

Chapter 236

Eligibility; Resignations, Removals and Vacancies; Transfers

236.010

NOTES OF DECISIONS

The failure of a district attorney to qualify before the date prescribed by law for entering upon his office does not render the office vacant. *State v. Colvig*, (1887) 15 Or 57, 61, 13 P 639.

Legislation for the removal from office of officials who bear the stigma of infamy was authorized by Ore. Const. Art. VII(A), §6, relating to removal of public officers. *Fehl v. Jackson County*, (1945) 177 Or 200, 161 P2d 782.

The Secretary of State may resign without the consent of the Governor. *State ex rel. O'Hara v. Appling*, (1959) 215 Or 303, 334 P2d 482.

The office of sheriff did not become vacant by reason of that officer's failure to renew his official bond when required to do so by the board of county commissioners since the board had no authority to require the renewal. *Ruckles v. State*, (1861) 1 Or 347.

The conviction of a county court judge of burglary automatically vacated his office without a proceeding or action brought for his removal. *Fehl v. Jackson County*, (1945) 177 Or 200, 161 P2d 782.

FURTHER CITATIONS: *State v. Hill*, (1947) 181 Or 585, 184 P2d 366.

ATTY. GEN. OPINIONS: Defining vacancy and temporary vacancy in regard to "inhabitant," 1926-28, p 604; forfeiture of office upon cancelation of bond without renewal thereof, 1928-30, p 412; abandonment of office by removal from state, 1930-32, p 529; disqualification prior to judgment of circuit court, of representative who has been found guilty of a crime by the verdict of a jury, 1932-34, p 463; procedure when justice of the peace is performing official duties without having qualified, 1934-36, p 87; election contest involving the result of a primary nominating election as to forfeiture of the office of which either party is an incumbent, 1934-36, p 132; authority of Governor to declare office of county clerk vacant where such officer has not been convicted of violation of law, 1934-36, p 154; confinement of constable in hospital in another county, 1938-40, p 363; office of local school committee member absent from district for purpose of obtaining employment, 1938-40, p 771; elected school director qualifying upon taking oath of office, 1946-48, p 328; effect of resignation of member of commission for the blind on his eligibility to continue as member, 1946-48, p 65; "vacancy" when incumbent is not qualified to hold the office, 1950-52, p 38; removal of soil conservation district supervisor for unexcused absence, 1956-58, p 59; membership on legislative interim committee as "office," 1956-58, p 167; term of sheriff elected to fill vacancy created by resignation, 1958-60, p 58; procedure to resign, 1962-64, p 231; vacancy in office of supervisor by moving from soil and water conservation district, 1964-66, p 213; necessity of taking oath of office, 1966-68, p 357; compensation of hold-over district attorney engaged also in private practice, (1969) Vol 34, p 506; lack of Senate confirmation, if required, to fill a vacancy on a board, (1969) Vol 34, p 617.

LAW REVIEW CITATIONS: 28 OLR 332.

236.020

ATTY. GEN. OPINIONS: Authority of Governor to declare office of county clerk vacant where no judgment has been obtained against such officer for breach of conditions of his official bond, 1934-36, p 154; constitutionality of this section, 1954-56, pp 173, 175; removal of soil conservation district supervisor for unexcused absence, 1956-58, p 59; blanket surety bond for officers, 1962-64, p 368.

236.030

NOTES OF DECISIONS

One of the organizations at which this type of statute is aimed is the Communist party. In re *Patterson*, (1957) 210 Or 495, 302 P2d 227, remanded for reconsideration, 353 US 952, 77 S Ct 869, 1 L Ed 2d 906, former opinion adhered to, (1958) 213 Or 398, 318 P2d 907, cert. denied, 356 US 947, 78 S Ct 795, 2 L Ed 2d 822.

236.100

ATTY. GEN. OPINIONS: Vacancy created by resignation of district attorney designated on ballot as "Republican-Democrat," 1956-58, p 95; vacancies in elective county offices, 1956-58, p 204; official running as "Independent," 1956-58, p 284; constitutionality of statute limiting Governor's power to fill vacancies in constitutional offices, 1958-60, p 113.

236.120

CASE CITATIONS: *Putnam v. Norblad*, (1930) 134 Or 433, 293 P 940.

ATTY. GEN. OPINIONS: Procedure to be followed by Governor in filling vacancy in office of Representative in Congress, 1926-28, p 268.

236.130

ATTY. GEN. OPINIONS: Vacancy in office of U.S. Senator, 1958-60, p 353.

236.140

ATTY. GEN. OPINIONS: Power of Governor to remove state officials appointed by him for definite term, in absence of statute, 1934-36, p 757; terms of members of forestry board unaffected by change of Governors, 1938-40, p 124.

236.145

ATTY. GEN. OPINIONS: Commodity commission chairman serving as elected executive secretary of commission, 1956-58, p 264; commission member serving as salaried

executive secretary, 1956-58, p 283; application to apprenticeship council and representatives, 1962-64, p 186; salary of board member serving as secretary-treasurer, 1962-64, p 309; waiver of salary of one lucrative office, 1964-66, p 25; member of State Board of Health serving as State Health Officer, 1966-68, p 180; employing board member, not re-appointed, after end of term, (1969) Vol 34, p 461.

236.210**NOTES OF DECISIONS**

The appointment of an officer will be presumed to have been regular. Ex parte Douros, (1920) 97 Or 39, 42, 191 P 319.

ATTY. GEN. OPINIONS: "Vacancy" when incumbent is not qualified to hold the office, 1950-52, p 38; constitutionality of appointment by county or state central committee, 1956-58, p 69; term of sheriff elected to fill vacancy created by resignation, 1958-60, p 58; constitutionality of statute limiting Governor's power to fill vacancies in constitutional offices, 1958-60, p 113.

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ATTY. GEN. OPINIONS: Constitutionality of appointment by county or state central committees, 1956-58, p 69.

236.240

ATTY. GEN. OPINIONS: Removal of soil conservation district supervisor for unexcused absence, 1956-58, p 59.

236.310**NOTES OF DECISIONS**

Acceptance by a legislator of some incompatible office creates no implied or presumed resignation and is void; the legislator continues as a member of the legislature until he signs and files a resignation. State v. Hill, (1947) 181 Or 585, 184 P2d 366.

ATTY. GEN. OPINIONS: Resignation of member of the legislature as being effective immediately, 1934-36, p 329.

LAW REVIEW CITATIONS: 28 OLR 332.

236.320

CASE CITATIONS: State ex rel. O'Hara v. Appling, (1959) 215 Or 303, 334 P2d 482.

ATTY. GEN. OPINIONS: Resignation procedure, 1958-60, p 98, 1962-64, p 231; effect of filing for second office prior to formal withdrawal of first filing, 1964-66, p 396.

LAW REVIEW CITATIONS: 39 OLR 140.

236.405

ATTY. GEN. OPINIONS: State offices required to name successors, 1960-62, p 228.

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ATTY. GEN. OPINIONS: State offices required to name successors, 1960-62, p 228.

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ATTY. GEN. OPINIONS: State offices required to name successors, 1960-62, p 228.

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ATTY. GEN. OPINIONS: Appointment and qualifications of successors, 1960-62, p 308.

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ATTY. GEN. OPINIONS: State offices required to name successors, 1960-62, p 228; appointment and qualifications of successors, 1960-62, p 308; construing authority of county board and legislators to appoint, 1960-62, p 329.

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ATTY. GEN. OPINIONS: Appointment and qualifications of successors, 1960-62, p 308; construing authority of county board and legislators to appoint, 1960-62, p 329.

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ATTY. GEN. OPINIONS: Appointment and qualifications of successors, 1960-62, p 308; construing authority of county board and legislators to appoint, 1960-62, p 329.

236.505

ATTY. GEN. OPINIONS: Appointment and qualifications of successors, 1960-62, p 308; application to apprenticeship council and representatives, 1962-64, p 186.