

CHAPTER 204

PRESIDENTIAL ELECTORS

204.01 ELECTION OF PRESIDENTIAL ELECTORS

HISTORY. 1858 c 86 s 1; PS 1858 c 6 s 57; 1891 c 4 s 1; 1893 c 4 s 1; GS 1894 s 6; RL 1905 s 153; Mason's 1927 s 255; 1939 c 345 Pt 5 c 1 s 1.

NOTE: See United States Constitution, Article II, Section 1, Amendment 12; Amendment 14, Section 3; and 3 USCA, Section 1 et seq. As to presidential primary, see Minnesota Statutes 1953, Sections 202.41 to 202.54.

204.02 NOMINATION OF PRESIDENTIAL ELECTORS

In fractional 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 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.

The evidence established that the Democratic-Farmer-Labor convention was duly called and legally organized and it continued to be such during its session. The persons nominated for presidential electors by that convention are the party's nominees. *Democratic-Farmer-Labor v Holm*, 227 M 52, 33 NW(2d) 831.

The printing of the name of a foreign born and naturalized citizen as a candidate for president of the United States would be impractical and illegal. OAG Feb. 19, 1952 (28-C-5).

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GENERAL PROVISIONS

205.03 ELECTION IN CITIES AND VILLAGES

Where the charter of a city provides for a primary election system, the charter provisions govern, and a primary election may precede a municipal charter election at any period of time deemed appropriate in the charter. OAG Feb. 14, 1951 (64-M).

205.06 GOVERNOR TO ISSUE WRIT

HISTORY. 1861 c 15 s 37; GS 1866 c 1 s 34; GS 1878 c 1 s 37; 1883 c 34; 1887 c 4 s 54; GS 1878 Vol 2 (1888 Supp) c 1 s 54; 1891 c 4 s 88; 1893 c 4 s 10, 11; GS 1894 s 15, 16; RL 1905 c 160; GS 1913 c 305; 1915 c 167 s 1; GS 1923 c 262; 1925 c 420 s 1; MS 1927 c 262; 1929 c 297 s 1; 1933 c 48; 1939 c 345 Pt 6 c 2 s 2; MS Supp s 270-1, 601-6(2)a.

205.07 VACANCIES IN CERTAIN CASES

HISTORY. 1887 c 4 s 54; GS 1878 Vol 2 (1888 Supp) c 1 s 54; 1893 c 4 s 11; GS 1894 s 15, 16; RL 1905 s 160; GS 1913 s 305; 1915 c 167 s 1; GS 1923 c 262; MS 1927 c 262; 1929 c 297 s 2; 1939 c 345 Pt 6 c 2 s 3; M Supp s 270-2, 601-6(2)b.

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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).

205.09 ISSUANCE OF WRIT

HISTORY. 1919 c 5 s 1; GS 1923 c 263; MS 1927 c 263; 1929 c 297 s 4; 1939 c 345 Pt 6 c 2 s 5; M Supp s 270-4, 601-6(2)d.

205.12 CANDIDATES TO FILL AFFIDAVITS

HISTORY. 1919 c 5 s 5; GS 1923 c 267; MS 1927 c 267; 1929 c 297 s 7; 1939 c 345 Pt 6 c 2 s 8; M Supp s 270-7, 601-6(2)g.

205.13 NAMES ON BALLOTS

A candidate nominated by petition may withdraw his name as a candidate by filing an affidavit with his filing officer at any time before the officer charged by law with the preparation of the ballot has made up the form to be used at the general election. OAG Jan. 17, 1950 (911-9).

205.14 ELECTION DISTRICTS

HISTORY. 1893 c 4 s 47; 1919 c 5 s 2; 1919 c 11 s 1; GS 1923 c 264; MS 1927 c 264; 1929 c 297 s 9; 1939 c 345 Pt 6 c 2 s 10; M Supp s 270-9, 601-6(2)i.

205.15 RETURN OF ELECTION

HISTORY. 1919 c 5 s 3, 7; GS 1923 c 265, 269; MS 1927 c 265, 269; 1929 c 297 s 10, 11; 1939 c 345 Pt 6 c 2 s 11; MS s 270-10, 270-11, 601-6(2)j.

205.18 SECRETARY OF STATE TO GIVE NOTICE OF STATE ELECTIONS

The "Alley Plan" for election of justices and district judges is applicable even if only one justice or one district judge is to be elected. OAG May 29, 1952 (28-B-7).

Notice of county wide election relating to authorizing a municipal liquor store need not be published; but the ballot must be published. OAG Sept. 5, 1947 (218-G-13).

205.19 POSTING OF NOTICES

HISTORY. RS 1851 c 5 s 7; PS 1858 c 6 s 5; 1861 c 15 s 4, 5; GS 1866 c 1 s 4, 5; GS 1878 c 1 s 4, 5; 1887 c 4 s 5; GS 1878 Vol 2 (1888 Supp) c 1 s 5; 1891 c 4 s 6; 1893 c 4 s 46; GS 1894 s 51; 1899 c 349 s 1, 7; 1901 c 216 s 1; RL 1905 s 181, 223; Ex1912 c 2 s 1; 1913 c 389 s 1; GS 1913 s 335, 403; 1915 c 76; 1923 c 127 s 1; GS 1923 s 293, 353; 1925 c 420 s 1; MS 1927 s 293, 353; 1939 c 345 Pt 6 c 3 s 2; M Supp s 601-6(3)a.

Notice of county wide election relating to authorizing a municipal liquor store need not be published; but the ballot must be published. OAG Sept. 5, 1947 (218-G-13).

Under the law requiring published notices for bids the council should give such notice as will attract the most bidders. OAG July 21, 1949 (707-A-9).

205.22 ELECTION DISTRICTS, DESIGNATION

HISTORY. RS 1851 c 5 s 4, 12, 18, 19; PS 1858 c 6 s 2, 10, 16, 17; 1861 c 15 s 2; GS 1866 c 1 s 2; 1877 c 9 s 1; GS 1878 c 1 s 2; 1885 c 172; 1887 c 4 s 2, 4; GS 1878 Vol 2 (1888 Supp) c 1 s 2; 1889 c 3 s 2; 1891 c 4 s 2; 1893 c 4 s 3; GS 1894 s 8; 1899 c 269; RL 1905 s 156; 1907 c 365; 1909 c 175 s 1; GS 1913 s 301; GS 1923 s 258; 1925 c 420 s 1; MS 1927 s 258; 1939 c 345 Pt 6 c 4 s 1; M Supp s 601-6(4).

Under the provisions of section 205.22 the governing body of a city or village so platted as to be situated in two adjoining counties may, by resolution adopted thirty

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days prior to election, designate a single voting place in the city or village in which the election for the entire city or village is being held. The county auditor of the two counties should supply the necessary blank ballots to the judges of election and the blanks for making the necessary returns to each county auditor. OAG Sept. 10, 1948 (64-S).

The state law controls over the charter provision as to the number of voters in precincts in the city of Owatonna. OAG Nov. 23, 1951 (64-S).

The city council of the city of Moorhead has authority to divide wards into precincts for voting purposes. Moorhead is a city of the third class, operating under a home rule charter. OAG April 18, 1952 (64-S).

The approval of the electorate is not required to adopt voting machines. OAG Oct. 3, 1951 (518).

Where village as organized contains parts of two county commissioner districts, voters will continue to vote in their separate districts unless an individual election district is formed under MSA 413.05; although after July 1, 1949, village will become a separate district by virtue of Chapter 119, Laws of 1949. OAG June 27, 1949 (798-G).

205.24 DIVISION OF WARDS

HISTORY. 1861 c 15 s 2; GS 1866 c 1 s 2; 1887 c 9 s 1; 1878 c 1 s 2; 1885 c 172; 1887 c 4 s 2; GS 1878 Vol 2 (1888 Supp) c 1 s 2; 1889 c 3 s 2; 1891 c 4 s 2; 1893 c 4 s 3, 4; GS 1894 s 9; RL 1905 s 157; GS 1913 s 302; GS 1923 s 259; 1925 c 420 s 1; MS 1927 s 259; 1939 c 345 Pt 6 c 4 s 3; M Supp s 601-6(4)b.

205.25 POLLING PLACES DESIGNATED

HISTORY. Amended, 1951 c 109 s 1; 1951 c 111 s 1.

When a town falls within the classification of section 205.27, the town board has authority under section 205.25 to change the place of election district for general or primary elections without a vote of the electorate. OAG Sept. 12, 1950 (185-A-5).

A village and town owning a building in common may each hold its primary and general election in the same building even though it has but one entrance; but separate voting facilities must be provided for each municipality. OAG July 7, 1950 (185-A-5).

By vote of the town the polling place for the town may be located in a village. OAG Oct. 5, 1949 (434-B-17).

205.27 TOWN BOARD TO DESIGNATE PLACE OF TOWN MEETING OR ELECTION

When a town falls within the classification of section 205.27, the town board has authority under section 205.25 to change the place of election district for general or primary elections without a vote of the electorate. OAG Sept. 12, 1950 (185-A-5).

Town meetings shall be held at the place designated by the voters as provided in section 212.02. The expression of the will of the people at their town meeting should prevail over a resolution of the town board acting under section 205.27. OAG March 19, 1951 (316).

Under the provisions of sections 205.29 and 205.30 in case the place designated for holding an election including town meeting is found not to comply with the provisions of sections 205.25 and 205.44, the town board is authorized under section 205.27 to designate a suitable place for holding the annual town meeting but this must be done 20 days before the annual meeting. Should an exigency arise within less than 20 days of the meeting, the voters should upon the day of the town meeting meet at the original place and adjourn to a new place selected, first publicly announcing the place to the voters present and posting in a conspicuous place at the old voting place the location of the new place selected. OAG Feb. 19, 1948 (434-A-17).

When the place where the last town meeting was held is destroyed or otherwise unavailable, place of holding the next annual town meeting may be determined under sections 205.27 through 205.30. OAG Feb. 9, 1948 (434-B-17).

By vote of the town the polling place for the town may be located in a village. OAG Oct. 5, 1949 (434-B-17).

205.28 TOWN BOARD MUST SECURE BUILDING

Under the provisions of sections 205.29 and 205.30 in case the place designated for holding an election including town meeting is found not to comply with the provisions of sections 205.25 and 205.44, the town board is authorized under section 205.27 to designate a suitable place for holding the annual town meeting but this must be done 20 days before the annual meeting. Should an exigency arise within less than 20 days of the meeting, the voters should upon the day of the town meeting meet at the original place and adjourn to a new place selected, first publicly announcing the place to the voters present and posting in a conspicuous place at the old voting place the location of the new place selected. OAG Feb. 19, 1948 (434-A-17).

Where the city of Chatfield and the town of Elmira were joint owners of the combination town and city hall and the city of Chatfield has recently designated a home rule charter, the town board cannot make a sale of their interest in the town hall until a new site has been designated by a two-thirds vote of the voters. As part consideration for the sale by the town to the city of their interest in the town hall, the furnishing of election facilities to the town might be considered. Under the provisions of MSA, Section 205.28 the town of Elmira may vote in the city of Chatfield but when elections are held the voting by the citizens of the town of Elmira must be separated from the voting by the people of the village. OAG Oct. 28, 1949 (434-C-7).

205.29 JUDGES MAY CHANGE POLLING PLACES IN CERTAIN CASES

HISTORY. 1893 c 4 s 75; GS 1894 s 80; RL 1905 s 254; GS 1913 s 439; GS 1923 s 403; 1925 c 420 s 1; MS 1927 s 403; 1939 c 345 Pt 6 c 5 s 5; M Supp s 601-6(5)d.

Under the provisions of sections 205.29 and 205.30 in case the place determined for holding an election including town meeting is found not to comply with the provisions of sections 205.25 and 205.44, the town board is authorized under section 205.27 to designate a suitable place for holding the annual town meeting but this must be done 20 days before the annual meetings. Should an exigency arise within less than 20 days of the meeting, the voters should upon the day of the town meeting meet at the original place and adjourn to a new place selected, first publicly announcing the place to the voters present and posting in a conspicuous place at the old voting place the location of the new place selected. OAG Feb. 19, 1948 (434-A-17).

205.30 JUDGES TO ANNOUNCE CHANGES IN POLLING PLACES

When the place where the last town meeting was held is destroyed or otherwise unavailable, place of holding the next annual town meeting may be determined under sections 205.27 through 205.30. OAG Feb. 9, 1948 (434-B-17).

Where the usual voting place of a town is destroyed and the time is too short to proceed under sections 205.27 or 205.28, the judges of election may under the provisions of section 205.29 procure a suitable place in the vicinity of the old election place and, on the day of the meeting, should be at the original place and adjourn to the new place selected and publicly announce to the voters present the place newly designated. A notice should be posted at the new voting place. OAG Feb. 19, 1948 (434-B-17).

205.37 BALLOT BOXES

HISTORY. Amended, 1951 c 167 s 4.

205.38 SECRETARY OF STATE TO FURNISH BLANKS

HISTORY. 1861 c 15 s 56; GS 1866 c 1 s 44, 53; 1878 c 84 s 40; GS 1878 c 1 s 47, 56, 116; 1887 c 4 s 66, 67; GS 1878 Vol 2 (1888 Supp) c 1 s 67; 1889 c 3 s 36, 62, 63; 1891 c 4 s 66, 101; 1893 c 4 s 9, 15; GS 1894 s 14, 20; RL 1905 s 159, 162; GS 1913 s 304, 313; GS 1923 s 261, 272; 1925 c 420 s 1; MS 1927 s 261, 272; 1939 c 345 Pt 6 c 5 s 14; M Supp s 601-6(5)m.

205.45 JUDGES IN TOWN ELECTIONS

Where a village has been established and its officers elected and it is planned to create the village a special election and assessment district, the ballot should state the question so that voters may vote yes or no. The council will determine the election date after having resolved to submit the question to the voters. There must be ten days notice. A clerk and two judges of election must be appointed as required by section 212.37. Under section 212.10 the polls may open any time between 9:00 A.M. and 1:00 P.M., and shall close at 5:00 P.M. These hours apply unless the council by previous resolution, at least 30 days before the election, fixes different hours. OAG Sept. 17, 1947 (472-I).

205.46 JUDGES IN MUNICIPALITIES

A member of the charter commission is not disqualified from becoming a member of the election board in the city of Owatonna. OAG Oct. 17, 1950 (183-I).

205.47 JUDGES TO APPOINT CLERKS

A town board member, if a candidate, is ineligible to act as a judge of election. OAG Oct. 23, 1950 (183-I). OAG Aug. 31, 1950 (183-J).

Section 205.47 prohibits a candidate for office from serving as an election judge or clerk but it does not prohibit the spouse of the candidate from so serving. OAG Dec. 9, 1949 (183-J).

Whether or not an election is void must be determined by a judicial determination. OAG March 17, 1948 (434-B-12).

A candidate for town supervisor is disqualified to act as a judge of election. If he so acts his election is voidable, but not void. OAG March 20, 1950 (434-B-12).

Where a village has been established and its officers elected and it is planned to create the village a special election and assessment district, the ballot should state the question so that the voters may vote yes or no. The council will determine the election date after having resolved to submit the question to the voters. There must be ten days notice. A clerk and two judges of election must be appointed as required by section 212.37. Under section 212.10 the polls may open any time between 9:00 A.M. and 1:00 P.M., and shall close at 5:00 P.M. These hours apply unless the council by previous resolution, at least 30 days before the election, fixes different hours. OAG Sept. 17, 1947 (472-I).

205.49 COUNTY BOARDS TO APPOINT JUDGES IN UNORGANIZED TERRITORY

HISTORY. 1860 c 15 art 2 s 29; GS 1866 c 8 s 107; GS 1878 c 8 s 121; GS 1894 s 693; RL 1905 s 444; GS 1913 s 769; GS 1923 s 775; MS 1927 s 775; 1939 c 345 Pt 6 c 6 s 5; M Supp s 601-6(6)d.

205.50 MAY APPOINT RELIEF JUDGES IN CERTAIN CASES

Ballot judges and clerks and special judges and clerks may be provided for general elections only under the provisions of section 205.58. Section 205.55 plainly states that one additional judge and two additional clerks, to be known as ballot judge and clerks, may be appointed in any district in cities of the first, second, and third classes, and for general elections only. Section 205.58 provides that no additional judges or clerks shall be employed at any except general elections; but

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section 205.50 provides for relief judges, known as "counting boards." OAG Aug. 9, 1948(183-G).

205.51 ELIGIBILITY OF JUDGES

A soldier receiving World War I pension is eligible to serve as an election judge as the limitation under section 205.51 runs only to individuals receiving compensation from the United States as an officer or employee. OAG April 4, 1951 (183-I).

205.54 OATH OF JUDGES AND CLERKS

HISTORY. 1893 c 4 s 54; GS 1894 s 59; RL 1905 c 233; GS 1913 s 414; 1923 c 138 s 2; GS 1923 s 362, 366; MS 1927 s 362, 366; 1939 c 345 Pt 6 c 6 s 10; M Supp s 601-6(6)i.

205.56 DUTIES OF BALLOT JUDGES

HISTORY. 1893 c 4 s 139-142; GS 1894 s 146; RL 1905 s 305; GS 1913 s 494; GS 1923 s 457; 1925 c 420 s 1; MS 1927 s 457; 1939 c 345 Pt 6 c 6 s 12; M Supp s 601-6(6)k.

205.57 BALLOTS; CANVASSING, COUNTING

HISTORY. Amended, 1951 c 167 s 5.

A canvassing board has no authority to determine that the death of a party nominee results in the nomination of a party candidate receiving the next highest number of votes. OAG Sept. 22, 1948 (28-B-1).

205.58 QUALIFICATIONS OF JUDGES AND CLERKS

HISTORY. 1893 c 4 s 146; GS 1894 s 151; RL 1905 s 310; GS 1913 s 499; GS 1923 s 461½; MS 1927 s 461½; 1937 c 270 s 11; 1939 c 345 Pt 6 c 6 s 14; M Supp s 601-6(6)m.

Ballot judges and clerks and special judges and clerks may be provided for general elections only under the provisions of section 205.58. Section 205.55 plainly states that one additional judge and two additional clerks, to be known as ballot judge and clerks, may be appointed in any district in cities of the first, second, and third classes, and for general elections only. Section 205.58 provides that no additional judges or clerks shall be employed at any except general elections; but section 205.50 provides for relief judges, known as "counting boards." OAG Aug. 9, 1948 (183-G).

205.59 VIOLATION A MISDEMEANOR

HISTORY. 1939 c 345 Pt 6 c 6 s 15; M Supp s 601-6(6)n.

A town board member, if a candidate, is ineligible to act as judge of election. OAG Oct. 23, 1950 (183-I).

Disqualification of a candidate for supervisor on the town board who acted as an election judge, made the election voidable, not void, and did not result in forfeiture of the office. OAG March 20, 1950 (434-B-12).

205.60 PRINTING OF BALLOTS

Notice of a county-wide election on the authorization of a municipal liquor store need not be published, but the ballot must be published. OAG Sept. 5, 1947 (218-G-13).

205.62 SECRETARY OF STATE TO PREPARE PINK BALLOTS

HISTORY. 1878 c 84 s 6, 7; GS 1878 c 1 s 82, 83; 1887 c 4 s 17; GS 1878 Vol 2 (1888 Supp) c 1 s 17; 1889 c 3 s 15, 17, 25; 1891 c 4 s 25, 28; 1893 c 4 s 28; 1903 c 251 s 1; RL 1905 c 166; GS 1913 s 318; 1919 c 76 s 1; MS 1927 s 277; 1939 c 345 Pt 6 c 7 s 3; M Supp s 601-6(7)b; 1941 c 72 s 1.

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205.63 CITY CLERK TO PREPARE RED BALLOTS

When a city desires to amend its charter, the constitution requires publication of the proposed amendment once each week for four successive weeks. Section 410.12 requires publication of a notice of election containing the complete amendment, sections 205.63, 212.68, and 212.70 define the requirements for the election procedure. OAG Sept. 7, 1950 (58-M).

205.64 LAVENDAR BALLOTS FOR CITY CHARTER OR AMENDMENTS

Submission of a proposed ordinance for the sale of a power plant and granting of a franchise should not be included upon a "red ballot" but should be placed on a separate ballot. OAG March 20, 1953 (64-B).

Color resembling lavender may be used for ballot for a special election, if a lavender ballot is unobtainable. OAG Nov. 18, 1953 (28-A-2).

205.65 COUNTY AUDITOR TO PREPARE "CANARY" BALLOT

HISTORY. 1939 c 345 part 6 c 7 s 5; 1949 c 584 s 1; M Supp s 601-6(7)e.

205.68 FORM AND SIZE OF BALLOTS

HISTORY. 1893 c 4 s 25; GS 1894 s 30; 1901 c 109 s 1; RL 1905 s 171; GS 1913 s 325; GS 1923 s 284; MS 1927 s 284; 1939 c 345 Pt 6 c 7 s 9; M Supp s 601-6(7)h; 1943 c 66 s 1; 1945 c 229 s 1.

205.69 FORM AND SIZE OF BALLOTS

HISTORY. 1939 c 345 part 6 c 7 s 10; 1943 c 66 s 2; 1947 c 76 s 1; M Supp s 601-6(7)i.

205.70 FORM, STYLE, AND SIZE OF BALLOTS

HISTORY. 1893 c 4 s 25; GS 1894 s 30; 1901 c 109 s 1; RL 1905 s 173; GS 1913 s 327; 1915 c 102; GS 1923 s 285; MS 1927 s 285; 1939 c 345 Pt 6 c 7 s 11; M Supp s 601-6(7)j; 1941 c 527 s 1.

Under section 205.70, permitting identification of candidates by showing occupation and residence in not to exceed three words where more than one candidate having the same surname will appear on the same ballot, compound words or a combination of words expressing in its simplest terms a single thought or idea—by way of designating a single office, occupation, or residence—should be counted as one word. When a person resigns from one public office, which has theretofore constituted his sole occupation, in order to become immediately a candidate for another public office, and where he has not prior to such candidacy acquired another occupation, he may, under section 205.70, when the names of one or more other persons having the same surname as his appear on the same ballot, refer to such former public office as a means of occupational identification. *Dougherty v Holm*, 232 M 68, 44 NW(2d) 83.

Following *Higgins and Berg*, 74 M 11, and under our present election law, the names of party candidates for congress, with their party designation, are required to appear on the ballot in the same order as those of state party candidates. OAG Jan. 23, 1948 (28-B-7).

A candidate, Lejk, may not have the word (Lake) printed on the ballot to explain the pronunciation. Under the provisions of M.S.A. 205.70 not to exceed three words indicating the candidate's occupation and residence may be added to his name in those cases where the surnames of two or more candidates for the same office are the same. OAG July 22, 1948 (28-B-2).

Where two candidates for the legislature have the surname "Johnson," one of the candidates may use the words "Park Commissioner, Minneapolis" as indicating his occupation and residence and such words may be added to the name of the candidate on the ballot. OAG Aug. 19, 1948 (28-B-2).

The identifying words "widowed home-maker, St. Paul" comes within the purview of Minnesota Statutes 1949, Section 205.70. OAG Aug. 11, 1950 (28-B-2).

The right to have descriptive words on a ballot is permitted only when the conditions set out in section 205.70 are present. This applies to city elections in the absence of a charter provision abrogating the state law. OAG Sept. 15, 1952 (28-B-2).

When two trustees are to be elected at a village election all candidates run against each other and the voters vote for two. A candidate can place the word "incumbent" after his name only when two candidates with the same surname are on the ballot. A candidate for village clerk may withdraw at any time before the filing expires and may withdraw after filing time expires if the withdrawal is made prior to the printing of the ballots. OAG Nov. 24, 1952 (472-C).

205.72 CANDIDATES FOR POLITICAL PARTIES

Neither the Socialist party nor the Socialist Workers party qualifies as a political party whose party name is protected by statute. Nominations must be made by petition. OAG July 29, 1948 (672-B-7).

The only parties at the present time having a legal status as political parties in Minnesota are the Democratic-Farmer-Labor party and the Republican party, and candidates using a party name other than those having a legal status may appear on the general election ballot only by nominating petition. OAG July 29, 1948 (672-B-7).

The secretary of state is required to accept any certificate of nomination issued in compliance with the election statutes. Whether any political party not recognized as such under "Minnesota Election Law" has the legal right in any particular case to prevent the use of its name, or any part thereof, by any person nominated by a petition, is a matter for the courts to determine. OAG July 29, 1948 (672-B-7).

205.74 NAMES ON BALLOTS

A candidate whose nomination has been duly certified by the canvassing board is not entitled to have the name changed for the final election ballot. OAG Sept. 30, 1948 (28-B-2).

205.75 ROTATION OF NAMES

In construing the provisions of sections 205.75, 340.25, et seq, the words "Yes" and "No" on the ballot need not rotate but the word "Yes" will be printed first followed by the word "No." OAG July 9, 1947 (218-E-2).

205.76 PRIMARY ELECTION BALLOTS

HISTORY. 1899 c 349 s 6; RL 1905 s 187; Ex1912 c 2 s.5; 1913 c 389 s 4; GS 1913 s 342; 1915 c 167 s 5; GS 1923 s 301; MS 1927 s 301; 1933 c 182; 1939 c 345 Pt 6 c 7 s 17; M Supp s 601-6(7)p; 1951 c 323 s 1.

The political party which polled the highest average vote at the last general election in county should be placed first on the voting machine ballot. OAG Feb. 14, 1952 (28-C-5).

205.77 SAMPLE PARTY BALLOTS

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; GS 1923 s 300; 1925 c 420 s 1; MS 1927 s 300; 1933 c 172 s 2; 1933 c 244 s 2; 1939 c 345 Pt 6 c 7 s 18; M Supp s 601-6(7)q.

205.78 ERRORS AND OMISSIONS; PROCEDURE

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 conven-

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tion 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.

The evidence established that the Democratic-Farmer-Labor convention was duly called and legally organized and it continued to be such during its session. The persons nominated for presidential electors by that convention are the party's nominees. *Democratic-Farmer-Labor v Holm*, 227 M 52, 33 NW(2d) 831.

One who intends to question the form of contents of an official ballot to be used in state elections must realize that dangerous delays, complications, and inconvenience must follow any action he may take, and, unless a reasonably valid reason be presented by him indicating why he did not act expeditiously he should not be permitted to complain. *Marsh v Holm*, M, 55 NW(2d) 302.

The county auditor does not have authority to omit the name of a nominee from general election ballot because the affidavit of disbursements discloses disbursements in excess of the amount allowed by law. Proceedings to annul a nomination for violation of Corrupt Practices Act must be instituted under section 211.35 and under section 205.78. OAG Sept. 29, 1948 (28-B-2).

If there appears to the city council to be no good reason why it should, before a judicial decision on the question involved, incur expense incident to a city-wide election where the constitutionality of the proposed amendment is doubtful, the council may in its discretion refuse to submit the question until ordered to do so by the court. Should the question of an amendment to the city charter be proposed it must be accepted by three-fifths of the qualified voters voting at the next general election. The primary election is not the general election. OAG May 11, 1948 (58-C), (531).

205.79 NOMINATIONS WITHOUT PARTY DESIGNATION

HISTORY. Ex1912 c 12 s 1; 1915 c 167 s 3; 1919 c 230 s 1; Mason's 1927 s 352; 1939 c 345 Pt 6 c 7 s 20; Mason's Supp s 601-6(7)s; 1943 c 419 s 1; 1951 c 323 s 2.

205.81 COUNTY AUDITORS TO DESTROY BALLOTS AFTER ONE YEAR; EXCEPTIONS

There is no statutory provision authorizing the city council to inspect and examine ballots at any time. OAG Nov. 10, 1947 (28-C-2).

205.82 ALLEY SYSTEM

HISTORY. 1949 c 690 s 1; 1951 c 130 s 1.

The provisions of s 205.82 that where an associate justice of the supreme court is a candidate to succeed himself, the word "incumbent" shall be printed after his name on the ballot, is intended to assist the voter by advising him who the present office-holder is and is not so unequal and partial as to violate any constitutional rights of candidates for office. *Gustafson v Holm*, 232 M 118, 44 NW(2d) 443.

The statutory declaration that when two or more associate judges of the supreme court are to be nominated at the same primary election or elected at the same general election, each associate justice shall be deemed to hold a separate non-partisan office and requiring that candidates for such offices designate which office they are a candidate for, are not repugnant to constitutional provision, article VI, sections 2 and 3. *Gustafson v Holm*, 232 M 118, 44 NW(2d) 443.

The "Alley Plan" for election of justices and district judges is applicable even if only one justice or one district judge is to be elected. OAG May 29, 1952 (28-B-7).

205.83 NAME OF PUBLIC OFFICIAL

HISTORY. 1953 c 294 s 1.