

## Elected County Attorney Guidelines

### Prior to Election – Setting Minimum Salary for Election Years

[Minnesota Statutes, Section 388.18, Subd. 2](#) states at the January meeting prior to the first date on which applicants may file for the office of county attorney the board shall set by resolution the minimum salary to be paid the county attorney for the term next following.

**Tip** – This can sound confusing, so work it backwards. If there is to be an election in November, and the candidates can file in July, then in January of that election year the county board passes a resolution setting the minimum salary that they will pay the elected attorney. The board might end up paying more, but it won't be less. This minimum is set so the candidates know at least the minimum salary they could expect, and that minimum might determine whether they decide to file. Mark your calendar for November the year before the election to make sure the resolution is prepared for the county board's approval in January. Set the calendar prompt to repeat every 4 years.

### Full-Time Position Establishment

In accordance with [Minnesota Statutes, Section 388.21](#), if a county wishes to establish this role as a full-time position and require that the individual elected to the office not engage in the private practice of law, action must be taken by the county board at the January meeting prior to the first date on which applicants may file for the office of county attorney.

### Candidates for the Office of County Attorney

In order to be eligible for election to office, any candidate for county attorney in the state of Minnesota must be licensed to practice law in this state, as indicated in [Minnesota Statutes, Section 388.01](#).

### Term of Office

The term of office of county attorney shall be four years and until a successor qualifies. [Minnesota Statutes, Section 388.01](#) states that a county attorney holds their office until their successor is elected and qualified. The term of office does not end with the calendar year, and does not necessarily end on the first Monday in January if the elected successor is not yet qualified and has not yet taken the oath of office.

### Start of Elected Term:

- [Minnesota Statutes, Section 204D.02, Subd. 2](#) and the Minnesota Constitution, Article VII, Section 7 state: The term of office of all elective state and county officers shall begin on the first Monday in January of the odd-numbered year following their election.
- [Minnesota Statutes, Section 382.01](#) states in every county in this state there shall be elected at the general election in 1918 a ... county attorney .... The terms of office of these officers shall be four years and shall begin on the first Monday in January next succeeding their election.

**Tip** – If your county utilizes a different date than the first Monday in January as noted above, you may wish to consult with the organization's legal counsel to ensure the county makes informed decisions regarding compliance.

## Setting Salary

### Setting Salary for Newly Elected County Attorney and Annually Thereafter:

- Salary and benefits for the newly elected county attorney should be set by county board resolution.
- The board should set the salary of the county attorney primarily with regard for the responsibilities and duties of office, as well as the elected official's experience, qualifications and performance.
- Additional relevant information for consideration typically includes elected county attorney salary data for similarly situated counties in the state. Comparison data should be obtained and reviewed as part of the salary setting process. Elements which may be important to consider in regard to comparison data include not only the salary of comparable county attorneys but also population, tax capacity, duties of the position, years of experience of the incumbents, caseloads, workload size and complexity, and number of employees supervised.
- A similar process should be followed on an annual basis, to set the elected official's salary and benefits for each new calendar year in office.
- In accordance with [Minnesota Statutes, Section 388.18, Subd. 2](#) the county board of each county with less than 100,000 population annually shall set by resolution the salary of the county attorney. This is typically set in December of each year, with the salary being defined for the upcoming calendar year.
- In some counties, the resolution is prepared, and a recommendation is presented to the board, by the human resources director along with presentation of relevant supporting information that the board must review and consider in making their decision. The human resources department may also gather comparable elected county attorney salary data from similarly situated counties for the board to review.

**Tip** - If challenged, the board needs to be able to demonstrate that it is "intimately familiar" with the duties and responsibilities of the office. A good way to meet that requirement is by asking the incumbent to state the duties and responsibilities. In addition, the board may review the job description and statutorily defined duties. Where a board has acted "arbitrarily, capriciously, oppressively, or without sufficiently taking into account the extent of the responsibilities and duties of the office," the district court is empowered to determine the salary. Also see article titled "Elected Officials – Salary Setting Considerations & Best Practices" on AMC's HR Technical Assistance Program website for additional discussion of this subject.

**Tip** - Take the potential cost of salary and benefits into consideration early on, when the county sets the proposed property tax levy in September for the following year. The adopted budget cannot be more than this proposed levy.

### Setting Salary for Outgoing County Attorney Prior to Newly Elected County Attorney Taking Office:

- In years when a newly elected county attorney takes office, the board may need to define how the outgoing county attorney's salary will be paid for the final days served in January of the new year.
- Generally, *annual salaries* are set for elected officials *for a particular calendar year*, so the outgoing county attorney's salary was likely defined as an annual amount for the calendar year that will end just prior to the newly elected county attorney taking office.
- If the newly elected county attorney takes the oath on the first Monday in January and that occurs several days into the new calendar year, the county should determine how to compensate the outgoing county attorney who will continue to hold the role from January 1 through the date the new county attorney takes office.

- This may be accomplished through board action or resolution defining the outgoing county attorney's compensation for the appropriate number of days in January of the new year.

### Oath of Office

[Minnesota Statutes, Section 388.01](#) requires that before entering upon duties, the county attorney shall take an oath. The oath must be recorded with the county recorder.

The Secretary of State's Office provides a sample [oath of office](#).

### Mid-Term Vacancy

If the office of county attorney becomes vacant during the four-year term, [Minnesota Statutes, Section 382.02](#) requires the county board to make an appointment to fill the vacancy for the remainder of the term. [Minnesota Statutes, Section 388.18, Subd. 2](#) then allows the county board to set the annual salary for the remainder of the calendar year for the appointee at an amount less than was set for that year.

### Process for Current Employees Elected to Hold Office

Leave of Absence for Current County Employee:

- [Minnesota Statutes, Section 3.088](#) states an individual elected to a full-time county office is entitled to a leave of absence from the public office or to employment without pay when on the business of the office, with right of reinstatement as provided in this statute.
- A newly elected county attorney should submit a request to the appropriate county authority (e.g., county board, county administrator, or human resources director) for a leave of absence from their regular county employment.
- Option for letter of intention to take a leave of absence:

*Pursuant to Minnesota Statutes, Section 3.088 I hereby provide notice of my intention to take a leave of absence from my current position as [position title] effective upon my taking the oath of office and commencement of my term of office as the [County Name] County Attorney.*

- The County should respond to the leave of absence notice in writing, indicating acceptance/approval of the leave pursuant to Minnesota Statutes and stating that the leave shall not exceed ten (10) years.
- Option for leave of absence response letter:

*The leave of absence you requested on [date] from regular County employment in the position of [position title] to serve as the elected [County Name] County Attorney is approved, to be effective upon your taking office on [date] and not to exceed ten years. Rights as outlined in Minnesota Statutes, Section 3.088 apply related to this leave of absence, including subdivision 2 reinstatement rights. Please contact [the Human Resources Department] if you have any questions.*

Reinstatement to Regular/Non-Elected County Employment at Conclusion of Elected Term:

- In the case of a county employee who exercised their right to take a leave of absence to serve as an elected official, [Minnesota Statutes, Section 3.088](#) requires that upon completion of the final day of the term to which the official was elected, the officer or employee shall be reinstated in the public position held at the time of entry, under the following conditions:
  - 1) The position has not been abolished or that its term, if limited, has not expired;
  - 2) The outgoing county attorney makes a written application for reinstatement to the county within 30 days after the expiration of the elected term; and

- 3) The request for reinstatement is made not later than ten years after the granting of the leave.
- Upon reinstatement in accordance with statutory provisions, the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, insurance benefits, sick leave, and other benefits as if actually employed during the time of the leave.
  - Prior to reaching ten years, the county board can voluntarily agree to extend the leave of absence and right of reinstatement for longer than ten years.

**Tip** – Some counties opt to establish language in applicable collective bargaining agreements that outlines related terms and process if an elected official exercises their reinstatement rights to return to a position covered by a collective bargaining agreement, since it may involve bumping less senior employees. This can be accomplished through establishing a memorandum of agreement (MOA) with the applicable bargaining unit(s) once election results are known. The MOA would address the elected official’s seniority in the position they are leaving, in the department, and in the county.

#### Pension and Retirement Rights

A public officer or employee who receives leave of absence under [Minnesota Statutes, Section 3.088](#) and has rights in a state, municipal, or other public pension, retirement, or relief system shall retain all the rights accrued up to the time of taking leave. This isn’t usually an issue requiring special action by the county; the person is probably in the PERA General Plan before, during, and after being elected.

Time spent by the employee as an elected county attorney shall be calculated in the same manner as if the employee had spent that time in the service of the public employer for the purpose of determining vesting of the employee's rights in the employer's pension, retirement, or relief system. Again, this is usually not an issue requiring special action by the county.