

## CHAPTER 209

### ELECTION CONTESTS

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**209.01** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.01 DEFINITIONS.**

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

**History:** 1959 c 675 art 10 s 1

**209.02** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.02 ELECTION CONTESTS.**

Subdivision 1. **Contest, who may institute, grounds.** Any voter, including a candidate, may contest the nomination or election of any person for whom he had the right to vote, who is declared nominated or elected to the senate or the house of representatives of the United States, to a state, county, legislative, or municipal, or district court office, or the declared result of a constitutional amendment or other question voted upon at an election by proceeding as provided in this chapter. The contest may be brought over an irregularity in the conduct of an election or canvass of votes or on the grounds of deliberate, serious, and material violations of the provisions of the Minnesota election law.

Subd. 2. **Contest, notice filed, where brought.** The contestant shall file a written notice of contest specifying the points upon which the contest will be made with the clerk of the district court of the county in which the candidate whose election is contested resides; or if the contest relates to a question to be voted for in a county or more than one county, the notice shall be filed with the clerk of the district court of the county or one of the counties; or in the case of an office elected on a statewide basis, including but not limited to United States senators and to presidential electors, or if the contest relates to a constitutional amendment or other question to be voted for statewide, then the notice of contest shall be filed in the district court of Ramsey county, and the place of trial shall not be changed.

Subd. 3. **Notice of contest, filing, service.** The notice of contest shall be filed within seven days after the canvass is completed, except that if the contest relates to a primary, the time for filing the notice of contest shall be limited to five days. Within the same period copies thereof shall be served upon the candidate whose election is contested and upon the official authorized to issue the certificate of election. When the contest relates to a constitutional amendment or other question to be voted for statewide or to a question to be voted for in more than one county, the secretary of state shall be designated the contestee, and a copy of the notice of contest shall be served upon him within seven days, or five days in the case of a primary, after the canvass is completed. When the contest relates to a question that affects a single county or a single municipality, the county auditor or the clerk of the municipality, as the case may be, shall be designated the contestee, and a copy of the notice of contest shall be served upon him within seven days, or five days in the case of a primary, after the canvass is completed.

In all cases where the contest relates to an irregularity in the conduct of the election or canvass of votes a copy of the notice of contest shall also be served within seven days, or five days in the case of a primary, after the canvass is completed upon the county auditor of the county in which the irregularity is said to have existed.

**Subd. 4. Notice of contest, how served.** Service of the notice of contest shall be made in the same manner as provided for the service of summons in civil actions. In all cases two copies of the notice shall be furnished the official authorized to issue the certificate of election at the time of service upon him, and the official shall send one copy thereof by certified mail to the contestee at his last known address. If the sheriff is unable to make personal or substituted service upon the contestee, then the affidavit of the sheriff to that effect and the affidavit of the official authorized to issue the certificate of election that he sent a copy to the contestee by certified mail to his last known address shall be sufficient to confer jurisdiction upon the proper court to hear and determine the contest.

**Subd. 4a. Notice of contest, certain legislative contests, how served.** In legislative contests, notice of contest shall be filed and served as provided in subdivisions 2 to 4, except that the clerk of district court with whom the notice, and answer, if any, has been filed shall, within three days of receipt of each, submit by certified mail one copy thereof to the chief justice of the supreme court. Upon receipt of the notice of contest, the chief justice shall, within five days, submit to the parties a list of all the district judges in the state, having stricken any judges involved in a trial with which serving as judge in the election contest would interfere and having stricken the name of any judge whose health precludes service as judge in the election contest. The parties shall within two days after receiving the list of judges meet together and, in cases where an unfair campaign practice is alleged, by alternating strikes remove the names of all judges until but one remains who shall then proceed to hear the contest in the manner provided in section 209.10. In cases where no unfair campaign practice is alleged, the parties shall follow the same procedure using only the names of judges of the judicial district or districts covering the area served by the contested office. The judge shall, within 15 days after notice has been filed, convene at an appropriate place within the county, or, if the district includes all or portions of more than one county, a county within the legislative district and hear testimony of the parties, under the ordinary rules of evidence for civil actions. If the contestant does not proceed within the time provided for herein his action shall be dismissed and the judge shall transmit a copy of his order for dismissal to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

**Subd. 5. Violation of law as grounds for contest, how commenced.** If the contest is brought on the grounds of deliberate, serious, and material violation of the provisions of the Minnesota election law, the contest shall be commenced in the manner provided in this section; except that if the ground of action is discovered from statement of receipts and disbursements required to be filed by candidates and committees, the action may be commenced and the notice filed and served within ten days after the filing of such statements, except in the case of primaries, the time shall be limited to five days.

**Subd. 6. Contest of nomination.** If a nomination is contested, the court shall decide which candidate was nominated, and that candidate shall be entitled to have his name printed on the official ballots.

**Subd. 7. Contests in Ramsey county.** When a notice of contest is filed in the district court of Ramsey county in the case of an office or constitutional amendment or other question to be voted for statewide as provided in subdivision 2, the case shall be heard and determined by three judges of the district court of the state assigned by the supreme court. If there be a division of opinion that of the majority shall prevail.

Subd. 8. **Notice of contest; other grounds.** When the notice of contest questions only which candidate received the highest number of votes legally cast at the election, the contestee may also serve notice of contest on any other ground during the three days following expiration of the time for appeal after filing of the final order of the district court on the contest relating to the number of votes. Notice of contest pursuant to this subdivision shall otherwise be made in accordance with this section.

**History:** 1959 c 675 art 10 s 2; 1961 c 607 s 1; 1963 c 682 s 1; 1965 c 81 s 4-6; 1971 c 733 s 3,4; 1974 c 312 s 1; 1978 c 674 s 60; 1981 c 29 art 7 s 38

**209.03** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.03 CONTESTEE, ANSWER.**

When the notice of contest questions only which of the parties to the contest received the highest number of votes legally cast at the election, the contestee need not file an answer. For all other election contests or in any contest in which the contestee desires to offer testimony on points not specified in contestant's notice, he shall file and serve on the contestant an answer to the notice of contest. The answer shall so far as practicable, conform to the rules for pleading in civil actions. If the contest relates to a primary service of the answer shall be made within the time fixed by the court, but not exceeding five days after service of contestant's notice upon him; if the contest relates to a general election, service of the answer shall be made within seven days after service of contestant's notice upon him. Service of the answer shall be made in the same manner as provided for service of an answer in civil actions or in such manner as the court may by order direct. Any other notices shall be served in such manner and within such times as the court may by order direct.

**History:** 1961 c 607 s 2; 1965 c 81 s 7; 1971 c 733 s 5; 1981 c 29 art 7 s 38

**209.04** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.04 PLEADINGS, TRIAL PROCEDURE.**

The notices shall be treated as the pleadings in the case, and may be amended in the discretion of the court. The contest proceedings shall be brought on for trial by either the contestant or contestee as soon as practicable within 20 days after the filing of the notice of contest at a general or special term of the court, or if there is none, the judge shall set a special term to be held within that time. The matter shall be tried by the court in the manner provided for the trial of civil actions so far as practicable.

**History:** 1961 c 607 s 3

**209.05** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.05 CONTEST, GUARD OF BALLOTS.**

In any election, upon demand made of the custodian of the ballots and upon notice to the opposing party, a continuous visual guard over the ballots at all hours of the day and night may be kept by a candidate until the expiration of the time for instituting contests, and in case of a contest it may be kept by any party thereto. The guard may be maintained either by the candidate or other party himself or by each of their duly authorized agents not exceeding two for each party at any one time. In event of such demand, the custodian of the ballots shall appoint some suitable person as guard over the ballots during such hours as he

shall deem necessary in order to prevent leaving the same in the sole custody of the candidate or other party or the agents of one of them.

**History:** 1959 c 675 art 10 s 3; 1961 c 607 s 4

**209.06** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

### **209.06 CONTEST, RECOUNT OF BALLOTS.**

**Subdivision 1. Recount, appointment of inspectors.** After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party applying for such inspection shall file with the clerk of district court in which the contest is brought a verified petition, stating that he cannot properly prepare his case for trial without an inspection of such ballots and designating the precincts in which he desires to have ballots inspected, and thereupon a judge of the court wherein the trial of such case is pending shall appoint three persons for a legislative, county, municipal, district court or other office not specifically provided for herein, or for any question voted upon at a county or municipal election, one selected by each of the parties and a third by those two by whom such inspection shall be made. In case either party neglects or refuses to name an inspector, he shall be named by such judge. The compensation of inspectors shall be the same as for referees, unless otherwise stipulated.

**Subd. 2. Recount, bond, taxing of costs.** The party applying for the inspection shall file with the clerk of district court a bond in the sum of \$250 if the contest be within a single county; otherwise the bond shall be in a sum to be fixed by the court in its discretion, with such sureties as shall be approved by the court, and conditioned that he will pay the costs and expenses of such in case he fails to maintain his contest. If the contestee succeeds, costs of the contest shall be taxed against the contestant. If the contestant succeeds, costs of the contest shall be taxed against the contestee, except that if the contestee loses because of an error in the counting of ballots or canvass of the returns or by reason of any other irregularity in the election procedure, costs shall be taxed, in the discretion of the judge, upon those municipalities responsible for errors which resulted in the reversal of the prior results of the election.

**Subd. 3. Recount of ballots, statewide election.** If the contest relates to a state office or to the declared result of a constitutional amendment or other question voted upon at a statewide election, the party applying for the inspection shall designate the precincts in the counties in which he desires the inspection to be made; and the court shall order the appointment of as many sets of three inspectors as may be necessary to expeditiously count and inspect the ballots, and the ballots shall be inspected in the office of the county auditor who is the legal custodian of the ballots in question. The inspectors in a state contest shall be selected in the manner provided in subdivision 1.

**Subd. 4. Recount of ballots, report of inspectors.** The inspection shall be made in the presence of the legal custodian of the ballots, and the inspectors shall recanvass the votes cast for the parties to the contest or the question in issue in accordance with the rules for counting ballots provided in the Minnesota election law. They shall make a written report of such recanvass and report the number of votes cast for each of the parties to the contest for each precinct that is recounted and report any disputed ballots upon which the inspectors cannot agree.

**History:** 1959 c 675 art 10 s 9; 1961 c 607 s 5

**209.07** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.07 CONTEST, DETERMINATION.**

Upon a determination of the contest by the court, after the time for appeal has expired or in case of an appeal, after the final judicial determination of the contest, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee, and the official authorized to issue the certificate of election shall issue the certificate to the person entitled thereto; except that if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, the contestant shall not, by reason of the disqualification of the contestee, be entitled to the certificate of election.

**History:** 1961 c 607 s 6; 1971 c 733 s 6

**209.08** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.085** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.09** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.09 APPEAL TO SUPREME COURT.**

When an appeal is taken to the supreme court from the determination of the district court in any contest instituted under this chapter, the party appealing shall file in the district court a bond in such sum, not less than \$500, and with such sureties, as shall be approved by the judge, conditioned for the payment of all costs incurred by the respondent in case appellant fails on his appeal. The notice of appeal shall be served and filed no later than ten days in case of a general election and no later than five days in case of a primary after the entry of the determination of the district court in the contest. The return of such appeal shall be made, certified, and filed in the supreme court as soon as practicable and in any event within 15 days after service of notice of appeal. The appeal may be brought on for hearing in the court at any time when it is in session, upon such notice from either party, as the court may determine which notice may be served during term time or in vacation; and it may be heard and determined summarily by the court. The appeal from a determination of an election contest relating to the office of state senator or representative shall take precedence over all other business on the supreme court docket, and shall be disposed of with all convenient dispatch. A copy of the decision shall be forwarded to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

**History:** 1959 c 675 art 10 s 10; 1961 c 607 s 7; 1971 c 733 s 7; 1981 c 29 art 7 s 38

**209.10** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.10 CONTEST OF LEGISLATIVE OFFICE.**

**Subdivision 1. Legislative contest, duties of court, transmittal to proper house.** When the contest relates to the office of state senator or representative, the judge trying the proceedings shall determine the contest, issue appropriate orders, and make written findings of fact and conclusions of law. Unless appealed to the supreme court, the judge shall, by the first day of the legislative session, transmit the findings, conclusions and orders to the chief clerk of the house of representatives or the secretary of the senate, as appropriate, together with the files and records of the proceedings. The provisions of this chapter shall not be construed as limiting the constitutional power of the legislature to be the judge of the election returns and eligibility of its own members.

**Subd. 2. Legislative contest, hearing, procedure.** In hearing the contest, the house or senate shall proceed as follows:

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(a) At the time appointed, the parties shall be called, and, if they appear, their appearance shall be recorded;

(b) If the presiding officer be a party, a speaker pro tem shall be elected to preside;

(c) The contestant's evidence shall be submitted first, followed by that of the contestee, and the contestant shall open the argument, and close the same after the contestee has been heard;

(d) The vote upon the contest shall be viva voce, any member may offer reasons for the vote he intends to give, and a majority of the votes given shall decide; but no party to the contest shall vote upon any question relative thereto; and

(e) The clerk or secretary shall enter the proceedings in the journal.

**History:** 1959 c 675 art 10 s 7; 1961 c 564 s 6; 1961 c 607 s 8; 1971 c 733 s 8

**209.11** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

## **209.11 DETERMINATION OF CONTEST.**

When in any contested election the tribunal hearing the contest shall determine that the ballots used in any precinct by reason of the omission, addition, misplacing, misspelling or misstatement of one or more titles of offices, names of candidates, or parties or policies represented by them, were so defective, as to the office in contest, as to be calculated to mislead the voters in regard to any of the candidates for the office, and that the defective condition of the ballots may have affected the result of the entire election for such office, the election shall be declared invalid as to that office.

**History:** 1959 c 675 art 10 s 11

**209.12** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

## **209.12 FEDERAL LEGISLATIVE OFFICES.**

When the contest relates to the office of senator or a member of the house of representatives of the United States, the only question to be tried by the court, notwithstanding any other provision of law, shall be the question as to which of the parties to the contest received the highest number of votes legally cast at the election, and as to who is entitled to receive the certificate of election. The judge trying the proceedings shall make findings of fact and conclusions of law upon the question so tried. Further evidence upon the points specified in the notices, including but not limited to the question as to the right of any person to nomination or office on the ground of deliberate, serious, and material violation of the provisions of the Minnesota election law, shall be taken and preserved by the judge trying the contest, or under his direction by some person appointed by him for that purpose, but the judge shall make no findings or conclusion thereon. After the time for appeal has expired, or in case of an appeal, after the final judicial determination of the contest, upon application of either of the parties to the contest, the clerk of the district court shall, without unnecessary delay, certify and carefully seal and immediately forward all the files and records of the proceedings with all the evidence taken, by mail or by express, addressed to the presiding officer of the senate or of the house of representatives as the case may be of the United States, Washington, District of Columbia; and shall also endorse upon the envelope or container in which the same are transmitted the name of the case in which the same were taken, together with the name of the party in whose behalf the same were taken, and shall subscribe such endorsement.

**History:** 1963 c 682 s 2

**209.13-209.22** MS 1957 [Repealed, 1959 c 675 art 13 s 1]