

CHAPTER 19

OFFICIAL OATHS AND BONDS; CUSTODY OF OFFICIAL PROPERTY

19.01	Oaths and bonds.	19.21	Custody and delivery of official property and records
19.015	Actions by the state, municipality or district.	19.22	Proceedings to compel the delivery of official property.
19.02	Actions by individuals.	19.23	Transfer of records or materials to historical society.
19.03	Security for costs; notice of action.	19.24	Refusal to deliver money, etc., to successor.
19.04	Other actions on same bond.	19.25	State officers may require searches, etc., without fees.
19.05	Execution; lien of judgment.		
19.06	Sureties, how relieved.		
19.07	Bonds of public officers and employes.		
19.10	Oaths.		
19.11	Official bonds.		

**19.01 Oaths and bonds.** (1) **FORM OF OATH.** Every official oath required by section 28 of Article IV of the constitution or by any statute shall be in writing, subscribed, sworn to, and except as provided otherwise by ss. 256.02 and 256.29, shall be in substantially the following form:

STATE OF WISCONSIN,

County of \_\_\_\_\_

I, the undersigned, who have been elected (Or appointed) to the office of \_\_\_\_\_, but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_(Signature)\_\_\_\_\_,

(1m) **FORM OF ORAL OATH.** If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:

I, \_\_\_\_\_, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of \_\_\_\_\_ to the best of my ability. So help me God.

(2) **FORM OF BOND.** (a) Every official bond required of any public officer shall be in substantially the following form:

We, the undersigned, jointly and severally, undertake and agree that \_\_\_\_\_, who has been elected (or appointed) to the office of \_\_\_\_\_, will faithfully discharge the duties of his said office according to law, and will pay to the parties entitled to receive the same, such damages, not exceeding in the aggregate \_\_\_\_\_ dollars, as may be suffered by them in consequence of his failure so to discharge such duties.

Dated \_\_\_\_\_, 19\_\_.

\_\_\_\_\_(Principal)\_\_\_\_\_,  
\_\_\_\_\_(Surety)\_\_\_\_\_,

(b) Any further or additional official bond lawfully required of any public officer shall be in the same form and it shall not affect or impair any official bond previously given by him for the same or any other official term. Where such bond is in excess of the sum of \$25,000, the officer may give 2 or more bonds.

(2m) **EFFECT OF GIVING BOND.** Any bond purportedly given as an official bond by a public officer, of whom an official bond is required, shall be deemed to be an official bond and shall be deemed as to both principal and surety to contain all the conditions and provisions required in sub. (2), regardless of its form or wording, and any provisions restricting liability to less than that provided in sub. (2) shall be void.

(3) **OFFICIAL DUTIES DEFINED.** The official duties referred to in subs. (1) and (2) include performance to the best of his ability by the officer taking the oath or giving the bond of every official act required, and the nonperformance of every act forbidden, by law to be performed by him; also, similar performance and nonperformance of every act required of or forbidden to him in any other office which he may lawfully hold or exercise by virtue of his incumbency of the office named in his official oath or bond. Except as provided otherwise by s. 59.22 (3) and (4) the duties mentioned in any such oath or bond include the faithful performance by all persons appointed or employed by such officer either in his principal or his said subsidiary office, of their respective duties and trusts therein.

(4) **WHERE FILED.** Official oaths and bonds shall be filed:

(a) In the office of the secretary of state; Of all members and officers of the legislature; of the governor, lieutenant governor and state superintendent; of the justices, reporter and clerk of the

supreme court; of the judges and reporters of the circuit and county courts; of all notaries public; of every officer, except the secretary of state, state treasurer and attorney general, whose compensation is paid in whole or in part out of the state treasury, including every member or appointee of a board or commission whose compensation is so paid; and of every deputy or assistant of an officer who files with the secretary of state;

(b) In the executive office: Of the secretary of state, state treasurer and attorney general;

(c) In the office of the clerk of the circuit court of any county: Of the county judge, of all court commissioners, of all family court commissioners, of all municipal justices, and of all other judges or judicial officers elected or appointed in and for such county, or whose jurisdiction is limited thereto;

(d) In the office of the county clerk of any county: Of all county officers elected or appointed in and for such county, other than those enumerated in par. (c), and of all officers whose compensation is paid out of the treasury of such county. The members of the governing board, and the superintendent and other officers of any joint county school, county hospital, county sanatorium, county asylum or other joint county institution shall file in the county in which the buildings of such institutions are located;

(dd) All bonds specified in pars. (c) and (d) and all bonds of any county employe required by statute or county ordinance to be bonded, shall be approved by the district attorney as to amount, form and execution before such bonds shall be accepted for filing. The clerk of the circuit court and the county clerk respectively shall notify in writing the county board or chairman thereof within 5 days after the entry of any judicial or county officer specified in pars. (c) and (d) upon his term of office or after any county employe required to be bonded has entered upon his employment, stating whether or not the required bond has been furnished, and such notice shall be published with the proceedings of the county board.

(e) In the office of any town clerk: Of all officers elected or appointed in and for such town except the town clerk who shall file in the office of the town treasurer;

(f) In the office of any city clerk: Of all officers elected or appointed in and for such city except the city clerk who shall file in the office of the city treasurer;

(g) In the office of any village clerk: Of all officers elected or appointed in and for such village, except the village clerk who shall file in the office of the village treasurer;

(h) The official oath and bond of any officer of a school district or of an incorporated school board shall be filed with the clerk of such school district or the clerk of such incorporated school board.

(j) With the secretary of a vocational, technical and adult education district: Of all members of the district board of such district.

(5) TIME OF FILING. Every public officer required to file an official oath or an official bond shall file the same before entering upon the duties of his office; and when both are required, both shall be filed at the same time.

(6) CONTINUANCE OF OBLIGATION. Every such bond continues in force and is applicable to official conduct during the incumbency of the officer filing the same and until his successor is duly qualified and installed.

(7) INTERPRETATION. This section shall not be construed as requiring any particular officer to furnish or file either an official oath or an official bond. It is applicable to such officers only as are elsewhere in these statutes or by the constitution or by special, private or local law required to furnish such an oath or bond. Provided, however, that whether otherwise required by law or not, an oath of office shall be filed by every member of any board or commission appointed by the governor, and by every administrative officer so appointed, also by every secretary and other chief executive officer appointed by such board or commission.

(8) PREMIUM ON BOND ALLOWED AS EXPENSE. The state and any county, town, village, city or school district may pay the cost of any official bond furnished by an officer or employe thereof pursuant to law or any rules or regulations requiring the same if said officer or employe shall furnish a bond with a licensed surety company as surety, said cost not to exceed the current rate of premium per annum. The cost of any such bond to the state shall be charged to the proper expense appropriation.

History: 1971 c. 154.

**19.015 Actions by the state, municipality or district.** Whenever the state or any county, town, city, village, school district or vocational, technical and adult education district is entitled to recover any damages, money, penalty or forfeiture on any official bond, the attorney general, county chairman, town chairman, mayor, village president, school board president or vocational, technical and adult education district board chairman, respectively, shall prosecute or cause to be prosecuted all necessary actions in the name of the state, or such municipality, against the officer giving such bond and his sureties for the recovery of such damages, mon-

ey, penalty or forfeiture.

History: 1971 c. 154.

**19.02 Actions by individuals.** Any person injured by the act, neglect or default of any officer, except the state officers, his deputies or other persons which constitutes a breach of the condition of the official bond of such officer, may maintain an action in his own name against such officer and his sureties upon such bond for the recovery of any damages he may have sustained by reason thereof, without leave and without any assignment of any such bond.

**19.03 Security for costs; notice of action.**

(1) Every person commencing an action against any officer and his sureties upon his official bond, except the obligee named therein, shall give security for costs by an undertaking as prescribed in s. 271.28 (3), and a copy thereof shall be served upon the defendants at the time of the service of the summons. In all such actions if final judgment is rendered against the plaintiff the same may be entered against the plaintiff and the sureties to such undertaking for all the lawful costs and disbursements of the defendants in such action, by whatever court awarded.

(2) The plaintiff in any such action shall, within 10 days after the service of the summons therein, deliver a notice of the commencement of such action to the officer who has the legal custody of such official bond, who shall file the same in his office in connection with such bond.

**19.04 Other actions on same bond.** No action brought upon an official bond shall be barred or dismissed by reason merely that any former action shall have been prosecuted on such bond, but any payment of damages made or collected from the sureties or any of them on any judgment in an action previously begun by any party on such bond shall be applied as a total or partial discharge of the penal sum of such bond, and such defense or partial defense may be pleaded by answer or supplemental answer as may be proper. The verdict and judgment in every such action shall be for no more than the actual damages sustained or damages, penalty or forfeiture awarded, besides costs. The court may, when it shall be necessary for the protection of such sureties, stay execution on any judgment rendered in such actions until the final determination of any actions so previously commenced and until the final determination of any other action commenced before judgment entered in any such action.

**19.05 Execution; lien of judgment.** Whenever a judgment shall be rendered against any officer and his sureties on his official bond in

any court other than the circuit court of the county in which such official bond is filed, no execution for the collection thereof shall issue from such other court unless the plaintiff therein, his agent or attorney shall make and file with such court an affidavit showing that no other judgment has been rendered in any court in an action upon such bond against the sureties therein which remains in whole or in part unpaid and that no other action upon such bond against said sureties was pending and undetermined in any other court at the time of the entry of such judgment; but every such judgment may be docketed in other courts and in other counties, shall constitute a lien, and may be enforced, in all respects the same as if it were an ordinary judgment, for the recovery of money, except as provided otherwise in this section.

**19.06 Sureties, how relieved.** Whenever several judgments shall be recovered against the sureties on any official bond in actions which shall have been commenced before the date of the entry of the last of such judgments the aggregate of which, exclusive of costs, shall exceed the sum for which such sureties remain liable at the time of the commencement of such actions, they may discharge themselves from all further liability upon such judgments by paying into court the sum for which they are then liable, together with the costs recovered on such judgments; or the court may, upon motion supported by affidavit, order that no execution for more than a pro rata share of such judgments shall be issued thereon against the property of such sureties or either of them and that upon payment or collection of such pro rata share they shall be discharged from the judgment or judgments upon which such pro rata share shall be paid or collected. When the money is paid into court by the sureties as above specified the same, exclusive of the costs so paid in, shall be distributed by an order of the court to the several plaintiffs in such judgments in proportion to the amount of their respective judgments. But every judgment shall have precedence of payment over all judgments in other actions commenced after the date of the recovery of such judgment.

**19.07 Bonds of public officers and employes.** (1) CIVIL SERVICE EMPLOYEES; BLANKET BONDS.

(a) The surety bond of any civil service employe of a county, city or village may be canceled in the manner provided by sub. (3).

(b) Any number of officers, department heads or employes may be combined in a schedule or blanket bond, where such bond is to be filed in the same place, and in the event such bond is executed by a corporate surety company, pay-

ment of the premium therefor is to be made from the same fund or appropriation prescribed in s. 19.01.

(2) **CONTINUATION OF OBLIGATION** Unless canceled pursuant to this section, every such bond shall continue in full force and effect.

(3) **CANCELLATION OF BOND.** (a) Any county or city by their respective governing body may cancel such bond or bonds of any one employe or any number of employes by giving written notice to the surety by registered mail, such cancellation to be effective 15 days after receipt of such notice.

(b) When a surety, either personal or corporate, on such bond, shall desire to be released from such bond, he or it may give notice in writing that he or it desires to be released by giving written notice by registered mail, to the clerk of the respective county or city, and such cancellation shall be permitted if approved by the governing body thereof, such cancellation to be effective 15 days after receipt of such notice. This section shall not be so construed as to operate as a release of the sureties for liabilities incurred previous to the expiration of said 15 days' notice.

(c) Whenever a surety bond is canceled in the manner provided by this section, a pro rata refund shall be made of the premium paid thereon.

**19.10 Oaths.** Each of the officers enumerated in s. 8.25 (4) (a) shall take and subscribe the oath of office prescribed by the constitution, as follows: The governor and lieutenant governor, before entering upon the duties of his office; the secretary of state, treasurer, attorney general and state superintendent, within 20 days after receiving notice of his election and before entering upon the duties of his office.

**19.11 Official bonds.** (1) The secretary of state, treasurer and attorney general shall each furnish a bond to the state, at the time he takes and subscribes his oath of office, conditioned for the faithful discharge of the duties of his office, and his duties as a member of the board of commissioners of public lands, and in the investment of the funds arising therefrom. The bond of each of said officers shall be further conditioned for the faithful performance by all persons appointed or employed by him in his office of their duties and trusts therein, and for the delivery over to his successor in office, or to any person authorized by law to receive the same, of all moneys, books, records, deeds, bonds, securities and other property and effects of whatsoever nature belonging to his said offices.

(2) Each of said bonds shall be subject to the approval of the governor and shall be guaranteed by resident freeholders of this state, or by a surety company as provided in s. 204.07. The amount of each such bond, and the number of sureties thereon if guaranteed by resident freeholders, shall be as follows: secretary of state, \$25,000, with sufficient sureties; treasurer, \$100,000, with not less than 6 sureties; and the attorney general, \$10,000, with not less than 3 sureties.

(3) The attorney general shall renew his bond in a larger amount and with additional security, and the treasurer shall give an additional bond, when required by the governor.

(4) The governor shall require the treasurer to give additional bond, within such time, in such reasonable amount not exceeding the funds in the treasury, and with such security as he shall direct and approve, whenever the funds in the treasury exceed the amount of the treasurer's bond; or whenever the governor deems the treasurer's bond insufficient by reason of the insolvency, death or removal from the state of any of the sureties, or from any other cause.

**19.21 Custody and delivery of official property and records.**

(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.

(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials, including but not limited to blueprints, slides, photographs and drawings. Duplication of university expansion materials may be performed away from the office of the custodian if necessary.

(3) Upon the expiration of his term of office, or whenever his office becomes vacant, each such officer, or on his death his legal representative, shall on demand deliver to his successor all such property and things then in his custody, and his successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state,

county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(4) Any person who violates this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than \$25 nor more than \$2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(5) (a) Any city council or village board may provide by ordinance for the destruction of obsolete public records. Prior to any such destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue.

(b) The period of time any city or village public record shall be kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in such ordinance shall be not less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board pursuant to s. 16.80 (3) (e).

(c) Any city council or village board may also provide by ordinance for the keeping and preservation of public records by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the standards established in s. 16.80 (7), so far as the same may be applicable.

(6) Counties having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records without regard to ss. 59.715 to 59.717 and may undertake a management of records service. The period of time any public record shall be kept before destruction shall be determined by ordinance except that the specific period of time expressed within s. 59.715 shall apply as to those records or documents. Prior to any destruction of records, except those specified within s. 59.715 as well as those having a confidential character as determined by the county, at least 60 days' notice of such destruction shall be given in writ-

ing, to the historical society, which may preserve any such records it determines to be of historical interest; however no notice need be given for any of the aforesaid class of records for which destruction has previously been approved by the historical society or in which it has indicated that it has no interest for historical purposes. The county board may also provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a record management service for the county and may appropriate funds to accomplish such purposes.

**History:** 1971 c. 215.

Examination of birth records cannot be denied simply because the examiner has a commercial purpose. 58 Atty Gen. 67.

### 19.22 Proceedings to compel the delivery of official property.

(1) If any public officer refuses or neglects to deliver to his successor any official property or things as required in s. 19.21, or if such property or things shall come to the hands of any other person who refuses or neglects, on demand, to deliver the same to the successor in such office, such successor may make complaint thereof to any judge of a court of record for the circuit or county where the person so refusing or neglecting resides. If such judge be satisfied by the oath of the complainant and such other testimony as may be offered that any such property or things are withheld he shall grant an order directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same.

(2) At the time appointed, or at any other time to which the matter may be adjourned, upon due proof of service of such order, if the person complained against makes affidavit before such judge that he has delivered to such successor all the official property and things in his custody or possession pertaining to such office, within his knowledge, the person complained against shall be discharged and all further proceedings in the matter before such judge shall cease.

(3) If the person complained against does not make such affidavit the matter shall proceed as follows:

(a) The judge shall inquire further into the matters set forth in the complaint, and if it appears that any such property or things are withheld by the person complained against the judge shall by warrant commit him to the county jail, there to remain until the delivery of such property and things to the complainant or until he be otherwise discharged according to law.

(b) If required by the complainant the judge shall also issue his warrant, directed to the sheriff or any constable of the county, commanding him in the daytime to search such places as shall be designated in such warrant for such official property and things as were in the custody of the officer whose term of office expired or whose office became vacant, or of which he was the legal custodian, and seize and bring them before the judge issuing such warrant.

(c) When any such property or things are brought before the judge by virtue of such warrant, he shall inquire whether the same pertain to such office, and if it thereupon appears that they pertain thereto he shall order their delivery to the complainant.

**19.23 Transfer of records or materials to historical society.** (1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records board, be transferred into the custody of the historical society, as provided in s. 16.80.

(2) The proper officer of any county, city, village, town, school district or other local governmental unit, may under s. 44.09 offer title and transfer custody to the historical society of any records deemed by the society to be of permanent historical importance.

(3) The proper officer of any court may, on order of the judge of that court, transfer to the historical society title to such court records as have been photographed or microphotographed or which have been on file for at least 75 years,

and which are deemed by the society to be of permanent historical value.

(4) Any other articles or materials which are of historic value and are not required for current use may, in the discretion of the department or agency where such articles or materials are located, be transferred into the custody of the historical society as trustee for the state, and shall thereupon become part of the permanent collections of said society.

**19.24 Refusal to deliver money, etc., to successor.** Any public officer whatever, in this state, who shall, at the expiration of his term of office, refuse or wilfully neglect to deliver, on demand, to his successor in office, after such successor shall have been duly qualified and be entitled to said office according to law; all moneys, records, books, papers or other property belonging to said office and in his hands or under his control by virtue thereof, shall be imprisoned not more than 6 months or fined not more than \$100.

**19.25 State officers may require searches, etc., without fees.** The secretary of state, treasurer and attorney general, respectively, are authorized to require searches in the respective offices of each other and in the offices of the clerk of the supreme court, of the several circuit courts, of the county courts or registers of deeds for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom without the payment of any fee or charge whatever.