

STATE'S ATTORNEY.

CHAPTER 178.

[S. B. 145.]

DUTIES OF STATE'S ATTORNEY.

AN ACT to Amend Section 1979, of the Revised Codes of 1899, Relating to Duties of State's Attorney.

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

§ 1. AMENDMENT.] That section 1979, of the Revised Codes of the state of North Dakota, be amended to read as follows:

§ 1979. DUTIES OF STATE'S ATTORNEY.] The state's attorney is the public prosecutor, and must:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the district court, must attend upon the magistrates in cases of arrest, when required by them, except in cases of assault and battery and petit larceny, and attend before, and give advice to the grand jury whenever cases are presented to them for their consideration.

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all bonds forfeited in the courts of record and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or his county.

4. Deliver receipts for money or property received in his official capacity, and file duplicate receipts therefor with the county auditor.

5. On the first Mondays of January, April, July and October in each year, file with the county auditor an account, verified by his oath, of all money received by him in his official capacity during the preceding three months and at the same time pay it over to the county treasurer.

6. Give when required, and without fee, his opinion in writing to the county, district, township and school district officers, on matters relating to the duties of their respective offices.

7. Keep a register of all official business, in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.

8. Make a written report to the attorney general, on the first day of each month, of all proceedings instituted or pending in his county in any court, other than justice courts, wherein the state is a party or is interested; which reports shall give the title of the case, the date when commenced, the purpose of the action, the proceedings had and taken therein, and the final disposition of such cases.

9. It is the intention of this act to make the attorney general, his assistants, and the state's attorney the only public prosecutor in all cases civil and criminal, wherein the state, or county, is a party to the action. and that they only shall be authorized and empowered to perform the duties herein set forth, except as hereinafter provided. The attorney general or his assistants are authorized to institute and prosecute any cases in which the state is a party, whenever in their judgment it would be to the best interests of the state so to do, and in case the state's attorney of any county refuses or neglects to perform any of the duties prescribed in subdivisions 2 and 3 of this section, after it has been properly brought to his attention, or when he has information that a public offense has been committed, or that a civil suit in which the state is a party, should be instituted and the fact of such a refusal or neglect to perform such duty, and that the action is one that should be prosecuted, has been brought before the judge of the district court in the judicial district having jurisdiction of such action, by affidavit or otherwise, and said judge is satisfied that such action should be prosecuted, and that said attorney has failed or neglected to perform his duty, then in that case, he shall request the attorney general or an assistant attorney general to take charge of such prosecution, or he shall appoint, by an order to be entered upon the minutes of the court, some suitable person, an attorney at law, and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that action, but for no other purpose, and the district court shall by order, to be entered in the minutes of the court, fix his fee therefor, which amount shall be allowed by the board of county commissioners and which amount, if so ordered by the court, shall be deducted from the salary of the state's attorney and the person so appointed shall be the only person authorized to proceed therein; provided, however, that nothing herein contained shall prevent the county commissioners of any county, in cases of public importance and with the advice and consent of the state's attorney, employing such additional counsel as may be deemed advisable, to assist the state's attorney upon such compensation as may be agreed upon. Provided, further, that the provisions of this act shall not be construed so as to abridge any of the powers conferred upon the attorney general, his assistants, or the state's attorney, or to relieve them from the infliction of any punishment, fine or forfeiture, for neglect of duty, as prescribed by the provisions of chapter 63 of the Penal Code, commonly known as the prohibition law.

Approved March 11, 1901.