

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.

**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