

---

## COUNTY OFFICERS

---

### CHAPTER 132.

[S. B. No. 103—Davis.]

---

#### REMOVAL OF OFFICERS.

AN ACT For An Act Providing for the Removal of Certain County, Township, Municipal and Other Officers.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. The governor may remove from office any county commissioner, clerk of the district court, county judge, sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioners, surveyor, public administrator, mayor, chief of police, deputy sheriff or other police officer, or any custodian of public moneys, except the state treasurer, whenever it appears to him by competent evidence and after a hearing as hereinafter provided that such officer has been guilty of misconduct, malfeasance, crime in office, or for habitual drunkenness or gross incompetency.

§ 2. The complaint or charges against any such official authorized to be removed by the governor shall be entitled in the name of the state of North Dakota, and shall be filed with the governor. It may be made on the relation of any five qualified electors of the county in which the person charged is an officer or the state's attorney of such county, and such complaint or charges shall be filed by the attorney general when directed so to do by the governor. When the officer sought to be removed is one other than the state's attorney, it shall be the duty of the state's attorney, to appear and prosecute and when proceedings are brought to remove the state's attorney, the governor shall request the attorney general or some other competent attorney to appear on behalf of the state and prosecute such proceedings.

§ 3. The complaint or charges shall state the charges against the accused, and unless filed by the state's attorney or attorney general shall be verified, and may be amended as in ordinary actions; *provided*, that if such amendment of the complaint or charges include any new

or additional charge, then a reasonable time should be allowed the accused to prepare his defense thereto.

§ 4. Whenever charges are made against any such officer, the governor shall appoint a special commissioner to take and report the testimony for and against the accused, to be used on the hearing. Such testimony shall be reduced to writing and each witness shall subscribe his name to his testimony, when same is so reduced, and the governor in his discretion may, if in his judgment the best interests of the state shall require it to be done, by written order to be delivered to such officer suspend such accused officer from the performance of duty during the pendency of the hearing. If the governor shall so suspend the accused, he shall immediately notify the board or persons authorized to fill a vacancy in such office and thereupon such board or person shall, within five days after receipt of such notice, appoint some competent person to fill such office and perform the duties thereof *ad interim*.

§ 5. Upon the filing of any such complaint or charges the governor shall, within ten days, cause a copy thereof to be made and served upon the accused, together with a notice of the time and place of taking testimony and the name of the special commissioner before whom such testimony will be taken, and the date fixed for the taking of such testimony shall not be more than twenty days from the service of the copy of charges against the accused.

§ 6. Whenever testimony has been taken upon charges filed against any officer, as hereinbefore provided, it shall be the duty of the special commissioner to forthwith report all such testimony to the governor and file the same in his office, and thereupon the governor shall fix a time and place for hearing on a day not more than ten days from the date of the filing of the commissioner's report, and not less than five days from the date of the service of notice of such hearing upon the accused at which hearing the accused shall be entitled to be heard in person or by attorney. If upon the hearing the charges are sustained, the governor shall forthwith make his order in writing, removing such officer from his office and cause a copy of such order to be delivered to the accused and one copy to be delivered to the board or persons having authority to fill a vacancy in such office, and thereupon such board or person shall, within five days thereafter, appoint some competent person to fill such office and perform the duties thereof, unless the accused had, prior to the final hearing, been suspended as hereinabove provided, and an *ad interim* appointment made. In such case the person appointed to

such office *ad interim* shall continue until the expiration of the term for which the accused had been elected or appointed; *provided*, however, that in all cases where the accused person so removed deems himself aggrieved thereby, he shall be entitled to appeal from the decision of removal so made by the governor to any district court in this state upon filing a notice of appeal therefrom in the office of the secretary of state within fifteen days after the date thereof. Such notice to set forth the grounds of appeal and thereupon such accused person shall be entitled to a trial *de novo* in such court as now provided by law, *provided*, that such trial be not held in the county wherein the accused resides.

§ 7. The fees of the special commissioner herein provided for shall be the same as allowed by law to referees, and witness giving testimony for the prosecution before such commissioner shall be allowed the same fee as witnesses in district court. In cases of removal of a county officer, such fees shall be paid by the county upon allowance by the county board in the same manner as other claims against the county and if a municipal or township officer, then by the city council, commission or township board, in the same manner as other claims against such municipality. If in such proceedings the commissioner shall authorize the taking of the testimony by a shorthand reporter, the fees of such reporter shall be the same as allowed the district court reporter, for like services and such fees shall be allowed in the same manner as the fees of the commissioner and witnesses.

§ 8. When a special commissioner shall have been appointed as herein provided for, such commissioner shall forthwith take an oath and file same with the governor that he will impartially and to the best of his knowledge and ability, without fear, favor or prejudice cause to be taken all the testimony and evidence offered at the hearing for and on behalf of the prosecution and accused, together with all papers and other exhibits offered by either party, carefully preserve the same; that he will cause all of the oral testimony offered at the hearing to be correctly and fully transcribed, and as speedily as may be after the hearing attest the same as a full, true and complete record of all the evidence and testimony, including all exhibits offered at said hearing by either party, and cause same to be filed with the governor. Upon having taken and filed such oath the commissioner shall have authority to issue subpoenas for persons and subpoenas *duces tecum*, and administer oaths to witnesses, the same as now conferred

upon justices of the peace, and such subpoenas may be directed to any sheriff, constable, chief of police or city marshal, who shall immediately serve the same, and such officer shall be entitled for his services in serving the same to the same fees as are now allowed to constables for serving subpoenas in civil cases in justice court, and such fees when served for the prosecution, shall be paid in the same manner as herein provided for witness fees for the prosecution, and commissioner fees; when served for the accused the accused shall be liable therefor to the officer serving the same. *Provided*, that such officer may demand of the accused his fees in advance for serving any subpoena for which the accused is liable, and that any witness subpoenaed by the accused may demand in advance from the accused his mileage and one day's witness fee before he shall be compelled to attend the hearing for which he has been subpoenaed.

§ 9. When charges are preferred against any of the officers mentioned in this Act by qualified electors other than the state's attorney or attorney general as provided in Section 2, and upon the hearing it should appear that such charges were not reasonably sustained by the facts proven at such hearing, or that such charges were not preferred in good faith, then all of the costs of the proceedings under this Act, not exceeding in the amount of one hundred dollars, may in the discretion of the governor be taxed to the persons making such charges.

§ 10. If costs shall be taxed against the persons preferring charges against any of the officers mentioned in this Act, it shall be the duty of the governor to certify such costs to the state's attorney of the county effected and it shall then be the duty of such state's attorney to proceed to put the same into judgment and to cause such judgment to be filed in the office of the clerk of district court in such county; and such certificate of the governor shall be prima facie evidence of the amount of costs therein stated.

Approved March 17, 1913.