

Chapter 128.

Offices and Public Officers.

Article 1.

General Provisions.

§ 128-1. No person shall hold more than one office; exception.

No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1, or by other General Statute. (Const., art. 14, s. 7; Rev., s. 2364; C.S., s. 3200; 1967, c. 24, s. 24; 1969, c. 1070; 1971, c. 697, s. 1; 1983, c. 609, s. 9.)

§ 128-1.1. Dual-office holding allowed.

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(c2) Repealed by Session Laws 2015-201, s. 3(b), effective August 5, 2015.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county board of elections under the supervision of the State Board of Elections. (1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10; 2006-259, s. 24(a); 2011-31, s. 13; 2014-100, s. 14.11(b); 2015-201, s. 3(b); 2015-241, s. 14.30(u); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 128-1.2. Ex officio service by county and city representatives and officials.

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city appoints one of its own members or officials to another board or commission,

the individual so appointed is considered to be serving on the other board or commission as a part of the individual's duties of office and shall not be considered to be serving in a separate office.

As used in this section, the term "official" means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term "city" has the meaning provided in G.S. 160A-1. (1983, c. 651, s. 1; 1991, c. 508, s. 5.)

§ 128-2. Holding office contrary to the Constitution; penalty.

If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to Article VI, Sec. 9 of the North Carolina Constitution, he shall forfeit all rights and emoluments incident thereto. (1790, c. 319, P.R.; 1792, c. 366, P.R.; 1793, c. 393, P.R.; 1796, c. 450, P.R.; 1811, c. 811, P.R.; R.C., c. 77, s. 1; Code, s. 1870; Rev., s. 2365; C.S., s. 3201; Ex. Sess., 1924, c. 110; 1971, c. 697, s. 3.)

§ 128-3. Bargains for office void.

All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (5 and 6 Edw. VI, c. 16, s. 3; R.C., c. 77, s. 2; Code, s. 1871; Rev., s. 2366; C.S., s. 3202.)

§ 128-4. Receiving compensation of subordinates for appointment or retention; removal.

Any official or employee of this State or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a Class 1 misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by G.S. 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2; 1993, c. 539, s. 942; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 128-5. Oath required before acting; penalty.

Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars (\$500.00) to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose. (R.C., c. 77, s. 4; Code, s. 1873; Rev., s. 2367; C.S., s. 3203.)

§ 128-6. Persons admitted to office deemed to hold lawfully.

Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void. (Const., art. 4, s. 25; 1844, c. 38, s. 2; 1848, c. 64, s. 1; R.C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C.S., s. 3204.)

§ 128-7. Officer to hold until successor qualified.

All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified. (1848, c. 64, s. 2; R.C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C.S., s. 3205.)

§ 128-7.1. Failure to qualify creates vacancy.

If any person who has been elected to public office (i) dies or becomes disqualified for the office before qualifying for the office, or (ii) for any reason refuses to qualify for the office, the office shall be declared vacant. Unless otherwise provided by law, such vacancy shall be filled by appointment by the authority having the power to fill vacancies as prescribed by law. (1971, c. 183.)

§ 128-7.2. Qualifications for appointment to fill vacancy in elective office.

No person is eligible for appointment to fill a vacancy in any elective office, whether State or local, unless that person would have been qualified to vote as an elector for that office if an election were to be held on the date of appointment. This section is intended to implement the provisions of Section 8 of Article VI of the Constitution. (2007-391, s. 27(a).)

§ 128-8: Repealed by Session Laws 1981, c. 884, s. 13.

§ 128-9: Repealed by Session Laws 1979, c. 650.

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.

When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor; any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen, or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, setting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within 60 days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars (\$500.00), of the amount

recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as indemnity shall in no case exceed five hundred dollars (\$500.00). (1913, c. 80; C.S., s. 3206.)

§ 128-11. Trust funds to be kept separate.

Any sheriff, treasurer or other officer of any county, city, town or other political subdivision of the State, receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own. (1931, c. 77, s. 1.)

§ 128-12. Violations to be reported; misdemeanors.

It shall be the duty of the director of the Local Government Commission to report to the district attorney of the district any violation of G.S. 128-11 of which he may have knowledge, and any violation of such section shall be unlawful and shall constitute a Class 1 misdemeanor. (1931, c. 60, s. 3; 1931, c. 77, s. 2; 1973, c. 47, s. 2; 1993, c. 539, s. 943; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 128-13. Officers compensated from fees in certain counties to render statement; penalty; proceeds to school fund.

Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation or services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year, a statement, verified under oath, showing: first, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars (\$25.00) and ten dollars (\$10.00) additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and supply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December 12, 1913.

This section applies only to the Counties of Anson, Bertie, Bladen, Cabarrus, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson. (1913, c. 97; Ex. Sess., 1913, c. 10; 1935, c. 390.)

§ 128-14. Identification cards for field agents or deputies of State departments.

Every field agent or deputy of the various State departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

§ 128-15. Employment preference for veterans and their spouses or surviving spouses.

(a) It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment with every State department, agency, and institution.

(b) As used in this section:

- (1) "A period of war" includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.
- (2) "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.
- (3) "Eligible veteran" means:
 - a. A veteran who served during a period of war; or
 - b. The spouse of a disabled veteran; or
 - c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as the result of such service; or
 - d. A veteran who suffered a disabling injury for service-related reasons during peacetime; or
 - e. The spouse of a veteran described in subdivision d. of this subsection; or
 - f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who dies for service-related reasons during peacetime.

(c) Hereafter, in all evaluations of applicants for positions with this State or any of its departments, institutions or agencies, a preference shall be awarded to all eligible veterans who are citizens of the State and who served the State or the United States honorably in the military forces of this State or of the United States during a period of war. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.

(d) The provisions of this section shall be subject to the provisions of Article 1 of Chapter 165 of the General Statutes, and Parts 13 and 19 of Article 9 of Chapter 143B of the General Statutes. (1939, c. 8; 1953, c. 1332; 1967, c. 536; 1987 (Reg. Sess., 1988), c. 1064, s. 2; 2007-286, s. 1; 2011-183, s. 96.)

§ 128-15.1: Repealed by 1987 (Reg. Sess., 1988), c. 1064, s. 4.

§ 128-15.2. Appointment of acting heads of certain agencies.

In every case where a State board or commission is authorized by statute to appoint the executive head of a State agency or institution, that board or commission may appoint an acting executive head of that agency or institution to serve

- (1) During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
- (2) During the continued absence of the regular holder of the office, or
- (3) During a vacancy in the office and pending the selection and qualification of a person to serve for the unexpired term.

An acting executive head of a State agency or institution appointed in accordance with this section may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately

- (1) Upon the termination of the incapacity of the officer in whose stead he acts,
- (2) Upon the return of the officer in whose stead he acts, or
- (3) Upon the selection and qualification of a person to serve for the unexpired term.

Each State board or commission may determine (after such inquiry as it deems appropriate) that the executive head of a State agency or institution whom it is authorized by statute to appoint is physically or mentally incapable of performing the duties of his office. Each such board or commission may also determine that such incapacity has terminated. (1959, c. 284, s. 1.)

§ 128-15.3. Discrimination against handicapped prohibited in hiring; recruitment, etc., of handicapped persons.

There shall be no discrimination in the hiring policies of the State Human Resources system against any applicant for employment based upon any physical defect or impairment of the applicant unless the defect or impairment to some degree prevents the applicant from performing the duties required by the employment sought.

It shall be the policy of this State to give positive emphasis to the recruitment, evaluation, and employment of physically handicapped persons in State government. To carry out the provisions of this section, the Office of State Human Resources shall develop methods and programs to assist and encourage the departments, institutions, and agencies of State government in carrying out this policy and to provide for appropriate study and review of the employment of handicapped persons. (1971, c. 748; 1973, c. 1299; 2013-382, s. 9.1(c); 2014-115, s. 55.4(c).)