

### **10-3-2. Local school boards; vacant or vacated offices.**

A. A local school board shall hold at least one regular meeting each month of the calendar year.

B. The office of any member of a local school board, if the member misses four consecutive regular meetings, may be declared vacant by a majority vote of the remaining members of the local school board.

C. The office of any member of a local school board, if the member misses six consecutive regular meetings, shall be vacant.

D. Any vacancy of an office on a local school board created pursuant to this section shall be filled in the same manner as other vacancies on a local school board are filled. Any member of a local school board who has his office declared vacant or vacated pursuant to this section shall not be eligible for appointment to the local school board until the term for which he was originally elected or appointed has expired.

E. As used in this section "regular meeting" means a meeting of the members of a local school board at which at least a quorum is present, about which notice has been published and at which normal school district business is transacted.

# ARTICLE 4

## REMOVAL OF LOCAL OFFICERS

### 10-4-1. [Local officers subject to removal.]

Any county, precinct, district, city, town or village officer elected by the people, and any officer appointed to fill out the unexpired term of any such officer, may be removed from office on any of the grounds mentioned in this chapter and according to the provision hereof.

**History:** Laws 1909, ch. 36, § 1; Code 1915, § 3954; C.S. 1929, § 96-105; 1941 Comp., § 10-303; 1953 Comp., § 5-3-3.

#### ANNOTATIONS

**Cross-references.** - For removal of justices, judges or magistrates of any court, see *N.M. Const., art. VI, § 32*.

For removal of municipal officers for financial interests, see *3-10-4 NMSA 1978*.

For removal of municipal officer for malfeasance in office, see *3-10-7 NMSA 1978*.

For supersedeas of judgment in removal proceedings, see Rule 1-062.

**Meaning of "this chapter".** - See same catchline in notes to *10-1-3 NMSA 1978*.

**Constitutionality.** - This act (*10-3-1, 10-4-1 to 10-4-29 NMSA 1978*) does not violate *N.M. Const., art. XX, § 2*. State ex rel. Harvey v. Medler, *19 N.M. 252, 142 P. 376* (1914).

**Purpose of removal** is not to determine whether a public officer has been a good person or a bad person in the past but only to determine whether, by reason of existing facts and circumstances, he should be removed from his present office. State v. Santillanes, *99 N.M. 89, 654 P.2d 542* (1982).

**This is a civil and not a criminal proceeding.** State ex rel. Mitchell v. Medler, *17 N.M. 644, 131 P. 976* (1913); State ex rel. Mansker v. Leib, *20 N.M. 619, 151 P. 766* (1915); State v. Santillanes, *99 N.M. 89, 654 P.2d 542* (1982).

**Officer not removable for misconduct during prior term.** - The terms "office" and "in office" in this section and *10-4-2 NMSA 1978* mean during the current term for which the officer is elected or appointed and in which the offenses charged occurred. Therefore, it is not within the province of the court to punish a public officer by allowing his removal for misconduct which may have occurred during a previous term. State v. Santillanes, *99 N.M. 89, 654 P.2d 542* (1982).

**Power to remove board of education member not exclusive.** - Notwithstanding *N.M. Const., art. XII, § 6*, the school board does not have exclusive power to remove a member of the state board of education, but the court also has such power under this section. State ex rel. Hannah v. Armijo, *37 N.M. 423, 24 P.2d 274* (1933).

**District attorney not within purview.** - This section does not embrace a district attorney within its purview. State ex rel. Prince v. Rogers, *57 N.M. 686, 262 P.2d 779* (1953).

**Even though now elected.** - In 1909, when this section was passed, the district attorney was an officer appointed by the governor of the state by and with the consent

of the legislature. The district attorney is not a "county, precinct, district, city, town or village officer elected by the people" under the terms of this section, even though **N.M. Const., art. VI, § 24**, adopted in 1911, provides for the election of district attorneys. State ex rel. Prince v. Rogers, **57 N.M. 686, 262 P.2d 779** (1953).

**Nor is a senator.** - Although a state senator may have been absent from the state for more than six months, yet it rests with the senate to declare his office vacant. 1925-26 Op. Att'y Gen. No. 82.

**Removal and suspension proceedings separate and distinct.** - Proceedings for removal and that for suspension are separate and distinct, and each requires its own citation as a basis for jurisdiction, although the latter is auxiliary to the former. State ex rel. Delgado v. Leahy, **30 N.M. 221, 231 P. 197** (1924).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Rights of state and municipal public employees in grievance proceedings, 46 A.L.R.4th 912.

Validity under federal constitution of regulations, rules, or statutes requiring random or mass drug testing of public employees or persons whose employment is regulated by state, local, or federal government, 86 A.L.R. Fed. 420.

20 C.J.S Counties §§ 104 to 106; 62 C.J.S. Municipal Corporations § 508.

## **10-4-2. [Causes for removal of local officers.]**

The following shall be causes for removal of any officer belonging to the class mentioned in the preceding section [**10-4-1 NMSA 1978**]:

- A. conviction of any felony or of any misdemeanor involving moral turpitude;
- B. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;
- C. knowingly demanding or receiving illegal fees as such officer;
- D. failure to account for money coming into his hands as such officer;
- E. gross incompetency or gross negligence in discharging the duties of the office;
- F. any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.