

## Chapter 204

### County Officers

#### Chapter 204

CASE CITATIONS: Croft v. Lambert, (1961) 228 Or 76, 357 P2d 513, 88 ALR2d 1227.

#### 204.005

##### NOTES OF DECISIONS

A general election is one that regularly recurs in each election precinct of the state on a day designated by law for the selection of officers, or is held in such entire territory pursuant to an enactment specifying a single day for the ratification or rejection of one or more measures submitted to the people by the legislature. Bethune v. Funk, (1917) 85 Or 246, 166 P 931.

FURTHER CITATIONS: State v. Holman, (1914) 73 Or 18, 144 P 429; State ex rel. Appling v. Chase, (1960) 224 Or 112, 355 P2d 631.

ATTY. GEN. OPINIONS: Terms of office of county judges and commissioners appointed to fill vacancies, 1958-60, p 315; authority for sick leave benefits of county elected officials, 1964-66, p 256; numbering position during change-over from county judge to a third commissioner in Polk County, 1964-66, p 349; authority of county assessor to change salaries for employes in his office, 1966-68, p 138; county employe serving subpoenas in criminal cases, 1966-68, p 294.

LAW REVIEW CITATIONS: 46 OLR 251.

#### 204.010

ATTY. GEN. OPINIONS: Status of office when elected county assessor failed to qualify, 1940-42, p 141; terms of office when three county commissioners are to be elected, 1940-42, p 536; term of newly elected sheriff where office became vacant before expiration of term of former sheriff, 1958-60, p 58; terms of office of county judges and commissioners appointed to fill vacancies, 1958-60, p 315.

#### 204.013

ATTY. GEN. OPINIONS: Numbering position during change-over from county judge to third commissioner in Polk County, 1964-66, p 349.

#### 204.016

CASE CITATIONS: State v. Welch, (1953) 198 Or 670, 259 P2d 112.

#### 204.020

##### NOTES OF DECISIONS

The certificate is legitimate evidence of the result of the election. Warner v. Myers, (1870) 3 Or 218.

The bond of a sheriff, though defective, was sufficient

to put the county court on inquiry as to the officer's authority to deliver it. Baker County v. Huntington, (1905) 46 Or 275, 79 P 187.

Mere signature and delivery of an incomplete bond to a person elected sheriff is insufficient to show that he was authorized to file it. Id.

ATTY. GEN. OPINIONS: Qualification of person elected as county clerk called into military service before qualifying, 1940-42, p 396.

#### 204.025

##### NOTES OF DECISIONS

A sheriff neglecting or refusing to levy an execution on property of the judgment debtor may be sued on his official bond. Habersham v. Sears, (1884) 11 Or 431, 5 P 208, 50 Am Rep 481.

Approval of the bond should be entered in the minutes. Baker County v. Huntington, (1905) 46 Or 275, 79 P 187.

Recourse to the bond required by this section for a delinquency in his duties as tax collector is limited to those cases in which the special bond given for that purpose is insufficient or unenforceable. Wheeler County v. Keeton, (1908) 52 Or 16, 95 P 819.

FURTHER CITATIONS: Columbia County v. Massie, (1897) 31 Or 292, 48 P 694; Fowler v. Donnelly, (1960) 225 Or 287, 358 P2d 485, 85 ALR2d 452.

#### 204.030

##### NOTES OF DECISIONS

The main office of the undertaking required of a clerk is to add the security of the sureties to that of the principal. Fleischner v. Florey, (1924) 111 Or 35, 224 P 831.

A clerk may be liable on his undertaking for public funds lost by failure of a bank, though the county furnished him no safe place for keeping money he collected. Id.

ATTY. GEN. OPINIONS: Authority to transfer certain duties from county clerk to a bank, 1966-68, p 569.

#### 204.035

##### NOTES OF DECISIONS

The fact that the bond runs to the state, and not to the county, indicates a purpose to retain in the lawmaking power a right to direct, in some degree, the instances in which the security may be utilized by the county. Miller v. Henry, (1912) 62 Or 4, 124 P 197, 41 LRA(NS) 97.

The undertaking required by this section should not be confused with that exacted from depositaries of county funds. State v. Crook County Bank, (1922) 104 Or 495, 208 P 749.

ATTY. GEN. OPINIONS: Authority to transfer certain duties from county clerk to a bank, 1966-68, p 569.

## 204.101

## NOTES OF DECISIONS

A county may maintain an action to recover excess salary paid a county judge. *Grant County v. Sels*, (1874) 5 Or 243.

A county officer whose claim for compensation is denied by the county court is not confined to a writ of review, but may bring an action on his claim. *Crossen v. Wasco County*, (1882) 10 Or 111.

County cannot bring action to recover value of warrants where defendant has not collected the money thereon. *Klamath County v. Leavitt*, (1898) 32 Or 437, 52 P 20.

Fees allowed an officer as compensation for his service are his property, but the legislature may accord him a salary and require him to collect the fees for the benefit of the state. *State v. Dunbar*, (1908) 53 Or 45, 98 P 878, 20 LRA(NS) 1015.

ATTY. GEN. OPINIONS: Transmitting federal passport and naturalization fees to county treasurer, 1952-54, p 214; salary of certified appraisers hired by county court, 1958-60, p 93; salaries of deputies and special guards hired to transport persons to state institutions, 1960-62, p 63; constitutionality of this section, 1960-62, p 158; public officer receiving disability compensation and statutory salary, 1960-62, p 203; compensation during temporary appointment as justice of the peace, 1960-62, p 228; sheriff's fees for serving foreign process, 1962-64, p 99; authority of county governing body regarding deputy sheriffs, 1962-64, p 109; overtime for deputy sheriffs, 1962-64, p 142; failure to use budgeted funds, approval of salary increase for employe, 1962-64, p 264; compensation of employe performing county and election board duties, 1964-66, p 17; county authority to expend public funds for employe retirement plans, 1964-66, p 148; authority for sick leave benefits of county elected officials, 1964-66, p 256; authority of county assessor to change salaries for employes in his office, 1966-68, p 138; authority to transfer certain duties from county clerk to a bank, 1966-68, p 569; employment of deputy sheriff as an attendant at a county hospital, (1969) Vol 34, p 429; collective bargaining procedure for counties, (1970) Vol 34, p 935; juvenile court authority to determine personnel salaries, (1970) Vol 34, p 977; compensation for county public defender, (1970) Vol 34, p 1157; "employer" in collective bargaining by sheriff department employes, (1970) Vol 35, p 181.

## 204.111

ATTY. GEN. OPINIONS: Transmitting federal passport and naturalization fees to county treasurer, 1952-54, p 214; salaries of deputies and special guards hired to transport persons to state institutions, 1960-62, p 63; public officer receiving disability compensation and statutory salary, 1960-62, p 203; fees for serving foreign process, 1962-64, p 99; failure to use budgeted funds, approval of salary increase for employe, 1962-64, p 264; compensation of employe performing county and election board duties, 1964-66, p 17; employment of deputy sheriff as an attendant at a county hospital, (1969) Vol 34, p 429.

## 204.131

ATTY. GEN. OPINIONS: Increasing salary of elective county official, 1956-58, p 14; compensation of district attorney, 1960-62, p 335.

## 204.141

ATTY. GEN. OPINIONS: Increasing salary of elective county official, 1956-58, p 14; compensation of district attorney, 1960-62, p 335.

## LAW REVIEW CITATIONS: 46 OLR 278.

## 204.151

ATTY. GEN. OPINIONS: Increasing salary of elective county official, 1956-58, p 14; compensation of district attorney, 1960-62, p 335.

## 204.245

## NOTES OF DECISIONS

An officer who has resigned from his post cannot be required to make the reports required by this section, though they relate to a period before his resignation. *State v. Webster*, (1911) 58 Or 376, 114 P 932.

## 204.260

## NOTES OF DECISIONS

This section does not authorize the auditor to withhold an officer's salary because he has collected fees which he had no authority to collect and refuses to pay them to the county. *Bell v. Martin*, (1913) 64 Or 519, 130 P 1126.

## 204.335

## NOTES OF DECISIONS

This statute should be strictly enforced. *State v. Haner*, (1927) 123 Or 301, 261 P 81.

The county court has no authority to allow a claim not filed with the clerk. *Id.*

## 204.401

CASE CITATIONS: *Taylor v. Umatilla County*, (1877) 6 Or 401; *Houser v. Umatilla County*, (1897) 30 Or 486, 49 P 867; *State v. Schanepf*, (1922) 103 Or 240, 204 P 612.

ATTY. GEN. OPINIONS: Right of sheriff to payment for meals while absent from county seat on official business, 1930-32, p 172; whether mileage rate for operation of motor vehicles is an "actual expense," as a question of fact, 1930-32, p 352; practice as to claims for, and payment of, travel expenses of county assessor, 1934-36, p 288; claim of county judge for mileage in traveling to county courthouse, 1934-36, p 457; duty of clerk to account for and pay over to the county the amount he is required to collect pursuant to migratory chattel mortgage statute, 1936-38, p 569; payment of county officers' expenses for election duties, 1946-48, p 429; elector appointed to serve on budget committee as public officer, 1958-60, p 36; payment of compensation to budget committee, 1958-60, p 36; mileage allowance for sheriff, 1960-62, p 8.

## 204.410

## NOTES OF DECISIONS

The claim for mileage must be for the number of miles actually travelled. *Howe v. Douglas County* (1869) 3 Or 488.

A sheriff is not within this section in so far as his mileage in collection of taxes is concerned. *Id.*

A sheriff is not entitled to mileage under this section where another section prescribes all the compensation the sheriff is entitled to receive for the service performed. *Crossen v. Earhart*, (1880) 8 Or 370.

FURTHER CITATIONS: *Northern Counties Inv. Trust v. Sears*, (1895) 30 Or 388, 41 P 931, 35 LRA 188.

ATTY. GEN. OPINIONS: Mileage where two trips necessary in serving one summons, 1940-42, p 381; application to service of papers of small claims department of justice

courts, 1940-42, p 394; this section as mandatory in so far as the allowance of mileage by a county court is concerned, 1940-42, p 425, 1946-48, p 202; mileage fees of sheriffs, 1942-44, pp 33, 251; mileage allowance for sheriff, 1960-62, p 8; mileage for serving small claims, 1960-62, p 408.

## 204.415

## NOTES OF DECISIONS

The expense account, covering outlays made while traveling without the county, means a detailed statement of the several items constituting the charge, and not a lumping sum. *Brownfield v. Houser*, (1897) 30 Or 534, 49 P 843.

**FURTHER CITATIONS:** *State v. Chadwick*, (1882) 10 Or 465, 525, 539; *Northern Counties Inv. Trust v. Sears*, (1895) 30 Or 388, 41 P 931, 35 LRA 188.

**ATTY. GEN. OPINIONS:** Manner of submission of claims for expenses of sheriff while traveling outside county, 1960-62, p 8; agency responsible for sheriff's travel expenses under Agreement on Detainers, (1969) Vol 34, p 863.

## 204.421

**CASE CITATIONS:** *Crossen v. Earhart*, (1880) 8 Or 370; *State v. Chadwick*, (1882) 10 Or 465, 525, 539.

**ATTY. GEN. OPINIONS:** Right of sheriff to retain fees received from state for delivery of prisoners, 1938-40, p 560; manner of submission of claims for expenses of sheriff while traveling outside county, 1960-62, p 8; salaries of deputies and special guards hired to transport persons to state institutions, 1960-62, p 63; reimbursement for more than one round trip, 1966-68, p 551; responsibility for medical expenses incurred for parole violator held by sheriff, (1970) Vol 34, p 1150.

## 204.425

**ATTY. GEN. OPINIONS:** Impoundment procedure, 1966-68, p 420.

## 204.601

**CASE CITATIONS:** *Henry v. Yamhill County*, (1900) 37 Or 562, 62 P 375.

**ATTY. GEN. OPINIONS:** Salary of district judge pro tem, 1950-52, p 328; salaries of deputies and special guards hired to transport persons to state institutions, 1960-62, p 63; establishing qualifications for sheriff's deputies, 1962-64, p 109; transfer of employe and salary adjustment, 1962-64, p 264; appointing authority for caseworker supervisor in juvenile department, 1964-66, p 205; investigator in district attorney office serving as candidate's campaign chairman, 1964-66, p 452; authority to transfer certain duties from county clerk to a bank, 1966-68, p 569; collective bargaining procedure for counties, (1970) Vol 34, p 935; juvenile court authority to determine personnel salaries, (1970) Vol 34, p 977; "employer" in collective bargaining by sheriff department employes, (1970) Vol 35, p 181.

## 204.625

## NOTES OF DECISIONS

The civil service commission for a county has the power to remove a deputy county clerk. *Stowe v. Ryan*, (1931) 135 Or 371, 296 P 857.

**FURTHER CITATIONS:** *State v. Smith*, (1879) 1 Or 250.

**ATTY. GEN. OPINIONS:** Powers of deputy county clerks, 1930-32, p 278; official qualified to be traffic court violations clerk, 1964-66, p 127; authority to transfer certain duties from county clerk to a bank, 1966-68, p 569.

## 204.635

## NOTES OF DECISIONS

The claim of a deputy for the salary allowed him by law is a personal right, to be enforced in his own name. *Henry v. Yamhill County*, (1900) 37 Or 562, 62 P 375.

The selection of agents, which the sheriff does not specially appoint as deputies, to post local option election notices is legal. *Roesch v. Henry*, (1909) 54 Or 230, 103 P 439, 443.

The appointments of deputies are terminable even by oral notice and without regard to any request for the discharge. *Scibor v. Ore.-Wash. R. & Nav. Co.*, (1914) 70 Or 116, 140 P 629.

A discharge may be shown by a notation over the brief entry showing the appointment. *Id.*

The element of trespass essential to the crime of larceny in an office is not precluded because the defendant was a deputy sheriff where he abstracted money from the vault of the sheriff's office. *State v. Coleman*, (1926) 119 Or 430, 249 P 1049.

Prior to the 1963 amendment, any sheriff was responsible for the act of his deputy. *Bowles v. Creason*, (1937) 156 Or 278, 66 P2d 1183.

The jailer was a deputy sheriff and, under subsection (4), the sheriff was not responsible for his acts. *Barendrecht v. Clark*, (1967) 246 Or 535, 426 P2d 445.

**FURTHER CITATIONS:** *Barendrecht v. Clark*, (1966) 244 Or 524, 419 P2d 603.

**ATTY. GEN. OPINIONS:** Appointing or employing bank to make collection of taxes, as within authority of sheriff, 1930-32, p 137; sheriff's power to appoint special deputies to assist in civilian defense, 1940-42, p 500; position of deputy sheriff as a lucrative "public office," 1948-50 p 284; position of deputy sheriff as a lucrative "public office," 1950-52, p 36; witness fees for public officers and employes, 1962-64, p 97; establishing qualifications for sheriff's deputies, 1962-64, p 109; employment of deputy sheriff as an attendant at a county hospital, (1969) Vol 34, p 429; "employer" in collective bargaining by sheriff department employes, (1970) Vol 35, p 181.

## 204.640

**ATTY. GEN. OPINIONS:** Authority to transfer certain duties from county clerk to a bank, 1966-68, p 569.

## 204.650

**ATTY. GEN. OPINIONS:** Qualifications of deputy surveyor, 1930-32, p 116; authority of deputies, 1940-42, p 204; deputy surveyor approval of subdivision plat made by county surveyor in his private capacity, 1962-64, p 6.

## 204.685

**CASE CITATIONS:** *Hammons v. Schrunck*, (1956) 209 Or 127, 305 P2d 405; *Ruonala v. Board of County Commrs.*, (1957) 212 Or 309, 319 P2d 898; *Croft v. Lambert*, (1960) 228 Or 76, 357 P2d 513, 88 ALR2d 1227; *Pakos v. Clark*, (1969) 253 Or 113, 453 P2d 682.

**204.801**

ATTY. GEN. OPINIONS: Sheriff's fees for serving foreign process, 1962-64, p 99.

**204.845**

NOTES OF DECISIONS

Under this section, a claim of lien is not invalidated by failure of the clerk to exact the fee before filing the claim. Charles K. Spaulding Logging Co. v. Ryckman, (1932) 139 Or 230, 6 P2d 25.

**204.850**

NOTES OF DECISIONS

A county clerk is not liable for money which never came into his possession. State v. Multnomah County, (1917) 82 Or 428, 433, 161 P 959.

**204.855**

NOTES OF DECISIONS

This section does not require a clerk to pay over fees collected by his predecessor and lost in bank failure. Haradon v. Coffey, (1913) 66 Or 80, 133 P 815.