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CHAPTER 1.

GENERAL PROVISIONS

**SECTION 8‑1‑10.** "Public officers" defined.

The term "public officers" shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.

HISTORY: 1962 Code Section 50‑1; 1952 Code Section 50‑1; 1942 Code Sections 1512, 3042; 1932 Code Sections 1512, 3042; Civ. C. '22 Section 733; Cr. C. '22 Section 460; Civ. C. '12 Section 649; Cr. C. '12 Section 535; 1901 (23) 754.

**SECTION 8‑1‑20.** Illegal collecting and retaining rebates, commissions or discounts.

A state or county officer who receives or collects a rebate, commission, or discount from a person upon the purchase of books or other property or supplies or from printing or advertising, whether for use of the State or a county, and fails or refuses to pay it to the proper state or county authority at the time of receiving it is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years. A person convicted under this section must forfeit his office.

HISTORY: 1962 Code Section 50‑2; 1952 Code Section 50‑2; 1942 Code Section 1254; 1932 Code Section 1254; Cr. C. '22 Section 149; Cr. C. '12 Section 303; Cr. C. '02 Section 223; 1897 (22) 519; 1993 Act No. 184, Section 14, eff January 1, 1994.

**SECTION 8‑1‑30.** Knowingly allowing false claims by witnesses or jurors of mileage traveled.

It is unlawful for an officer, whose duty it is to certify to the mileage of any juror, witness, or other person required to attend court or to travel to perform any legal duty, to knowingly allow a claim for mileage other than prescribed by law.

A person who violates the provisions of this section is guilty of a misdemeanor. Upon conviction, the officer must be fined in the discretion of the court or imprisoned not more than one year, or both. The officer is liable in a civil action to pay to the county a penalty equal to ten times the amount which the county may lose by reason of the excess payment for mileage.

HISTORY: 1962 Code Section 50‑3; 1952 Code Section 50‑3; 1942 Code Section 1517; 1932 Code Section 1517; Cr. C. '22 Section 465; Cr. C. '12 Section 302; Cr. C. '02 Section 222; 1897 (22) 732; 1993 Act No. 184, Section 143, eff January 1, 1994.

**SECTION 8‑1‑40.** Failure of clerk, sheriff or magistrate to pay over fines or penalties.

Any clerk of the circuit court, county sheriff or magistrate who shall neglect or refuse immediately to pay over, as required, any and all fines and penalties collected by him in any criminal cause or proceeding shall, on conviction thereof, be subject to a fine of not less than one hundred nor more than one thousand dollars and imprisonment for not less than three nor more than six months and shall be dismissed from office and disqualified from holding any office of trust and profit under this State.

HISTORY: 1962 Code Section 50‑4; 1952 Code Section 50‑4; 1942 Code Section 1519; 1932 Code Section 1519; Cr. C. '22 Section 467; Cr. C. '12 Section 540; Cr. C. '02 Section 383; G. S. 2553; R. S. 300; 1871 (15) 656.

**SECTION 8‑1‑50.** Allowing records to be taken from office.

If any clerk of any court of record, judge of probate, master, register of deeds or sheriff shall allow any record, or any part thereof, to be taken or removed from their respective offices by any person whomsoever, he shall be guilty of a misdemeanor and upon conviction thereof he shall be punished by a fine of fifty dollars for the first offense and for the second and any subsequent offense by a fine of one hundred dollars. Nothing herein contained shall be held to apply to the attendance of any of such officers with any of the records of their respective offices in any court when the actual production of such record is required by the proper process of such court for the purpose of evidence in any trial then proceeding therein nor shall the provisions of this section apply to the taking or removal of any books or records when done under any order of a circuit judge for the better preservation or protection of such books or records.

HISTORY: 1962 Code Section 50‑5; 1952 Code Section 50‑5; 1942 Code Section 1526; 1932 Code Section 1526; Cr. C. '22 Section 473; Cr. C. '12 Section 547; Cr. C. '02 Section 390; G. S. 2557; R. S. 307; 1882 (18) 871; 1885 (19) 415; 1997 Act No. 34, Section 1, eff January 1, 1998.

**SECTION 8‑1‑60.** Neglect of duty.

Any clerk of the court of common pleas and general sessions, sheriff, judge of probate or register of deeds in this State who shall wilfully fail or neglect to discharge all the duties and perform all the services which are required of him by law shall, in addition to his liability to the person aggrieved, be liable to be indicted as for a misdemeanor and upon conviction thereof shall be fined, at the discretion of the court, not exceeding five hundred dollars.

HISTORY: 1962 Code Section 50‑6; 1952 Code Section 50‑6; 1942 Code Section 1527; 1932 Code Section 1527; Cr. C. '22 Section 474; Cr. C. '12 Section 548; Cr. C. '02 Section 391; G. S. 2558; R. S. 308; 1837 (6) 577; 1997 Act No. 34, Section 1, eff January 1, 1998.

**SECTION 8‑1‑70.** Officers reported by circuit solicitor for neglect of duty; indictment.

If any clerk of the court of common pleas and general sessions, sheriff, judge of probate or register of deeds in this State shall be reported by a circuit solicitor as having wilfully failed or neglected to discharge any of the duties or to perform any of the services appertaining to his office which are required of him by law, the court shall order a bill of indictment to be preferred against such delinquent officer.

HISTORY: 1962 Code Section 50‑7; 1952 Code Section 50‑7; 1942 Code Section 1528; 1932 Code Section 1528; Cr. C. '22 Section 475; Cr. C. '12 Section 549; Cr. C. '02 Section 392; G. S. 2559; R. S. 309; 1837 (6) 577; 1997 Act No. 34, Section 1, eff January 1, 1998.

**SECTION 8‑1‑80.** Misconduct, habitual negligence and the like of public officer; office declared vacant.

Any public officer whose authority is limited to a single election or judicial district who is guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression shall be liable to indictment and, upon conviction thereof, shall be fined not more than one thousand dollars and imprisoned not more than one year.

The presiding judge before whom any public officer convicted under this section is tried shall order a certified copy of the indictment to be immediately transmitted to the Governor who must, upon receipt of the indictment, by executive order declare the office to be vacant. The office must be filled as in the case of the death or resignation of the officer.

HISTORY: 1962 Code Section 50‑8; 1952 Code Section 50‑8; 1942 Code Section 1525; 1932 Code Section 1525; Cr. C. '22 Section 472; Cr. C. '12 Section 545; Cr. C. '02 Section 388; R. S. 305; 1829 (6) 391; 1993 Act No 181 Section 66, eff July 1, 1993.

**SECTION 8‑1‑90.** Repealed by 1993 Act No. 181, Section 1617(A), eff July 1, 1993.

**SECTION 8‑1‑100.** Suspension of officer indicted for crime.

Except as provided in Section 8‑1‑110, any state or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in event of suspension shall appoint another in his stead until he shall be acquitted. In case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law.

HISTORY: 1962 Code Section 50‑10; 1956 (49) 1841; 1993 Act No 181, Section 67, eff July 1, 1993.

**SECTION 8‑1‑110.** Suspension of officer charged with embezzlement or misappropriation of funds; removal upon conviction.

Whenever it shall be brought to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds is probably guilty of embezzlement or the appropriation of public or trust funds to private use then the Governor shall direct his immediate prosecution by the proper officer and, upon true bill found, the Governor shall suspend such officer and appoint one in his stead until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

HISTORY: 1962 Code Section 50‑205; 1952 Code Section 50‑205; 1942 Code Section 985; 1932 Code Section 985; Cr. P. '22 Section 76; Cr. C. '12 Section 546; Cr. C. '02 Section 389; G. S. 2556; R. S. 306; 1896 (22) 312.

**SECTION 8‑1‑115.** Lien on public retirement or pension plan of persons convicted of embezzling public funds; procedures; exceptions.

(A) There is hereby created a general lien upon any public retirement or pension plan not governed by ERISA of any public officer, public employee, or any other person who is convicted of an offense involving embezzlement or misappropriation of public funds or public property to the private use of himself or any other person, to the extent of the total loss, damage, and expense to the State, or to a county or municipality, or to any agency or political subdivision of the State, or to any state, county or municipal agency, any college or university, or to any school, special or public service district within the State, that is authorized by law to perform a governmental function or provide a governmental service.

(B)(1) The presiding judge before whom any public officer, employee, or any other person is convicted of an offense described in subsection (A) must send to the Attorney General and the appropriate retirement or pension plan system a notice of the lien showing the name of the person convicted whose retirement or pension plan is subject to the lien created by subsection (A) and the date of the conviction, which is the date upon which the lien attaches. The presiding judge must set the lien at the time of conviction and the presiding judge's notice of lien must state the amount of the lien.

(2)(a) Within ten days of the date of conviction, the convicted person's spouse or representative of the convicted person's minor children may file a petition with the presiding judge requesting the judge to dissolve the lien, in whole or in part, in favor of the spouse or minor children because the spouse or minor children would suffer extreme financial hardship if the lien were to attach. If the petition is filed, the lien is stayed pending a hearing on the petition and the ruling of the judge. Any benefits occurring during the stay accrue to the potential benefit of the spouse and minor children, if the petition is successful, and do not accrue to the benefit of the convicted person. The judge's ruling must be based on clear and convincing evidence that the spouse or minor children would suffer extreme financial hardship were the lien to attach and that the spouse or minor children have not been convicted of the same offense involving the embezzlement of public funds for which the lien was created. To the extent that the lien is dissolved in whole or in part in favor of the spouse or minor children, the appropriate retirement or pension plan system is directed to make payment directly to the spouse or representative of the minor children. The dissolution extends only until the minor children reach majority or the spouse dies or remarries at which time the lien reattaches.

(b) If the convicted person is divorced and is subject to a Qualified Domestic Relations Order (QDRO) pursuant to Section 9‑18‑10, et seq., then the lien shall not attach to the alternate payee's portion of the retirement benefit, unless the alternate payee has been convicted of the same offense involving embezzlement of public funds for which the lien was created. The pension plan is directed to make payment to the alternate payee in accordance with the provisions of the QDRO.

(c) If the convicted person's pension benefit is subject to an order for child support, then the lien shall not attach to the portion of the convicted person's benefit which goes to pay support for any minor child who has not been convicted of the same offense involving embezzlement of public funds for which the lien was created.

(C) In addition to any other sentence imposed upon a person convicted of an offense described in subsection (A) and taking into account the petition process set forth in subsection (B), the presiding judge may require full restitution of all public funds embezzled or misappropriated and full payment for the conversion, use, and value of public property appropriated to private use and may provide for an indeterminate sentence of incarceration or probation, or both, until restitution in full has been made.

(D) The Attorney General is charged with an affirmative duty to recover public funds and property embezzled or converted to private use, or the value thereof, and he or his designee may bring an action to enforce the lien created by this section at any time up to the death of a person whose retirement or pension plan is subject to the lien created by subsection (A).

(E) The Attorney General or his designee shall file a satisfaction and discharge of the lien created by this section after restitution has been made by payment of the amount of the lien in full or after the death of the person whose retirement or pension plan is subject to the lien created by subsection (A). If the beneficiary of the person whose retirement or pension plan is subject to the lien created by subsection (A) was, himself, convicted of the same offense involving the embezzlement or misappropriation of public funds or public property for which the lien was created, the lien must continue until restitution has been made or until the death of the beneficiary.

(F) The lien created by this section and the action to enforce the lien are cumulative and in addition to all other remedies provided by law.

HISTORY: 2001 Act No. 16, Section 1, eff April 10, 2001.

**SECTION 8‑1‑120.** County health employees entitled to same employee benefits as other public employees.

All county health department employees, without regard to whether they are compensated partially or wholly by the State or county, shall be entitled to all benefits to which other state or county employees are entitled including, but not limited to, group insurance benefits.

HISTORY: 1962 Code Section 32‑108.1; 1974 (58) 2184.

**SECTION 8‑1‑130.** Holding certain offices and serving as city attorney not to constitute dual officeholding.

Any member of a lawfully and regularly organized fire department, county veterans affairs officer, constable, or municipal judge serving as attorney for another city is not considered to be a dual officeholder, by virtue of serving in that capacity, for the purposes of the Constitution of this State.

HISTORY: 1987 Act No. 127 Section 1, eff June 8, 1987.

**SECTION 8‑1‑140.** Repealed by 1990 Act No. 382, Section 2, eff March 19, 1990.

**SECTION 8‑1‑145.** Irrevocable resignation of elected office holder to take effect in future; election to fill vacancy.

(A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.

(B) An election must be held in accordance with the provisions of Section 7‑13‑190 or other applicable provisions of law to fill the office to be vacated as if the vacancy occurred on the date the written irrevocable resignation is submitted.

(C) The newly elected official may not take office until the vacancy actually occurs.

HISTORY: 1990 Act No. 382, Section 1, eff March 19, 1990.

**SECTION 8‑1‑150.** Filling vacancies.

Whenever a vacancy occurs in the membership of the governing body of a special purpose district or public service district, and the duties of the governing body are prescribed by law, and there is no provision for filling the vacancy, it must be filled in the same manner of original appointment or election for the remainder of the unexpired term.

HISTORY: 1988 Act No. 652, eff June 3, 1988.

**SECTION 8‑1‑155.** Preference to resident of State.

Notwithstanding another provision of law, if a vacancy occurs in a state agency, other than an institution of higher learning, or if an agency acts to fill a new position, the agency shall give preference to a resident of this State, if the applicants are equally qualified for the vacancy or new position.

HISTORY: 2008 Act No. 353, Section 2, Pt 20D, eff July 1, 2008.

**SECTION 8‑1‑160.** Performance increase or decrease in salary; redress for decrease.

Notwithstanding other provisions of law, state agencies may increase or decrease individual employee salaries based upon performance. Such increase or decrease shall be determined by the agency. Performance increases shall not place an employee's salary above the maximum of the grade or executive compensation level. Performance decreases may not place an employee's salary below the minimum of the grade or executive compensation level. Performance decreases shall be based on the results of an EPMS evaluation. Employees assessed salary decreases may seek redress through the state employees' grievance system.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

**SECTION 8‑1‑170.** Group productivity incentive programs.

State agencies are authorized to develop group productivity incentive programs for the recognition and award of team accomplishments through group performance. Employees of any organizational unit within each of the various agencies are eligible to share equally twenty‑five percent of the identified savings resulting from reduced operational costs in the unit up to a maximum of two thousand dollars per employee in a fiscal year. The agency shall adopt policies and procedures to determine unit expenses or base data and for the year of participation in the group productivity incentive program. Records of proposals, actual dollar savings, and employee awards will be reported to the Budget and Control Board or its designee. Any bonus or cash award paid as a group productivity incentive shall not become a part of the employee's base salary and shall not be considered as compensation in terms of contributions to and determination of benefits for any of the state's retirement systems.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

**SECTION 8‑1‑180.** Tokens of recognition and other rewards; limit on amount per individual.

State agencies and institutions shall be allowed to spend public funds on employee plaques, certificates, and other events, including meals and similar types of recognition to reward innovations or improvements by individual employees or employee teams that enhance the quality of work or productivity or as a part of employee development programs of their agency or institution. Awards shall be limited to fifty dollars for each individual.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

**SECTION 8‑1‑190.** Pilot programs to create innovation in state government.

Notwithstanding other provisions of law, the Budget and Control Board is authorized to enter into pilot programs with individual agencies or groups of agencies in order to create innovations in State Government. The Budget and Control Board will monitor the findings and results of pilot programs to determine if legislative recommendations should be provided to the General Assembly.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.