CHAPTER 17

RESIGNATIONS, VACANCIES, AND REMOVALS FROM OFFICE

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History: 2001 a. 103 s. 21.

17.01 Resignations to whom made; when effective. Resignations of public officers shall be made as follows:

(1) By the governor, lieutenant governor or any officer appointed by the legislature, to the legislature, if in session; otherwise by the governor or lieutenant governor, to the secretary of state, and by an officer appointed by the legislature, to the governor.

(2) By the secretary of state, treasurer, attorney general, state superintendent, by a district attorney and by all officers appointed by the governor alone or by the governor by and with the advice and consent of the senate, to the governor.

(3) By senators and members of the assembly, to the presiding officers of their respective houses, who shall immediately transmit the same to the governor, and to the governor during the recess of the legislature.

(4) By the justices of the supreme court, court of appeals judges and circuit judges, to the governor.

(5) By a sheriff, to the county clerk, who shall immediately transmit notice thereof to the governor.

(6) By a clerk of the circuit court, to the circuit judge.

(7) By a county supervisor, county clerk, county treasurer, coroner, register of deeds or county surveyor, to the sheriff, who shall immediately transmit a notice thereof, in case of a coroner or register of deeds, to the governor; and in case of a county supervisor, county clerk, county treasurer or surveyor, to the chairperson of the county board; and after such notices the sheriff shall file such resignations with the county clerk.

(8) By the mayor or alderperson or council member of a city, however organized, to the council; by other elective officers thereof, to the mayor; and by other city officers, to the officer or body having power to appoint in their stead.

(9) By a town officer, to the town board.

(10) By officers of a village, however organized, to the village board.

(11) By a school district officer, to the district board.

(12) By all other officers, to the officer or body having power to appoint in their stead.

(13) Resignations shall be made in writing, shall be addressed and delivered to the officer or body prescribed in this section and shall take effect, in the case of an officer who is not a school district officer and whose term of office continues by law until a successor is chosen and qualifies, upon the qualification of the successor; and in the case of other officers including school district officers, at the time indicated in the written resignation, or if no time is therein indicated, then upon delivery of the written resignation. If the governor or the state superintendent of public instruction makes a provisional appointment under s. 17.20 (2) and the appointee files the required oath of office, the appointee qualifies for office, unless the appointment is withdrawn or rejected. Delivery of a resignation shall be made by leaving a copy thereof with the officer to whom it is required to be addressed and delivered at his or her public office or usual place of business, or if required to be addressed and delivered to a body, by leaving a copy with the following officer at his or her public office or usual place of business:

(a) If required to be addressed and delivered to the legislature, with the presiding officer of each house, or if required to be addressed and delivered to but one house, to the presiding officer of that house.

(b) If required to be addressed and delivered to the county board, city council or to the village, town or school board, to the clerk thereof, except the resignation of the county, city, village, town or school district clerk which shall be delivered to the chairperson of the county board, mayor, village president, town chairperson, or president, as the case may be.

(c) If required to be addressed and delivered to any other body, to the secretary or clerk thereof, if any, and if none, to any member of such body.

History: 1977 c. 187, 418, 427, 447, 449; 1983 a. 192 s. 303 (2); 1985 a. 135 s. 83 (1); 1985 a. 218; 1989 a. 31; 1989 a. 56 s. 258; 1989 a. 359; 1993 a. 184; 1997 a. 298.

Conditional resignations are permissible under this section. In sub. (13), "time" refers to the "point when something occurs." Ortin v. Schuett, 157 Wis. 2d 415, 459 N.W.2d 596 (Ct. App. 1990).

17.015 Municipal judge: multiple resignations. If a municipal judge is elected under s. 755.01 (4), the judge shall submit resignations to each applicable officer or board under s. 17.01.

History: 1985 a. 89.

17.02 Notice of resignations. Notice of resignations, in addition to those provided for in s. 17.01, shall be given forthwith as follows:

(1) SENATORS AND MEMBERS OF CONGRESS. Of the resignation of a United States senator or member of congress from this state, by the senator or member of congress to the secretary of state.

from office as provided by law for neglect of duty, and a competent person shall be appointed, in the manner and by the appointing power prescribed for filling vacancies in the affected office, to discharge the duties of the officer during the officer's suspension. If it is determined in the action or proceedings or is found upon investigation that the officer has not in any particular willfully neglected the officer's duty in connection with public moneys, and that fact is certified to the secretary of state by the judge, governor or other officer who conducted the action, proceedings or investigation, the suspended officer, unless the officer has been removed from office for any cause provided by law, shall thereby be restored to office, if the term for which the officer was elected or appointed has not expired, and shall thereby become entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended as herein provided.

(2) This section in no manner impairs or restricts the power of the governor or other officer or body to remove any officer from office as provided by law.

History: 1991 a. 316.

17.09 Removal of elective county officers. Elective county officers may be removed from office as follows:

(1) COUNTY CLERK; TREASURER; SURVEYOR; SUPERVISOR. The county clerk, county treasurer or surveyor, or a county supervisor, by the county board, for cause, by a vote of two-thirds of all the supervisors entitled to seats on such board.

(2) CLERK OF CIRCUIT COURT. The clerk of the circuit court, by the judge or a majority of judges of the circuit court for the clerk's county, for cause.

(5) OTHER ELECTIVE COUNTY OFFICERS. The sheriff, coroner or register of deeds, by the governor, for cause.

History: 1977 c. 449; 1979 c. 32; 1989 a. 31.

Removal is governed by s. 17.16 and contemplates a determination of cause by the board. An ordinance making a violation *ipso facto* cause for removal impermissibly circumvents that procedure. 66 Atty. Gen. 148.

17.10 Removal of appointive county officers. **(1)** APPOINTED BY GOVERNOR. County officers appointed by the governor may be removed by the governor for cause.

(2) APPOINTED BY COUNTY BOARD. County officers appointed by the county board may be removed by the county board for cause. All removals may be made by an affirmative vote of two-thirds of the supervisors entitled to seats on the county board.

(3) APPOINTED BY CHAIRPERSON OF COUNTY BOARD. County officers appointed by the chairperson of the county board may be removed by the chairperson for cause, except members of the county civil service commission who may be removed by the county board for cause under sub. (2). A county commissioner of elections so removed may appeal to the county board within 10 days after removal; the county board shall conduct a hearing in the manner determined by it and shall determine the question of removal.

(4) APPOINTED BY THE CIRCUIT JUDGE. County officers appointed by a judge or judges of the circuit court may be removed at pleasure by the judge or a majority of the judges authorized to appoint the officers' successors.

(5) APPOINTED BY THE COUNTY JUDGE. County officers appointed by the county judge may be removed at pleasure by the circuit judge or a majority of the circuit judges authorized to appoint the officers' successors.

(6) OTHERS. (a) Except as provided under par. (b), all other appointive county officers may be removed at pleasure by the officer or body that appointed them. Removals by a body, other than the county board, consisting of 3 or more members may be made by an affirmative vote of two-thirds of all the members thereof.

(b) The following appointive county officers may be removed for cause only:

1. Disposition staff and intake workers appointed to provide services under chs. 48 and 938.

2. Any person appointed to administer services under s. 46.22, 46.23, 51.42 or 51.437.

(7) GENERAL EXCEPTION. County officers appointed according to merit and fitness under and subject to a civil service law, or whose removal is governed by such a law, shall be removed only as therein provided.

History: 1977 c. 354; 1983 a. 192; 1985 a. 29; 1995 a. 77.

In a county that does not have a county executive or administrator, the personnel committee of the county board does not possess the statutory authority to remove the county social services director. The county board may not, under s. 59.025, 1993 stats., [now 59.03 (1)], transfer the authority to appoint. 81 Atty. Gen. 145.

Removal of the chairperson of a county board may be at the will of a simple majority of the board under s. 59.12. This section is inapplicable. Sub. (2) applies only to persons who are removed from a position as a county officer. Ending the tenure of a member of the county board as chair of the board does not oust that member from county office but only from a particular position on the board. OAG 1-07.

17.11 Suspension of district attorney or sheriff. **(1)** If any district attorney or sheriff is arrested for or charged with any offense against the laws of this state, or if the governor is credibly informed that any district attorney or sheriff is guilty of any offense against the laws of this state, or that proceedings are pending before any court or officer involving any criminal charge against any district attorney or sheriff, or that any district attorney or sheriff willfully neglects or refuses to perform that district attorney's or sheriff's duties, the governor shall in the case of a felony and may in the case of a misdemeanor suspend the district attorney or sheriff from office until the charge shall be investigated and finally determined. The governor shall, in the case of the district attorney, appoint the attorney general or one of the attorney general's assistants or some competent attorney of the state, and the governor shall, in the case of the sheriff, appoint a suitable person, to discharge the duties of the affected office during the suspension.

(2) (a) The state shall pay an attorney temporarily appointed under sub. (1) for his or her services and expenses in an amount determined and fixed by the governor.

(b) The county in which a person is temporarily appointed sheriff under sub. (1) shall pay the appointed sheriff for his or her services in an amount determined and fixed by the governor and certified by the governor to the county clerk of the county.

(3) Any attorney so temporarily appointed shall have all the power and discharge all the duties of the district attorney and that attorney shall speedily bring to a hearing and determination any charges made against the district attorney so suspended. Any person so temporarily appointed as sheriff shall have all the power and discharge all the duties of sheriff.

(4) If it is determined in the action or proceeding or is found upon the investigation that a district attorney or sheriff suspended under this section is not guilty of an offense, or has not willfully neglected or refused to perform his or her duties, as charged, that fact shall be certified by the governor to the department of administration if a district attorney is involved or to the county clerk of the sheriff's county if a sheriff is involved. Upon the certification, the district attorney or sheriff shall be:

(a) Entitled to the emoluments of the office for the time he or she would have served in the office had he or she not been suspended under this section; and

(b) Restored to office if the term for which he or she was elected or appointed has not expired.

(5) This section in no manner affects provisions of law relating to the removal from office of the district attorney or sheriff.

History: 1989 a. 31; 1991 a. 316.

17.12 Removal and suspension of city officers. **(1)** GENERAL AND SPECIAL CHARTER. Officers of cities, except public officials, as defined in s. 62.51 (1) (b), operating under the general law or under special charter including school officers, may be removed as follows:

(a) *Elective.* Elective officers by recall as provided in s. 9.10, or by the common council, for cause.

(c) *Appointive.* Appointive officers, by whomsoever appointed, by the common council, for cause, except officers appointed by the council who may be removed by that body, at pleasure. Officers appointed by any other officer or body without confirmation or concurrence by the council, by the officer or body that appointed them, at pleasure. The council may conduct a hearing thereon by a committee which committee shall proceed in such manner as may be determined by it and make full report to the council, which shall determine the question upon such appeal.

(d) *Votes required.* Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of 3 or more members, by an affirmative vote of two-thirds of all the members thereof.

(2) COMMISSION FORM. Officers of cities operating under the commission form of government may be removed as follows:

(a) *Elective.* Elective officers by recall as provided in s. 9.10.

(c) *Appointive.* Appointive officers, by whomsoever appointed, by the council, at pleasure, by a majority vote; and officers appointed by any officer or body other than the council may also be removed from office by the officer or body that appointed them, at pleasure, by vote as provided in sub. (1) (d).

(3) SUSPENSION. The mayor of any city may summarily suspend from office any officer thereof whose removal is sought and against whom charges have been preferred therefor, and may appoint an officer to discharge the duties of such office until such charges have been disposed of. If such charges are dismissed, the officer so suspended shall thereby be restored to office and be entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended.

(4) GENERAL EXCEPTION. But no officer of any city, appointed according to merit and fitness under and subject to a civil service or to a police and fire commission law, or whose removal is governed by such a law, shall be removed otherwise than as therein provided.

History: 1987 a. 382; 1991 a. 316; 1999 a. 150 s. 672.

City officers are subject to s. 17.03 vacancy provisions. Wellnitz v. Wauwatosa Police and Fire Commissioners, 151 Wis. 2d 306, 444 N.W.2d 412 (Ct. App. 1989).

17.13 Removal of village, town, town sanitary district, school district, and technical college officers. Officers of towns, town sanitary districts, villages, school districts, and technical college districts may be removed as follows:

(1) APPOINTIVE OFFICERS. Except as provided in s. 60.30 (1e) (c) and (f), any appointive village, town, town sanitary district, school district and technical college district officer, by the officer or body that appointed him or her, at pleasure. Removal of any such officer by a body shall be by a majority vote of all the members thereof.

(2) ELECTIVE VILLAGE OFFICERS. Any elective village officer by a majority vote of all the members of the village board, because of continued physical inability to perform the duties of office or gross neglect of duty.

(3) ALL OFFICERS. Any village, town, town sanitary district, school district or technical college district officer, elective or appointive, including those embraced within subs. (1) and (2), by the judge of the circuit court of the circuit wherein the village, town, town sanitary district, school district or technical college district is situated, for cause.

History: 1971 c. 154; 1977 c. 449; 1983 a. 532; 1993 a. 399; 1995 a. 34, 225; 1999 a. 9; 2007 a. 20.

If a statute provides that a public officer, including VTAE (technical college) board members, serves at pleasure but is appointed for a term, the officer may be summarily dismissed during the term. 62 Atty. Gen. 97.

A town board was restrained from discharging its police chief until the issue of impermissible consideration of the chief's political activities was resolved. Kuhlmann v. Bloomfield Township, 521 F. Supp. 1242 (1981).

17.14 Removal; assessors; boards of review; county boards; procedure. Any assessor and any member of a board of review or of a county board of supervisors, in addition to being removable as otherwise provided, may be removed by the circuit court for the county of the assessor or member, as follows:

(1) ASSESSORS. Any assessor for one or more of the following causes:

(a) Willful or intentional assessment of property at other than its true cash value with the intent to subject such property to more or less than its lawful share of taxes.

(b) Willful or intentional omission of taxable property from the assessment roll with intent to permit the same to escape taxation.

(c) Willful or intentional assessment of the property of one person at a lower value than the property of another or others whereby favoritism or discrimination between taxpayers in the district is shown.

(d) Solicitation or receipt of any favor, reward, money or other thing of value of or from the owner of any taxable property in the assessor's assessment district for the assessment or valuation of property at other than its true cash value.

(e) Solicitation or demand by any assessor of any owner of property liable to assessment in the assessor's assessment district to aid, assist or promote the business or interests of such assessor by means of which and by virtue of the office of assessor the assessor shall gain or receive pecuniary profit or advantage that the assessor could not otherwise have gained or received.

(f) Any violation of law in the valuation or assessment of property in the assessor's assessment district.

(g) Failure to use the "Wisconsin Property Assessment Manual" provided under s. 73.03 (2a) and as required by s. 70.32 (1) and 70.34. The certification of any assessor removed under this paragraph may for sufficient reason be reinstated by the secretary of revenue after one year upon formal application for reinstatement.

(h) Failure or refusal to deny claims for exemption or to terminate exemptions pursuant to direction of the secretary of revenue under s. 73.03 (45).

(2) MEMBERS OF BOARDS OF REVIEW AND COUNTY BOARD. Any supervisor, alderperson, trustee or other officer who acts as a member of a board of review or of the county board of supervisors, for one or more of the following causes:

(a) Willful or intentional valuation or equalization of property of persons or towns, cities or villages at other than the true cash value thereof, with the intent to subject the property of persons or of towns, cities or villages to more or less than their lawful share of taxes.

(b) Aiding, abetting or assisting in any understanding, combination or conspiracy to value or equalize the property in towns, cities or villages in a county at other than the true cash value, with intent to subject the property in one or more towns, cities or villages to more or less than its lawful share of taxes for state or county purposes or both.

(c) Any violation of law in the valuation or equalization of property in towns, cities or villages or in the discharge of official duties.

(3) PROCEDURE. Removals under this section may be made by the circuit judge, by order specifying the cause thereof, a copy of which order shall be certified by the circuit judge to the proper town, village or city clerk. The removal shall be made only upon a duly verified petition signed by a resident of the county setting forth fully the charges preferred against the officer. The district attorney of the county upon complaint showing cause therefor shall prepare the petition and have the petition duly verified by the complainant. The judge, upon the presentation of the petition, shall by an order to show cause, which shall be served upon the officer personally at least 10 days prior to the hearing, fix a time and place for hearing the matters alleged in the petition. The testimony shall be taken and the proceedings conducted under such reasonable regulations as the judge prescribes. The district attorney shall attend the hearing and conduct the proceedings on behalf of the petitioner. The removal of the officer shall disqualify the officer from holding the office for 3 years from the date of the order of removal.

(4) COSTS. If the court, after a hearing on the merits, dismisses the petition and further finds the complaint was willful and malicious and without probable cause, the court shall order judgment in favor of the officer and against the petitioner for $10 attorney fees and for the costs and fees of witnesses and officers incurred on behalf of the officer. The judgment shall be signed by the clerk of circuit court and entered in the judgment and lien docket. An execution may be issued against the property of the petitioner in the same mode as upon a judgment entered in the circuit court in civil actions founded in tort. Upon the return of the execution unsatisfied in whole or in part, an execution against the person of the petitioner may be issued in the manner and with the force and effect of an execution against the person as provided in ss. 815.01 to 815.10. In all other cases the judge may order that the expenses incurred in procuring witnesses and other needed actual expenses be paid out of the treasury of the county in which the officer resides upon certificates of the clerk of circuit court.

History: 1973 c. 90; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218; 1977 c. 418, 449; 1991 a. 39, 316; 1993 a. 184, 224.

17.15 Removals; other officers. (1) JOINT COUNTY INSTITUTIONS. Any member of the governing body of any joint county school, hospital, sanatorium, asylum or other joint county institution, appointed by the county board of any county, may be removed by said county board, for cause; and any other officer of any such institution may be removed by the officer or body that appointed the officer, for cause.

(3) DANE COUNTY LAKES AND WATERSHED COMMISSION. Any commissioner of the Dane County lakes and watershed commission appointed under s. 33.44 (1) (c) to (g) may be removed by the appointing authority for cause.

(3m) SOUTHEASTERN WISCONSIN FOX RIVER COMMISSION. Any commissioner of the Southeastern Wisconsin Fox River commission appointed under s. 33.55 (2) (b) or (c) may be removed by the appointing authority for cause.

(5) LONG-TERM CARE DISTRICT. Any member of a long-term care district governing board appointed under s. 46.2895 (3) (a) may be removed by the appointing authority for cause.

History: 1989 a. 324; 1991 a. 39, 316; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20.

17.16 Removals; definition; procedure; disqualification. (1) Removals from office at pleasure shall be made by order, a copy of which shall be filed as provided by sub. (8), except that a copy of the order of removal of a circuit court commissioner shall be filed in the office of the clerk of the circuit court.

(3) Removals from office for cause under this chapter, except as provided in s. 17.14, shall be made as provided in this section, and may be made only upon written verified charges brought by a resident taxpayer of the governmental unit of which the person against whom the charges are filed is an officer, and after a speedy public hearing at which the officer shall have full opportunity to be heard to present a defense against the charges, personally and by counsel. A copy of the charges and written notice of the time and place for the hearing shall be given the officer by the removing power by delivery to the officer in person or by mailing the same to the officer at the officer's last and usual post-office address not less than 10 days prior to the hearing. The officer may within 10 days from service of the charges file with the removing power a verified answer thereto. The hearing shall be conducted and investigation made by the removing power with due dispatch, but in case of charges brought before the governor, the governor may appoint a commissioner to conduct the hearing, make the investigation and report the testimony and proceedings to the governor, and the council of any city having a membership of more than 20, in case of charges brought before it, may appoint a committee of not less than 5 of its members, to conduct the hearing, make investigation and report the testimony and proceedings to it. The commissioner or committee shall have the same power and authority as the governor or the council, as the case may be, in the conduct of the hearing on and investigation of the charges.

(4) The removing power may, before acting upon any charges preferred against any officer, require the person preferring the same to execute and deliver to such power a bond in the sum of $1,000 with one or more sureties to be approved by such power, conditioned for the payment of all costs and expenses actually incurred by the state, county or other unit of which the person charged is an officer and by the removing power in the hearing and investigation of such charges.

(5) The removing power, and in case such power consists of more than one person, each such person is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence, and may make and enforce such orders and rules as are necessary to properly conduct such hearing and may appoint and fix the compensation of a stenographer to take testimony thereat.

(7) (a) No person may be excused from testifying or from producing evidence on the hearing for the reason that the testimony, documentary or otherwise, required of him or her may tend to incriminate him or her, but no person so testifying may be prosecuted for or on account of testifying or producing any documentary evidence, except for perjury committed in giving the testimony.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(8) Removals from office for cause shall be by order, a certified copy of which, together with a complete transcript of the testimony and proceedings at the hearing and a statement of the cause or causes for which removal is made, shall be filed by the removing power as follows:

(a) In the case of a state officer, in the office of the secretary of state.

(b) In the case of other officers, in the office of the clerk of the unit of which the person removed was an officer.

(c) In the case of officers of joint county institutions, in the office of the county clerk of the county wherein the buildings of such institution are located.

(9) In the case of procedure for removals by the governor, all expenses incurred shall be paid upon vouchers duly certified by the governor and shall be charged to the appropriation provided in s. 20.525. In the case of procedure for removals by any other state officer or body, such expenses shall be paid out of the appropriation to the officer or body invested with power to remove. In case of procedure for removals by other officers or bodies, the expenses thereof shall be paid by the unit of government of which the person against whom charges are preferred was an officer. But if the removing power finds that the complaint was willful and malicious and without probable cause all such expenses shall be paid by the person who preferred the charges and may be collected in an action against the person or on the bond furnished by the person.

(10) A person lawfully removed from office shall be ineligible to appointment or election to fill the vacancy caused by such removal.

History: 1989 a. 122; 1991 a. 316; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 2001 a. 61, 103.

The common council's removal of an employee statutorily entitled to the position deprives the employee of both liberty and property; therefore, employee is entitled to full due-process protections. Aldermen who initiated removal proceedings were not thereby disqualified as impartial adjudicators. State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 (1976).

"Expenses" under sub. (9) relates solely to expenses incurred by the "removing power", not by the person bringing written charges. In Matter of Petition to Remove Kamps, 118 Wis. 2d 482, 347 N.W.2d 911 (Ct. App. 1984).

Removal is governed by s. 17.16 and contemplates a determination of cause by the board. An ordinance making a violation *ipso facto* cause for removal impermissibly circumvents that procedure. 66 Atty. Gen. 148.

17.17 Notice of vacancies. Notice of vacancies occurring otherwise than by resignation shall be given forthwith as follows:

(1) SENATORS AND MEMBERS OF CONGRESS. In the office of United States senator or member of congress from this state, by the county clerk of the county wherein such officer resided at the time of election, to the government accountability board.