

PUBLIC OFFICERS

CHAPTER 199.

[S. B. No. 64—Bond.]

REMOVAL OF PUBLIC OFFICERS.

AN ACT to Amend and Re-enact Sections 686, 688, 690, 691, 692, 693, 694 and 695, Compiled Codes of North Dakota, 1913, Relating to the Removal of Public Officers by the Governor.

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

§ 686. CHARGES, HOW MADE AND BY WHOM PROSECUTED.] 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 upon the relation of any five qualified electors of the county in which the person charged is an officer, or by the State's Attorney of such county, and such complaint and charges shall be filed by the Attorney General when directed to do so by the Governor. When the officer sought to be removed is other than the State's Attorney, it shall be the duty of the State's Attorney or other competent attorney upon request of the Governor to appear and prosecute, and when the proceedings are brought to remove the State's Attorney the Governor shall request the Attorney General, or other competent attorney to appear on behalf of the state and prosecute such proceedings.

§ 688. SPECIAL COMMISSIONER TO HEAR AND TAKE TESTIMONY. SUSPENSION OF OFFICER.] Whenever charges are filed against any such officer, the Governor shall appoint as a special commissioner a competent person learned in the law to hear and report the testimony for and against the accused, and to file his report of said testimony, to be used on the hearing. Such testimony shall be reduced to writing, and when said testimony is not taken by a shorthand reporter, each witness shall subscribe his name to his testimony when the 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 of such office, and thereupon such board or persons shall, within five days after receipt of such notice, appoint some competent person to fill such office and perform the duties thereof ad interim.

§ 690. 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 and proceedings, to the Governor, and file the same in his office, and thereupon the Governor shall fix a time and place for the 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 services 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 such hearing the charges are sustained, the Governor shall forthwith make the 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 the authority to fill a vacancy in such office, and thereupon such board or persons 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 was 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 a 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 the 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.

§ 691. The fees of the special commissioner herein provided for shall be six dollars per day, and in addition thereto said special commissioner shall receive his mileage from his residence to the place of trial the same as is allowed by law to Sheriffs, and shall have power to employ a stenographer who shall be paid fifteen cents per folio for original transcript of testimony and five cents per folio for copies required, said expenses to be itemized by said commissioner and filed with his report and findings and audited and allowed by the Governor, and witnesses giving testimony before such commissioner shall to a number to be limited by the commissioner be allowed the same fees as witnesses in district court. In proceedings to remove 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, board of city commissioners or township board, in the same manner as other claims against the municipality.

§ 692. When a special commissioner shall have been appointed,

as herein provided for, such commissioner shall forthwith take an oath and file the same with the Governor that he will impartially and to the best of his knowledge and ability, without fear, favor or prejudice hear, and cause to be taken, all the testimony and evidence offered and received at the hearing for and in behalf of the prosecution and accused, together with all papers and other exhibits offered by either party and carefully preserve the same; that he will cause all of the oral testimony offered and received 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 evidence and testimony, including all exhibits offered and received at said hearing by either party, and cause the 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, such fees as are now allowed to constables for serving subpoenas in justice court, and such fees shall be paid in the same manner as herein provided for witness fees and commissioner's fees. The procedure in taking the testimony as herein provided shall be the same as is now provided by law in the district court as to admissibility of testimony, and such commissioner shall, upon taking and filing his oath, have the same powers as are now conferred upon district judges and shall rule on, admit or exclude testimony accordingly, and he shall have the power to punish for contempt in the same manner as is now provided by law for contempt in the district court.

§ 693. When charges are preferred against any of the officers mentioned in this Act by qualified voters other than the State's Attorney or Attorney General, as provided in Section 686, and upon such hearing it shall appear that such charges were not preferred in good faith, then all of the costs of the proceedings under this Act, not exceeding the sum of three hundred dollars, may in the discretion of the Governor be taxed to the persons making such charges, and when such charges are made by such relators there shall be filed, together with such charges, a good and sufficient indemnity bond in the sum of three hundred dollars, to be approved by the Governor, binding such relators to the payment of such costs upon the failure to maintain such charges as herein provided.

§ 694. If the costs shall be taxed against the persons preferring charges against any of the officers mentioned in Section 685, it shall be the duty of the Governor to certify such costs to the State's Attorney of the county affected, together with the indemnity bond filed with said charges, and it shall then be the duty

of such State's Attorney to commence action on the bond and reduce the same to judgment and cause said judgment to be filed in the office of the Clerk of the District Court of such county, and to proceed to collect the same; and such certificate of the Governor shall be prima facie evidence of the amount of costs therein contained.

Approved, March 9, 1915.

PURE FOOD AND BEVERAGES

CHAPTER 200.

[S. B. No. 208—Porterfield.]

PURE FOOD AND BEVERAGES.

AN ACT to Prohibit the Adulteration and Misbranding of Foods and Beverages and the Selling of Adulterated and Unwholesome Foods and Beverages; Providing for the Labeling of Foods and Beverages; and Prescribing Penalty for Failure to Comply with the Provisions of this Act.

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

§ 1. ADULTERATING AND MISBRANDING FOODS AND BEVERAGES.] It shall be unlawful for any person, either himself or while acting as agent or servant of any other person or corporation, to manufacture for sale, offer, or have for sale, to solicit orders for, to store or to deliver within the state any article of food or beverage which is unwholesome, misbranded, adulterated or insufficiently labeled within the meaning of this Act. The having in possession of such adulterated, unwholesome, misbranded or insufficiently labeled article or articles shall be deemed prima facie evidence of the violation thereof. For the purpose of this Act all confections, condiments, extracts, vinegars, or other substances used in the preparation or compounding of foods or food products and beverages shall be deemed articles of food.

§ 2. The office of Food Commissioner and State Chemist is hereby created, said office to be located at the Agricultural College at Fargo.

§ 3. WHAT CONSTITUTES ADULTERATION. IMPROPER LABELING.] Any article of food or beverage shall be considered as misbranded, unwholesome, adulterated or insufficiently labeled, as the case may be, within the meaning of this Act:

FIRST. If it contains any form of added mineral color, aniline dye or other coal tar dye, or if colored (and not in violation of clause six of this Section) with a harmless vegetable dye or color and the name thereof is not given on the label; *provided*, the Food