

CHAPTER 206

CONDUCT OF ELECTIONS AND MANNER OF VOTING

206.01 TIME FOR VOTING.

HISTORY. R.S. 1851 c. 5 s. 11; P.S. 1858 c. 6 s. 9; 1861 c. 15 s. 7; G.S. 1866 c. 1 ss. 7, 12; 1876 c. 74 s. 1; 1878 c. 84 s. 4; G.S. 1878 c. 1 s. 11; 1885 c. 145 s. 16; 1887 c. 4 s. 10; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 10; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 219; 1889 c. 3 s. 8; 1889 c. 125; 1891 c. 4 s. 10; 1893 c. 4 s. 73; G.S. 1894 ss. 78, 1216; 1899 c. 349 s. 15; 1901 c. 60; R.L. 1905 ss. 191, 252, 712; 1909 c. 125 s. 2; 1911 c. 172 s. 1; 1913 c. 23 ss. 1, 2; 1913 c. 413 s. 1; G.S. 1913 ss. 346, 435, 1252; 1917 c. 34; 1919 c. 282; G.S. 1923 ss. 305, 401, 1054, 1169; M.S. 1927 ss. 305, 401, 1054, 1169; 1929 c. 198 s. 1; 1939 c. 345 Pt. 6 c. 8 s. 1; M. Supp. ss. 601-6(8), 401-1; 1945 c. 229 s. 2.

This section authorizes the council to provide by resolution for not less than three consecutive hours of voting within the period between 7:00 A.M. and 8:00 P.M. at municipal elections. 1940 OAG 80, Sept. 19, 1940 (472n).

As to the effect of holding the polls open after hours, see *Soper v County of Sibley*, 46 M 274, 48 NW 1112.

See 1928 El. Op. 156.

206.02 JUDGES TO OPEN BALLOT BOXES.

HISTORY. 1861 c. 15 s. 9; G.S. 1866 c. 1 s. 9; 1878 c. 84 s. 4; G.S. 1878 c. 1 ss. 13, 80; 1887 c. 4 ss. 4, 14; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 14; 1889 c. 3 s. 4; 1891 c. 4 s. 21; 1893 c. 4 s. 85; G.S. 1894 s. 90; R.L. 1905 s. 262; G.S. 1913 s. 447; G.S. 1923 s. 411; M.S. 1927 s. 411; 1939 c. 345 Pt. 6 c. 8 s. 2 M. Supp. s. 601-6 (8)a.

206.03 BALLOTS TO BE DISTRIBUTED IN POLLING PLACE ONLY.

HISTORY. 1889 c. 3 s. 35; 1891 c. 4 ss. 55, 56; 1893 c. 4 ss. 90, 92; G.S. 1894 s. 95; R.S. 1905 s. 267; G.S. 1913 s. 452; G.S. 1923 s. 416; M.S. 1927 s. 416; 1939 c. 345 Pt. 6 c. 8 s. 3; M Supp. s. 601-6 (8)b.

206.04 DUTIES OF JUDGES.

HISTORY. 1889 c. 3 s. 73; 1891 c. 4 s. 50; 1893 c. 4 ss. 95, 118; G.S. 1894 s. 100; R.L. 1905 s. 271; G.S. 1913 s. 456; G.S. 1923 s. 420; M.S. 1927 s. 420; 1939 c. 345 Pt. 6 c. 8 s. 4; M. Supp. s. 601-6 (8)c.

206.05 JUDGES TO INITIAL BALLOTS.

HISTORY. 1891 c. 4 s. 51; 1893 c. 4 s. 89; G.S. 1894 s. 94; R.L. 1905 s. 266; G.S. 1913 s. 451; G.S. 1923 s. 415; 1925 c. 420 s. 1; M.S. 1927 s. 415; 1939 c. 345 Pt. 6 c. 8 s. 5; M. Supp. s. 601-6 (8)d.

The provisions of the general election law which refer to initialing ballots by the election judges are directory and not mandatory; and an elector who receives an uninitialed ballot from the judges and, in good faith, votes the same is not disfranchised by reason of the failure of the judges to perform their duty. *Truelson v Hugo*, 87 M 139, 91 NW 434.

In village elections, the ballots should be initialed and the judge, rather than the voter, should deposit the ballots in the ballot box. OAG Dec. 11, 1935 (28a-6).

206.06 CHALLENGERS.

HISTORY. 1878 c. 84 s. 14; G.S. 1878 c. 1 s. 90; 1887 c. 4 s. 12; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 12; 1889 c. 3 s. 10; 1891 c. 4 ss. 48, 58; 1893 c. 4 s. 86;

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G.S. 1894 s. 91; R.L. 1905 s. 263; G.S. 1913 s. 448; G.S. 1923 s. 412; M.S. 1927 s. 412; 1939 c. 345 Pt. 6 c. 8 s. 6; M. Supp. s. 601-6 (8)e.

A refusal of the judges to allow challengers to be present is not fatal. *Soper v County of Sibley*, 46 M 274, 48 NW 1112.

206.07 APPOINTMENT OF CHALLENGERS.

HISTORY. 1915 c. 329; M.S. 1927 s. 425-1; 1933 c. 53; 1939 c. 345 Pt. 6 c. 8 s. 7; M. Supp. ss. 601-6 (8)f, 425-1.

Qualifications, 1928 El. Op. 33, 201; 1934 OAG 374.

206.08 WHO MAY APPOINT CHALLENGERS.

HISTORY. 1939 c. 345 Pt. 6 c. 8 s. 8; M. Supp. s. 601-6 (8)g.

206.09 WHO MAY REMAIN IN POLLING PLACES.

HISTORY. 1889 c. 3 s. 26; 1891 c. 4 s. 46; 1893 c. 4 ss. 91, 93, 94; G.S. 1894 ss. 98, 99; R.L. 1905 s. 268; G.S. 1913 s. 453; G.S. 1923 s. 417; 1925 c. 420 s. 1; M.S. 1927 s. 417; 1939 c. 345 Pt. 6 c. 8 s. 9; M. Supp. s. 601-6 (8)h.

A voter not authorized in accordance with the law to act as a challenger has no legal right to remain in the polls after he has cast his ballot. 1928 El. Op. 34. See also, 1928 OAG 201; 1934 OAG 374; OAG April 3, 1933.

A closed voting booth is indispensable. Peace officers may remain in the voting place; should the judges require someone to assist in giving legal advice on disputed matters the irregularity would not invalidate the vote. 1942 OAG 98, Aug. 19, 1941 (59A-1).

206.10 JUDGES OR CHALLENGERS MAY CHALLENGE VOTER; MAY BE REQUIRED TO TAKE OATH.

HISTORY. R.S. 1851 c. 5 ss. 16, 25; P.S. 1858 c. 6 ss. 14, 23; 1861 c. 15 ss. 71 to 75; G.S. 1866 c. 1 ss. 65 to 69; G.S. 1878 c. 1 ss. 68 to 72; 1887 c. 4 ss. 25 to 27; 1889 c. 3 ss. 49 to 51, 73; 1891 c. 4 s. 58; 1893 c. 4 ss. 67, 97; G.S. 1894 ss. 102, 103; R.L. 1905 s. 272; G.S. 1913 s. 457; G.S. 1923 s. 421; 1925 c. 420 s. 1; M.S. 1927 s. 421; 1939 c. 345 Pt. 6 c. 8 s. 10; M. Supp. s. 601-6 (8)i.

206.11 OATH AFTER CHALLENGE.

HISTORY. R.S. 1851 c. 5 ss. 16, 17; P.S. 1858 c. 6 ss. 14, 15; 1861 c. 15 ss. 71 to 75; G.S. 1866 c. 1 ss. 17, 65 to 69; G.S. 1878 c. 1 ss. 68 to 72, 93; 1887 c. 4 ss. 28, 29; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 ss. 28, 29; 1889 c. 3 ss. 52, 53; 1891 c. 4 ss. 59 to 61; 1893 c. 4 s. 98; G.S. 1894 s. 103; R.L. 1905 s. 273; G.S. 1913 s. 458; G.S. 1923 s. 422; M.S. 1927 s. 422; 1939 c. 345 Pt. 6 c. 8 s. 11; M. Supp. s. 601-6 (8)j.

One born in this state, taken to Canada, where father was naturalized, is a British subject and not a citizen. *Ostby v Salmon*, 177 M 289, 225 NW 158.

206.12 CERTIFICATES OF REGISTERED VOTERS.

HISTORY. R.S. 1851 c. 5 ss. 16, 25; P.S. 1858 c. 6 ss. 14, 23; 1861 c. 15 ss. 71 to 75; G.S. 1866 c. 1 ss. 65 to 69; G.S. 1878 c. 1 ss. 68 to 72; 1887 c. 4 ss. 25 to 27; 1889 c. 3 ss. 49 to 51, 73; 1891 c. 4 s. 58; 1893 c. 4 ss. 67, 97; G.S. 1894 ss. 102, 103; R.L. 1905 s. 272; G.S. 1913 s. 457; G.S. 1923 s. 421; 1925 c. 420 s. 1; M.S. 1927 s. 421; 1939 c. 345 Pt. 6 c. 8 s. 12; M. Supp. s. 601-6 (8)k.

In case challengers have not been appointed, any voter present at the voting place may challenge a person offering to vote whom he knows or suspects not to be a qualified voter, but he has no legal right to remain in the polls after he has cast his ballot. 1928 El. Op. 34.

A candidate has a right to have a challenger in the election place. 1928 El. Op. 35.

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The judges of election may make just as searching an inquiry when they interpose the challenge as in cases where the challenge is interposed by a challenger. 1928 El. Op. 162.

The election board may require, of its own motion, evidence as to a person's right to vote, and must require such evidence if a voter is duly challenged. 1928 El. Op. 164.

Each judge shall challenge such person whom he knows or suspects not to be a qualified voter, notwithstanding the challenging judge also passes upon the challenge. 1928 El. Op. 199.

Where a voter in a city other than a city of the first class declines to sign a certificate in the form prescribed by this section, a judge of election may challenge him and require him to make an affidavit showing his qualifications. OAG Jan. 16, 1932.

See OAG June 11, 1935.

206.13 VOTING.

HISTORY. R.S. 1851 c. 5 s. 20; P.S. 1858 c. 6 s. 18; 1861 c. 15 ss. 10 to 12; G.S. 1866 c. 1 ss. 10, 11; 1878 c. 84 s. 8; GS. 878 c. 1 ss. 14, 15, 84; 1881 c. 79; 1887 c. 4 ss. 16, 20, 80; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 ss. 16, 20, 80; 1889 c. 3 ss. 31, 44, 73; 1891 c. 4 ss. 52, 101; G.S. 1894 s. 106; R.L. 1905 s. 276; G.S. 1913 s. 461; G.S. 1923 s. 425; M.S. 1927 s. 425; 1939 c. 345 Pt. 6 c. 8 s. 13; M. Supp. s. 601-6(8)L.

The provisions which refer to initialing ballots by the election judges are directory, not mandatory; and an elector who receives an uninitialed ballot from the judges and in good faith votes the same is not disfranchised by reason of the failure of the judges to perform their duty. *Truelsens v Hugo*, 87 M 139, 91 NW 434.

Ballots marked by voters with a distinct X mark on the back thereof in the space where the initials of the election judges appear, so that the mark could plainly be seen by the election judges when the ballots were received by them, identifies such ballots and makes them invalid. In re *Élection Contest Itasca County*, 178 M 578, 228 NW 155.

Where the judges of election, by reason of a mistake as to the law, numbered the ballots of electors, without their knowledge, the ballots so numbered are legal and must be counted as cast. *Pennington v Hare*, 60 M 146, 62 NW 116.

In a village election, ballots should be initialed and the judge, rather than the voter, should deposit ballot in ballot box. OAG Dec. 11, 1935 (28a-6).

206.14 VOTER TO RECEIVE BALLOTS.

HISTORY. 1887 c. 4 s. 16; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 16; 1891 c. 4 ss. 52, 56; 1893 c. 4 s. 96; 1899 c. 349 ss. 16, 17; 1901 c. 216 s. 4; R.L. 1905 s. 192; G.S. 1913 s. 347; G.S. 1923 s. 306; 1925 c. 420 s. 1; M.S. 1927 s. 306; 1933 c. 244 s. 4; 1939 c. 345 Pt. 6 c. 8 s. 14; M. Supp. ss. 601-6(8)m, 306.

Entitled to vote only one party ballot. 1928 El. Op. 161.

206.15 MARKING BALLOTS.

HISTORY. 1891 c. 4 s. 52; 1899 c. 349 s. 17; R.L. 1905 s. 193; Ex. 1912 c. 2 s. 7; G.S. 1913 s. 348; 1915 c. 167 s. 7; G.S. 1923 s. 307; M.S. 1927 s. 307; 1933 c. 244 s. 5; 1939 c. 345 Pt. 6 c. 8 s. 15; M. Supp. ss. 601-c(8)n, 307.

206.16 SHALL MARK EACH BALLOT.

HISTORY. 1891 c. 4 s. 52; 1893 c. 4 s. 100; G.S. 1894 s. 105; R.L. 1905 s. 275; G.S. 1913 s. 460; G.S. 1923 s. 424; M.S. 1927 s. 424; 1939 c. 345 Pt. 6 c. 8 s. 16; M. Supp. s. 601-6(8)o.

A distinguishing mark on a ballot which requires rejection of the entire ballot is one that is placed there deliberately by the voter with intention to identify the ballot after the vote is cast and not as the result of an honest effort on the part of the voter to indicate his choice of candidates. Numerous ballots cast in

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an election are considered and held either to have or not to have distinguishing marks on them within the rule. *Hanson v Emanuel*, 210 M 271, 297 NW 749.

A distinguishing mark on a ballot is one made by a voter which is not an honest effort to indicate his choice either of candidates or propositions and which is effective to distinguish his ballot. A mark placed on a ballot in an honest effort of the voter to indicate his choice and not to identify his ballot is not a distinguishing mark within the rule. *Aura v Brandt*, 211 M 281, 1 NW(2d) 381.

A ballot cast at an election, which is so marked by the elector that his identity is thereby disclosed to any person other than the voter, is void. *Elwell v Comstock*, 99 M 261, 109 NW 113, 698.

Where the marks used on a ballot are inappropriate to express the voter's intention, or are so distinct and individual in character as to furnish means of identifying the ballot as that of the particular voter, they are cause for rejecting ballots. *Bloedel v Cromwell*, 104 M 487, 116 NW 947.

Where a school teacher is not a legal voter in the precinct where she voted, her vote should be deducted from the total county counted for the contestee for whom she testified she voted. *Nelson v Bullard*, 155 M 419, 194 NW 308.

Where the ballot on an election contained the names of two candidates printed on lines one above the other and also a third line, in the same order on which was printed the words "or Mayor," but which contained no name, a cross-mark in the square at the end of such third line was insufficient to indicate an intention to vote for either one of the candidates named. *Nelson v McBride*, 117 M 387, 135 NW 1002.

Where the printed ballot at a city election contains the name of one candidate and a blank space under it, the voter may substitute the name of another by pasting a sticker over the printed name, and vote for the party so substituted by properly marking the ballot. *Erickson v Paulson*, 111 M 336, 126 NW 1097.

Where electors intentionally write their names upon their ballots, for identification, and so cast them, such ballot cannot be counted. *Pennington v Hare*, 60 M 146, 62 NW 116.

Any mark which it is apparent was honestly intended for a cross-mark, and for nothing else, must be given effect as such, no matter how crude in form it may be. *Pennington v Hare*, 60 M 146, 62 NW 116.

Various ballots involved in the contest examined and considered and the markings thereon held a sufficient compliance with the statutory requirements. Other ballots examined and held not a compliance with such statutes. *Truelsen v Hugo*, 81 M 73, 83 NW 500.

At a school district election where official ballots were used, and such ballots contain two names, and only two are to be elected, the ballot if cast should be counted as cast for the two named, even though no cross-mark appears in the square following the names. *Adams v McMullen*, 184 M 602, 239 NW 594.

At a school district election where official ballots are used, and such ballots contain two names and only two are to be elected, if any ballot has another name written or pasted on, that name must be counted as cast for the person so named, whether a cross-mark is made after it or not; and, unless in such a case, there is a cross-mark in the appropriate square after the name of one of the regular candidates he cannot claim a vote on that ballot. *Adams v McMullen*, 184 M 602, 239 NW 594.

Ballots in the form of "pasters" are legal. *Snortum v. Homme*, 106 M 464, 119 NW 59.

Ballot must be marked, and where it appears that a mark is made on another piece of paper, leaving an impression on ballot, the ballot is not properly marked and must be rejected. *Pye v Hanzel*, 200 M 135, 273 NW 611.

Ballots with slightly burned corners and small pieces torn from corners and with ink and smudge marks on back should have been counted. *Pye v Hanzel*, 200 M 135, 273 NW 611.

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Where it appears that a figure on the back of a ballot was placed there by an election official, the ballot is not identified and should be counted. *Pye v Hanzel*, 200 M 135, 273 NW 611.

Complete specifications as to what are and what are not distinguishing marks; use of stickers; misspelling, effect of. *Murray v Floyd*, 216 M 69, 11 NW(2d) 780.

Writing in names. 1928 El. Op. 186, 187.

Voter may use stickers or write in name of person he intends to vote for, and mark-in cross is unnecessary. OAG March 16, 1936 (434b-21).

Where a voter writes in a name, it is unnecessary to put a cross after the name. OAG Aug. 1, 1930; OAG June 25, 1934; OAG March 16, 1936.

A candidate defeated at the primaries may run by stickers. OAG Sept. 17, 1934.

206.17 SHALL FOLD BALLOTS AND DEPOSIT IN INDICATED BOXES.

HISTORY. R.S. 1851 c. 5 s. 20; P.S. 1858 c. 6 s. 18; 1899 c. 349 s. 18; 1901 c. 216 s. 5; R.L. 1905 s. 194; G.S. 1913 s. 349; G.S. 1923 s. 308; M.S. 1927 s. 308; 1933 c. 244 s. 6; 1939 c. 345 Pt. 6 c. 8 s. 17; M. Supp. ss. 601-6(8)p, 308.

206.18 SPOILED BALLOTS.

HISTORY. 1878 c. 84 s. 20; G.S. 1878 c. 1 s. 96; 1887 c. 4 s. 92; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 92; 1889 c. 3 ss. 33, 39; 1891 c. 4 ss. 54, 57; 1893 c. 4 ss. 100, 102, 103, 108; G.S. 1894 ss. 107, 108; R.L. 1905 ss. 277, 278; G.S. 1913 ss. 462, 463; G.S. 1923 ss. 426, 427; M.S. 1927 ss. 426, 427; 1939 c. 345 Pt. 6 c. 8 s. 18; M. Supp. s. 601-6(8)q.

206.19 VOTER NOT TO DIVULGE NAME OF PERSON FOR WHOM HE VOTES.

HISTORY. 1889 c. 3 s. 32; 1891 c. 4 s. 53; 1893 c. 4 s. 105; G.S. 1894 s. 110; R.L. 1905 s. 280; G.S. 1913 s. 465; G.S. 1923 s. 429; M.S. 1927 s. 429; 1939 c. 345 Pt. 6 c. 8 s. 19; M. Supp. s. 601-6(8)r.

See annotations under section 206.16.

206.20 VOTER TO GIVE CORRECT ADDRESS.

HISTORY. 1893 c. 4 s. 107; G.S. 1894 s. 112; R.L. 1905 s. 282; G.S. 1913 s. 467; G.S. 1923 s. 430; M.S. 1927 s. 430; 1939 c. 345 Pt. 6 c. 8 s. 20; M. Supp. s. 601-6(8)s.

206.21 EMPLOYEES MAY VOTE WITHOUT LOSS OF TIME.

HISTORY. G.S. 1894 s. 114; R.L. 1905 s. 283; G.S. 1913 s. 472; 1923 c. 4 s. 109; G.S. 1923 s. 435; M.S. 1927 s. 435; 1939 c. 345 Pt. 6 c. 8 s. 21; M. Supp. s. 601-6(8)t.

It is incumbent upon employers to allow employees who are entitled to vote at a primary the forenoon of the primary election day in which to vote. 1928 El. Op. 213.

The non-deduction of pay provision, as to employees who work on the per hour basis, offends the equal protection and due process of law clause of the 14th Amendment of the Federal Constitution and is not valid, but is valid as to employees who work by the year or month. 1928 El. Op. 214.

206.22 JUDGES TO REMOVE BALLOT FOR EACH VOTER.

HISTORY. 1889 c. 3 s. 31; 1893 c. 4 s. 118; G.S. 1894 s. 123; R.L. 1905 s. 284; G.S. 1913 s. 473; G.S. 1923 s. 436; M.S. 1927 s. 436; 1939 c. 345 Pt. 6 c. 8 s. 22; M. Supp. s. 601-6(8)u.

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206.23 SHALL HAND BALLOTS TO VOTER.

HISTORY. 1889 c. 3 s. 31; 1891 c. 4 s. 55; 1893 c. 4 ss. 99, 100; G.S. 1894 s. 104; R.L. 1905 s. 274; G.S. 1913 s. 459; G.S. 1923 s. 423; M.S. 1927 s. 423; 1937 c. 270 s. 6; 1939 c. 345 Pt. 6 c. 8 s. 23; M. Supp. ss. 601-6(8)v, 423.

206.24 INCAPACITATED VOTERS.

HISTORY. 1893 c. 4 s. 104; G.S. 1894 s. 109; R.L. 1905 s. 279; G.S. 1913 s. 464; G.S. 1923 s. 428; M.S. 1927 s. 428; 1939 c. 345 Pt. 6 c. 8 s. 24; M. Supp. s. 601-6 (8)w.

There is no method provided by law whereby a person quarantined in his home may vote. A judge of election, on election day, may not take a ballot from the polling place to the sick voter's home, permit him to mark it, then return it to the polling place and cast it in the name of the sick voter. 1928 El. Op. 199.

Election judges may not take the ballots of the soldiers in the hospital at the Soldiers Home, the inmates of such hospital not being physically able to go to the polling place that will be established on the Soldiers Home grounds. 1928 El. Op. 207.

206.25 INTOXICATED PERSONS MAY BE DENIED RIGHT TO VOTE.

HISTORY. 1893 c. 4 s. 106; G.S. 1894 s. 111; R.L. 1905 s. 281; G.S. 1913 s. 466; G.S. 1923 s. 429½; M.S. 1927 s. 429½; 1939 c. 345 Pt. 6 c. 8 s. 25; M. Supp. s. 601-6 (8)x.

206.26 NUMBER OF VOTERS IN POLLING PLACE.

HISTORY. 18889 c. 3 s. 30; 1891 c. 4 ss. 46, 47; 1893 c. 4 ss. 92 to 94; G.S. 1894 ss. 98, 99; R.L. 1905 s. 269; G.S. 1913 s. 454; G.S. 1923 s. 418; M.S. 1927 s. 418; 1939 c. 345 Pt. 6 c. 8 s. 26; M. Supp. s. 601-6(8)y.

206.27 JUDGES TO MAKE PROCLAMATION OF CLOSING.

HISTORY. 1861 c. 15 s. 13; G.S. 1866 c. 1 ss. 12, 13; 1878 c. 84 s. 10; G.S. 1878 c. 1 ss. 16, 17; Ex. 1881 c. 64; 1887 c. 4 s. 30; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 30; 1889 c. 3 s. 54; 1891 c. 4 s. 67; 1893 c. 4 s. 121; G.S. 1894 s. 126; R.L. 1905 s. 286; G.S. 1913 s. 475; G.S. 1923 s. 438; M.S. 1927 s. 438; 1939 c. 345 Pt. 6 c. 8 s. 27; M. Supp. s. 601-6(8)z.

206.28 TALLY BOOKS.

HISTORY. 1893 c. 4 s. 130; G.S. 1894 s. 135; R.L. 1905 s. 294; G.S. 1913 s. 483; G.S. 1923 s. 446; M.S. 1927 s. 446; 1939 c. 345 Pt. 6 c. 9 s. 1; M. Supp. s. 601-6 (9).

206.29 FORM OF TALLY BOOK.

HISTORY. 1893 c. 4 s. 130; G.S. 1894 s. 135; R.L. 1905 ss. 296, 297; G.S. 1913 ss. 485, 486; G.S. 1923 ss. 448, 449; M.S. 1927 ss. 448, 449; 1939 c. 345 Pt. 6 c. 9 s. 2; M. Supp. s. 601-6(9)a.

206.30 FORM OF TALLY BOOKS.

HISTORY. 1893 c. 4 s. 131; G.S. 1894 s. 136; R.L. 1905 s. 298; G.S. 1913 s. 487; G.S. 1923 s. 450; M.S. 1927 s. 450; 1937 c. 270 s. 9; 1939 c. 345 Pt. 6 c. 9 s. 3; M. Supp. ss. 601-6(9)b, 450.

206.31 COUNTY AUDITOR TO FURNISH TALLY BOOKS FOR PRIMARY ELECTION.

HISTORY. 1899 c. 349 ss. 21, 22; R.L. 1905 s. 197; Ex. 1912 c. 2 s. 9; G.S. 1913 s. 352; G.S. 1923 s. 311; 1925 c. 420 s. 1; M.S. 1927 s. 311; 1939 c. 345 Pt. 6 c. 9 s. 4; M. Supp. s. 601-6(9)c.

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206.32 TALLY BOOK TO BE PART OF ELECTION RETURNS.

HISTORY. 1899 c. 349 s. 20; 1901 c. 216 s. 6; R.L. 1905 s. 196; Ex. 1912 c. 2 s. 8; G.S. 1913 s. 351; 1915 c. 167 s. 8; G.S. 1923 s. 310; M.S. 1927 s. 310; 1933 c. 244 s. 7; 1939 c. 345 Pt. 6 c. 9 s. 5; M. Supp. ss. 601-6(9)d, 310.

206.33. ELECTION RETURNS.

HISTORY. R.S. 1851 c. 5 s. 30; P.S. 1858 c. 6 s. 28; 1893 c. 4 ss. 122, 151; G.S. 1894 s. 156; R.L. 1905 s. 314; G.S. 1913 s. 503; G.S. 1923 s. 465; 1925 c. 420 s. 1; M.S. 1927 s. 465; 1939 c. 345 Pt. 6 c. 9 s. 6; M. Supp. s. 601-6(9)e.

The city clerk should require all returns to be sealed before receiving them and then keep them under seal, but the canvassing board cannot wholly reject such returns because presented to it unsealed, the returns being fair, complete, and plain on their face, and free from suspicion of tampering, and where the duplicate returns filed with the county auditor are ambiguous and contradictory. *Hunt v Hoffman*, 125 M 249, 146 W 733.

206.34 SEALING RETURNS; STATEMENT OF TOTAL VOTE CAST.

HISTORY. R.S. 1851 c. 5 s. 31; P.S. 1858 c. 6 s. 29; 1887 c. 4 s. 35; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 35; 1891 c. 4 s. 72; 1893 c. 4 ss. 148, 152 to 154; G.S. 1894 ss. 157 to 159; R.L. 1905 s. 315; G.S. 1913 s. 504; G.S. 1923 s. 466; 1925 c. 126; 1925 c. 420 s. 1; M.S. 1927 s. 466; 1937 c. 270 s. 12; 1939 c. 345 Pt. 6 c. 9 s. 7; M. Supp. ss. 601-6(9)f, 466.

206.35 RETURNS TO BE DELIVERED TO CITY CLERK IN CITIES OF FIRST CLASS.

HISTORY. R.S. 1851 c. 5 s. 31; P.S. 1858 c. 6 s. 29; 1893 c. 4 ss. 118, 149, 150, 153 to 156; G.S. 1894 ss. 160, 161; 1905 c. 214; R.L. 1905 s. 316; Ex. 1912 c. 2 s. 19; G.S. 1913 s. 505; G.S. 1923 s. 467; M.S. 1927 s. 467; 1937 c. 270 s. 13; 1939 c. 345 Pt. 6 c. 9 s. 8; M. Supp. ss. 601-6 (9)g, 467.

206.36 AUDITOR TO DISPATCH SPECIAL MESSENGER IN CERTAIN CASES.

HISTORY. R.S. 1851 c. 5 s. 32; P.S. 1858 c. 6 s. 30; 1861 c. 15 s. 19; G.S. 1866 c. 1 s. 18; G.S. 1878 c. 1 s. 22; 1893 c. 4 s. 161; G.S. 1894 s. 166; R.L. 1905 s. 317; G.S. 1913 s. 510; G.S. 1923 s. 472; M.S. 1927 s. 472; 1939 c. 345 Pt. 6 c. 9 s. 9; M. Supp. s. 601-6 (9)h.

206.37 IRREGULARITIES NOT TO BE CONSIDERED IN RETURNS.

HISTORY. R.S. 1851 c. 5 s. 43; P.S. 1858 c. 6 s. 41; 1861 c. 15 s. 43; G.S. 1866 c. 1 s. 40; G.S. 1878 c. 1 s. 43; 1887 c. 4 s. 38; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 38; 1889 c. 3 s. 61; 1891 c. 4 s. 73; 1893 c. 4 ss. 162 to 164; G.S. 1894 ss. 168, 169; R.L. 1905 s. 318; G.S. 1913 s. 511; G.S. 1923 s. 473; M.S. 1927 s. 473; 1939 c. 345 Pt. 6 c. 9 s. 10; M. Supp. s. 601-6(9)i.

206.38 AUDITOR TO MAKE CERTIFICATES OF ELECTIONS.

HISTORY. 1893 c. 4 s. 168; G.S. 1894 s. 173; R.L. 1905 s. 322; G.S. 1913 s. 515; G.S. 1923 s. 477; M.S. 1927 s. 477; 1935 c. 199 s. 1; 1939 c. 345 Pt. 6 c. 9 s. 11; M. Supp. ss. 601-6(9)j, 477; 1945 c. 229 s. 3.

To go behind a certificate of election issued and determine the correctness of the canvass, involves the determination of the right of the holder of the certificate to the office; this cannot be done upon mandamus. *State ex rel v Churchill*, 2 M 188 (148).

In mandamus, where the relator, a candidate for a public office, has violated a provision of the statute so as to render it unlawful for the auditor to issue to him a certificate of election, the writ will be denied. *Dale v Johnson*, 143 M 225, 173 NW 417.

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One who has been elected, holds a regular certificate of election, and has qualified is entitled to possession of the office until and unless his election has been set aside in a direct attack by an election contest or quo warranto. *State ex rel v Magie*, 183 M 60, 235 NW 526.

206.39 CANVASS OF VOTES IN PRIMARY ELECTIONS.

HISTORY. R.S. 1851 c. 5 s. 27; P.S. 1858 c. 6 s. 25; 1861 c. 15 s. 14; G.S. 1866 c. 1 s. 13; G.S. 1878 c. 1 s. 17; 1899 c 349 s. 20; 1901 c. 216 s. 6; R.L. 1905 s. 196; Ex. 1912 c. 2 s. 8; G.S. 1913 s. 351; 1915 c. 167 s. 8; G.S. 1923 s. 310; M.S. 1927 s. 310; 1933 c. 244 s. 7; 1939 c. 345 Pt. 6 c. 10 s. 1; M. Supp. ss. 601-6(10), 310.

206.40 CANVASS OF VOTES TO BE PUBLIC.

HISTORY. R.S. 1851 c. 5 s. 27; P.S. 1858 c. 6 s. 25; 1861 c. 15 s. 14; G.S. 1866 c. 1 s. 13; 1878 c. 84 ss. 10; G.S. 1878 c. 1 ss. 16, 17, 86; Ex. 1881 c. 64; 1887 c. 4 s. 30; G.S. 1878 Vol. 2(1888 Supp.) c. 1 s. 30; 1889 c. 3 s. 54; 1891 c. 4 s. 67; 1893 c. 4 s. 123; G.S. 1894 s. 128; R.L. 1905 s. 288; G.S. 1913 s. 477; G.S. 1923 s. 440; M.S. 1927 s. 440; 1939 c. 345 Pt. 6 c. c. 10 s. 2; M. Supp. s. 601-6(10)a.

206.41 ORDER OF CANVASS.

HISTORY. R.S. 1851 c. 5 s. 28; P.S. 1858 c. 6 s. 26; G.S. 1866 c. 1 s. 15; 1878 c. 84 s. 11; G.S. 1878 c. 1 ss. 19, 87; 1887 c. 4 s. 33; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 33; 1889 c. 3 s. 57; 1891 c. 4 s. 70; 1893 c. 4 ss. 124, 151; G.S. 1894 ss. 129, 156; R.L. 1905 s. 289; G.S. 1913 s. 478; G.S. 1923 s. 441; 1925 c. 420 s. 1; M.S. 1927 s. 441; 1937 c. 270 s. 8; 1939 c. 345 Pt. 6 c. 10 s. 3; M. Supp. ss. 601-6(10)b, 441.

206.42 METHOD OF CANVASS.

HISTORY. R.S. 1851 c. 5 ss. 28, 29; P.S. 1858 c. 6 ss. 26, 27; 1861 c. 15 s. 14; G.S. 1866 c. 1 ss. 12, 13; G.S. 1878 c. 1 ss. 16, 17, 86; Ex. 1881 c. 64; 1887 c. 4 s. 30; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 30; 1889 c. 3 s. 54; 1891 c. 4 s. 67; 1893 c. 4 ss. 125, 126; G.S. 1894 ss. 130, 131; R.L. 1905 s. 290; G.S. 1913 s. 479; G.S. 1923 s. 442; M.S. 1927 s. 442; 1939 c. 345 Pt. 6 c. 10 s. 4; M. Supp. s. 601-6(10)c.

Under the facts in this case, the poll list is conclusive evidence of the number of persons who voted. *Lannon v Ring*, 107 M 453, 120 NW 1082.

206.43 BALLOTS DEPOSITED IN WRONG BOX.

HISTORY. R.S. 1851 c. 5 s. 28; P.S. 1858 c. 6 s. 26; 1889 c. 3 s. 57; 1891 c. 4 s. 70; 1893 c. 4 ss. 126, 127; G.S. 1894 s. 132; R.L. 1905 s. 291; G.S. 1913 s. 480; G.S. 1923 s. 443; M.S. 1927 s. 443; 1939 c. 345 Pt. 6 c. 10 s. 5; M. Supp. s. 601-6(10)d.

206.44 DISPOSITION OF BALLOTS FOUND IN WRONG BOX.

HISTORY. R.S. 1851 c. 5 s. 28; P.S. 1858 c. 6 s. 26; 1893 c. 4 ss. 127, 128; G.S. 1894 ss. 132, 133; R.L. 1905 s. 292; G.S. 1913 s. 481; G.S. 1923 s. 444; M.S. 1927 s. 444; 1939 c. 345 Pt. 6 c. 10 s. 6; M. Supp. s. 601-6(10)e.

206.45 CLERKS TO TALLY BALLOTS.

HISTORY. R.S. 1851 c. 5 s. 30; P.S. 1858 c. 6 s. 28; 1889 c. 3 s. 56; 1893 c. 4 s. 129; 1939 c. 345 Pt. 6 c. 10 s. 7; M. Supp. s. 601-6(10)f.

See 1928 El. Op. 15.

206.46 CANVASSING VOTES; METHODS; INSPECTION.

HISTORY. 1861 c. 15 s. 15; G.S. 1866 c. 1 s. 14; 1878 c. 84 s. 12; G.S. 1878 c. 1 ss. 18, 88; 1887 c. 4 s. 32; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 32; 1889 c. 3 s. 56; 1891 c. 4 s. 69; 1893 c. 4 s. 143; 1939 c. 345 Pt. 6 c. 10 s. 8; M. Supp. s. 601-6(10)g.

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206.47 BALLOTS TO BE PLACED IN ENVELOPES AND SEALED.

HISTORY. R.S. 1851 c. 5 s. 31; P.S. 1858 c. 6 s. 29; 1861 c. 15 s. 18; G.S. 1866 c. 1 s. 17; G.S. 1878 c. 1 s. 21; 1887 c. 4 s. 34; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 34; 1889 c. 3 s. 58; 1893 c. 4 ss. 138, 148; G.S. 1894 s. 153; R.L. 1905 s. 311; 1911 c. 256 s. 1; G.S. 1913 s. 500; 1915 c. 167 s. 12; G.S. 1923 s. 462; M.S. 1927 s. 462; 1939 c. 345 Pt. 6 c. 10 s. 9; M. Supp. s. 601-6(10)h.

The provisions requiring the judges of election, after completing the canvass, to envelop and seal up the ballots, are merely directory. If it be clearly and satisfactorily proved that they have been kept intact and inviolate in the same condition as when counted, the ballots are admissible in evidence, although not enveloped and sealed up in the manner required by statute. *O'Gorman v Richter*, 31 M 25, 16 NW 416.

Consolidated ballot may be folded once in placing in envelope. 1934 OAG 366, May 1, 1934.

206.48 TO BE DELIVERED TO COUNTY AUDITOR.

HISTORY. R.S. 1851 c. 5 s. 31; P.S. 1858 c. 6 s. 29; G.S. 1866 c. 1 s. 17; G.S. 1878 c. 1 s. 21; 1887 c. 4 s. 34; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 34; 1889 c. 3 s. 58; 1891 c. 4 s. 71; 1893 c. 4 s. 149; G.S. 1894 s. 154; R.L. 1905 s. 312; 1911 c. 256 s. 2; G.S. 1913 s. 501; 1915 c. 167 s. 13; G.S. 1923 s. 463; 1925 c. 420 s. 1; M.S. 1927 s. 463; 1939 c. 345 Pt. 6 c. 10 s. 10; M. Supp. s. 601-6(10)i.

206.49 DISPOSITION OF BALLOTS IN CERTAIN COUNTIES.

HISTORY. R.S. 1851 c. 5 s. 31; P.S. 1858 c. 6 s. 29; 1887 c. 4 s. 35; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 35; 1889 c. 3 s. 59; 1893 c. 4 ss. 155, 156; G.S. 1894 ss. 160, 161; 1905 c. 214; R.L. 1905 s. 316; Ex. 1912 c. 2 s. 19; G.S. 1913 s. 506; G.S. 1923 s. 468; M.S. 1927 s. 468; 1939 c. 345 Pt. 6 c. 10 s. 11; M. Supp. s. 601-6(10)j.

206.50 RULES FOR CANVASSING BALLOTS.

HISTORY. 1893 c. 4 s. 136; G.S. 1894 s. 141; R.L. 1905 s. 302; G.S. 1913 s. 491; G.S. 1923 s. 454; M.S. 1927 s. 454; 1939 c. 345 Pt 6 c. 10 s. 12; M. Supp. s. 601-6(10)k.

See annotations under section 206.16.

Aura v Brandt, 211 M 288, 1 NW(2d) 381 overruled by *Murray v Floyd*. 216 M 73, 11 NW(2d) 781.

Where the candidate filed as Nellie Davis, votes cast for Mrs. Ray Davis, her family name, or for Nellie Mann, her maiden name, may be counted. 1942 OAG 65, July 2, 1941(184-E).

206.51 DEFECTIVE BALLOTS.

HISTORY. G.S. 1866 c. 1 s. 14; 1878 c. 84 s. 18; G.S. 1878 c. 1 ss. 18, 88, 94; 1887 c. 4 ss. 32, 70; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 32; 1889 c. 3 s. 34; 1891 c. 4 s. 69; 1893 c. 4 ss. 137, 138; G.S. 1894 ss. 142, 143; R.L. 1905 s. 303; G.S. 1913 s. 492; G.S. 1923 s. 455; M.S. 1927 s. 455; 1939 c. 345 Pt. 6 c. 10 s. 13 M. Supp. s. 601-6(10)l.

See OAG June 14, 1932.

206.52 MEMBERS OF COUNTY CANVASSING BOARD.

HISTORY. R.S. 1851 c. 5 s. 33; P.S. 1858 c. 6 ss. 31, 32; 1861 c. 15 ss. 20, 22, 23, 31, 32, 35, 40; G.S. 1866 c. 1 ss. 19, 21, 22, 29 to 33, 37; 1867 c. 90; G.S. 1878 c. 1 ss. 23 to 25, 32 to 36, 40; 1881 c. 22; 1887 c. 4 ss. 39, 40, 49 to 52; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 ss. 39, 40, 49 to 52; 1891 c. 4 ss. 74 to 80; 1893 c. 4 ss. 163, 164, 167 to 169; G.S. 1894 ss. 169 to 173; R.L. 1905 ss. 319 to 322; G.S. 1913 ss. 512 to 515; 1915 c. 167 s. 14; G.S. 1923 ss. 474 to 477; M.S. 1927 474 to 476; 1939 c. 345 Pt. 6 c. 11 s. 1; M. Supp. s. 601-6(11).

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The duties of the canvassing board, in canvassing the votes, are merely ministerial. *O'Ferrall v Colby*, 2 M 180(148).

When a board of canvassers has met, canvassed the votes, and adjourned sine die the board is *functus officio*. It has no power to reconvene, and the supreme court cannot compel it to do so. *Clark v Buchanan*, 2 M 346(298).

It is the duty of the canvassing board to canvass all returns made to the auditor, notwithstanding there may be irregularities in the returns. The board has no authority to decide the effect of such irregularities. *Taylor v Taylor*, 10 M 107(81).

The canvassing board's certificate of its canvass is *prima facie* evidence of the facts stated in it. *Taylor v Taylor*, 10 M 107(81).

Where the county canvassing board canvasses the returns of an election and duly determines and reports the number of votes received by each candidate, the report is in legal effect a declaration of the result of the election. *McVigh v Spang*, 178 M 578, 228 NW 155.

The failure of the canvassing board to expressly declare a candidate elected does not prevent an appeal and contest of the election. *In re Election Contest Itasca County*, 178 M 578, 228 NW 155.

The Federal House of Representatives has exclusive jurisdiction to determine whether member declared elected was in fact the recipient of a plurality of the votes cast at the election. *State ex rel v Selvig*, 170 M 406, 212 NW 604; *Williams v Maas*, 198 M 516, 270 NW 586.

206.53 RETURNS OF COUNTY CANVASSING BOARDS.

HISTORY. R.S. 1851 c. 5 ss. 35, 36; P.S. 1858 c. 6 ss. 33, 34; 1861 c. 15 s. 23; G.S. 1866 c. 1 s. 22; G.S. 1878 c. 1 s. 25; 1887 c. 4 s. 39; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 39; 1891 c. 4 s. 74; 1893 c. 4 ss. 165, 166; G.S. 1894 s. 171; R.L. 1905 s. 320; G.S. 1913 s. 513; G.S. 1923 s. 475; M.S. 1927 s. 475; 1939 c. 345 Pt. 6 c. 11 s. 2; M. Supp. s. 601-6(11)a.

206.54 STATE CANVASSING BOARDS.

HISTORY. R.S. 1851 c. 5 s. 35; P.S. 1858 c. 6 s. 33; 1861 c. 15 s. 24; G.S. 1866 c. 1 s. 23; G.S. 1878 c. 1 s. 26; 1887 c. 4 ss. 41 to 43; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 ss. 41 to 43; 1891 c. 4 ss. 81 to 83; 1893 c. 4 ss. 173, 174; G.S. 1894 ss. 178, 179; 1899 c. 349 s. 24; 1901 c. 21 s. 8; R.L. 1905 ss. 200, 326, 327; 1909 c. 76 s. 1; Ex. 1912 c. 2 s. 11; 1913 c. 389 s. 5; G.S. 1913 ss. 355, 519, 520; 1915 c. 167 ss. 10, 15; G.S. 1923 ss. 314, 478, 479; M.S. 1927 ss. 314, 478, 479; 1929 c. 280 ss. 1, 2; 1939 c. 345 Pt. 6 c. 11 s. 3; M. Supp. ss. 601-6(11)b, 314, 478; 1945 c. 229 s. 4.

Where an error has been made by a county canvassing board and the state canvassing board has acted upon it, the state board may be directed to reconvene and correct their proceedings to conform to the facts. *Haroldson v Norman*, 146 M 426, 178 NW 1003.