or interests of such assessor by means of which and by virtue of his office he shall gain or receive pecuniary profit or advantage that he could not otherwise have gained or received.

(f) Any violation of law in the valuation or assessment of property in his assessment district.

(2) **MEMBERS OF BOARDS OF REVIEW AND COUNTY BOARD.** Any supervisor, alderman, trustee or other officer who acts as a member of a board of review or of the county board of supervisors, for one or more of the following causes:

(a) Wilful or intentional valuation or equalization of property of persons or towns, cities or villages at other than the true cash value thereof, with the intent to subject the property of persons or of towns, cities or villages to more or less than their lawful share of taxes.

(b) Aiding, abetting or assisting in any understanding, combination or conspiracy to value or equalize the property in towns, cities or villages in a county at other than the true cash value, with intent to subject the property in one or more towns, cities or villages to more or less than its lawful share of taxes for state or county purposes or both.

(c) Any violation of law in the valuation or equalization of property in towns, cities or villages or in the discharge of official duties.

(3) **PROCEDURE.** Removals under this section may be made by the circuit judge in term time or vacation, by order specifying the cause thereof, a copy of which order shall be certified by the circuit judge to the proper town, village or city clerk. Such removal shall be made only upon a duly verified petition signed by a freeholder and taxpayer of the county setting forth fully the charges preferred against such officer. The district attorney of the county upon complaint showing cause therefor shall prepare the petition and have the same duly verified by the complainant. The judge, upon the presentation of the petition, shall by an order to show cause, which shall be served upon such officer personally at least ten days prior to the hearing, fix a time and place for hearing the matters alleged in the petition. The testimony shall be taken and the proceedings conducted under such reasonable regulations as the judge shall prescribe. The district attorney shall attend

the hearing and conduct the proceedings on behalf of the petitioner. The removal of such officer shall disqualify him from holding such office for three years from the date of the order of removal.

(4) **COSTS.** If the presiding judge, after a hearing on the merits, dismisses the petition and further finds the complaint was wilful and malicious and without probable cause, such judge shall order judgment in favor of the officer and against the petitioner for ten dollars attorney's fees and for the costs and fees of witnesses and officers incurred on behalf of such officer. The judgment shall be signed by the clerk of the circuit court and entered and docketed in his office as the judgment of the circuit court in term. An execution may be issued thereon against the property of the petitioner in the same mode as upon a judgment entered in the circuit court in civil actions founded in tort. Upon the return of such execution unsatisfied in whole or in part, an execution against the person of the petitioner may be issued in the manner and with the force and effect of an execution against the person as provided in sections 272.01 to 272.10. In all other cases the judge may, in his discretion, order that the expenses incurred in procuring witnesses and other needed actual expenses, be paid out of the treasury of the county in which such officer resides upon certificates of the clerk of said court. [1943 c. 275 s. 6]

17.15 Removals; other officers. (1) **JOINT COUNTY INSTITUTIONS.** Any member of the governing body of any joint county school, hospital, sanatorium, asylum or other joint county institution, appointed by the county board of any county, may be removed by said county board, for cause; and any other officer of any such institution may be removed by the officer or body that appointed him, for cause.

(2) **JURY COMMISSIONERS.** Jury commissioners may be removed from office by the judge or a majority of the judges authorized to appoint them, at pleasure.

(3) **JUDGES SPECIAL COURTS.** The judge of any special municipal court or other special court created by special act and with jurisdiction over an area less than a county but more than a city, village or town, may be removed by the governor, for cause.

17.16 Removals; definition; procedure; disqualification. (1) Removals from office at pleasure shall be made by order, a copy of which shall be filed as provided by subsection (8) of this section, except that a copy of the order of removal of a court commissioner, a jury commissioner or divorce counsel shall be filed in the office of the clerk of the circuit court.

(2) The word "cause," as used in this chapter, unless qualified, means inefficiency, neglect of duty, official misconduct or malfeasance in office.

(3) Removals from office for cause under this chapter, except as provided in section 17.14, shall be made as provided in this section, and may be made only upon written verified charges preferred by a taxpayer and resident of the governmental unit of which the person against whom the charges are filed is an officer, and after a speedy public hearing whereat said officer shall have full opportunity to be heard in his defense, personally and by counsel. A copy of the charges and written notice of the time and place for the hearing thereon shall be given such officer by the removing power by delivery to such officer in person or by mailing the same to him at his last and usual post-office address not less than ten days prior to such hearing. The officer may within ten days from service of such charges file with the removing power his verified answer thereto. The hearing shall be conducted and investigation made by the removing power with due dispatch, but the governor, in case of charges preferred to him, may appoint a commissioner to conduct the hearing, make the investigation and report the testimony and proceedings to him, and the council of any city having a membership of more than twenty, in case of charges preferred to it, may appoint a committee of not less than five of its members, to conduct the hearing, make investigation and report the testimony and proceedings to it. Such commissioner or committee shall have the same power and authority as the governor or the council, as the case may be, in the conduct of the hearing on and investigation of such charges.

(4) The removing power may, before acting upon any charges preferred against any officer, require the person preferring the same to execute and deliver to such power a bond in the sum of one thousand dollars with one or more sureties to be approved by such power, conditioned for the payment of all costs and expenses actually incurred by the state, county or other unit of which the person charged is an officer and by the removing power in the hearing and investigation of such charges.

(5) The removing power, and in case such power consists of more than one person, each such person is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence, and may make and enforce such orders and rules as are necessary to properly conduct such hearing and may appoint and fix the compensation of a stenographer to take testimony thereat.

(6) If any witness fails or refuses to obey a subpoena issued by the removing power or refuses to testify to any matter concerning which he may lawfully be interrogated, the

circuit court of the county in which such witness is summoned to appear or the judge thereof, upon application by the removing power, shall issue an order requiring such person to comply with such subpoena and to testify, or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(7) No person shall be excused from testifying or from producing evidence on such hearing for the reason that the testimony, documentary or otherwise, required of him may tend to incriminate him, but no person so testifying shall be prosecuted for or on account of any transaction, matter or thing concerning which he may have so testified or produced any documentary evidence, except for perjury committed in giving such testimony.

(8) Removals from office for cause shall be by order, a certified copy of which, together with a complete transcript of the testimony and proceedings at the hearing and a statement of the cause or causes for which removal is made, shall be filed by the removing power as follows:

(a) In the case of a state officer, in the office of the secretary of state.

(b) In the case of other officers, in the office of the clerk of the unit of which the person removed was an officer.

(c) In the case of officers of joint county institutions, in the office of the county clerk of the county wherein the buildings of such institution are located.

(d) In the case of judges of special municipal or other special courts with jurisdiction over an area less than a county but more than a city, village or town, in the office of the county clerk of the county wherein such court is located.

(9) In the case of procedure for removals by the governor, all expenses incurred shall be paid upon vouchers duly certified by him and shall be charged to the appropriation provided in subsection (7) of section 20.02. In the case of procedure for removals by any other state officer or body, such expenses shall be paid out of the appropriation to the officer or body invested with power to remove. In case of procedure for removals by other officers or bodies, the expenses thereof shall be paid by the unit of government of which the person against whom charges are preferred was an officer. But if the removing power finds that the complaint was wilful and malicious and without probable cause all such expenses shall be paid by the person who preferred the charges and may be collected in an action against him or on the bond furnished by him.

(10) A person lawfully removed from office shall be ineligible to appointment or election to fill the vacancy caused by such removal.

17.17 Notice of vacancies. Notice of vacancies occurring otherwise than by resignation shall be given forthwith as follows:

(1) **SENATORS AND MEMBERS OF CONGRESS.** In the office of United States senator or member of congress from this state, by the county clerk of the county wherein such officer resided at the time of election, to the secretary of state.

(2) **NOTARIES PUBLIC.** In the office of a notary public, by the secretary of state to the clerk of the circuit court of the county wherein such officer resided when appointed.

(3) **VACANCIES BY JUDGMENTS.** In any office occurring by virtue of a judgment of a court of this state convicting the incumbent of and sentencing him for treason, felony or other crime of whatsoever nature punishable by imprisonment in any jail or prison for one year or more, or convicting him of and sentencing him for any offense involving a violation of his official oath; or declaring the election or appointment of any officer to be void or that the office of any officer has been forfeited, or become vacant; or adjudging any officer to be insane, by the clerk of such court to the officer or body authorized to fill such vacancies, or if such vacancies are required to be filled only by election, then to the officer authorized to give notice thereof.

(5) **OTHER VACANCIES.** In city, village, town or school district offices, other than those of which notice is required by subsection (3), by the clerk or in his absence by the treasurer thereof, and in state, county and other offices other than those of which notice is required by subsection (3), by the county clerk of the county wherein the officer resided at the time of election or appointment, or in his absence by the sheriff, to the officer or body authorized to fill such vacancies, or if such vacancies are required to be filled only by election, then to the officer authorized to give notice thereof. [1943 c. 275 s. 7]

17.18 Vacancies, United States senator and member of congress; how filled. Vacancies in the office of United States senator or member of congress from this state shall be filled by election, as provided in section 7.01, for the residue of the unexpired term.

17.19 Vacancies, elective state offices; how filled. Vacancies in elective state offices shall be filled as follows:

(1) **MEMBERS OF LEGISLATURE.** In the office of state senator or assemblymen, by election, as provided in section 7.01, for the residue of the unexpired term.

(2) **JUDICIAL.** In the office of justice of the supreme court or judge of the circuit court, by temporary appointment by the governor, which shall continue until a successor

is elected, as provided in section 8.02, and qualifies. When so elected such successor shall hold his office for the residue of the unexpired term and shall take office as follows:

(a) A supreme court justice, on the first day of the first regular term of the supreme court next succeeding such election.

(b) A circuit court judge, on the first Monday of June next succeeding such election.

(3) **PRESIDENTIAL ELECTORS.** In the office of presidential elector, by the remaining electors present in the manner prescribed by section 9.06.

(4) **OTHER ELECTIVE STATE OFFICERS.** In the office of secretary of state, treasurer, attorney-general or state superintendent, by appointment by the governor, and a person so appointed shall hold office until his successor is elected, as provided in section 7.01, and qualifies, but if no such election is held, the person so appointed shall hold office for the residue of the unexpired term.

Note: The legislature's practical construction of sec. 7, art. V, Const., as making no distinction, in respect to vacancy in the office of governor and devolution of power on the lieutenant governor, between the case of a duly elected governor who, by reason of death or some other circumstance, has failed to qualify, and that of one who has qualified and later has become disabled to act, is evi-

denced by the fact that the legislature has not dealt with the situation at all, but has excepted the office of governor from elaborate statutory provisions for special elections to fill vacancies, and has never enacted any specific provision for filling vacancies in the office of governor. State ex rel. Martin v. Heil, 242 W 41, 7 NW (2d) 375.

17.20 Vacancies in appointive state offices; how filled; terms. (1) **GENERAL.** Vacancies in appointive state offices shall be filled by appointment by the appointing power and in the manner prescribed by law for making regular full term appointments thereto, and appointees to fill vacancies therein shall hold office for the residue of the unexpired term or, if no definite term of office is fixed by law, until their successors are appointed and qualify.

(2) **INTERIM VACANCIES; TERMS.** (a) Vacancies occurring during the recess of the legislature in the office of any officer appointed by the legislature shall be filled by appointment by the governor. Persons so appointed shall hold office until their successors are appointed by the legislature at the next regular session thereof and qualify.

(b) Vacancies occurring during the recess of the legislature in the office of any officer appointed by the governor by and with the advice and consent of the senate shall be filled by appointment by the governor for the residue of the unexpired term, subject to confirmation by the senate at the next regular session thereof if the term for which the person was so appointed has not expired. Any such appointment subject to confirmation by the senate shall be in full force until acted upon by the senate, and when confirmed by the senate shall continue for the residue of the unexpired term. [1943 c. 275 s. 8]

17.21 Vacancies in elective county offices; how filled; term. Vacancies in elective county offices shall be filled in the manner and for terms as follows:

(1) **SHERIFF, CORONER, ETC.** In the office of sheriff, coroner, register of deeds or district attorney, by appointment by the governor for the residue of the unexpired term.

(2) **JUDGES.** (a) In the office of county judge, or judge of a municipal, superior, district, civil or other special court created under the general law or by special act and with jurisdiction throughout the county, by appointment by the governor. Persons so appointed shall hold office until the first Monday of June next succeeding an election held as provided in section 8.02 to fill such vacancy for the residue of the unexpired term. In case an election cannot be held to fill such vacancy, because of the limitations of section 8.02, the appointee shall hold office for the residue of the unexpired term.

(b) Notwithstanding any provision of the law to the contrary any vacancy occurring in the office of the judge of any county court, or of any municipal, superior, district, civil or other special court created under the general law or by special act and with jurisdiction throughout the county, by reason of the induction of such judge into any branch of the armed forces of the United States when at war, shall be filled by appointment by the governor of a qualified person who shall continue to act as judge of such court for the residue of the unexpired term or until the judge so inducted shall be discharged from military service and resume his duties and functions as judge of said court, whichever period is the shorter. When the judge so inducted shall be discharged from military service before the expiration of the term for which he was elected or appointed he shall thereupon resume his duties and functions as judge of such court until such expiration. When the compensation of the judge of such court or any part thereof is an annual salary the judge so inducted and person so appointed to fill the vacancy shall each receive as compensation for his services as judge such proportion of such annual salary in any year as the number of months or parts of months he served in such year as judge bears to the number of months in the year; and when the compensation of the judge of such court or any part thereof is on a fee basis the judge so inducted and the person appointed

to fill the vacancy shall each receive such fees for his compensation as may accrue during the period which he serves.

(3) COUNTY CLERK, TREASURER AND SURVEYOR. In the office of county clerk, treasurer or surveyor, by appointment by the county board for the residue of the unexpired term.

(4) COUNTY SUPERINTENDENT. In the office of county or district superintendent of schools, by appointment by the state superintendent of public instruction for the residue of the unexpired term.

(4m) CLERK OF COURT. In the office of clerk of circuit court, by appointment of the judge, or by a majority of the judges of the circuit court of such county, in term time or vacation, for the residue of the unexpired term.

(5) SUPERVISORS SPECIAL COUNTIES. In the office of county supervisor of counties having a population of at least two hundred fifty thousand, according to the last state or United States census, by appointment by the chairman of the county board from among the electors of the assembly district for which such vacancy occurs. A person so appointed and approved shall hold office until his successor is elected and qualified. His successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens thirty days or more before such day, but if such vacancy happens within thirty days before such first Tuesday of April, then such successor shall be elected on the first Tuesday of April of the next ensuing year; provided, however, that such successor shall be elected at an April election at which officers shall be voted for throughout the entire assembly district; but no election to fill a vacancy in such office shall be held at the time of holding the regular election for such office. The provisions hereof shall not apply to vacancies heretofore filled.

(6) APPOINTMENTS, HOW REPORTED. For the information of all concerned appointments by the governor under subsections (1) and (2) and by the state superintendent under subsection (4) of this section shall be reported by the appointing officer to the county clerk. Appointments of the county board under subsection (3) of this section shall be reported by the county clerk to the secretary of state. Appointments of clerks of court by the judge or judges of the circuit court under subsection (4m) shall be reported to the county clerk and to the secretary of state. [1943 c. 529]

Note: See note to sec. 4, art VI, Const., citing State v. Roden, 219 W 132, 262 NW 629. Election of judges of courts created by special act which have jurisdiction throughout county is controlled by (2). 23 Atty. Gen. 47.

17.22 Vacancies in appointive county offices; how filled. (1) Vacancies in any appointive county office shall be filled by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto; but the term of any person appointed by the county board to fill a vacancy in the office of county highway commissioner shall terminate the first Monday of January of the second year next succeeding the appointment. All appointments, subject to confirmation by the county board, made while the board is not in session, shall be acted upon by said board at its meeting next following such appointment.

(2) Vacancies in the offices of officers appointed by the county board, occurring when the board is not in session, shall be filled in manner and for terms as follows:

(a) In the office of superintendent of the county workhouse, by appointment by the committee on workhouse for the residue of the unexpired term, subject to the approval of the county board at its next regular meeting.

(b) In the office of the county highway commissioner, by appointment by the county state road and bridge committee. A person so appointed shall hold office until the first Monday of January next succeeding his appointment, and his successor shall be appointed by the county board at its first regular meeting next succeeding such appointment and shall take office on the Tuesday following the first Monday of January next succeeding and shall hold office for term as prescribed in subsection (1).

(c) In the office of a member of the county state road and bridge committee, by the chairman of the county board for the residue of the unexpired term.

(d) In the office of any other officer appointed by the county board, by temporary appointment by the chairman of the county board. A person so appointed shall hold office until his successor is appointed and qualifies, and such successor shall be appointed by the county board for the residue of the unexpired term at its meeting next after such vacancy occurred.

(3) Vacancies in the office of any member of the county board of education occurring between the annual meetings of the county school board convention shall be temporarily filled by appointment by the remaining members of said board. A person so appointed shall hold office until the vacancy is filled for the residue of the unexpired term by the county school board convention at its annual meeting held next after such vacancy occurs.

17.23 Vacancies in city offices; how filled. (1) GENERAL AND SPECIAL CHARTER CITIES. Vacancies in offices of cities operating under the general law or special charter shall be filled as follows:

(a) In the office of mayor, except as provided in section 10.44, by appointment by the common council. In the office of aldermen in cities of the first class, by the mayor, and in cities of second, third and fourth class, by the common council, except in both cases as provided in section 10.44. A person so appointed shall hold office until his successor is elected and qualified. His successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens thirty days or more before such day, but if such vacancy happens within thirty days before such first Tuesday of April, then such successor shall be elected on the first Tuesday of April of the next ensuing year; but no election to fill a vacancy in such office shall be held at the time of holding the regular election for such office.

(b) In the office of any other elective officer, except the judge of a municipal court created by special act with jurisdiction throughout the city only, and except as provided in section 10.44, by appointment by the mayor subject to confirmation by the council, except that in case of vacancies in the office of any such officer of a city of the first class who is authorized by law to have a deputy, such deputy shall have full power and authority and it is hereby made his duty to exercise the office and perform the duties of such office, and he shall be entitled to the emoluments of such office during the remainder of the term. A person so appointed and confirmed shall hold office until his successor is elected and qualifies. His successor shall be elected as provided in paragraph (a).

(c) In the office of the judge of a municipal court created by special act, with jurisdiction throughout the city only, by appointment by the governor. A person so appointed shall hold office for the term provided in subsection (2) of section 17.21 and his successor shall be elected for the residue of the unexpired term as provided in said subsection.

(d) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto, except that vacancies in the office of any member of the board of trustees of the public school teachers' annuity and retirement fund shall be filled in the following manner: In case the vacancy be that of a member of the managing body of the schools, such managing body, at its next regular meeting after the occurrence of such vacancy, shall elect a member to serve as such trustee during the residue of the unexpired term; in case the vacancy be that of a teacher member, the remaining teacher members of said board shall elect a teacher to serve as trustee until a teacher shall have been elected to serve as trustee for the residue of the unexpired term, at the next annual election, provided for in subsection (5) of section 38.24, after the occurrence of such vacancy.

(2) COMMISSION FORM. Vacancies in offices of cities operating under the commission form of government shall be filled as follows:

(a) 1. In the office of mayor or other member of the council, except as provided in section 10.44, in the manner provided in paragraph (a) of subsection (1). On failure of the council to make such appointment for thirty days after the vacancy exists the city engineer shall be a temporary acting member of the council until such vacancy is filled in the manner provided by law, and he shall have all the powers, prerogatives and duties of the vacant office except the right to vote to fill a vacancy in the office of mayor or councilman.

2. When two vacancies exist in the council the city clerk shall be a temporary acting member of the council until the vacancies are filled in the manner provided by law, and he shall have all the powers, prerogatives and duties of the vacant office except the right to vote to fill a vacancy in the office of mayor or councilman.

3. When three vacancies exist in the council the city treasurer shall be a temporary acting member of the council until the vacancies are filled in the manner provided by law, and he shall have all the powers, prerogatives and duties of the vacant office except the right to vote to fill a vacancy in the office of mayor or councilman.

4. When two or more vacancies exist in the council six months or more prior to the first Tuesday of April of any year a special election to fill the vacancy for the residue of the unexpired term of each such vacancy shall be held and conducted, and the returns thereof made in the manner and within the time required in the case of regular municipal elections, and the city clerk shall call and give notice of such special election as provided by law within ten days of the date when such vacancies exist.

5. While serving as temporary members of the council the city engineer, city clerk and city treasurer shall not be entitled to have or receive any compensation for such temporary service.

6. The powers, prerogatives and duties conferred on such temporary acting members of the council shall be in addition to all those otherwise vested by law in such city engineer, city clerk and city treasurer.

7. It is hereby declared to be the purpose and intention of this paragraph to permit the city engineer, city clerk and city treasurer to have and perform the powers and duties herein provided as temporary acting members of the council, in addition to the regular powers and duties of their respective offices and notwithstanding any other contrary provision of the law.

8. The provisions of this paragraph shall apply only to cities organized and operating under sections 63.01 to 63.14.

(b) In the office of the judge of a municipal court created by special act, with jurisdiction throughout the city only, by appointment by the governor for the term prescribed by paragraph (c) of subsection (1) and the successor to such appointee shall be elected for the residue of the term as provided in said paragraph.

(c) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointment thereto. [1933 c. 425; 1935 c. 255, 401]

17.24 Vacancies in village offices; how filled. Vacancies in offices of villages operating under the general law or special charter shall be filled as follows:

(1) In elective offices, by appointment by the village board, except vacancies caused by removals from office by the circuit judge as provided by law, which latter vacancies shall be filled by appointment by the said judge. Persons appointed by the village board or the circuit judge to fill vacancies shall hold office for the residue of the unexpired term, except persons appointed to fill vacancies in the office of police justice, justice of the peace or member of the water or light commission, which latter appointee shall hold office only until their successors are elected and qualify, and their successors shall be elected for the residue of the unexpired term as provided in paragraph (a) of subsection (1) of section 17.23.

(2) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto, except vacancies caused by removal by the judge of the circuit court which shall be filled for the residue of the unexpired term by the said judge.

17.25 Vacancies in town offices; how filled. Vacancies in town offices shall be filled as follows:

(1) In the town board, by the remaining supervisors and the town clerk, except when the vacancy is caused by removal by the circuit judge as provided by law, which latter vacancy shall be filled by appointment by the said judge. Vacancies in other elective town offices shall be filled by appointment by the town board, except vacancies caused by removal by the judge of the circuit court which latter vacancy shall be filled by the said judge. Persons appointed under the provisions of this subsection to fill vacancies shall hold office for the residue of the unexpired term, except persons appointed to fill vacancies in the office of justice of the peace and member of the water or light commission, which persons shall hold office only until their successors are elected and qualify and such successors shall be elected at the annual town meeting next after the vacancy occurs if such vacancy occurs twelve days or more prior to such meeting; otherwise at the annual town meeting held in the year next succeeding; but no election to fill a vacancy in such office shall be held at the time of holding the regular election for such office.

(2) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto, except vacancies caused by removals by the judge of the circuit court which shall be filled for the residue of the unexpired term by the said judge.

17.26 Vacancies in school district boards and boards of education; how filled. Vacancies in school district boards and boards of education operating under the general law or under special charters shall be filled as follows:

(1) In boards the members of which are elected at the annual school district meeting, by appointment by the remaining members of the boards within ten days after the vacancy occurs. If the vacancy is not so filled, the town, village or city clerk, and in case of joint districts, the clerk of the town, village or city in which the schoolhouse is situated, shall fill such vacancy by appointment. Any person upon being notified of his appointment shall be deemed to have accepted the same unless within five days thereafter he files with the clerk or director a written refusal to serve; and any person so appointed shall hold office until the next annual meeting at which meeting the electors shall fill such vacancy for the residue of the unexpired term.

(2) In boards the members of which are elected otherwise than as provided in subsection (1) or are appointed, by appointment by the mayor for the residue of the unexpired

term, subject to confirmation by the council, except in cities of the first class however organized, wherein such vacancies shall be filled by the board, a majority of the remaining members being necessary to a choice, and members so chosen shall serve until the first Monday of July following the next school election at which election the vacancy shall be filled for the residue of the unexpired term.

17.27 Vacancies in other offices; how filled. (1) **JOINT COUNTY INSTITUTIONS.** Vacancies in the office of any member of the governing body of any joint county school hospital, sanatorium, asylum or other joint county institution, or in the office of any other officer of any such institution, shall be filled by appointment by the appointing power and in the manner prescribed by law for making regular full term appointments thereto. A vacancy in the office of any such officer appointed by the county board, occurring while the board is not in session, shall be filled by appointment by the chairman of the county board. A person so appointed shall hold office until his successor is appointed for the residue of the unexpired term by the county board at its first regular meeting held next after the vacancy occurs and qualifies.

(2) **JURY COMMISSIONERS.** Vacancies in the office of any jury commissioner shall be filled for the remainder of the unexpired term by the judge or a majority of the judges authorized to make regular full term appointments thereto.

(3) **JUDGES OF SPECIAL COURTS.** Vacancies in the office of the judge of any special municipal or other special court created by special act with jurisdiction throughout an area comprising less than a county, but more than a city, village or town shall be filled by appointment by the governor. A person so appointed shall hold office for the term provided in subsection (2) of section 17.21 and his successor shall be elected for the unexpired term, as provided in said subsection.

(4) **ANY OTHER VACANCY.** In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor.

Note: Subsection (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 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 the operation of sec. 10, art. XIII,

which permits the legislature to provide the manner in which vacancies shall be filled where the constitution contains no provision for that purpose, and since, also, such an appointment would be for a vacancy not arising during the incumbency of the present governor. *State ex rel. Martin v. Heil*, 242 W 41, 7 NW (2d) 375.

17.28 When officers may take office. When no different provision is made in respect thereto, any officer elected or appointed to fill a vacancy shall qualify in the manner required by law of the officer in whose stead he was elected or appointed and shall enter upon the duties of his office immediately thereafter and shall hold office for the residue of the unexpired term and until his successor is elected or appointed and qualifies, or, if no definite term of office is prescribed by law, until his successor is elected and qualifies.

17.29 Effect of chapter. The provisions of this chapter supersede all contrary provisions in either the general law or in special acts, except the provisions of chapters 6 and 10 of the statutes relating to election officers appointed for the election precincts or polling places in the state; the provisions of sections 21.01 to 21.70 of the statutes relating to the military staff of the governor and to officers of the Wisconsin national guard; and the provisions of sections 21.71 to 21.78 of the statutes relating to officers of the Wisconsin naval militia; and shall govern in the case of all offices hereafter created, either by general law or special act, unless otherwise specially provided. [1943 c. 490]

Note: Sec. 17.29, a part of ch. 17, relating to vacancies in and removals from office, and providing that the provisions of such chapter shall govern in the case of all offices

"hereafter" created, 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.