

## **CHAPTER 44-11 REMOVAL BY GOVERNOR**

### **44-11-01. What officers removable by governor - Grounds.**

The governor may remove from office any county commissioner, sheriff, coroner, county auditor, recorder, state's attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to the governor by competent evidence and after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

### **44-11-02. Charges - How made - By whom prosecuted.**

1. The complaint or charges against any official authorized to be removed by the governor must be entitled in the name of this state and must be filed with the governor.
2. The complaint or charges against any official, other than a school board member, may be made upon the relation of fifty qualified electors of the county in which the person charged is an officer, or upon the relation of ten percent of the qualified electors voting at the preceding general election for the office of governor in that political subdivision or district in which the person charged is an officer, whichever is least, or by the state's attorney of such county.
3. The complaint or charges against a school board member must be made upon the relation of a petition containing the signatures of qualified electors of the school district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census are required. However, not fewer than twenty-five signatures are required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located.
4. The complaint and charges must be filed by the attorney general when directed to do so by the governor.
5.
  - a. When the officer sought to be removed is other than the state's attorney, the state's attorney or other competent attorney, upon request of the governor, shall appear and prosecute.
  - b. 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.

### **44-11-03. Complaint - Requisites.**

The complaint or charges must state the charges against the accused, and, unless filed by the state's attorney or attorney general, must be verified and may be amended as in ordinary actions. If such amendment of the complaint or charges includes any new or additional charge, then a reasonable time must be allowed the accused to prepare a defense thereto.

### **44-11-04. Special commissioner to hear and take testimony - Suspension of officer.**

Whenever charges are filed against any officer mentioned in section 44-11-01, 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 that person's report of the testimony, to be used on the hearing. The testimony must be reduced to writing, and when the testimony is not taken by a shorthand reporter, each witness shall subscribe the witness's name to the

witness's testimony when the same is so reduced. If the governor judges that the best interests of the state require it to be done, the governor by written order to be delivered to such officer, may suspend the accused officer from the performance of duty during the pendency of the hearing. If the governor suspends the accused, the governor immediately shall notify the board or persons authorized to fill a vacancy in that office, and that board or those persons, within five days after receipt of such notice, shall appoint a competent person to fill the office and perform the duties thereof ad interim.

**44-11-05. Notice of charges - Taking testimony.**

Upon the filing of a complaint or charges, the governor, within ten days, shall cause a copy thereof to be made and served upon the accused, together with a notice of the time and place of taking testimony and the name of the special commissioner before whom such testimony will be taken. The date fixed for the taking of such testimony may not be less than fifteen nor more than twenty days from the service of the copy of charges against the accused.

**44-11-06. Report to governor - Time of hearing fixed.**

Whenever testimony has been taken upon charges filed against any officer, as provided by this chapter, the special commissioner forthwith shall report all such testimony and proceedings to the governor and shall file the same in the governor's office. 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 service of notice of such hearing upon the accused. At such hearing the accused is entitled to be heard in person or by attorney.

**44-11-07. Removal from office upon hearing - Filling vacancy.**

If upon a hearing the charges are sustained, the governor forthwith shall make an order in writing removing the accused officer from office, and shall cause a copy of the 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 that office. Thereupon that board or person, within five days thereafter, shall appoint a competent person to fill the office and perform the duties thereof, unless the accused, prior to the final hearing, had been suspended as provided by this chapter, and an ad interim appointment made. In such case the person appointed to the office ad interim shall continue until the expiration of the term for which the accused was elected or appointed.

**44-11-08. Appeal - Notice and bond filed with clerk of district court.**

When the accused person so removed is aggrieved by the removal, the accused person is entitled to appeal from the decision of removal made by the governor to the district court in any other district of the state upon filing a notice in the office of the clerk of the district court, setting forth the grounds of appeal, together with a bond in the sum of two hundred fifty dollars, which must be for the payment of costs of such appeal in the event the action of the governor is affirmed. Such bond must be approved as to form by the state's attorney of the county and as to its sufficiency by the clerk of the district court. Such notice and bond must be filed within fifteen days after the date of the order by the governor.

**44-11-09. Appeal - Notification of governor - Proceedings.**

The clerk of the district court shall notify the governor of the filing of an appeal by registered or certified mail. The governor, within ten days after the receipt of such notice, shall mail to the clerk of said court the testimony in such removal proceedings, together with a copy of any order made by the governor in such proceedings. Said appeal must be heard by the judge of said court upon the record in such proceedings, without a jury, at the next regular term of court or prior to said term, in the discretion of the judge of said court. After such hearing by the district judge, the district judge shall make an order affirming the order of the governor or an order reinstating the defendant officer.

#### **44-11-10. Fees of special commissioner - Stenographer - Witnesses.**

The fees of the special commissioner provided for by this chapter must be one hundred dollars per day, and in addition thereto, the special commissioner shall receive mileage from the commissioner's residence to the place of trial the same as is allowed by law to sheriffs. The special commissioner may employ a stenographer and pay the expenses of the stenographer. Such expenses must be itemized by the commissioner and filed with the commissioner's report and findings and audited and allowed by the governor. Witnesses giving testimony before such commissioner, the number to be limited by the commissioner, must be allowed the same fees as witnesses in district court. In proceedings to remove a county officer, such fees must be paid by the county upon allowance by the board of county commissioners 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 board of township supervisors, in the same manner as other claims against the municipality are paid.

#### **44-11-11. Oath of commissioner - Contents - Filing.**

When a special commissioner has been appointed as provided in this chapter, the commissioner forthwith shall take an oath and shall file the same with the governor that:

1. The commissioner, impartially and to the best of the commissioner's knowledge and ability, without fear, favor, or prejudice, will 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 will preserve the same.
2. The commissioner 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 will 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 will cause the same to be filed with the governor.

#### **44-11-12. Powers of commissioner - Subpoenas - Service - Fees.**

After taking and filing the oath of office, the commissioner has authority to issue subpoenas for persons and subpoenas duces tecum and to administer oaths to witnesses the same as is conferred upon district judges. The subpoenas may be directed to any sheriff, or chief of police, who immediately shall serve the subpoenas. The officer is entitled to such fees as are allowed to sheriffs for serving subpoenas in district court. The fees must be paid in the same manner as is provided in this chapter for witness fees and commissioner's fees. The commissioner has the same powers as are conferred upon district judges to take testimony and may rule on, admit, or exclude testimony accordingly. The commissioner may punish for contempt in the same manner as the district court.

#### **44-11-13. Costs on dismissal of charges - Bond.**

When charges are preferred against any of the officers mentioned in section 44-11-01 by qualified electors other than the state's attorney or attorney general, as provided in section 44-11-02, and upon such hearing it appears that such charges were not preferred in good faith, then all of the costs of the proceedings under this chapter, not exceeding the sum of five hundred dollars, in the discretion of the governor, may be taxed to the persons making such charges. When such charges are made by such relators, there must be filed, together with such charges, a good and sufficient indemnity bond in the sum of five 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.

#### **44-11-14. Collection of costs.**

If the costs are taxed against the persons preferring charges against any of the officers mentioned in section 44-11-01, the governor shall certify such costs to the state's attorney of the county affected, together with the indemnity bond filed with said charges. Such state's attorney then shall commence action on the bond and reduce the same to judgment, and shall cause

such judgment to be filed in the office of the clerk of the district court of such county, and shall proceed to collect the same. Such certificate of the governor is prima facie evidence of the amount of costs therein contained.