

COUNTY COMMISSIONERS AND COUNTY CLERKS.

CHAPTER 4.

AN ACT RELATIVE TO COUNTY COMMISSIONERS AND COUNTY CLERKS.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

DUTIES.

Board to consist
of whom—
qualifications

Section 1. There shall be a board of county commissioners, consisting of three persons, in each organized county in this Territory. Said commissioners shall have the qualifications of electors, and shall be elected by the qualified voters of the several counties respectively, at the annual general election; *Provided, however,* That in counties which are now, or that may hereafter be, divided into townships, there shall be one commissioner elected in each township.

Division of
county. Shall
not be changed

Sec. 2. Each county shall be divided into three districts by the board of county commissioners, which districts may be numbered from one to three; and said districts shall not be changed oftener than once in three years by said board. In each newly organized county the board of commissioners, at their first election under this section, shall proceed to divide their respective counties into districts, as provided in the first part of this section; and one commissioner shall be elected from one of said districts at each general election thereafter, by the qualified voters of the whole county; *Provided,* That it shall not be lawful to change said district lines without a full board of commissioners existing at the time said lines are changed.

Provided

Sec. 3. At the first election held to choose the board of Election to choose board commissioners under this chapter for any county, the person having the highest number of votes shall continue in office for three years; the next highest, two years; and the next highest, one year; but if any two or more persons have the same number of votes, their term of office shall be determined by the board of canvassers, and each commissioner elected at the first general election, in pursuance of this chapter, shall hold his office for three, two, and one years, as the case may be, and until his successor shall be duly elected and qualified, and each commissioner elected thereafter, in pursuance of the second section of this chapter, shall hold his office for three years, and until his successor is elected and qualified; *Provided, however,* That in counties which are now, or may hereafter be divided into townships, the commissioners shall hold their office for the term of two years, and until their successors are elected and qualified.

Sec. 4. Each person elected county commissioner, shall, on Oath or receiving a certificate of his election, take an oath before some officer qualified to administer oaths, that he will support the constitution of the United States, and the organic act of this Territory, and perform faithfully all the duties enjoined by this chapter, which oath shall be certified to by the officer administering the same, under seal, and filed in the office of the register of deeds for said county for record, in a book to be kept for that purpose, and when so recorded shall be sufficient authority for such commissioner to act.

Sec. 5. The county commissioners shall meet and hold sessions for the transaction of county business at the court house Shall meet and hold session, when, where in their respective counties, or at the usual place of holding courts, on the first Monday in January, April, July and October, of each year, and may adjourn from time to time, and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notice in three public places in the county, or by publication in one newspaper in the county.

Sec. 6. The county clerk shall attend the sessions of said County clerk shall attend, duty of commissioners, and keep a true and full record of all their

proceedings in a book to be provided for that purpose, and the sheriff of the county shall also, by himself or deputy, attend their sessions and execute their orders.

When
commissioners
are equally
divided on any
question. What

Sec. 7. When the commissioners of the board are equally divided on any question, they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board.

Copies of
proceedings

Sec. 8. Copies of their proceedings, duly certified and attested by the county clerk, under seal, shall be received as evidence in all the courts of this Territory.

Power and
authority of

Sec. 9. Any of said commissioners, or the county clerk, shall have power and authority to administer oaths or affirmations in all cases, and said commissioners shall have the power to preserve order when sitting as a board, and may punish contempts by fine, not exceeding five dollars, or by imprisonment in the county jail not exceeding twenty-four hours; they may enforce obedience to all orders made by them, by attachment or other compulsory process, and when fines are assessed by them, the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines, within ten days after they are collected.

District account
with treasurer

Sec. 10. The said commissioners shall keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him, and for all sums for which the said treasurer is accountable to the county, and they shall credit him with all orders returned and canceled, with all moneys paid, and with all vouchers presented by him, and with all matters with which the treasurer is to be credited on account; and the said commissioners shall, in their settlement with the treasurer, keep the general, special and road tax separate, that any citizen of the county may see how the same has been expended.

Shall keep a
book, to record
what

Sec. 11. They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges, and all orders for the allowance of money

from the county treasury, shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively, as allowed, from the first day of January to the thirty-first day of December in each year.

Sec. 12. They shall keep a book for the entry of all proceedings and adjudications relating to bridges and the establishment, change or discontinuance of roads.

Book of entry of all proceedings relating to what

Sec. 13. They shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount and name of the drawee of each warrant drawn on the treasury, which may be known as the warrant book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn.

Same.

Sec. 14. They shall have the power to institute and prosecute civil actions in the name of the county, for and on behalf of the county.

Power to prosecute civil actions

Sec. 15. Said commissioners shall have power to make all orders respecting the property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section, it shall be sufficient to convey all the interest of the county in such grounds, when an order is made for the sale and a deed is executed in the name of the county by the chairman of board of commissioners, reciting the order, and signed and acknowledged by him for, and on behalf of the county, before some officer authorized to take acknowledgment of deeds; *Provided, however,* That the question of the sale of such public grounds or lands shall be first submitted to a vote of the people of the county, as hereinafter provided, and sanctioned by a majority vote thereof.

Power to make all orders respecting what.

Provided. Power to levy tax. To audit accounts &c.

Second, They shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness;

Third, To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated for its benefit.

Sec. 16. Said commissioners shall superintend the fiscal concerns of the county, and secure their management in the best manner; they shall keep an account of the receipts and

Shall superintend, what

expenditures of the county, and on the first Monday of July, annually, they shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year, to be made out in detail under separate heads, with an account of all debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county, the same shall be posted up at the usual place of holding their lessons, and at one public place in each precinct of the county.

To procure for
their county
a copy of field
notes, when
deposited

Sec. 17. The said commissioners are authorized to procure for their county a copy of the field notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be construed therewith, on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, to be kept open in the office of the county clerk, and the field notes to be deposited in the same office.

Submit to the
people at
election

Sec. 18. The said commissioners shall have power to submit to the people of the county, at any regular or special election whether the county will aid or construct any road or bridge, or to submit to the people of the county any question involving an extraordinary outlay of money by the county; and said commissioners may aid any enterprise designed for the benefit of the county as aforesaid, whenever a majority of the people thereof shall be in favor of the proposition, as provided in this section.

Depreciated
value of county
warrants

Sec. 19. When county warrants are at a depreciated value, the said commissioners may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied; and in all cases when an additional tax is laid, in pursuance of a vote of the people of the county, for the special purpose of repaying borrowed money, or of constructing or ordaining to construct any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

Mode of
submitting
questions to
people

Sec. 20. The mode of submitting questions to the people, contemplated by the last two sections, shall be the following: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per

annum and the whole regulation, including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

Sec. 21. When the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes under section fifteen of this chapter; and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

When question submitted involves

Sec. 22. The rate of tax levied in pursuance of the last four sections of this chapter shall in no case exceed three mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rate shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge, the annual rate shall not exceed one mill on a dollar of the valuation; and any special tax or taxes levied in pursuance of this chapter becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue law of this Territory.

Rate of tax levied

Sec. 23. The said commissioners, being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax, in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

Propositions thus acted upon can not be rescinded

Money raised
in pursuance of
last six sections

Sec. 24. Money raised by the county commissioners, in pursuance of the last six sections, is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligation assumed is discharged.

Commissioners
to hold their
sessions with
open doors

Sec. 25. The said commissioners shall hold their sessions with open doors, and transact all business in the most public manner; and where the county has no court house, or the court house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to the interest of the county shall be heard by the board of commissioners in sessions only, but they may continue any business from any regular session to an intermediate day.

Shall constitute
a record

Sec. 26. The books required to be kept by this chapter shall constitute the record of the board of county commissioners.

Power to
provide for
erection and
repairing county
houses &c

Sec. 27. Said commissioners shall have authority and power to provide for the erection and repairing of court houses, jails, and other necessary buildings within and for the county; and to carry out the provisions of this section, they shall have power to make contracts on behalf of the county for the building or repairing of the same. They shall determine the amount of taxes to be levied for county purposes, according to the provisions of this chapter, and the revenue law of this territory.

May sue and
be sued

Sec. 28. The counties in this territory may sue and be sued, plead and be impleaded, in any court in this territory; and in all cases where lands have been granted to any county for public purposes, and any part thereof has been sold and the purchase-money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of such lands, or to enforce the payment of the purchase-money, shall be instituted in the name of the proper county.

Power to employ
attorney by the
year

Sec. 29. Said commissioners shall have power to employ an attorney by the year, who shall be known as county attorney. But said commissioners shall, in no case, pay said attorney more than one hundred dollars per annum.

When any
judgment is
obtained

Sec. 30. When any judgment is obtained against the county, it shall be a lien upon the property of the county, and the

public property shall be liable therefor; but no execution shall issue thereon until the board of county commissioners shall have had six months time to assess and collect a sufficient amount of revenue, under the provisions of this chapter, to pay off and discharge said judgments, in addition to the ordinary expenses of the county.

Sec. 31. From all decisions of the board of commissioners, Appeals from decisions, how upon matters properly before them, there shall be allowed an appeal to the district court by any person aggrieved, upon filing a bond with sufficient penalty, and one or more sureties, to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in the said district court. Said bond shall be executed to the county, and may be sued in the name of the county, upon breach of any condition therein.

Sec. 32. Said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on one of the board of county commissioners, and the county clerk shall upon the filing of the bond, and the payment of his fees, allowed by this chapter, as hereinafter provided, make out a complete transcript of the proceedings of said board, relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court. Shall be taken, when

Sec. 33. Said appeal shall be filed by the first day of the district court next after such appeal, and said cause shall stand for trial at such term. When filed

Sec. 34. All appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo*. Shall be docketed as other causes

Sec. 35. The district court may make a final judgment and cause the same to be executed, or may send the same back to the board, with an order how to proceed, and require said board of county commissioners to comply therewith by mandamus or attachment, as for contempt. Final judgment

Sec. 36. All treasurers, sheriffs, clerks, constables, and other officers, chargeable with money belonging to any county, shall render their accounts to, and settle with the county commissioners at the time required by law, and pay into the county Treasurers sheriffs &c. chargeable with money shall render their accounts to whom. At what time

treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

Persons thus
chargeable shall
neglect or refuse
so to do

Sec. 37. If any person thus chargeable, shall neglect or refuse to render true accounts, or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due the county, and order suit to be brought in the name of the county therefor.

In such case

Sec. 38. In such case, the board of commissioners shall refuse such delinquent any commission, and such delinquent shall forfeit and pay to the county a penalty of twenty per cent. on the amount of funds due the county.

Duty of county
clerk

Sec. 39. It shall be the duty of the county clerk to do, perform and transact all county business without any extra or greater compensation than is allowed by law; said clerk shall keep all the books required by this chapter to be kept, shall file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted as evidence in all courts in this territory.

Commissioners
shall procure
and keep a seal

Sec. 40. The board of county commissioners hereby established, shall procure and keep a seal, with such emblems and devices, as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk.

Impressions of,
sufficient

Sec. 41. The impression of the seal hereby required to be kept, by the stamp, shall be a sufficient sealing in all cases where sealing is required.

Power of
county clerk

Sec. 42. The county clerk shall have power and authority to take the acknowledgment of deeds and other instruments of writing.

Ex officio
register of deeds

Sec. 43. The county clerks shall be *ex officio* registers of deeds in and for their respective counties, and the said county clerk shall keep the books and record all instruments, now or hereafter required to be recorded by any law of this territory, in the same manner that the law requires the register of deeds.

to keep the same. And the said clerks shall receive the same compensation for recording deeds and other instruments of writing, as is now allowed county recorders, or such compensation as may by law be prescribed from time to time.

Sec. 44. It shall be the duty of said county clerks to keep the records of their office in a fire-proof iron safe, to be kept for the purpose, and which shall be purchased by the county commissioners, when in their judgment the same shall be advisable.

When records to be kept

Sec. 45. All county orders heretofore drawn or that may hereafter be drawn by the proper authorities of any county, shall, after having been presented to the county treasurer of the respective counties, and by him endorsed "not paid for want of funds in the treasury," from said date shall draw interest at the rate of ten per cent. per annum.

All county orders to draw interest, when

Sec. 46. Whenever any county shall organize in this Territory, the qualified voters thereof are hereby empowered to select the place of their county seat by a vote at the first election held in the county for the choice of county officers; for this purpose, each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having the majority of all the votes polled, shall be the county seat, and public notice of said location shall be given within thirty days, by the tribunal transacting county business, by posting up notices in three several places in each precinct in the county.

On organization of county, voters to select place of county seat, how

Sec. 47. Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the tribunal transacting county business, signed by two-thirds of the qualified voters of the county, it shall be the duty of said tribunal, in the notices for the next general election, to notify said voters to designate upon their ballots at said election, the place of their choice; and if, upon canvassing the votes so given, it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be given as hereinbefore provided in the case of the location of county seats of new counties.

Changing place of county seat

If no place has
a majority

Sec. 48. If no one place has a majority of all the votes polled, as provided for in section forty-seven, it shall be the duty of the tribunal transacting county business, within one month after said election, to order a special election, and give ten days notice thereof, by posting up three notices in each precinct in the county, at which election votes shall be taken by the ballot between the three highest places voted for at the first election. And if no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two highest places voted for at the last election, and the place having the highest number of votes shall be the county seat.

When county
seat shall be
located on
public lands,
duty of tribunal
transacting
county business

Sec. 49. Whenever any county seat shall be located upon the public lands, it shall be the duty of the tribunal transacting county business to enter, or purchase, a quarter section of land at the place so designated, at the expense of, and for the use of the county within three months thereafter, if said land be subject to private entry; if not, such tribunal shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

Same

Sec. 50. The aforesaid tribunal shall, within three months after the selection, cause the same to be surveyed into town lots, squares, streets and alleys, and platted and recorded in pursuance of law; and shall select the place for the county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

Remainder of,
offered at public
sale

Sec. 51. The remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one third cash, and the balance on time, as the county tribunal may deem best, and may dispose of lots at private sale, upon terms as above provided for.

Purchasers of
lots sold not
paid for shall be
forfeited—When

Sec. 52. Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warrantee deed from the county tribunal when payment in full shall be made for the same. Any lots sold as above that

shall not be paid for as provided in this chapter, or within one year thereafter, shall be forfeited to the county, and shall be again sold as hereinafter provided.

Sec. 53. The proceeds of the sales of the aforesaid lots, Proceeds of sales after deducting expenses after deducting the expenses of the surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county seat, at the county seat, and shall be used for no other purpose whatever.

Sec. 54. In any county which may collect a building fund by the provisions of this chapter, it shall be the duty of the tribunal transacting county business, within one year from the time such fund becomes available, to advertise, by publishing in a newspaper at least three months, for bids for building a court house, jail and offices for register of deeds and county clerk, if the above specified fund, in their judgment, may be sufficient for that purpose. Said advertisements for bids to contain plans and specifications for such buildings, and also the time allowed to complete the same. The lowest responsible bid shall in all cases be accepted, and the contracts for such buildings shall be so conditioned, that not more than one-half the payment for the same shall be made until the contract shall be completed to the satisfaction of the said tribunal. In any county which may collect a building fund, by provisions of this chapter. Duty of tribunal

Sec. 55. All acts and parts of acts in conflict with this act are hereby repealed. Acts in conflict, repealed

Sec. 56. This act shall take effect and be in force from and after its passage. Act to take effect, when

Approved, Jan. 14, 1869.