

CHAPTER 204

ELECTIONS, CONDUCT OF

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204.01 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

204.01 **DEFINITIONS.** The words used in this chapter have the meanings prescribed to them in chapter 200.

[1959 c 675 art 5 s 1]

204.02 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

204.02 **APPLICATION.** The provisions of sections 204.01 to 204.32 are applicable to all elections held in this state except as otherwise provided by law.

[1959 c 675 art 5 s 2]

204.03 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

204.03 **STATE ELECTIONS, HOURS FOR VOTING.** Subdivision 1. **Opening and closing of polls.** Except as otherwise provided in this section, at the general election and the primary election the polls in every precinct in the state shall open at 7:00 A.M., and they shall be kept open continuously until 8:00 P.M., at which time they shall close. The governing body of any municipality of less than 1,000 inhabitants, situated entirely outside the metropolitan area as defined in Minnesota Statutes 1965, Section 473.02, Subdivision 5, by resolution adopted 30 days prior to any general or primary election, may fix a time for the opening of the polls which may not be earlier than 7:00 A.M. nor later than 9:00 A.M. in the case of a general election, 5:00 P.M. in the case of a primary election. Resolutions adopted pursuant to this subdivision shall be effective for all ensuing general or primary elections until revoked. Under no circumstances shall the ballot boxes be opened and the ballots counted before closing of the polls.

Subd. 2. **Time, closing of polls.** On or before the opening of the polls the judges shall agree upon some standard of time to be used in opening and closing the polls. When the hour for closing the polls has arrived, the polls shall be closed, except that those voters who, at the time of closing, are either in the polling place or in line at the door thereof and have not been able to vote, are entitled to vote, and the polls shall remain open a sufficient time for them to do so.

[1959 c 675 art 5 s 3; 1965 c 325 s 1; 1967 c 444 s 1]

204.04 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

204.04 **OPENING OF POLLS, BALLOT BOXES.** Subdivision 1. **Locking of ballot boxes.** Immediately before opening the polls, one of the judges shall open the ballot boxes in the presence of the people there assembled, turn them upside down so as to empty them of everything that is in them, then lock them and deliver the key to another of the judges. Having locked the ballot boxes, the judges shall proclaim that the polls are open, and they shall cause written or printed notices of the hour of closing to be conspicuously posted outside the polling place. The boxes may not be reopened until opened for the purpose of counting the ballots therein at the close of the polls.

Subd. 2. **Ballot boxes, box-car seals.** The governing body of any municipality, by resolution, may direct the clerk to furnish each ballot box with two so-called

"box-car seals" in lieu of a lock and key. Each seal shall consist of a metal strap with a number imprinted on the metal, no two straps bearing the same number, together with a self-locking device securely attached to one end of the strap, and so constructed that the other end may be inserted and securely locked in the seal. One of the seals shall be used in the same manner provided for locks in subdivision 1, and the other seal shall be attached after the ballots are counted as provided in section 204.24. Whenever seals are used in lieu of a lock and key, the number on the seal used to lock the ballot box shall be written in a suitable space provided therefor on the tally sheets used in canvassing and tallying the votes.

[1959 c 675 art 5 s 4]

204.05 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

**204.05 BALLOTS, JUDGES' INITIALS.** Subdivision 1. Before the voting begins, or as soon thereafter as possible, two judges shall place their initials on the backs of all the ballots they have, directly under or opposite the facsimile of the official signature, and they may not otherwise mark the ballots.

Subd. 2. No official ballot may be distributed except in the voting room to voters about to vote, and no ballot which is not officially endorsed in the handwriting of the judges may be placed in the ballot box. The ballot boxes shall at all times be kept in public view.

[1959 c 675 art 5 s 5]

204.06 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

**204.06 PERSONS IN POLLING PLACE.** Subdivision 1. **Challengers.** Except as provided in this subdivision and except when a voter is unable to read English or is physically disabled and a voter is called upon to assist him, no person may remain inside the polling place except members of the election board, peace officers, challengers, and voters who are about to vote. The challengers may not handle or inspect registration cards, files, or lists. Challengers shall not make or prepare in any manner any list of persons who have or have not voted. They may not attempt to converse with voters at any time except to establish whether the voter is qualified to vote in this precinct and then only with an election judge present at the conversation or to influence voting on election day in any manner. Representatives of the secretary of state's office and the county auditor's office may be present at the polling place during the hours of voting for the purpose of observing election procedure.

Subd. 2. **Time to vote.** The judges may make such regulations as they deem proper as to the time in which a voter may remain in the polling place while receiving, preparing, and voting his ballots.

[1959 c 675 art 5 s 6; 1969 c 127 s 1; 1969 c 691 s 1]

204.07 M.S. 1957 [Repealed, 1959 c 675 art 13 s 1]

**204.07 VOTING, NO REGISTRATION.** Subdivision 1. **Evidence of qualification to vote.** Except where voters are registered under a permanent registration system, any person desiring to vote at any election shall satisfy the election board by proper and sufficient evidence that he is qualified to vote at the election in the precinct, and by stating under oath, that under the constitution and laws of this state, he is entitled to vote at the election in the precinct. The election board shall allow any person delivering to them a certificate of eligibility properly issued pursuant to section 204.075 to vote.

Subd. 2. **Voting, examination.** Any person desiring to vote shall truly state, when he is asked, the name of the street in which he resides, the house number, if any, and whether he is a householder; lodger, or employee therein, and such other matters that may be necessary for identification. Upon refusal to make such statements, he may not be allowed to vote.

Subd. 3. **Election registers, form.** Two election registers shall be provided by the county auditor or the clerk of the municipality, as the case may be, for each precinct. The election registers shall be kept and maintained in duplicate, and two judges shall have charge of them, each using one as provided in this section. Every election register shall be headed by the designation of the precinct, shall contain one column headed "Name of Voter," one headed "Residence," and one headed "Remarks," and shall contain the names of the voters in separate groups, in alphabetical order according to the first letter of the surnames, each letter of the alphabet to form one group, with not more than one group on any one page, and each group to be separately numbered commencing with the numeral "1."

Subd. 4. **Voting, election register, use.** Having satisfied the judges of his qualifications, the voter's name and residence shall be entered in the proper place in

the election registers, and the other judges shall have charge of and hand to and receive from each voter the ballots.

[1959 c 675 art 5 s 7; Ex1961 c 10 s 6]

**204.075 RESIDENTS OF STATE IN PRECINCT LESS THAN 30 DAYS.** Subdivision 1. **Change of residence within municipality.** A person who changes his residence from one precinct to another in the same municipality within 30 days of an election shall be entitled to vote at such election in the precinct of his former residence only.

Subd. 2. **Change of residence from one municipality to another.** A person who changes his residence from one municipality to another in the state within 30 days of an election may apply for a certificate of eligibility to vote in the precinct of his new residence and may vote only in the precinct of new residence.

Subd. 3. **Municipal clerk, duties.** The municipal clerk acting as officer in charge of elections or as commissioner of registration under section 201.03 in places having permanent registration, shall determine whether an applicant is entitled to a certificate of eligibility, and if he is, shall issue the same. The municipal clerk may make a personal investigation to satisfy himself as to whether an applicant for a certificate is entitled to one.

Upon issuing a certificate of eligibility, as hereinafter provided, the municipal clerk, acting as commissioner of registration in places having permanent registration shall remove the voter's registration from the files if he has registered; and the municipal clerk in places not having permanent registration shall notify the judges of the precinct from which the voter has moved that the voter has been issued a certificate of eligibility to vote in another place.

Subd. 4. **Certificate of eligibility.** A person qualified to vote in an election under section 200.02, subdivision 25, who has not resided in the election precinct 30 days next preceding the election may qualify to vote in the precinct to which he has moved within such 30 days by obtaining a certificate of eligibility from the municipal clerk in the precinct from which he has moved and delivering the same on the day of election to the judges of election at a proper polling place in the precinct to which he has moved. Such certificate may be obtained during posted office hours except for the day of election and the day preceding that day.

An application for a certificate of eligibility shall show

- (1) The applicant's name;
- (2) His former address;
- (3) His new address;
- (4) The date on which he removed to his new address;
- (5) The election for which he desires the certificate;
- (6) His statement that, as of the day of the election, he will be a citizen of the United States for three months or more and a resident of the state for six months or more; and

- (7) His signature;

and such application shall be sworn to before a notary public or another official duly authorized to administer oaths. The application shall be submitted in duplicate, and one copy thereof shall be attached to or incorporated into the certificate of eligibility. The municipal clerk shall keep the other copy of the application for his records.

The certificate of eligibility shall also include the certification of the municipal clerk that the person would have been eligible to vote in that precinct if he had continued to reside in that precinct until the election.

The certificate shall include a notice that the certificate is void for all purposes after the election for which it is issued. It shall also include a statement that in places having permanent registration, such permanent registration is waived only for the election for which the certificate is issued; and in order to vote in future elections, it will be necessary to register in the usual way.

Subd. 5. **Certificates obtained by mail.** A person may obtain a certificate of eligibility by mail from the municipal clerk of the precinct from which he has moved. To secure an application for a certificate, a person may apply in person or in writing to any municipal clerk, and he shall be given or sent the form of application or directions for making an entirely written application. Whenever a person mails an application for a certificate of eligibility to the municipal clerk of the precinct from which he has moved, he shall allow sufficient time for the consideration of his application, the issuance of the certificate, and its delivery by mail before the day of election.

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Subd. 6. Delivery of certificate in precinct of new residence. The election board or the judges of election in any polling place within this state shall honor a properly issued certificate of eligibility and allow the person having the same to vote upon delivering it to them.

[Ex1961 c 10 s 7]

204.076 TOWN MEETINGS OR ELECTIONS ON CANDIDATES; LOCAL ISSUES; RESIDENCE OF VOTERS. The voters at a town meeting or the voters at an election on candidates who will serve, or on issues which will relate to only one precinct may be limited to voters who have resided within the precinct for 30 days regardless of the provisions of section 204.075, or other provisions relating to the issuance of a certificate of eligibility to persons who move from one precinct in the state to another within 30 days of an election.

[Ex1961 c 10 s 10]

204.077 CERTIFICATES OF ELIGIBILITY FOR PERSONS MOVING FROM ONE PRECINCT TO ANOTHER; AVAILABILITY. The governing body of any city, town, village, or other political subdivision, which does not have permanent registration shall make provisions for the municipal clerk to be available at times before an election, other than a local election described in section 204.076, to issue certificates of eligibility, pursuant to section 204.075, to persons moving from the precinct to other precincts within 30 days of an election.

[Ex1961 c 10 s 11]

204.08 REGISTRATION, VOTER'S CERTIFICATE. Subdivision 1. Form of certificate. Wherever voters are registered under a permanent registration system before any person desiring to vote receives the ballots from the judges, a certificate containing the following information shall be signed by the applicant:

I hereby certify that I am a qualified voter, permanently registered in accordance with the Minnesota Election Law.

(Signature of Voter) .....
(Address) .....
(Approved) .....

Judge of Election

Upon honoring a certificate of eligibility issued under section 204.075, the judges of election shall strike the words "permanently registered" on the form of voter's certificate, and allow the person with or upon his then executing a voter's certificate so altered to vote upon his delivering it to them.

Subd. 2. Voter's certificate, use. The certificate shall be approved by a judge who shall compare the signature on the voter's certificate with the signature as it appears on the duplicate registration card, and the judge shall record the fact of voting on the back of the duplicate registration card. The certificate, having been approved, shall be handed to the voter who shall deliver it to the judge in charge of ballots as proof of his right to vote, and thereupon the judge shall hand to the voter the ballots.

Subd. 3. Name omitted, emergency voting. When any voter who has registered under a permanent registration system is challenged because his name does not appear in the duplicate registration file of the precinct in which he desires to vote, and upon examination it appears that such name was erroneously omitted from the file, he shall be permitted to vote at the election in the precinct, and an emergency voting card shall be signed by the applicant and the judges, containing substantially the following information:

EMERGENCY VOTING CARD

.....Ward .....Precinct
Name .....
Residence .....

The undersigned judges hereby certify that the above named voter was permitted to vote in this precinct at the election held ....., 19....., pursuant to instructions from the office of the commissioner.

.....
Signature of Voter .....
Signature of Judge calling office .....
Judges of Election
Authorized by

[1959 c 675 art 5 s 8; Ex1961 c 10 s 8]

**204.09 BALLOTS, VOTING, REGISTRATION AND OTHERWISE.** Subdivision 1. **Removal of ballot from pad.** When the judges are satisfied that the person applying for ballots is a qualified voter, the judge having charge of the ballots shall tear from the pad one ballot of each kind that is to be voted, having the proper initials thereon, and hand the same to the voter. Each ballot shall be removed from the pad separately as required by each voter.

Subd. 2. **Voters, marking ballots.** One of the judges shall instruct the voter as to the proper method of marking and folding his ballots, and the voter shall then retire alone to an unoccupied booth, and without undue delay the voter shall mark the ballots as provided by law. The voter may take with him into the booth sample ballots to assist in marking the official ballots.

Subd. 3. **Sample ballots.** Except that sample ballots may be printed in newspapers as news matter, it is a misdemeanor to print sample ballots on paper of the same color as any official ballots.

[1959 c 675 art 5 s 9]

**204.10 MARKING BALLOTS, INSTRUCTIONS.** The voter shall mark and prepare each ballot in the following manner:

(a) The voter shall place a mark (X) in the square opposite the printed name of each candidate for whom he desires to vote, and in the square before the "YES" or "NO" if he desires to vote for or against any proposition.

(b) If he so desires, he may write other names in the blank spaces provided therefor under the printed names of the candidates, except that no names may be written in on primary election ballots.

(c) If, at any primary election the voter votes for the candidates of more than one party on the party ballot, that ballot is void.

(d) When he has prepared his ballots, he shall fold each of them separately so as to conceal the face and all marks thereon, and so as to expose only the facsimile of the official signature and the initials of the judges on the back of the ballot.

(e) Having marked and folded his ballots in the manner provided in this section, the voter shall withdraw from the voting booth with his ballot.

[1959 c 675 art 5 s 10]

**204.11 BALLOTS, DEPOSIT.** Subdivision 1. **Deposit in box.** Having withdrawn from the voting booth with his ballots, the voter shall hand them to the judge in charge of the ballot boxes, and the judge immediately shall deposit each ballot in the proper box.

Subd. 2. **Ballots, secrecy.** No entry or notation shall be made in the register or otherwise showing to which political party any voter belonged or which political party ballot he voted, nor shall the judges knowingly permit any other person within the polling place to make such an entry or notation.

Subd. 3. **Ballots, identifying marks.** No voter, judge, or any other person may at any time place any mark as a means of identification upon any ballot handed to or cast by any voter or upon any spoiled or discarded ballots except the proper signature and initials provided by law to be placed upon ballots.

Subd. 4. **Ballots, challenge of.** The voter and the ballots of any absent voter at any time before the ballots have been deposited in the ballot boxes are subject to a challenge by the judges or by any person who was not present at the time the voter procured the ballots, but not otherwise. The question shall be determined in the same manner as is provided for the challenge of voters, and if the voter or the ballots of any absent voter are found to be disqualified, the ballots so prepared shall be placed unopened among the spoiled ballots.

Subd. 5. **Voter to retire.** Having cast his ballot, or his ballot having been refused, the voter shall leave the polling place and not return unless he is given permission to do so by all of the judges.

Subd. 6. **Enforcement, violation, penalties.** The judges shall at all times observe and enforce the provisions of the Minnesota election law. Violation of subdivision 3 or subdivision 4 is a gross misdemeanor.

[1959 c 675 art 5 s 11]

**204.12 SPOILED BALLOTS.** When a voter spoils a ballot, he may return it to the judges and receive another. The judges shall preserve unused and spoiled ballots and return them to the officers from whom they were received, with a statement of the number spoiled and unused, and take a receipt therefor.

[1959 c 675 art 5 s 12]

**204.13 ASSISTANCE TO VOTERS.** Subdivision 1. **Disability.** When any voter states under oath that he cannot read English, or that he is physically unable to mark his ballot, he may call to his aid two of the judges, of different political party affiliation, who shall mark his ballot as he desires and in as secret a manner as circumstances permit. When he also states that he cannot speak the English language or understand it when spoken, the judges may select two persons from different political parties to act as interpreters, who shall take an oath similar to that taken by the judges, and assist the person in marking his ballots. When the disabled voter prefers, he may call to his aid any voter of the same precinct who, unaccompanied by a judge, shall retire with him to one of the booths and mark the ballot for him, but no one who aids a voter shall mark the ballots of more than three voters at one election. Before his ballot is deposited, the voter may show it privately to one of the judges to ascertain that it is marked as directed. No judge or other person assisting a voter may in any manner request, persuade, induce, or attempt to persuade or induce, the voter to vote for any particular political party or candidate, but he shall mark the ballot as requested and may not reveal to any other person the name of any candidate for whom the voter has voted or anything that took place while so assisting him.

Subd. 2. **Disabled voter, assistance.** Two judges, who are not members of the same political party, shall likewise assist a voter who is at the door of the polling place but who is unable to enter because of physical disability; provided, however, that for the purpose of this section, intoxication is not physical disability, and a person who is intoxicated may not vote.

[1959 c 675 art 5 s 13; 1965 c 380 s 1, 2]

**204.14 VOTING, SECRECY.** A voter may not divulge to any one within the polling place the name of any candidate for whom he intends to vote or has voted, and he may not ask for or receive assistance in the preparation of his ballot from any one within the polling place except as provided by law. If any voter, after having marked his ballot, shows it to any one except as provided by law, the judges shall refuse to receive the ballot and shall place it among the spoiled ballots. When the showing clearly has been intentional, no other ballot may be delivered to the voter.

[1959 c 675 art 5 s 14]

**204.15 EMPLOYEES, TIME OFF TO VOTE.** Every employee who is entitled to vote at any state-wide general election or at any election to fill a vacancy in the office of representative in Congress is entitled to absent himself from his work for the purpose of voting during the forenoon of such election day without penalty or deduction from his salary or wages on account of such absence.

[1959 c 675 art 5 s 15; 1963 c 680 s 1]

**204.16 CHALLENGERS.** Subdivision 1. **Partisan.** At any election where partisan offices are to be filled the chairman of an authorized committee of each political party may appoint by written certificate and the judges shall permit one voter at any one time from each political party for each precinct to be in the polling place while the election is being held and to remain with the election board until the votes are canvassed and the results declared, to act as challenger of voters.

Subd. 2. **Nonpartisan.** At any election each nonpartisan candidate may appoint by written certificate, and the judges shall permit, one voter at a time for each nonpartisan candidate for each precinct to be in the polling place while the election is being held and to remain with the election board until the votes are canvassed and the results declared, to act as challenger of voters.

Subd. 3. **On proposition.** At any election where a proposition is to be voted upon, the mayor of the municipality, upon a written petition signed by at least 25 legal voters being presented to him, shall appoint by written certificate and the judges shall permit, one voter for each precinct to be in the polling place while the election is being held and to remain with the election board until the votes are canvassed and the results declared, to act as challenger of voters.

[1959 c 675 art 5 s 16; 1965 c 260 s 1, 2]

**204.17 CHALLENGES.** Subdivision 1. **Manner.** Each judge shall, and any authorized challenger or other voter may, challenge any person whom he knows or suspects not to be a qualified voter.

Subd. 2. **Ground, oath.** The challenger shall state the ground for the challenge, and a judge shall administer to the challenged person the following oath:

"Do you solemnly swear that you will fully and truly answer all such questions that shall be put to you touching your qualifications as a voter at this election?" The judge shall then ask the challenged person such questions as tend to test his residence and his right to vote.

Subd. 3. **Determination of residence.** The judges, in determining the legal residence of any challenged person, shall be governed by the rules provided for the commissioner of registration in the Minnesota election law; and if the challenged person by his answers to the questions put to him reveals that he is not a qualified voter, he may not be allowed to vote. If, after all questions have been answered, the challenge is not withdrawn, the judge shall administer the following oath:

"Do you swear that you are a citizen of the United States; that you are 18 years of age; that you have been an actual resident of this precinct for 30 days immediately preceding this election; that you are a qualified voter in this precinct and that you have not voted at this election?" When this oath is administered to a person who qualifies to vote under section 204.075, the judge shall strike the words "and an actual resident of this precinct for 30 days immediately preceding this election". After taking this oath, the challenged person is entitled to vote.

Subd. 4. **Challenged person may not vote, when.** If the challenged person refuses to answer the questions put to him or to take an oath, his name may not be placed upon the election registers, and he is not entitled to vote. The challenged person may not leave the polling place and return later willing to answer questions or take an oath.

[1959 c 675 art 5 s 17; Ex1961 c 10 s 9; Ex1971 c 47 s 1]

**204.18 RETURNS OF THE ELECTION, TALLY BOOKS.** Subdivision 1. **Tally books.** Except where voting machines are used, the official charged with printing the ballots shall furnish two tally books with returns for each precinct at the same time and in the same manner as the ballots are furnished.

Subd. 2. **Tally book, information required.** The judges shall fill out the tally book and returns in duplicate, and in suitable spaces provided therefor they shall disclose the following information:

(a) State of Minnesota, Tally Book and Returns for (Color) Ballots, (number) Precinct, (number) Ward, of the (City) (Village) (Town) of (Name) and the date and kind of election;

(b) The office, name of candidates, the number of votes each candidate received, and the number of blank and defective ballots for each office;

(c) The number of persons who voted at the election in the precinct, where there is permanent registration the number of registered voters in the precinct, the total number of ballots actually counted, the number of totally defective ballots, and the number of persons who returned spoiled ballots and received other ballots;

(d) A certificate in substantially the following form: "We, the undersigned judges of the (number) Precinct, (number) Ward, of the (City) (Village) (Town) of (Name), Minnesota, do hereby certify that all of the ballots cast at the (date and kind of election) Election, were carefully and properly piled, checked, and counted, and that the number of votes marked opposite the respective names of the candidates, correctly shows the number of votes so cast. The national flag was displayed on a suitable staff during all the hours of voting." The certificate shall be signed by all members of the election board.

Subd. 3. **Tally book and returns, primary election.** The tally book and returns for the primary election shall be in the same form as the tally book and returns for the general election except that a separate tally book and returns shall be provided for each political party ballot and for the ballot of candidates to be nominated without party designation. The primary tally book and returns shall be headed substantially as follows: "Tally Book and Returns for (Name) Party, (number) Precinct, (number) Ward, of the (City) (Village) (Town) of (Name), Primary Election held (Date)."

Subd. 4. **Tally book and returns, form.** The secretary of state shall prescribe the form for the tally book and returns, and he may place thereon instructions for their use and such other matter that is authorized by law to be printed on tally books and returns. Any other official charged with furnishing tally books and re-

turns shall prepare them in the manner prescribed by the secretary of state, so far as practicable.

[1959 c 675 art 5 s 18; 1965 c 343 s 1]

**204.19 CANVASS OF VOTES.** Subdivision 1. **Procedure.** After the polls close the judges shall immediately proceed to canvass the votes cast at the election. The canvass shall be held at the polling place and be public, and it shall be continued without intermission until completed and the results declared, except that the judges may take a temporary recess for meals or other necessary purposes. During the canvass no person other than the judges may handle the ballots.

Subd. 2. **Ballots, order of canvass.** The ballot boxes shall be opened, the votes counted, and the results declared, one box at a time in the following order: the white box, the pink box, the canary box, the light green box, and other kinds of ballots voted at the election. The returns may not be finally prepared until the votes in all the boxes have been counted so as to allow corrections in case any errors have occurred by reason of the deposit of ballots in the wrong boxes.

Subd. 3. **Primary ballots, manner of canvass.** Primary election ballots shall be canvassed in the same manner as general election ballots, except that the judges shall take the ballots from the boxes and count those cast for each political party and the non-partisan candidates separately.

[1959 c 675 art 5 s 19]

**204.20 BALLOTS, PROPER NUMBER.** Subdivision 1. **Counting.** The judges shall remove all the ballots from the box, and without considering how the ballots are marked they shall ascertain that each ballot is single, and count them to determine whether the number of ballots corresponds with the number that the election register or registration file shows were cast.

Subd. 2. **Ballots, excess number.** If two or more ballots are found so folded together as to appear like a single ballot, the judges shall lay them aside until all of the ballots in the box have been counted; and if it is evident from the number that the election register or registration file shows were cast that the ballots folded together were cast by one voter, the judges shall preserve but not count them. If there is an excess of ballots in one box, the judges shall examine all the ballots in the box to ascertain that all are properly marked with the initials of the judges, and if any are not so marked, they shall preserve but not count them. If there is still an excess of properly marked ballots, the judges shall replace them in the box, and one judge, without looking, shall withdraw from the box a number of ballots equal to the excessive number, and the withdrawn ballots shall be preserved but not counted.

Subd. 3. **Ballots in wrong box.** If the judges find ballots in a ballot box that are different from the kind properly belonging therein, they shall lay the different ballots aside. If the number of ballots in any box equals or exceeds the number that the election register or registration file shows were cast, then ballots proper to have been placed therein, but found in another box, may not be counted. But if the number is less than that shown by the election registers or registration file, and ballots properly belonging in that box are found in another box, they shall be counted the same as those in the proper box, but only to the extent of the deficiency and selected by lot when necessary.

Subd. 4. **Ballots not counted, disposition.** When the number of ballots as finally counted agrees with the number that the election register or registration file shows were cast, those ballots not counted shall be attached to a certificate made by the judges, stating why the ballots were not counted, and the certificate and uncounted ballots shall be sealed in a separate envelope and returned with the other returns to the officer from whom they were received.

[1959 c 675 art 5 s 20]

**204.21 COUNTING BALLOTS.** Subdivision 1. **Method.** The judges shall take all the ballots of the same kind and count the votes cast for the first office or proposition on the ballot by separating the ballots into piles, one pile for each candidate who received votes for that office, or one pile for the "Yes" votes and one pile for the "No" votes if it is a proposition. The judges also shall pile the ballots that are blank or defective as to that office separately. After the separation into piles, the judges shall examine each pile and remove therefrom and place in the proper pile any ballots that are found to be in the wrong pile. After the examination, the judges shall count the ballots in each pile, and when their counts agree, they shall announce the number of ballots in each pile, and the number shall be written in the proper place on the tally books. The judges may



also pile ballots crosswise in groups of 25 in the same pile so as to facilitate counting.

Subd. 2. **Piling system.** Each office and proposition on the ballot should be counted and canvassed in the manner provided in subdivision 1.

Subd. 3. **More than one to be elected, piling.** Where more than one person is to be elected to an office, the votes for that office shall be counted and canvassed in the manner provided in subdivision 1 so far as practicable.

[1959 c 675 art 5 s 21; 1965 c 343 s 2]

**204.22 RULES FOR COUNTING BALLOTS.** In counting ballots a ballot may not be rejected for any technical error that does not make it impossible to determine the voter's choice even though the ballot may be slightly soiled or defaced. All ballots shall be counted for the persons for whom they were intended, so far as the intent can be clearly ascertained from the ballots themselves; and in determining the intent the following rules are applicable and shall be observed:

(a) When a voter has placed a mark (X) against two or more names for the same office, where only one is to be elected, his vote may not be counted for either candidate, but the rest of his ballot shall be counted;

(b) When a voter has written the name of a person in the proper place, his vote shall be counted for that person whether he makes a mark (X) in the square opposite the blank line or not;

(c) When a voter has written the name of a person on a primary election ballot, the vote may not be counted for that office;

(d) When a mark (X) is made out of its proper place, but on or so near a name or space as to indicate clearly that the voter intended to mark the name, the vote shall be counted as so intended;

(e) When a number of persons are to be elected to the same office, all cross marks in squares opposite names, not exceeding the whole number to be elected, including written names thereon, shall be counted. When less than the number to be elected are marked, only those so marked shall be counted;

(f) The judges shall disregard misspelling or abbreviations of the names of candidates, if it can be clearly ascertained from the ballot for whom it was intended;

(g) When the judges can determine from a ballot the voter's choice for only a part of the offices, the ballot shall be counted for that part only;

(h) When a voter uniformly uses a mark other than (X) in marking his ballot, clearly indicating his intent to mark against a name, and does not use (X) anywhere else on the ballot his vote shall be counted for each candidate so marked; when a voter uses two or more distinct marks in expressing his vote on a ballot such as (X) and some other mark, the vote shall be counted for each candidate so marked, nonetheless, unless it is so marked by distinguishing characteristics so as to make the entire ballot defective as provided in (k);

(i) When a ballot shows that marks have been made against the names of two candidates, and an attempt made to erase or obliterate one of the marks, it shall be counted for the candidate for whom it was evidently intended;

(j) All ballots marked as hereinbefore provided shall be counted for the candidates or proposition therein shown to be voted for;

(k) When a ballot is so marked by distinguishing characteristics that it is evident that the voter intended to identify his ballot, the entire ballot is defective;

(l) When the number of candidates is equal to the number to be elected to an office, and the voter has not marked against any name, no vote may be counted for that office.

[1959 c 675 art 5 s 22; 1963 c 684 s 1]

**204.23 DEFECTIVE BALLOTS.** Subdivision 1. **Marking; memorandum.** A ballot so defective in whole or in part that it cannot be counted by reason of inability of the judges to determine the intent of the voter shall be marked on the back "Defective" or "Defective as to .....,," naming the office as to which it is defective. A memorandum of the number of defective ballots, and if defective in part only, of the defective parts not counted, shall be made, certified, and returned by the judges as part of the returns.

Subd. 2. **Defective ballots, disposition.** The defective ballots shall be placed with those not defective, and all the ballots shall be placed in the order they are

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read and canvassed, and they shall be disposed of in the manner provided in section 204.24 for the disposition of ballots.

[1959 c 675 art 5 s 23]

**204.24 BALLOTS, DISPOSITION.** Subdivision 1. **Envelopes.** Except in cities of the first class and in counties having a population of 200,000 or more, after the canvass has been completed and in the presence of all the judges, the ballots cast shall be removed from the ballot boxes and placed in envelopes and sealed. Each judge shall write his name upon the envelope over the sealed part in such a way that the envelope cannot be opened without disturbing the continuity of the lines in the writing. The envelopes shall be of a heavy paper, of the same color as the ballots to be placed therein, and of a size suitable to hold all the ballots without folding. The official charged with printing the ballots shall furnish the envelopes required in this section. The number of ballots in each envelope, the kind thereof, the name of the town, village, or city, and the number of the precinct shall be plainly written upon the envelopes. The unused and spoiled ballots or returns may not be placed in the envelopes.

Subd. 2. **Ballots, disposition, certain cities and counties.** In all first class cities and in counties having a population of 200,000 or more, after the canvass has been completed and in the presence of all the judges, all the ballots of the same kind shall be strung and fastened together into a single package by passing a substantial twine string through and around the ballots, tying the ends of the string and sealing the same with wax over the knots with a seal provided by the county auditor or the city clerk, as the case may be. After the ballots have been so strung, fastened and sealed, they shall be replaced in the proper ballot boxes in the presence of all the judges, and each ballot box shall be locked and then sealed by pasting a firm paper across the lid and body thereof in such manner that the box cannot be opened without breaking the seal. Each judge shall write his name upon the paper so that the signatures shall cross the opening between the lid and the body of the box. Wherever box-car seals are used in lieu of a lock and key the remaining seal provided for in section 204.04 shall be secured to the box in such a manner that the box cannot be opened without breaking the seal. The unused and spoiled ballots and the returns may not be placed in the ballot boxes.

[1959 c 675 art 5 s 24; 1961 c 564 s 4; 1961 c 606 s 15]

**204.25 SUMMARY STATEMENTS.** After the canvass has been completed the judges in each precinct, in addition to the other forms required, shall make a summary statement and two additional copies thereof of the total numbers and kinds of each ballots counted, the total votes counted for each person, and the total number of blank or defective ballots for any office and for and against any proposition voted upon. The summary statement shall be divided into two parts, the first part dealing with the state, congressional, and presidential elections, and the second part dealing with county and local elections. The secretary of state shall prescribe the form for summary statements and shall furnish to county auditors sufficient copies of the first part to be distributed by the auditor with the other election materials. The county auditors shall print and furnish the second part of the summary statement. The judges shall file one copy of the summary statement with the clerk of the municipality, and the other two copies with the county auditor. The county auditor shall deliver to the secretary of state one copy of all the summary statements received in the office of the county auditor.

[1959 c 675 art 5 s 25; 1965 c 348 s 3]

**204.26 TALLY BOOK AND RETURNS, DISPOSITION.** Subdivision 1. **Envelope.** The judges in each precinct shall include one set of the tally book and returns in each of two envelopes, and each envelope shall then be sewed by drawing twice through it and the tally book and returns therein a substantial twine string and by tying the ends of the string together and then sealing the envelope in three places with wax and stamp furnished by the county auditor, one of the places to be over the knot in the string. The judges shall then endorse the envelope in substantially the following form: "Tally book and returns of the ..... election precinct, (Town) (Village) or (City) of ....., in the County of ....., State of Minnesota."

Subd. 2. **Returns and materials, delivery.** Except in first class cities one of the judges in each precinct shall deliver one set of the tally book and returns, all unused and spoiled white, pink, and canary ballots, one summary statement, two election registers; and the envelopes containing the white, pink, and canary ballots

to the county auditor at his office within 24 hours after the closing of the polls. Another judge shall deliver the remaining set of the tally book and returns, all unused and spoiled municipal ballots, the remaining summary statement, the remaining election register, the envelopes containing municipal ballots and all other things furnished by the municipal clerk, to the municipal clerk at his office within 24 hours after the closing of the polls.

**Subd. 3. Returns and materials, disposition, first class cities.** In all first class cities, two of the judges in each precinct shall deliver tally books and returns, the unused and spoiled ballots, the summary statements, and the box containing the ballots to the city clerk at his office within 24 hours after closing of the polls.

[1959 c 675 art 5 s 26]

**204.27 BALLOTS, RETURNS, DUTIES.** Subdivision 1. **County auditor.** The auditor of every county shall remain in his office to receive delivery of the things required to be delivered to him, and to permit public inspection of the summary statements, and to tabulate the votes until all have been tabulated and the results made known, or until 24 hours have elapsed since the closing of the polls, whichever occurs first. The county auditor shall file all envelopes containing ballots delivered to him in his office and shall keep them in a safe place with seals unbroken unless previously opened by proper authority for examination or recount, and in that event, the auditor shall cause the envelopes to be sealed again with the names of the persons making the inspection or recount endorsed thereon. The envelopes may be opened by the county canvassing board, if necessary to procure any election returns that may inadvertently have been sealed up with the ballots by the judges; and the envelopes shall be sealed again and endorsed in the manner provided in this subdivision. Where ballots are strung and replaced in the boxes, and the boxes are locked and sealed with the ballots within, the ballots shall be stored in such manner as to admit at all times of actual, visual inspection of the exterior of the boxes, except that if the boxes are needed for use in another election, the ballots may be withdrawn from the boxes and wrapped and tied securely, and sealed and endorsed in the manner provided in this subdivision.

**Subd. 2. Clerk.** The clerk of every first, second, and third class city shall remain in his office to receive delivery of the things required to be delivered to him, or until 24 hours have elapsed since the closing of the polls, whichever occurs first. The clerk of every first class city shall keep a book in which, in the presence of the delivery judges, he shall make a record of all things delivered to him, and the time of delivery, and the names of the judges so delivering them. The book shall be preserved in his office for the same period as the ballots.

[1959 c 675 art 5 s 27]

**204.28 NONCOMPLIANCE WITH LAW.** Subdivision 1. **Failure of judges to make delivery.** Whenever the judges fail to make and deliver returns as provided by law, the auditor or municipal clerk to whom the returns should have been made shall dispatch a special messenger to obtain them, and the messenger is entitled to the same compensation as a judge for like service, and he is subject to the same penalties.

**Subd. 2. Irregularities, not fatal.** An officer to whom election returns are required to be made may not refuse to receive them because they are returned or delivered to him in any manner other than that prescribed by law, except that the returns must be sealed. A canvassing board may not refuse to include any returns in its canvass of votes on account of any informality in holding the election or making returns thereof. All returns shall be received and the votes canvassed by the canvassing board and included in its statements where there is a substantial compliance with the provisions of the Minnesota election law.

[1959 c 675 art 5 s 28]

**204.29 COUNTY CANVASSING BOARD.** Subdivision 1. **Membership.** The county canvassing board shall consist of the county auditor, the clerk of the district court, two members of the county board to be selected by the board from among its members who are not candidates for nomination or election to any office, and the mayor or president of the most populous municipality in the county. If any of these persons fail or refuse to serve on the canvassing board and in the absence of any selection by the county board from among its own members, the county auditor shall appoint a qualified voter of the county who may not hold or be a candidate for any public office, to take the place of the person on the canvass-

ing board. Three members shall constitute a quorum and when sworn shall have the power to act.

**Subd. 2. County canvass, primary election information required.** The board shall meet at the auditor's office at 10:00 A.M. on or before the third day after the primary election, take the oath of office, and publicly canvass the returns of the election made to the county auditor. The board shall complete the canvass by the evening of the sixth day following the election, and it shall forthwith make the following report and file the same with the county auditor:

(a) A statement for each political party showing the names of all candidates thereof voted for at the primary election, the number of votes received by each, in each precinct and in the county, and for what office;

(b) A statement showing the names of candidates of each political party who are nominated;

(c) A statement of the total number of persons who voted at the election in the county, and in each precinct, and the number of ballots counted in each precinct, and in the county; and

(d) A statement of the votes received by each of the nonpartisan candidates in each precinct in the county and the names of the nonpartisan candidates nominated. If any candidates receive an equal number of votes for the same nomination, the canvassing board shall determine the tie by lot. Upon completion of the canvass, the county auditor shall forthwith certify to the secretary of state the vote, as shown by the report of the county canvassing board, for all candidates to be voted for in more than one county, and he shall mail or deliver to each nominee who is to be voted for in his county only, a notice of his nomination and that his name will be placed upon the general election ballot.

**Subd. 3. County canvass, general election, information required.** The canvassing board shall meet at the auditor's office on or before the third day after the general election, take the oath of office, and publicly canvass the returns of the general election made to the county auditor. The board shall complete the canvass without unnecessary delay, and it shall forthwith make the following report and file the same with the county auditor:

(a) A statement of the number of persons who voted at the election in each precinct in the county and the total number of persons who voted at the election in the county; and the number of white, pink, and canary ballots counted in each precinct in the county, and the total number of white, pink, and canary ballots counted in the county;

(b) A statement of the names of all candidates for state offices, representatives and senators in the legislature, representatives and senators in congress, judges of the district court, and county offices; and the number of votes received by each in each precinct and in the whole county;

(c) A statement of the total number of votes counted for and against any proposed change of county lines or county seat; and

(d) A statement of the number of votes counted for and against any constitutional amendment or other proposition in any precinct, and the total number of votes counted therefor in the county.

In case of a tie, the canvassing board shall determine the results by lot. Upon completion of the canvass, the board shall declare the person receiving the highest number of votes for each county office duly elected thereto; and when the county constitutes or contains a senatorial or representative district in the legislature, it shall declare the person receiving the highest number of votes for each office in the legislature duly elected.

**Subd. 4. County canvass, returns, to secretary.** Two copies of each of the statements required in this section shall be made and certified under the official seal of the auditor; each enclosed in an envelope directed to the secretary of state, with the auditor's name and official address and the words, "Election Returns," endorsed thereon, and forwarded by different mails within five days of each other. If neither copy is received by the secretary of state within 20 days after the election, he shall immediately notify the auditor of that fact, and the auditor shall transmit another copy thereof to the secretary by special messenger deputed by him.

[1959 c 675 art 5 s 29; 1967 c 98 s 1]

**204.30 ERRORS IN COUNTING, CORRECTION.** Subdivision 1. **Manner of correction.** If in conducting the canvass of votes at any election it appears to a

majority of the canvassing board or to any candidate that an obvious error in the counting and recording of the vote for any particular office has been made by the judges in any precincts such obvious errors may be corrected in accordance with the provisions of section 203.38, subdivision 2.

Subd. 2. **Ballots, inspection.** The inspection shall be made by the canvassing board in the presence of all the candidates for the office or their representatives.

Subd. 3. **Inspection, time, place.** The inspection shall be conducted as soon as practicable at the office of the county auditor, and the auditor shall set the time of meeting, and give notice to the candidates a sufficient time before the meeting.

Subd. 4. **Canvass, not delayed.** The report of the canvassing board as to other offices on the ballot may not be delayed because of the inspection provided for in this section. Appropriate notation and report of the action taken with reference to the office in regard to which inspection has been ordered shall be made on the regular report of the canvassing board.

Subd. 5. **Canvassing board, report.** As soon as practicable after the board has reexamined the ballots and returns, it shall report to the county auditor. The report shall be signed by all the members of the canvassing board, and it shall contain the following information:

- (a) A copy of the order of the court, if any;
- (b) A statement of the minutes of the meeting of the board for the purposes of correcting the errors, showing the time, date, and place of the meetings, and appearances entered by or on behalf of the candidates;
- (c) A copy of the notice of the meeting given to each candidate with proof of service;
- (d) A statement showing action of the board with reference to the conduct of the inspection and reexamination; and
- (e) A statement showing results of the action of the canvassing board.

Subd. 6. **Canvassing board, declaration, notification.** The canvassing board shall make its declaration of election with reference to the office in question. The report and declaration of election shall be filed by the auditor, and he shall mail a certified copy thereof to each candidate. The auditor immediately shall notify the secretary of state by registered or certified mail of the action of the county canvassing board.

[1959 c 675 art 5 s 30; 1965 c 81 s 2, 3]

**204.31 STATE CANVASSING BOARD.** Subdivision 1. **Membership.** The secretary of state shall call to his assistance two judges of the supreme court and two judges of the district court none of whom may be candidates at the election, and the judges together with the secretary of state shall constitute the state canvassing board. The board shall meet at the office of the secretary of state on the second Tuesday after the primary and general election, except as otherwise provided for special elections. When a vacancy in the membership of the state canvassing board occurs by reason of the failure of any judge to attend the meeting of the board on the day appointed, the secretary of state shall fill the vacancy by selecting another disinterested judge from either court, but not more than two judges of the supreme court shall serve upon the canvassing board at any one time.

Subd. 2. **State canvass, primary election.** After the primary election the canvassing board shall canvass the returns of the election that were made to the secretary of state; and upon the completion of the canvass, the secretary of state shall forthwith certify to the several county auditors the names of the persons found to be nominated and mail to each nominee a notice of his nomination.

Subd. 3. **State canvass, general election.** After the general election, the canvassing board shall canvass the certified copies of the statements made by the county canvassing boards, and they shall prepare therefrom a statement of the following information:

- (a) A statement of the whole number of votes counted for candidates for state offices, congressional offices, and such other candidates as shall be voted for in more than one county, specifying the several counties in which they were cast;
- (b) The names of the persons receiving the votes and the number received by each, specifying the several counties in which they were cast; and
- (c) The number of votes counted for and against each constitutional amendment, specifying the several counties in which they were cast.

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In case of a tie vote for any office, the result of which is to be certified by the state canvassing board, the board shall determine the tie by lot.

Subd. 4. **State canvassing board, certification and declaration of results.** All members of the state canvassing board shall subscribe their names to the statement and certify to its correctness; and within three days after the completion of the canvass, the board shall declare the result.

[1959 c 675 art 5 s 31]

**204.32 CERTIFICATES OF ELECTION; PREPARATION, DELIVERY.** Subdivision 1. **Preparation, delivery.** The auditor of each county, and the secretary of state where the candidates for office are voted for in more than one county, shall make for every person declared elected by the canvassing board of the county or the state canvassing board a certificate of his election and deliver the certificate to the person entitled thereto upon demand, and without fee. The auditor of any county also shall make for any candidate or voter of his county, a certified copy of any statement of votes made by the county canvassing board upon payment or tender of one dollar therefor. In case of a contest, the court may invalidate and revoke the certificate, pursuant to chapter 209.

Subd. 2. **Certificates of election, issuance, contest.** The auditor of any county and the secretary of state may not issue a certificate of election to any person declared elected by the canvassing board of the county or the state canvassing board until 12 days after the canvassing board has canvassed the returns and declared the result of the election. In case of a contest, the certificate may not be issued until the proper court has determined the contest. This subdivision shall not apply to candidates elected to the office of state senator or representative.

[1959 c 675 art 5 s 32; 1971 c 733 s 2]