

Article 2.

Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.

Any sheriff or police officer shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office.
- (3) For corruption.
- (4) For extortion.
- (5) Upon conviction of a felony.
- (6) For intoxication, or upon conviction of being intoxicated. (P.L. 1913, c. 761, s. 20; 1919, c. 288; C.S., s. 3208; 1959, c. 1286; 1961, c. 991; 1973, c. 108, s. 82.)

§ 128-17. Petition for removal; county attorney to prosecute.

The complaint or petition shall be entitled in the name of the State of North Carolina, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the district attorney of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or district attorney to appear and prosecute this proceeding. (P.L. 1913, c. 761, s. 21; 1919, c. 288; C.S., s. 3209; 1973, c. 47, s. 2.)

§ 128-18. Petition filed with clerk; what it shall contain; answer.

The accused shall be named as defendant, and the petition shall be signed by some elector, or by such officer. The petition shall state the charges against the accused, and may be amended, and shall be filed in the office of the clerk of the superior court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the superior court his answer, which shall be verified. (P.L. 1913, c. 761, s. 22; 1919, c. 288; C.S., s. 3210.)

§ 128-19. Suspension pending hearing; how vacancy filled.

Upon the filing of the petition in the office of the clerk of the superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling of the vacancies in such office. (P.L. 1913, c. 761, s. 23; 1919, c. 288; C.S., s. 3211.)

§ 128-20. Precedence on calendar; costs.

In the trial of the cause in the superior court the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next session after the petition is filed, provided the proceedings are filed in said court in time for said action to be heard. The superior court shall fix the time of hearing. If the final termination of such proceedings be favorable

to any accused officer, said officer shall be allowed the reasonable and necessary expense, including a reasonable attorney fee, to be fixed by the judge, he has incurred in making his defense, by the county, if he be a county officer, or by the city or town in which he holds office, if he be a city officer. If the action is instituted upon the complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties. (P.L. 1913, c. 761, s. 24; 1919, c. 288; C.S., s. 3212; 1973, c. 108, s. 83.)