

CHAPTER 77.

REMOVAL OF APPOINTIVE STATE OFFICIALS AND COMMISSIONERS.

S. F. 418.

AN ACT providing for the removal of appointive state officials, members of boards, members of commissions, commissioners and persons appointed by the same. [Additional to chapter eight (8) of title six (VI) of the code, relating to removal from office.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. May be removed by executive council—causes. Members of the board of curators of the state historical society, members of the board of educational examiners appointed by the governor, the director of the weather and crop service, the fish and game warden, members of the commission of pharmacy, members of the board of dental examiners, members of the board of parole, dairy comissioner, custodian of public buildings and property, state veterinary surgeon, inspectors of products of petroleum, members of state board of veterinary medical examiners, inspectors of passenger boats, members of the board of optometry examiners, and members of the library commission appointed by the governor may be removed by a majority vote of the executive council, for any of the following causes:

1. For habitual or wilful neglect of duty.
2. For any disability preventing a proper discharge of the duties of his office.
3. For gross partiality.
4. For oppression.
5. For extortion.
6. For corruption.
7. For wilful misconduct or maladministration in office.
8. Upon conviction of felony.
9. For a failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.

SEC. 2. In effect. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Register and Leader and the Des Moines Capital, newspapers published in the city of Des Moines.

Approved April 10, A. D. 1909.

I hereby certify that the foregoing act was published in the Register and Leader and Des Moines Capital April 12, A. D. 1909.

W. C. HAYWARD,
Secretary of State.

CHAPTER 78.

REMOVAL OF OFFICERS FOR MISFEASANCE, MALFEASANCE OR NONFEASANCE IN OFFICE.

S. F. 8.

AN ACT authorizing the district court or judge to remove officers for misfeasance, malfeasance or nonfeasance in office, and providing the method of procedure therefor. [Additional to chapter eight (8) of title six (VI) of the code, relating to removal from office.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Officers subject to removal—causes. Any county attorney, sheriff, mayor, police officer, marshal or constable shall be removed from office by the district court or judge upon charges made in writing and hearing thereunder for the following causes:

1. For wilful or habitual neglect or refusal to perform the duties of his office.
2. For wilful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication or upon conviction of being intoxicated.

SEC. 2. **Complaint or petition—who to prosecute.** The complaint or petition shall be entitled in the name of the state of Iowa, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, the county attorney of such county, or the attorney general, and shall be filed by the attorney general when directed so to do by the governor. It shall be the duty of the county attorney to appear and prosecute this proceeding when the officer sought to be removed is one other than himself; and when the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings.

SEC. 3. **Governor may direct attorney general to file complaint—answer to be filed.** It shall be the duty of the governor, whenever he has knowledge that reasonable grounds exist for the filing of complaint against any of the within named officers, to direct the attorney general to file the same against the offending party and prosecute said action. The accused shall be named as defendant and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the district court his answer which shall be verified.

SEC. 4. **Cause heard by judge of another district—when—how commissioned—order fixing time of hearing.** If the person or persons filing the complaint or the defendant believe that the cause ought not to be heard before any of the judges in such district, he shall at the time he files his petition or answer in the office of the clerk of the district court, file a copy thereof in the office of the clerk of the supreme court, together with an application to the supreme court asking for the appointment of a judge outside of such district to hear the complaint. Upon the filing of the copy of said complaint, together with the application, in the office of the clerk of the supreme court, it shall be the duty of the chief justice of the supreme court, or in his absence or inability to act, any justice thereof, to forthwith issue a written commission directing a district judge in the state of Iowa outside of such district to proceed to the county in which the complaint was filed and hear the same. Upon the receipt of such commission, said judge shall immediately make an order fixing a time for hearing, which shall be not less than ten (10) nor more than twenty (20) days thereafter, and forward said order to the clerk of the district court of the county in which the hearing is to be had. The clerk shall file said order and forthwith cause a copy thereof or a notice of the time and place of hearing to be served on the accused. If the cause is to be heard by a judge within the judicial district, upon the presentation of the petition, or a copy thereof, to such judge, he shall make the order fixing a time for the hearing as hereinbefore specified.

SEC. 5. **Triable as an equitable action—accused may be suspended—vacancy—how filled.** The proceeding shall be summary in its nature and triable as an equitable action and may be heard either in vacation or term time, and shall be heard before the court or judge without the intervention of a jury. Upon the filing of the petition in the office of the clerk of the district court, and

presentation of the same to the judge, the court or judge may suspend the accused from office, if in his judgment sufficient cause appear from the petition and affidavit or affidavits which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner specified in section 1257 of the code.

SEC. 6. **Order of removal—vacancy—how filled.** If upon the hearing herein provided for, the district court or judge shall find that the accused should be removed from office, he shall make and enter of record an order of removal and the vacancy thus created shall be filled as provided in section 1272 of the supplement to the code, 1907.

SEC. 7. **Appeal to supreme court—costs—how taxed.** In case of appeal to the supreme court, the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstract and arguments are filed in said court in time for said action to be heard. The supreme court shall fix the time of hearing and the filing of arguments. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court or judge, or restore said defendant to office pending such appeal. If the final termination of such proceedings be favorable to any accused officer, said officer shall be allowed the reasonable and necessary expense including a reasonable attorney fee to be fixed by the court or judge he has incurred in making his defense, by the county if he be a county officer, or by the city or town in which he holds office if he be a mayor, police officer or marshal. If the action is instituted upon complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties.

SEC. 8. **Expenses of judge and reporter—how paid.** Any judge who is required to preside at a hearing, herein provided for, outside of his judicial district, shall be allowed his necessary and actual expenses incurred by reason of such hearing, and the necessary and actual expenses of his official reporter. An itemized sworn statement shall be made by such judge and official reporter showing the amount of expenses incurred, and the same shall be filed with the auditor of state. Thereupon, the auditor shall draw his warrant upon the treasurer of state for such amount.

SEC. 9. **Acts in conflict repealed.** All acts and parts of acts in conflict with this act, in so far as they apply to the officers herein designated, are hereby repealed.

SEC. 10. **In effect.** This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Register and Leader and Des Moines Capital, newspapers published in the city of Des Moines, Iowa.

Approved March 25, A. D. 1909.

I hereby certify that the foregoing act was published in the Register and Leader and Des Moines Capital March 27, A. D. 1909.

W. C. HAYWARD,
Secretary of State.