

CHAPTER 294.

QUO WARRANTO.

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

294.02 When and how tried. Actions of quo warranto and scire facias shall be tried at special as well as at general terms of the circuit court, and the court shall have power to summon a jury for the purpose and prescribe the manner of summoning the same.

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

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

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

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

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

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

Note: The declaratory relief act (269.56) is not a substitute for mandamus or quo warranto. *McCarthy v. Hoan*, 221 W 344, 266 NW 916.

Members of a city board of education, even if subjecting themselves to the direction and control of a certain organization

and failing to exercise their own individual judgment and discretion in the performance of their official duties, do not thereby unlawfully "exercise their offices," and cannot on that ground be proceeded against under 294.04. *State ex rel. Brister v. Weston*, 241 W 584, 6 NW (2d) 648.

294.05 When defendant held to bail. Whenever such action shall be brought against a person for usurping an office the attorney-general or person complaining, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his usurpation thereof, an order may be granted by a judge of the circuit court or by a justice of the supreme court, if the action be pending therein, for the arrest of such defendant and holding him to bail; and thereupon he shall be arrested and held to bail in the manner and with the same effect and subject to the same rights and liabilities as in other civil actions when the defendant is subject to arrest.

294.06 Pleading. In an action brought to determine the right to any office, in every case where the defendant has the official certificate of election to the office, the complaint shall state in what respect such certificate was improperly or illegally issued; and if any party claims that illegal votes were cast at the election for the office, he shall state in his pleading the names of the persons whom he claims cast illegal votes which were counted, and in what such illegality consists, and the election district where such illegal votes were cast, and the number of legal votes cast for each claimant, respectively; if he claims that lawful votes were tendered and not received, the names of such voters and the election district where tendered shall be alleged; if he claims lawful votes were rejected by the

canvassers, the number and election district where so rejected shall be alleged, together with the number which it is claimed should have been counted for claimant. And if it be alleged by either party that the entire vote of any town, ward or election precinct was illegal, his pleading shall specify the grounds of such alleged illegality. [Court Rule XXX; Supreme Court Order, effective Jan. 1, 1934]

294.07 Proceedings on demurrer; continuance. In all such actions brought to determine the right to an office in the circuit courts, if the defendant shall demur to the complaint the issue raised by such demurrer shall have preference upon the calendar and be tried before the other issues thereon; if such demurrer be sustained the plaintiff or relator shall amend his complaint, if he desire to amend, within twenty-four hours; and if it be overruled the defendant shall serve his answer to the complaint in the like time unless, upon cause shown, further time therefor shall be granted to either party by the court. The issue as finally made shall stand for trial at the same term; and no continuance of any such cause shall be granted upon the defendant's application unless he shall show the absence of a witness or other testimony and the facts which he expects to prove by such witness or other testimony and they shall be deemed material by the court. The plaintiff or relator may traverse or offer counterevidence to the facts set forth in such application for a continuance.

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

294.09 Relator to take office and demand books. If the judgment be rendered upon the rights of the person so alleged to be entitled and the same be in favor of such person he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office; it shall be his duty immediately thereafter to demand of the defendant in the action all the books and papers in his custody or within his power belonging to the office from which he shall have been excluded.

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

294.11 Damages. If the judgment be rendered upon the right of the person so alleged to be entitled in favor of such person he may recover by action the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

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

294.13 Judgment if office, etc., usurped. When a defendant against whom such action shall have been brought shall be adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege judgment shall be rendered that such defendant be excluded from such office, franchise or privilege and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding two thousand dollars, which fine, when collected, shall be paid into the treasury of the state.