

TITLE 31
COUNTIES AND COUNTY LAW

CHAPTER 26
PROSECUTING ATTORNEY

31-2601. QUALIFICATIONS. No person shall be eligible to qualify for the office of prosecuting attorney who is not an attorney and counselor at law duly licensed to practice as such in the district courts of the state at the time he assumes office as prosecuting attorney. No prosecuting attorney shall hold any other county or state office during his term of office as prosecuting attorney provided, however, that a prosecuting attorney or a deputy prosecuting attorney may be appointed by the attorney general as a special assistant attorney general for the performance of duties pursuant to such appointment in any other county than the county in which such prosecutor or deputy prosecutor serves. Nothing in this section, as amended, shall be construed to authorize the appointment of a special assistant attorney general except upon the request in writing of the prosecuting attorney in the county in which such special assistant attorney general is to serve, nor shall this section authorize the appointment of a prosecuting attorney as special assistant attorney general without his consent.

[(31-2601) 1897, p. 74, sec. 1; reen. 1899, p. 24, sec. 1; am. and reen. R.C. & C.L., sec. 2080; C.S., sec. 3653; I.C.A., sec. 30-2101; am. 1953, ch. 239, sec. 1, p. 360.]

31-2602. DEPUTY PROSECUTING ATTORNEYS -- APPOINTMENT, SALARY, AND QUALIFICATIONS. Each prosecuting attorney may be empowered by the board of county commissioners of his county to appoint deputy prosecuting attorneys upon a finding by such board of county commissioners that such appointments are necessary for the proper conduct of his office. The deputy prosecuting attorneys shall receive a salary to be fixed by the board of county commissioners of his county. The salary of any deputy prosecuting attorney shall be paid monthly from the county treasury on warrants of the county auditor on being allowed and audited by the board of county commissioners, as other claims against the county. Every deputy prosecuting attorney must possess the qualifications required of prosecuting attorneys, except that of county residency.

[(31-2602) C.S., sec. 3653-A, as added by 1927, ch. 156, sec. 1, p. 210; I.C.A., sec. 30-2102; am. 1941, ch. 138, sec. 1, p. 272; am. 1986, ch. 139, sec. 1, p. 375; am. 1996, ch. 352, sec. 1, p. 1176.]

31-2603. SPECIAL PROSECUTOR -- APPOINTMENT. (a) When the prosecuting attorney for the county is absent from the court, or when he has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged, and for which he is to be tried on a criminal charge, or when he is near of kin to the party to be tried on a criminal charge, or when he has a business connection or kinship with the complainant or defendant, or when he is unable to attend to his duties, the district court may, upon petition of the prosecuting attorney or board of county commissioners, by an order entered in its minutes, stating the cause therefor, appoint some suitable person to perform for the time being, or for the trial of such accused

person, the duties of such prosecuting attorney, and the person so appointed has all the powers of the prosecuting attorney, while so acting as such.

(b) The prosecuting attorney may petition the district judge of his county for the appointment of a special assistant attorney-general to assist in the prosecution of any criminal case pending in the county; and if it appears to the district judge to whom such petition is addressed that good cause appears for granting such petition, the district judge, may, with the approval of the attorney-general, appoint an assistant attorney-general to assist in such prosecution. The compensation of the person so appointed shall be fixed by agreement between the district judge and the attorney-general and shall be paid by the attorney-general out of appropriations made available for the conduct of his office.

[(31-2603) 1897, p. 74, sec. 2; reen. 1899, p. 24, sec. 2; am. and reen. R.C. & C.L., sec. 2081; C.S., sec. 3654; I.C.A., sec. 30-2103; am. 1953, ch. 239, sec. 2, p. 360; am. 1988, ch. 295, sec. 1, p. 936.]

31-2604. DUTIES OF PROSECUTING ATTORNEY. It is the duty of the prosecuting attorney:

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people, or the state, or the county, are interested, or are a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county.

2. To prosecute all felony criminal actions, irrespective of whom the arresting officer is; to prosecute all misdemeanor or infraction actions for violation of all state laws or county ordinances when the arresting or charging officer is a state or county employee; to conduct preliminary criminal examinations which may be had before magistrates; to prosecute or defend all civil actions in which the county or state is interested; and when a written contract to do so exists between the prosecuting attorney and a city, to prosecute violations for state misdemeanors and infractions and violations of county or city ordinances committed within the municipal limits of that city when the arresting or charging officer is a city employee.

3. To give advice to the board of county commissioners, and other public officers of his county, when requested in all public matters arising in the conduct of the public business entrusted to the care of such officers.

4. To attend, when requested by any grand jury for the purpose of examining witnesses before them; to draw bills of indictments, informations and accusations; to issue subpoenas and other process requiring the attendance of witnesses.

5. On the first Monday of each month to settle with the auditor, and pay over all money collected or received by him during the preceding month, belonging to the county or state, to the county treasurer, taking his receipt therefor, and to file, on the first Monday of October in each year, in the office of the auditor of his county, an account verified by his affidavit, of all money received by him during the preceding year, by virtue of his office, for fines, forfeitures, penalties or costs, specifying the name of each person from whom he receives the same, the amount received from each, and the cause for which the same was paid.

6. To perform all other duties required of him by any law.

[(31-2604) 1897, p. 74, sec. 3; reen. 1899, p. 24, sec. 3; am. and reen. R.C. & C.L., sec. 2082; I.C.A., sec. 30-2104; am. 1953, ch. 239, sec.

3, p. 360; am. 1970, ch. 120, sec. 11, p. 284; am. 1971, ch. 94, sec. 1, p. 206; am. 1976, ch. 45, sec. 24, p. 139; am. 1989, ch. 292, sec. 1, p. 719.]

31-2605. RECEIPTS FOR MONEY COLLECTED. When any prosecuting attorney receives any money for fines, forfeitures, penalties or costs, he must deliver to the person paying the same duplicate receipts therefor, one (1) of which must be filed by such person in the office of the county auditor.

[(31-2605) 1897, p. 74, sec. 4; reen. 1899, p. 24, sec. 4; am. and reen. R.C. & C.L., sec. 2083; C.S., sec. 3656; I.C.A., sec. 30-2105.]

31-2606. PROHIBITIONS. No prosecuting attorney must receive any fee or reward for or on behalf of any prosecutor or other individual, for services in any prosecution, or business to which it is his official duty to attend or discharge; nor be concerned as attorney or counsel for either party other than for the state, people or county, in any civil action depending upon the same state of facts, upon which any criminal prosecution commenced but not determined depends, and no law partner of any county attorney must be engaged in the defense of any suit, action or proceeding, in which said prosecuting attorney appears on behalf of the people, state or county.

[(31-2606) 1897, p. 74, sec. 5; reen. 1899, p. 24, sec. 5; am. and reen. R.C. & C.L., sec. 2084; C.S., sec. 3657; I.C.A., sec. 30-2106.]

31-2607. ADVISER OF COUNTY COMMISSIONERS. The prosecuting attorney is the legal adviser of the board of commissioners; he must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

[(31-2607) 1897, p. 74, sec. 7; reen. 1899, p. 24, sec. 6; am. and reen. R.C. & C.L., sec. 2085; C.S., sec. 3658; I.C.A., sec. 30-2107.]

31-2608. COUNTY STENOGRAPHERS -- COMPENSATION. The board of county commissioners of any county in this state may if they deem it advisable for the best interests of the county, employ competent stenographers at a compensation, to be fixed by said board, to take and transcribe testimony at preliminary hearings or examinations.

[(31-2608) 1909, p. 146, sec. 1; am. 1913, ch. 59, sec. 1, p. 244; reen. C.L., sec. 2086a; C.S., sec. 3659; am. 1929, ch. 96, sec. 1, p. 158; I.C.A., sec. 30-2108; am. 1953, ch. 220, sec. 1, p. 335.]

31-2609. COUNTY STENOGRAPHERS -- DUTIES. Said stenographers shall be under the control and direction of the prosecuting attorney of the said county, and it shall be the duty of such stenographers to be present at all preliminary examinations when so requested by the prosecuting attorney, to take and transcribe the testimony of all such witnesses in said examination, and to certify the same as true and correct, which said certificate shall be sufficient proof of the correctness of said depositions, the reading of the same to or by the witness and the signing of the same by the witness being hereby dispensed with. Said stenographers shall also perform such other duties as may be required by the prosecuting attorney in the conduct of his office, and other county business. Nothing in this section shall be construed to provide an exclusive procedure for the taking of testimony

at preliminary examinations, and such testimony may be taken by means of a mechanical recording device if the committing magistrate shall so order. In the event such mechanical recording device is used, one of the county stenographers shall upon completion of the hearing forthwith transcribe such testimony and certify the same to be true and correct as elsewhere in this section provided, and such certificate shall be sufficient proof of the correctness of such transcript and depositions and the reading of the same and signing of same by witnesses is hereby dispensed with.

[(31-2609) 1909, p. 146, sec. 2; reen. C.L., sec. 2086b; C.S., sec. 3660; I.C.A., sec. 30-2109; am. 1953, ch. 220, sec. 2, p. 335.]

31-2610. COUNTY STENOGRAPHERS -- TRAVELING EXPENSES. When it becomes necessary for said stenographers to go from place to place in the performance of county business, the expenses of travel, including hotel and board, shall be a charge against the county, and shall be allowed in addition to the monthly salary.

[(31-2610) 1909, p. 146, sec. 3; reen. C.L., sec. 2086c; C.S., sec. 3661; I.C.A., sec. 30-2110; am. 1953, ch. 220, sec. 3, p. 335.]

31-2611. PROSECUTING ATTORNEY'S CONTINGENT FUND -- APPROPRIATION BY COMMISSIONERS. The county commissioners of each county in this state are hereby authorized and directed to set apart at their first meeting in October of each year, from any funds then in the county treasury, not specially appropriated or set aside for other purposes, in an amount to be fixed by said board of county commissioners, a sum of money not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1000), to be used by the prosecuting attorney of each county as a contingent fund for the purpose of defraying such necessary expenses as are not otherwise specifically provided for in the trial and preparation for trial of criminal cases, and in the payment of such necessary expenses as are not otherwise provided for in conducting investigations by the grand jury.

[(31-2611) 1911, ch. 140, sec. 1, p. 436; reen. C.L., sec. 2086d; C.S., sec. 3662; I.C.A., sec. 30-2111; am. 1976, ch. 45, sec. 25, p. 140.]

31-2612. CONTINGENT FUND -- APPROVAL OF DISTRICT COURT. The prosecuting attorney of each county, by and with the consent and approval first had and obtained of the district court, or any judge thereof, in and for his county, is hereby authorized and empowered to incur the expenses specified in the preceding section, so far as is necessary, to the amount annually appropriated by said board of county commissioners for said purpose.

[(31-2612) 1911, ch. 140, sec. 2, p. 436; reen. C.L., sec. 2086e; C.S., sec. 3663; I.C.A., sec. 30-2112.]

31-2613. CONTINGENT FUND -- MANNER OF DISBURSEMENT. All disbursements from said fund shall be made in the usual manner by the county treasurer of each county upon the warrant of the auditor of each county, which auditor's warrant shall be executed and delivered in an amount, and to the person designated by the order of the prosecuting attorney, countersigned by any judge of the district court for that county.

Before any such approval shall be indorsed upon any such order of any prosecuting attorney so applying for the same, it shall be the duty of said prosecuting attorney so applying for the same, to present to said judge of the district court an itemized and detailed statement of the expenses, for the payment of which he then makes application, and which statement shall be verified by said prosecuting attorney in the usual manner provided for the verification of claims against the counties of this state.

Immediately upon such judge of the district court affixing his indorsement to said order of the prosecuting attorney, said judge, if in his opinion the public interests will not be prejudiced thereby, and if he be of the opinion that the public interests will permit, shall file in the office of the county auditor of the county on which said order is drawn, said itemized and verified list so furnished by said prosecuting attorney.

[(31-2613) 1911, ch. 140, secs. 3-5, p. 436; reen. C.L., sec. 2086f; C.S., sec. 3664; I.C.A., sec. 30-2113.]

31-2614. CONTINGENT FUND -- UNEXPENDED BALANCE. Any sum remaining in said fund on the thirtieth day of September of each year shall then be transferred by the county auditor to the general county revenue fund of said county.

[(31-2614) 1911, ch. 140, sec. 6, p. 437; reen. C.L., sec. 2086g; C.S., sec. 3665; I.C.A., sec. 30-2114; am. 1976, ch. 45, sec. 26, p. 140.]