

CHAPTER 206

CONDUCT OF ELECTIONS AND MANNER OF VOTING

**206.02 JUDGES TO OPEN BALLOT BOXES.**

Amended by L. 1947 c. 9 s. 1.

**206.06 CHALLENGERS.**

Where the election is to determine whether or not a village may acquire a municipal light plant, section 206.06 has no application. OAG Feb. 20, 1946 (639-A).

Sections 206.06 to 206.08 do not authorize the appointment of a challenger, unless a petition for such appointment is filed at least three days prior to election. OAG Feb. 20, 1946 (639-A).

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

Section 206.10 determining the right, and section 206.11 the procedure, are the only statutory provisions relating to challengers at town and village elections. OAG June 11, 1935 (183-Z); OAG Feb. 20, 1946 (639-A).

**206.15 MARKING BALLOTS.**

A ballot so marked that it can be distinguished is held to be invalid to preserve secrecy in voting as well as to prevent bribery, fraud, or intimidation. But care must be taken not to disfranchise the voter. A distinguishing mark on a ballot is one made by the voter which is not an honest effort to indicate his choice and which is effective to distinguish his ballot. Conversely, 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. *Aura v Brandt*, 211 M 283, 1 NW(2d) 381.

**206.16 SHALL MARK EACH BALLOT.**

See, *Aura v Brandt*, 211 M 281, 1 NW(2d) 381, and *Maffett v Turnbull*, 212 M 382, 3 NW(2d) 674.

Superfluous cross marks, heavy lines underscoring the name of a candidate, indecent remarks and drawings on the face of a ballot, and cross marks and numbers on the back thereof made by the voter are distinguishing marks requiring rejection of the ballot. Erasures, obliterations of cross marks, retracings, heavy cross mark lines, flourishes and other lines incidental to making cross marks, a cross mark made in the square opposite a blank line for writing in the name of a candidate, and a line made in the square opposite a candidate's name as if the voter, who used complete cross marks for voting, started to make a cross mark which he did not complete, are not distinguishing marks. Sections 206.16 (3) and 206.50 (3, 8) construed; overruling (1) previous decision holding that indecent remarks written by a voter on the face of the ballot are not distinguishing marks and (2) a dictum in *Aura v Brandt*, 211 M 288, 1 NW(2d) 387, that a cross mark placed before a blank line for writing in the name of a candidate is without apparent purpose except to identify the ballot. *Murray v Floyd*, 216 M 69, 11 NW(2d) 780.

Where a name is written in the blank space under the printed names of candidates, the name so written shall be counted, whether marked in the square or not. *Murray v Floyd*, 216 M 72, 11 NW(2d) 780.

**206.17 SHALL FOLD BALLOTS AND DEPOSIT IN INDICATED BOXES.**

Every voter should be given an opportunity to vote and have his ballot counted as cast when his intention can be ascertained from the ballot without violating

# MINNESOTA STATUTES 1947 ANNOTATIONS

505

## CONDUCT OF ELECTIONS AND MANNER OF VOTING 206.46

the statutory provisions intended to prevent bribery, fraud, and intimidation, and to preserve the secrecy of the ballot. *Bloedel v Cromwell*, 104 M 487, 116 NW 947; *Doepke v Redwood County*, 132 M 290, 156 NW 125; *Frajola v Zanna*, 193 M 48, 257 NW 660; *Pye v Hanzel*, 200 M 135, 273 NW 611; *Hanson v Emanuel*, 210 M 271, 297 NW 749; *Aura v Brandt*, 211 M 281, 1 NW(2d) 381; *Murray v Floyd*, 216 M 69, 11 NW(2d) 780.

### 206.18 SPOILED BALLOTS.

Cases involving counting or rejection of spoiled ballots: *State ex rel v Gay*, 59 M 6, 60 NW 676; *Erickson v Paulson*, 111 M 336, 126 NW 1097; *McEwen v Prince*, 125 M 417, 147 NW 275; *Nelson v Bullard*, 155 M 419, 194 M 308; *Aura v Brandt*, 211 M 281, 1 NW(2d) 381; *Murray v Floyd*, 216 M 69, 11 NW(2d) 780.

Two ballots could be distinguished by tears, but there was no showing the tears were made by the voters. Where a ballot is mutilated it is presumed that the mutilation occurred after the ballot was counted or during the counting, otherwise the judges of election would not have counted it. *Aura v Brandt*, 211 M 286, 1 NW(2d) 381.

### 206.20 VOTER TO GIVE CORRECT ADDRESS.

In absence of substantial evidence otherwise, the poll list, a record of the names of voters made by election officers during the progress of the election, is conclusive of the names and number of persons who voted. *Lannon v Ring*, 107 M 453, 120 NW 1082.

### 206.21 EMPLOYEES MAY VOTE WITHOUT LOSS OF TIME.

Measures to insure full and free exercise of elective franchise are in the interest of the general welfare, and within scope of the state's police power. That the burden of a statute in exercise of police power may bear unequally does not render its placement unlawful. Employees employed at an hourly wage are probably included as well as those employed by the week or by the month. *People v Ford Motor Co.*, 63 N. Y. Supp. (2d) 697.

### 206.38 AUDITOR TO MAKE CERTIFICATES OF ELECTIONS.

Title to public office cannot be determined in mandamus proceeding, but temporary possession of the office pending litigation to try title thereto may be controlled thereby. One who has been elected, holds an election certificate, and has qualified may hold the office until the election is set aside by direct attack or quo warranto. *State ex rel v Magie*, 183 M 60, 235 NW 526.

### 206.39 CANVASS OF VOTES IN PRIMARY ELECTIONS.

A proceeding may be maintained in the supreme court to compel a city canvassing board to correct a palpable mistake of fact or law in canvassing returns. This proceeding is one of the "remedial cases" in which original jurisdiction may be conferred upon the supreme court. *Hunt v Hoffman*, 125 M 249, 146 NW 733.

### 206.42 METHOD OF CANVASS.

Purging an election of illegal votes by deleting a pro rata part of them from the votes of each candidate is justifiable only when it is impossible to show for whom they were actually cast. *Berg v Veit*, 136 M 444, 162 NW 522.

### 206.46 CANVASSING VOTES; METHODS; INSPECTION.

Amended by L. 1947 c. 564 s. 1.

The ballot, in accordance with charter requirement, provided for preferential voting and for three classes of votes, arrayed in separate columns, and designated "first choice," "second choice," and "additional choices." The law requires the votes

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 206.49 CONDUCT OF ELECTIONS AND MANNER OF VOTING

506

of each class to be counted and canvassed separately, and no votes in one class can be counted in another class. *McEwen v Prince*, 125 M 417, 147 NW 275.

### 206.49 DISPOSITION OF BALLOTS IN CERTAIN COUNTIES.

Amended by L. 1947 c. 9 s. 2.

### 206.50 RULES FOR CANVASSING BALLOTS.

See, notes under section 206.16.

See, *Bloedel v Cromwell*, 104 M 487, 116 NW 947; *Prenevost v Delorme*, 129 M 359, 152 NW 758; *Pye v Hanzel*, 200 M 135, 273 NW 611; *Hanson v Emanuel*, 210 M 271, 297 NW 749; *Aura v Brandt*, 211 M 281, 1 NW(2d) 381.

*Aura v Brandt*, 211 M 288, 1 NW(2d) 387, relating to distinguishing marks is overruled; and where a sticker is placed on a ballot not in the place provided therefor, but on or so near the space as to indicate clearly that the voter intended to mark the ballot for the person named for the office, the vote shall be counted as so intended. *Murray v Floyd*, 216 M 69, 11 NW(2d) 780.

The placing in good faith of stickers containing the name of a candidate for the "short term" on a ballot does not invalidate it as to the candidates for other offices. OAG Nov. 4, 1946 (28-a-8).

### 206.52 MEMBERS OF COUNTY CANVASSING BOARD.

Nothing to the contrary appearing, the finding of the canvassing board that a candidate has received the highest number of the votes cast for a certain office is in legal effect a declaration that he is elected to that office. *McVeigh v Spang*, 178 M 578, 228 NW 155.

Federal house of representatives has exclusive jurisdiction to determine whether candidate declared elected to the house was in fact recipient of plurality of votes at the election. *Williams v Maas*, 198 M 516, 270 NW 586.

### 206.54 STATE CANVASSING BOARDS.

The courts of the state have jurisdiction to determine whether a constitutional amendment has been legally submitted to and adopted by the people. *McConaughy v Secretary of State*, 106 M 392, 119 NW 408.

Where 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.