

Whether registration is necessary depends on whether or not the governing body of a municipality has elected to come within the provisions of section 201.01 et seq. OAG June 16, 1952 (639-J).

201.25 REGISTRATION IN CERTAIN MUNICIPALITIES

Provisions relating to registration of voters are not applicable to an election in a school district except where the school districts join with the municipality for the creation of a combined system of permanent registration. OAG Oct. 31, 1951 (187-A-9).

201.32 DETERMINATION OF RESIDENCE

The finding of the federal district court in a breach of contract action that plaintiff, who had lived in foreign countries and wherever his business took him for several years preceding the bringing of the action, was a citizen of Oklahoma and had not lost his citizenship, so that diversity of citizenship existed between plaintiff and defendant Minnesota corporation, was not clearly erroneous under the evidence and was required to be affirmed on appeal. *Maple Island Farm v Bitterling*, 196 F(2d) 55.

The residence of the wife ordinarily follows residence of the husband but in order to vote she must also fulfill the residence requirements found in Minnesota Constitution, Article VII, Section 1. OAG March 28, 1952 (490-J-2).

CHAPTER 202**PRIMARY ELECTIONS****202.011 MUNICIPAL**

HISTORY. 1943 c 408 s 1; 1951 c 206 s 1.

202.03 AFFIDAVIT OF CANDIDACY; FEES

HISTORY. 1889 c 349 s 4; 1901 c 216 s 2; RL 1905 s 184; 1907 c 226; 1909 c 95 s 1; Ex1912 c 2; 1913 c 389 s 3; GS 1913 s 339; GS 1923 s 297; MS 1927 s 297; 1933 c 172 s 1; 1933 c 244 s 1; MS 1927 s 297; 1937 c 93 s 1; 1939 c 345 pt 3 c 1 s 3; M Supp s 297, 601-3(1)b; 1945 c 127 s 1; 1951 c 96 s 1; 1953 c 718 s 1.

A commissioner appointed to fill a vacancy holds office until the next general election occurring after there is sufficient time to give the prescribed notice. He holds office until a successor has been elected and has qualified. Any eligible person, including the incumbent, may file as a candidate for that office in the primary. OAG March 19, 1952 (126-G).

The same person cannot file for two offices at the same village election. OAG Nov. 9, 1948 (184).

A candidate for representative must meet the requirements specified in article IV, section 25 of the state constitution which provides that he be a qualified voter of the state, reside one year in the state and six months immediately preceding the election in the district from which elected. To be a qualified voter he must reside in the election district 30 days preceding the election and if he moves his residence he must do so 30 days prior to the November election, still remaining within the district from which elected. OAG Aug. 9, 1948 (184-I).

The secretary of state has no power to decide controversies unless authorized by statute, and has no statutory authority to pass upon facts. If the candidate's affidavit, on its face, complies with the law it is the duty of the secretary of state to accept it. OAG June 14, 1948 (911).

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A candidate may withdraw by filing his affidavit for that purpose within eight days after the last day for filing for such office. He may file such withdrawal on or before Aug. 13, 1948. OAG Dec. 2, 1947 (911-J).

There is no provision for filing by petition the name of the candidate for county commissioner in a primary election. OAG July 3, 1952 (911-K).

The affidavit required of a candidate by section 202.03 must disclose the party of the candidate's affiliation. Filing on two party tickets is forbidden by section 205.17. OAG Aug. 5, 1953 (911-K).

A candidate who has personally filed an affidavit of candidacy for nomination of his party for president of the United States, may withdraw his candidacy by filing an affidavit within five days after the last date for filing. OAG Oct. 26, 1951 (911-Q).

The last date for a candidate to file an affidavit to withdraw his name from the official ballot is eight days after the last day for filing on Aug. 11, 1950. OAG Jan. 17, 1950 (911-O).

The first date for filing in the 1950 primary election is 90 days before the said election on June 14, 1950. The last day for filing is 40 days before the primary election on Aug. 3, 1950. OAG Jan. 17, 1950 (911-O).

A candidate may file for both the short and long term for railroad and warehouse commissioner as they are the same "office." OAG Aug. 2, 1950 (911-S).

202.04 MARRIED WOMEN AS CANDIDATES; USE OF HUSBAND'S NAME

HISTORY. 1923 c 384 s 1; Mason's 1927 s 298; 1939 c 345 Pt 3 c 1 s 4; Mason's Supp s 601-3(1) (c); 1953 c 87 s 1.

202.05 AFFIDAVITS TO BE NUMBERED

HISTORY. 1899 c 349 s 4; 1901 c 216 s 2; RL 1905 s 185; 1909 c 95 s 2; GS 1913 s 340; 1917 c 68 s 5; GS 1923 s 299, 500; MS 1927 s 299, 500; 1939 c 345 Pt 3 c 1 s 5; M Supp s 601-3(1)d.

202.06 ELECTION TO BE BY BALLOT

HISTORY. 1899 c 349 s 5; 1901 c 216 s 3; RL 1905 s 186; Ex1912 c 2 s 4; GS 1913 s 341; 1915 c 167 s 4; 1917 c 68 s 5; GS 1923 s 300, 500; 1925 c 420 s 1; MS 1927 s 300, 500; 1933 c 172 s 2; 1933 c 244 s 2; 1939 c 345 Pt 3 c 1 s 6; M Supp s 601-3(1)e.

202.08 ERRORS IN BALLOTS

The oath required by statute relating to presidential primary nominating petitions is mandatory; and where the petition from one congressional district did not contain the signed oath, the petition was fatally defective and the nominating petition vitiated. *Fetsch v Holm*, 236 M 158, 52 NW(2d) 113.

In an action against the secretary of state contesting the validity of the presidential primary nominating petition, where supporters of such petition intervened, the intervenor could not complain that delay in bringing action made it impossible for secretary of state to perform his duties under the law. *Fetsch v Holm*, 236 M 158, 52 NW(2d) 113.

Where action against the secretary of state contesting the validity of the presidential primary nominating petition was commenced on the earliest date on which the secretary could send the copy of the ballot to the printer, there was not such delay as to support a claim of laches. *Fetsch v Holm*, 236 M 158, 52 NW(2d) 113.

Where under the presidential primary law of the State of Minnesota, a nominating petition in behalf of Estes Kefauver was filed without his consent with the secretary of state; and where said Kefauver within the prescribed time filed a withdrawal affidavit to the effect that although he was a candidate for president he did not wish his name to appear on the Minnesota ballot and asked that his name not be placed

thereon, the provision of section 209.49, subdivision 2, requiring a candidate who desires that his name shall not be included in the ballot of the party to file an affidavit stating in part "that if nominated by such party he will not accept," is arbitrary and unreasonable and invalid. The secretary of state was justified in not placing his name on the ballot. *Ryan v Holm*, 236 M 189, 52 NW(2d) 406.

202.09 CONTESTS IN PRIMARY ELECTIONS

State courts have no jurisdiction over election of representatives to congress, but the congress is its own judge of elections, returns, and qualifications of its members. State courts have jurisdiction to the extent provided by law over nomination of candidates for representatives to congress. *Youngdale v Eastvold*, 232 M 134, 44 NW(2d) 459.

The office of representative in congress is a federal office created by the United States Constitution. The qualifications of those who aspire to or hold this office are prescribed by the United States Constitution, and the state may not add to or modify such qualifications. Each house of congress is the judge of the elections, returns, and qualifications of its own members. *Danielson v Fitzsimmons*, 232 M 149, 44 NW(2d) 484.

202.10 POLITICAL PARTY CONVENTION

HISTORY. 1893 c 4 s 31, 33, 34; GS 1894 s 3839; 1895 c 276 s 2, 9; 1897 c 137; RL 1905 s 209-212; 1912 c 2 s 18; 1913 c 389 s 7; GS 1913 s 366 to 370, 537; 1921 c 322; 1923 c 125 s 1; GS 1923 s 318; MS 1927 s 318; 1939 c 345 Pt 3 c 2 s 1; M Supp s 601-3 (2); 1943 c 47 s 1.

In factional controversies within the party where there is no controlling statute or clear right based on statute law, the courts will not assume jurisdiction, but will leave the matter for determination within the party organization. A political convention is the judge of the election, qualifications, and returns of its own members. If the convention is regularly called, those who actually assemble constitute a quorum and the majority of those voting is competent to transact business. Upon the withdrawal of either a majority or minority, those remaining may proceed with the business of the convention. *Democratic-Farmer-Labor Committee v Holm*, 227 M 52, 33 NW(2d) 831.

Political parties may draft a constitution to provide for their government, and if they have no such constitution, the framework for political conventions is provided for in sections 202.10 to 202.18. Section 202.12 provides for calling county conventions for the selection of delegates to the state convention and by the congressional district committee for selection of delegates to a district convention. The date for holding county conventions is named in the case, and conventions of the several counties must be held on the same day. There is no provision permitting county committees to set a date for county conventions. OAG April 15, 1948 (672-A-2) (672-B-6).

202.18 CERTIFICATES OF NOMINATION

Political parties may draft a constitution to provide for their government, and if they have no such constitution, the framework for political conventions is provided for in sections 202.10 to 202.18. Section 202.12 provides for calling county conventions for the selection of delegates to the state convention and by the congressional district committee for selection of delegates to a district convention. The date for holding county conventions is named in the case, and conventions of the several counties must be held on the same day. There is no provision permitting county committees to set a date for county conventions. OAG April 15, 1948 (672-A-2) (672-B-6).

202.19 NOMINATION BY PETITION

Where there is no vacancy or death or withdrawal of a nominated candidate, a petition for the nomination of an independent candidate cannot be filed. OAG Oct. 9, 1950 (911-J).

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There is no provision for filing by petition the name of the candidate for county commissioner in a primary election. OAG July 3, 1952 (911-K).

When there is a vacancy in the office of judge of probate a successor, when elected, serves for the full four year term. A special primary election is not needed. OAG Aug. 22, 1952 (347-K).

When three candidates file for county commissioner and one dies prior to the primary, there can be no filing by petition either before or after the primary. OAG Aug. 26, 1952 (911-K).

202.23 VACANCIES

Where the party nominated dies, the state central committee has a right to select the candidate to fill the vacancy. OAG Sept. 22, 1948 (28-B-1).

The duties of the canvassing board are purely ministerial. The board is not empowered to determine that the death of a party nominee, who dies after the primary election and before the meeting of the canvassing board, results in the nomination of the party candidate receiving the next highest number of votes. The state canvassing board has no other alternative than to certify the person receiving the highest number of votes to be the nominee notwithstanding the death. Section 202.23 provides that in the instant case the state central committee of the party of which the deceased candidate was a nominee is empowered to select a candidate to fill the vacancy in question. OAG Sept. 22, 1948 (28-B-1).

202.25 VOTER'S CERTIFICATE OF NOMINATION, FILING

HISTORY. 1891 c 4 s 38; 1893 c 4 s 42; GS 1894 s 47; RL 1905 s 219; Mason's 1927 s 346; 1939 c 345 Pt 3 c 3 s 7; Mason's Supp s 601-3(3)f; 1951 c 167 s 1.

Prohibition is not an effective remedy and under that writ the county auditor cannot be prevented from placing on ballots the name of a candidate for state senator whose name was presented by voters' certificate of nomination, and where the acts required of the auditor were purely ministerial and not judicial or quasi-judicial. O'Neil v Kalisen, 222 M 379, 24 NW(2d) 715.

202.26 TIME OF FILING OF PETITION

Where a nominee for the state legislature dies after the primary and there were only two candidates at the primary, a petition for filing must be filed not later than the third Tuesday before election. Any person who wishes to be a candidate may run as a sticker candidate. OAG Oct. 29, 1952 (28-B-1).

No nomination for any office shall be made either by petition or otherwise within 30 days (Oct. 7, 1950) before the time of holding a general election except that nominations to fill a vacancy in a nomination previously made or to nominate a candidate for an office in which a vacancy has occurred and for which no person is a candidate. OAG Jan. 17, 1950 (911-O).

202.27 CERTIFICATES OF NOMINATION, FILING

HISTORY. 1889 c 3 s 27; 1891 c 4 s 38; 1893 c 4 s 44; GS 1894 s 49; RL 1905 s 221; Mason's 1927 s 348; 1937 c 270 s 3; 1939 c 345 Pt 3 c 3 s 9; Mason's Supp s 601-3(3)h; 1943 c 410 s 1; 1951 c 167 s 2.

The secretary of state has no authority to pass upon facts or to decide controversies except as he may be authorized by statute. If, on its face, an affidavit complies with the law the secretary of state must accept it and if there is any controversy it must be determined by the courts. OAG June 14, 1948 (911).

When there is a vacancy in the office of judge of probate a successor, when elected, serves for the full four year term. A special primary election is not needed. OAG Aug. 22, 1952 (347-K).

202.30 BALLOT; NONPARTISAN CANDIDATES

HISTORY. 1919 c 230 s 1; Mason's 1927 s 352; 1939 c 345 Pt 3 c 3 s 12; Mason's Supp s 601-3(3)k.

202.31 FEES

HISTORY. 1889 c 3 s 22; 1891 c 4 s 40; 1893 c 4 s 45; GS 1894 s 50; 1895 c 136 s 1; 1903 c 174 s 1; RL 1905 s 222; 1907 c 226 s 1; 1925 c 420 s 1; Mason's 1927 c 349; 1937 c 270 s 4; 1939 c 345 pt 3 c 3 s 13; Mason's Supp s 601-3(3)i; 1951 c 167 s 3.

PRESIDENTIAL PRIMARY

202.41 TIME FOR HOLDING

HISTORY. 1949 c 433 s 1.

The municipal liquor store must be closed on the presidential primary election day. OAG Feb. 29, 1952 (218-J-4).

202.42 NUMBER OF DELEGATES IN NATIONAL CONVENTION

HISTORY. 1949 c 433 s 2.

202.43 SELECTION OF CONVENTION DELEGATES

HISTORY. 1949 c 433 s 3.

The presidential primary is an election of delegates bound to a particular candidate. Ryan v Holm, 236 M 189, 52 NW(2d) 406.

202.44 PRESIDENTIAL CANDIDATE; AFFIDAVIT OF CANDIDACY

HISTORY. 1949 c 433 s 4.

An elector may not have his name filed as a delegate for more than one presidential candidate. OAG Jan. 3, 1952 (28-C-5).

202.45 PRESIDENTIAL CANDIDATE NAMED BY PETITION

HISTORY. 1949 c 433 s 5.

The oath required by statute relating to presidential primary nominating petitions is mandatory; and where the petition from one congressional district did not contain the signed oath, the petition was fatally defective and the nominating petition vitiated. Fetsch v Holm, 236 M 158, 52 NW(2d) 113.

In an action against the secretary of state contesting the validity of the presidential primary nominating petition, where supporters of such petition intervened, the intervenor could not complain that delay in bringing action made it impossible for secretary of state to perform his duties under the law. Fetsch v Holm, 236 M 158, 52 NW(2d) 113.

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Where under the presidential primary law of the State of Minnesota, a nominating petition in behalf of Estes Kefauver was filed without his consent with the secretary of state; and where said Kefauver within the prescribed time filed a withdrawal affidavit to the effect that although he was a candidate for president he did not wish his name to appear on the Minnesota ballot and asked that his name not be placed thereon, the provision of section 209.49, subdivision 2, requiring a candidate who desires that his name shall not be included in the ballot of the party to file an affidavit stating in part "that if nominated by such party he will not accept," is arbitrary and unreasonable and invalid. The secretary of state was justified in not placing his name on the ballot. Ryan v Holm, 236 M 189, 52 NW(2d) 406.

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202.46 ONE FILING FOR ONE CANDIDATE

HISTORY. 1949 c 433 s 6.

202.47 INFORMATIVE AFFIDAVIT

HISTORY. 1949 c 433 s 7.

Considering the provisions of section 202.47 together with the Presidential Election Act as a whole, a proposed delegate may not be filed in behalf of more than one presidential candidate. OAG Jan. 3, 1952 (28-C-5).

202.48 PRESIDENTIAL PRIMARY, HOW CONDUCTED

- HISTORY. 1949 c 433 s 8.

If members of the armed forces register for a presidential primary, they should receive their ballots for state primary and general election without further application. OAG Feb. 11, 1952 (639-E).

If voting machines are not practicable, paper ballots may be used in a presidential primary election. OAG March 14, 1952 (28-C-5).

202.49 AUDITOR FURNISHED INFORMATION BY SECRETARY OF STATE; BALLOTS PREPARED

HISTORY. 1949 c 433 s 9; 1951 c 156 s 1.

Where under the presidential primary law of the State of Minnesota, a nominating petition in behalf of Estes Kefauver was filed without his consent with the secretary of state; and where said Kefauver within the prescribed time filed a withdrawal affidavit to the effect that although he was a candidate for president he did not wish his name to appear on the Minnesota ballot and asked that his name not be placed thereon, the provision of section 209.49, subdivision 2, requiring a candidate who desires that his name shall not be included in the ballot of the party to file an affidavit stating in part "that if nominated by such party he will not accept," is arbitrary and unreasonable and invalid. The secretary of state was justified in not placing his name on the ballot. *Ryan v Holm*, 236 M 189, 52 NW(2d) 406.

Under section 202.49, as amended by Laws 1951, Chapter 156, the secretary of state must prepare separate and distinct ballots for each political party. OAG Aug. 31, 1951 (28-C-5).

202.50 DELEGATES AT LARGE

HISTORY. 1949 c 433 s 10.

202.51 LIST OF DELEGATES AND ALTERNATES WITH SECRETARY OF STATE.

HISTORY. 1949 c 433 s 11.

202.52 CERTIFICATE OF APPOINTMENT

HISTORY. 1949 c 433 s 12.

202.53 POWERS OF CONVENTION NOT CURTAILED

HISTORY. 1949 c 433 s 13.

202.54 DIVISION OF FEES

HISTORY. 1949 c 433 s 14.