

MAINE STATE LEGISLATURE

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Chapter 108. Municipal Courts.

Sec. 1. Municipal court judges; disposition of fines, etc.—Judges of municipal courts shall be appointed and shall hold their offices as provided in the constitution. All fines, penalties and costs imposed by such courts, paid to the jailer after commitment of a respondent, shall be paid over by him, monthly as provided in section 5 of chapter 150.

Every judge of a municipal court shall maintain a bank account in the name of the court in which all fines, costs and forfeitures received shall be deposited within 72 hours after their receipt. (R. S. c. 96, § 1.)

See Me. Const., Art. 9, § 8, re appointment and tenure.

Sec. 2. Qualification. — No person shall be eligible for appointment as judge of any municipal court unless he shall be a member of the bar of this state and a resident of the county in which such court is located. (R. S. c. 96, § 2.)

See c. 19, § 3, sub-§ IV, re authority of department of audit.

Sec. 3. Recorder acting as judge; salary.—In the event of the death or resignation or any vacancy in the position of a judge of a municipal court, the recorder shall, as acting judge, receive the salary of the judge in lieu of salary as recorder and shall further be paid for such clerk hire as shall be necessary on account of the additional duties. (R. S. c. 96, § 3.)

Sec. 4. Jurisdiction.—A municipal court shall not have jurisdiction in any civil matter unless a defendant resides within the county in which such court is established, or is a nonresident of the state and has personal service within the county, or a party summoned as trustee resides within the county, or property of the defendant is attached within the county in which such court is established; but in case of such personal service, trustee or attachment, such court shall have jurisdiction concurrent with the superior court and with all other municipal courts in the same county wherein it is established of all civil actions in which the debt or damages demanded do not exceed \$300; any action in which the judge of such municipal court may be interested, either by relationship, as counsel or otherwise, may be brought by such judge before any other court, superior or municipal, in the same county in the same manner and with like effect as other actions therein. (R. S. c. 96, § 4.)

Cross references.—See c. 15, § 15, re recording of fingerprints; c. 109, re small claims; c. 112, § 16, re action against defendants residing in different counties.

Actions in rem cognizable notwithstanding defendant resides without the county.

—Under this section a municipal court was held to have jurisdiction of proceedings to enforce liens for pasturing, feeding or sheltering animals in a case where the al-

leged owner of the animals did not reside within the county where such court was established. This section does not limit the jurisdiction of municipal courts to enforce liens of this character, since a petition to enforce such lien is purely a proceeding in rem, and no personal judgment is rendered against the owner of the property. *McGillicuddy v. Edwards*, 96 Me. 347, 52 A. 785.

Sec. 5. Writs.—Writs in civil actions before any municipal court may be made returnable at any term thereof, to be held not less than 7 nor more than 65 days from their date. (R. S. c. 96, § 5.)

Section repeals prior conflicting act.—The general provision of this section applies to a municipal court, although that court was created by special act before the

general law was passed and the two acts conflict with each other. This section repeals the former act. *Starbird v. Brown*, 84 Me. 238, 24 A. 824.

The general law enacted in this section was intended to control over prior conflicting statutes. *Tibbetts v. Coombs*, 114 Me. 441, 96 A. 741.

And intends uniformity in serving of writs.—The design of this section was to secure uniformity of practice in the matter of serving writs returnable to municipal courts, and to prevent mistakes that are occasioned by too long a period lapsing between the service and return day of a writ. *Starbird v. Brown*, 84 Me. 238, 24 A. 824; *Tibbetts v. Coombs*, 114 Me. 441, 96 A. 741.

This section is made applicable to "any" municipal court without distinction or exception. *Tibbetts v. Coombs*, 114 Me. 441, 96 A. 741.

Sec. 6. Signature of recorder or clerk; facsimile signatures. — The signature of the recorder or clerk of any municipal court to a complaint, warrant, mittimus, writ or other document, purporting to come from the court of which he is recorder or clerk, shall be sufficient evidence of his authority to issue the same, without in any way accounting for the absence or presence of the judge of said court.

A facsimile of the signature of the judge, recorder or clerk of any municipal court imprinted by or at their direction upon any writ, summons, subpoena, order or notice or order of attachment, except executions and criminal processes, shall have the same validity as the written signature. (R. S. c. 96, § 6. 1949, c. 69, § 1.)

See c. 112, § 3, re writs signed.

Sec. 7. Writs returnable to any municipal court in county.—Writs issued from any municipal court may be made returnable to any other municipal court in any county, but nothing in the provisions of this section shall be construed as permitting a defendant in one county to be summoned into a municipal court in another county unless one or more trustees of the principal defendant reside in a county other than the county in which said defendant resides as provided in section 84 of chapter 114. (R. S. c. 96, § 7.)

Sec. 8. Municipal court judges may interchange duties; reimbursement for expenses.—When the judge and recorder of any municipal court are for any reason unable to preside at any session of such court, or over any civil or criminal case pending before said court, or the said offices are temporarily vacant, the said judge or recorder or in case of the vacancy in said offices, any justice of the supreme judicial court, or of the superior court, may request any judge or recorder of any other municipal court in the same county or in an adjoining county to act in place of the judge of such municipal court. The official signature of such judge or recorder upon any process issued by him shall be sufficient evidence of his authority to issue the same, without reference to or proof of action under this section. When any judge or recorder holds court for another judge or recorder, he shall be reimbursed by the county in which said court is held for his expenses actually and reasonably incurred, upon presentation to the county commissioners of said county of a detailed statement of such expenses. (1951, c. 111. 1953, c. 158.)

Sec. 9. Judge not to act in cases within jurisdiction of his court or in his county.—No judge of any municipal court shall act as counsel or attorney in any case, cause, matter or thing which depends upon or relates to any cause exclusively cognizable by the court over which he presides, or act as counsel or

Writ returnable after 65 days, dismissed.—A writ made returnable to a municipal court at a term to be held more than sixty-five days from its date is properly dismissed for that reason in accordance with the provisions of this section. *Tibbetts v. Coombs*, 114 Me. 441, 96 A. 741.

It is void, and justifies no action thereunder.—A writ made returnable in contravention of this section is not voidable merely but void, and such writ, or execution pursuant thereto, can be no justification to a party thereto for any action under it. *Brown v. Howard*, 86 Me. 342, 29 A. 1094.

Applied in *Smith v. Hunt*, 91 Me. 572, 40 A. 698.

attorney in any case, cause, matter or thing, either in the municipal court over which he presides or in any other municipal court in his county. (R. S. c. 96, § 8.)

Section seeks to preserve purity and impartiality of courts.—The great underlying principle embraced by this section is that no judge should preside in a case in which he is not wholly free, disinterested, impartial, and independent. This principle should not have a narrow or technical construction, but should be applied to all cases where a judicial officer is called upon to decide controversies between the people.

Such a rule is in the general interest of justice, to preserve the purity and impartiality of the courts and the respect of the people for their decisions. *Norton v. Fayette*, 134 Me. 468, 188 A. 281.

This section disqualifies a judge where he previously acted in the case as counsel for the plaintiff. Any judgment rendered by such judge is invalid. *Norton v. Fayette*, 134 Me. 468, 188 A. 281.

Sec. 10. Costs and fees; overcharging costs.—The costs and fees taxed and allowed in all the municipal and trial justice courts shall be as follows:

Costs in civil actions. Costs to parties and attorneys in civil actions shall be:

To plaintiffs who prevail:

I. Where the damages recovered amount to \$20 or more;

| | |
|--|--------|
| Writ | \$3.54 |
| Entry | .50 |
| Officers' fees for serving writ, as allowed by the court | — |
| Attendance, each term | 3.50 |
| Travel, each term | .66 |
| Witness fees, as allowed by the court | — |
| Taxing costs | .25 |

II. Where the damages recovered amount to less than \$20;

| | |
|--|--------|
| Writ | \$2.00 |
| Entry | .50 |
| Officers' fees for serving writ, as allowed by the court | — |
| Attendance, each term | 2.00 |
| Travel, each term | .66 |
| Witness fees, as allowed by the court | — |
| Taxing costs | .25 |

To defendants who prevail:

| | |
|---------------------------------------|------|
| Pleadings | 2.00 |
| Witness fees, as allowed by the court | — |
| Attendance, each term | 2.00 |
| Travel, each term | .66 |

To trustees who make disclosure at the return term:

| | |
|---------------------------------------|--------|
| Disclosure | \$1.00 |
| Attendance, each term | 2.00 |
| Travel, each term | .66 |
| Witness fees, as allowed by the court | — |

If the prevailing party actually travels more than 10 miles for the special purpose of attending court in any such action, he may be allowed by the court for every 10 miles so traveled, but not exceeding 40 miles .33.

The allowance for travel and attendance to parties recovering costs shall be limited to 2 terms, except that the court for good and sufficient cause may order allowance for additional terms.

Copies of papers for removal or appeal to the superior court, to be paid by the appellant to the municipal court and taxed in his cost by the superior court if he finally prevails 2.00.

If any attorney at law or other person demands or takes for a writ of attachment with a summons or for an original summons with the declaration, returnable before a trial justice, judge or recorder of a municipal court, more than the costs

and fees allowed in the preceding paragraphs of this section from the defendant; or, in the taxation of costs, such justice, judge or recorder taxes or allows more than that sum for the same, he forfeits to the defendant not less than \$5 nor more than \$10, to be recovered in an action of debt, but nothing herein contained shall be so construed as to reduce the fees of municipal courts otherwise established by law.

Fees in criminal cases.

| | |
|---|--------|
| Receiving a complaint and issuing a warrant | \$1.00 |
| Entering a complaint, swearing witnesses, filing papers and certifying costs to the county commissioners | .75 |
| Trial of an issue, each day | 3.00 |
| Recognizing parties charged with crimes for appearance at the superior court, certifying and returning the same | .50 |
| Mittimus for the commitment of any person | 1.00 |
| Issuing a subpoena separate from the warrant | .10 |
| Taxing costs | .25 |
| Copies of papers for the superior court | 2.00 |
| Witnesses in civil and criminal cases: | |
| For each day's attendance | 2.00 |
| For each mile's travel going and returning home | .06. |

The aforesaid fees when received shall be disposed of as provided by the public laws or by the acts establishing the respective courts. (R. S. c. 96, § 9.)

Sec. 11. Fees for entering appeal.—No trial justice, or judge or other officer of any municipal court shall demand or receive any fees for entering an appeal or taking a recognizance to prosecute it, in a criminal case. The legal fees therefor may be taxed in the bill of costs, and certified and paid like other fees. (R. S. c. 96, § 10.)

See c. 146, § 26, re limitation of fees of magistrates in criminal cases.