

CHAPTER 208

ELECTION CONTESTS

NOTE: Excepted from the rules of civil procedure insofar as inconsistent or in conflict therewith.

208.01 WHO MAY INSTITUTE CONTEST

HISTORY. RS 1851 c 6 s 1; PS 1858 c 6 s 70; 1861 c 15 s 49, 52; GS 1866 c 1 s 46, 49, 52; 1871 c 45 s 1; 1872 c 57 s 2; GS 1878 c 1 s 49, 52, 55; 1887 c 4 s 57, 61, 63; GS 1878 Vol 2 (1888 Supp) c 1 s 57, 61, 63; 1891 c 4 s 91, 95, 97; 1893 c 4 s 181, 185; GS 1894 s 186, 190, 191; 1901 c 365; RL 1905 s 332, 336; Ex1912 c 3 s 33; GS 1913 s 599; GS 1923 s 570; MS 1927 s 570; 1939 c 345 Pt 7 c 1 s 1; M Supp s 601-7(1).

The right to appeal from a determination made by the state canvassing board of the result of an election is purely statutory, a right which the legislature may withhold or give on such terms and conditions as it deems proper. To perfect an appeal to the district court from such determination, the appeal must be taken in the manner and within the time required by statute. Such requirements are not to be regarded as mere matters of form, but as substantial mandatory requisites to be strictly complied with before the court can acquire jurisdiction. Tested by rules stated in preceding paragraphs, held, upon facts recited in opinion, that contestant has failed to comply with either of the statutory requirements relating to procedure, namely, M.S.A., Sections 208.01 and 208.07. *Hunt v Rolloff*, 224 M 323, 28 NW(2d) 771.

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.

Proceedings to avoid an election for violation of corrupt practices is a statutory special proceeding but is tried as a civil action, and the usual rules governing a civil action prevail. *Bank v Egan*, M, 60 NW(2d) 257.

Where the district court, in an action contesting an election upon the question of granting licenses for the sale of liquor, orders village to pay the attorney's fees for the contesting parties, the village must either appeal the order or pay the judgment. The money must be paid out of the general revenue fund but the village has authority to transfer a like sum from the liquor store fund to the general fund for the purpose of making the payment. OAG May 31, 1951 (218-C-1).

208.03 CANDIDATE MAY FILE CONTEST; NOTICE

State courts have no jurisdiction over the election of representatives to congress. The congress is its own judge of elections, returns and qualifications of its members. In re *Youngdale*, 232 M 134, 44 NW(2d) 459.

208.04 INSPECTION OF BALLOTS

HISTORY. 1878 c 84 s 13; GS 1878 c 1 s 89; 1893 c 4 s 188; 1913 c 368 s 1; GS 1913 s 530; 1915 c 167 s 16; 1919 c 162 s 2; GS 1923 s 485; MS 1927 s 485; 1939 c 345 Pt 7 c 1 s 4; M Supp s 601-7(1)c.

208.05 TRIAL

HISTORY. RS 1851 c 6 s 5; PS 1858 c 6 s 74; 1893 c 4 s 186; GS 1894 s 190, 191; 1901 c 365; RL 1905 s 336; 1911 c 59 s 1; GS 1913 s 528, 529; 1919 c 162 s 3; GS 1923 s 486; MS 1927 s 486; 1939 c 345 Pt 7 c 1 s 5; M Supp s 601-7(1)d; 1945 c 229 s 6.

208.07 VOTER MAY CONTEST ELECTION

The right to appeal from a determination made by the state canvassing board of the result of an election is purely statutory, a right which the legislature may withhold or give on such terms and conditions as it deems proper. To perfect an appeal to the district court from such determination, the appeal must be taken in the manner and within the time required by statute. Such requirements are not to be regarded as mere matters of form, but as substantial mandatory requisites to be strictly complied with before the court can acquire jurisdiction. Tested by rules stated in preceding paragraphs, held, upon facts recited in opinion, that contestant has failed to comply with either of the statutory requirements relating to procedure, namely sections 208.01 and 208.07. *Hunt v Rolloff*, 224 M 323, 28 NW(2d) 771.

Filing of a petition for a contest in the county of the contestee's residence confers no jurisdiction upon the court under section 208.07, which requires notice of contest to be filed in the county of the contestant's residence. *Youngdale v Eastvold*, 232 M 134, 44 NW(2d) 459.

There are no statutory provisions authorizing courts to entertain contests involving nomination or election to office of representative in congress for mere errors in counting ballots. *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.

Where error is suspected in the count of ballots on a special election regarding city charter amendments the proceedings in relief must be taken under section 208.07. OAG Nov. 13, 1950 (58-1).

208.09 APPEAL; BOND

When on election the issuance of licenses for the sale of intoxicating liquor was authorized and the council adopted an ordinance establishing a liquor store and granted other licenses; but the election being contested on appeal to the supreme court the election was voided. The operation of liquor stores was lawful during the time that intervened between the granting of the license and the decision by the supreme court, but thereafter operation of the liquor stores must be discontinued. OAG May 1, 1947 (218-G-13).

208.10 DETERMINATION OF CONTEST

Where minor technical irregularities do not prevent an election otherwise shown to be fair, such irregularities can have no effect on the jurisdiction of a school district organization proceedings. *State ex rel. Grozbach v Common School District No. 65*, 237 M 150, 54 NW(2d) 30.

CHAPTER 209**VOTING MACHINE****209.01 MUNICIPAL CORPORATIONS MAY PROVIDE FOR VOTING MACHINES**

HISTORY. 1897 c 296 s 1; 1889 c 315 s 1; 1905 c 267; RL 1905 s 344; 1913 c 327 s 1; GS 1913 s 538; GS 1923 s 509; MS 1927 s 509; 1939 c 345 Pt 8 c 1 s 1; M-Supp s 601-8(1).