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notice, which time shall not be more than three weeks after the last publication of the notice. If upon the hearing the judge shall be satisfied with [that] the assignee is entitled to be discharged, he shall make an order accordingly; or if, in the opinion of the judge, anything remains to be done by such assignee, he may require the performance thereof before making such order. Such order shall have the effect of discharging the assignee and his sureties from all further responsibility in respect to the trust, and such order shall not be refused on account of any failure on the part of the assignee to comply with the formal provision of law, where no loss or damage to any one shall have occurred through such failure. Whenever the trust estate shall have been taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may in like manner be discharged, upon showing that he has fully accounted with the assignee in bankruptcy, and turned over to him the whole of the trust estate.

§ 2. This act shall take effect and be in force from and after its passage and approval, and apply to all such assignments heretofore made in this Territory.

Approved, March 11, 1887.

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## AUDITOR.

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### CHAPTER 10.

#### CREATING THE OFFICE OF COUNTY AUDITOR.

AN ACT Creating the Office of County Auditor and Defining the Duties Thereof.

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. HOW APPOINTED.] Whenever the county commissioners of any county within the Territory of Dakota in which the office of county auditor does not now exist, shall declare by resolution, at any regular meeting, that a county auditor is necessary for the proper and expeditious dispatch of public business in their respective county, said commissioners, together with the probate judge and treasurer of their county, may appoint a legally qualified person county auditor, who shall hold and discharge the duties of

such office until the first Monday of January after the first general election next succeeding the time of his appointment, and until his successor is elected and qualified; *Provided*, That if a majority of the electors of any county, as evidenced by the vote cast at the last preceding election, shall present a petition remonstrating against the creation of the office of county auditor, to the board of commissioners of such county, the office shall not be created for one year thereafter. *And provided, further*, That no such appointments shall be made on the first day of the meeting of the board.

§ 2. WHEN ELECTED.] That at the next general election after the appointment of a county auditor, as provided by section one of this act, there shall be elected in such county a county auditor, who shall hold his office for two years from the first Monday in January succeeding his election and until his successor is elected and qualified.

§ 3. BOND.] Each county auditor, previous to entering upon the discharge of the duties of his office, shall qualify by giving a bond to the Territory of Dakota, with two or more sureties, to be approved by the board of county commissioners, in such penal sum, not less than two thousand dollars nor more than twenty thousand dollars, as the said commissioners require, conditioned for the faithful performance of the duties of his office, and shall take and subscribe the oath required by law, to be endorsed upon said bond, which bond so endorsed shall be filed and recorded in the office of the register of deeds of such county.

§ 4. DUTIES OF AUDITOR.] The county auditor shall, by virtue of his office, be clerk of the board of county commissioners of his county, and keep an accurate record of their official proceedings, and carefully preserve all of the documents, books, records, maps and other papers required to be deposited or kept in his office, and prepare a financial statement of the county annually, unless otherwise ordered by the board of county commissioners, and carefully to do and perform all other acts and duties which may now or hereafter be required to be done or performed by the county clerks of the counties of the Territory of Dakota.

§ 5. SHALL KEEP CURRENT ACCOUNT WITH TREASURER.] He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with the auditor any receipt given by the treasurer for money paid into the treasury, the auditor shall file such receipt in his office and charge the treasurer with the amount thereof.

§ 6. SUCCESSOR IN OFFICE.] On going out of office he shall deliver up to his successor in office all the moneys, books, records, documents, maps, papers, vouchers and other property in his hands belonging to the county, and in case of the death of any county auditor, his personal representatives shall in like manner deliver up all such moneys, books, records, maps, documents and other property.

§ 7. AUDITOR TO ATTEST ALL CLAIMS.] In all counties where the office of county auditor is created as provided by this act, no claim against the county shall be paid otherwise than upon the allowance of the county commissioners upon the warrant of the chairman of the board, attested by the county auditor, except it is authorized to be fixed by some other person or tribunal, in which case the sum shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the same; *Provided*, That no public money shall be disbursed by the county commissioners or any of them, but the same shall be disbursed by the county treasurer upon the warrant of the chairman of the board of county commissioners, attested by the county auditor, specifying the name of the party entitled to the same, on what account and upon whose allowance, if not fixed by law; and all such orders shall be progressively numbered, and the numbers, date and amount of each, and the name of the person to whom payable, and the purpose for which drawn, shall at the time of issuing the same be entered in a book kept by the auditor for that purpose.

§ 8. MAY APPOINT DEPUTIES.] County auditors are authorized to appoint deputy auditors, by a certificate in writing, who shall before entering upon the duties of their office take and subscribe the oath required, which oath shall be endorsed on the certificate of appointment and filed in the office of the register of deeds. Such deputies are authorized to sign all papers and do all other things which the auditors themselves may do. The county auditors shall be responsible for the acts of their deputies, and may revoke their appointment at any time. They shall require bonds of their deputies in such amounts and with such sureties as they may deem proper.

§ 9. VACANCY—HOW FILLED.] When from any cause a vacancy occurs in the office of county auditor, the same shall be filled in the manner prescribed by law for filling vacancies in other county offices.

§ 10. WHO MAY BRING ACTION.] An action may be brought against the county auditor and his sureties in the name of the Territory of Dakota, and for its use, or for the use of any county or person injured by the misconduct in office of the auditor, or by the omission of any duty required of him by law.

§ 11. LIABLE TO COUNTY COMMISSIONERS.] If any county auditor fails to make settlement or pay over all moneys with which he stands charged at the time and in the manner prescribed by law, or misapplies any money which comes into his possession in the discharge of his official duties, the county commissioners shall commence action against such auditor and his sureties in the district court of said county or other court of competent jurisdiction, and he shall be proceeded against as now provided by law for proceeding against other county officers. In case of suspension under the provisions of this section, such auditor, if restored to office,

shall not be deprived of his salary during the time of suspension, and his reasonable expenses of his defense, upon such hearing, shall be paid by the county. If upon trial of such action, such auditor is adjudged guilty of any neglect of duty, the office shall be deemed to be vacant.

§ 12. WHO SHALL BE ELIGIBLE.] No county commissioner, probate judge, register of deeds, or county treasurer shall be eligible to the office of county auditor.

§ 13. COUNTY CLERK TO BECOME AUDITOR IN CERTAIN CASES.] In all counties where the office of county auditor is now provided by law, it shall continue in force under this act, and the county clerk, where distinct from the register of deeds, shall become county auditor under this act.

§ 14. SALARY.] The salary of the county auditor shall be regulated by the value of the property in their respective counties, as fixed by the Territorial Board of Equalization for the preceding year, as follows: In counties where the amount of taxable property does not exceed the sum of one and one-half million dollars, they shall be entitled to receive five mills on each dollar of the first one hundred thousand dollars, and one mill on each dollar of all amounts in excess of said last named sum, and less than two hundred thousand dollars, and one-tenth of one mill on each on [of] all sums in excess of said last named sum. In counties where the value of taxable property for the preceding year, as fixed by said Board of Equalization, exceeds the sum of one and one-half million dollars, the county auditor shall be entitled to receive five mills on each dollar of the first one hundred thousand dollars, and one-third of one mill on each dollar in excess of said sum, and less than two million dollars, and one-fifth of one mill on each dollar of all sums in excess thereof; *Provided*, That no county auditor shall receive more than fifteen hundred dollars per annum for his personal services in counties where the valuation does not exceed four million dollars, nor more than two thousand dollars in counties where the valuation exceeds four million dollars; and all moneys received as fees or percentage in excess of the amounts provided for in this act, shall be paid by the auditor at the end of each year into the revenue fund of the county.

§ 15. CLERK HIRE.] The allowance for clerk hire, in all cases, shall be for actual services rendered and shall be allowed and paid in the discretion of the board of county commissioners, the same as all similar claims against the county, and in no case shall the auditor be allowed clerk hire unless such services have been rendered; *Provided*, That no clerk hire shall be allowed except in counties having an assessed valuation of two million dollars or over.

§ 16. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 17. This act shall take effect and be in force from and after its passage and approval.

## NOTE BY THE SECRETARY OF THE TERRITORY.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the Council of the Legislative Assembly in which it originated within the time prescribed by the organic act, has become a law without his approval.

BISMARCK, Dak., March 11, 1887.

M. L. McCORMACK,  
Secretary of the Territory.

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BONDS.

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CHAPTER 11.AUTHORIZING INCORPORATED BOARDS OF EDUCATION OR SCHOOL  
DISTRICTS TO REFUND OUTSTANDING INDEBTEDNESS.

AN ACT To Provide for Refunding the Outstanding Indebtedness Which Existed Prior to July 30, 1886, of any Incorporated Board of Education or School District in the Territory of Dakota.

*Be it Enacted by the Legislative Assembly of the Territory of Dakota:*

§ 1. WHAT INDEBTEDNESS MAY BE REFUNDED.] All bonds, warrants, orders or other evidences of indebtedness heretofore issued by any incorporated board of education or school district, prior to July 30, 1886, under and by authority of any special or general law, may be refunded in the discretion of the proper officers of such incorporated board of education or school district, in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such incorporated board of education or school district legally applicable thereto, to pay such bonds, warrants, orders or other evidences of indebtedness.

§ 2. BONDS, HOW ISSUED.] Said bonds shall be in denominations of not less than \$100, nor more than \$1,000, and shall be numbered consecutively, and shall bear date of their issue, and shall be made payable to the purchaser, or bearer, and shall be made payable not less than ten nor more than twenty years from their date of issue, and shall bear a rate of interest not exceeding seven (7) per cent. per annum, payable annually or semi-annually, as shall be agreed upon by the parties interested, and shall have interest coupons attached, representing each interest payment, and principal and interest shall be made payable at such place as