

REVISED LAWS OF MINNESOTA *94*

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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CHAPTER 6.

ELECTIONS.

154. Definition of terms.

Definitions.—"Village" defined. State ex rel. Village of Excelsior v. District Court of Hennepin County, 120 N. W. 894.

156. Election districts—How constituted and altered.—Each town, each village that is separated from the town for election purposes, and each city ward, shall constitute at least one election district. No district, when first formed, shall contain more than four hundred male voters, provided, however, that where two voting machines are used in any election district, the said districts, when so framed shall contain no more than six hundred male voters. And the council or town board shall so divide, consolidate, and re-arrange the districts from time to time that the number of voters in each shall be substantially equal, and not exceed four hundred. All such changes shall be made by resolution adopted at least six weeks before the next ensuing election, and sixty days posted notice thereof shall be given before the change shall take effect. (R. L. § 156, as amended by Laws 1907, c. 36, and Laws 1909, c. 125, § 1.)

Historical.—"An act to amend sections 156 and 252 of Revised Laws 1905, of the State of Minnesota, as amended, relating to election districts and the hours for opening and closing polling places." Approved March 27, 1909.

See section next following, designated as section 156bis.

156[bis]. Election districts—How constituted and altered.—Each town, each village that is separated from the town for election purposes, and each ward, shall constitute at least one election district. No district, when first formed, shall contain more than four hundred male voters, and the council or town board shall so divide, consolidate, and rearrange the district from time to time that the number of voters in each shall be substantially equal, and not exceed four hundred. All such changes shall be made by resolution adopted at least six weeks before the next ensuing election, and sixty days' posted notice thereof shall be given before the change shall take effect. Provided, that in cities or villages in this state having less than two thousand population, divided into separate wards or when such city or village is so platted so as to be situate in two adjoining counties, the city or village council of such city or village may by resolution adopted at least thirty days prior to any general or special election designate a single voting place in said city or village in which election for the entire city or village shall be held and one set of election officials presiding thereat shall be sufficient, providing, however, that a separate ballot box for each election district shall be provided, in which the votes of such election district shall be deposited and separate record kept therefor. When such single voting place has been so designated, it shall so continue until changed by resolution of said council adopted at least thirty days prior to a subsequent election. (R. L. § 156, as amended by Laws 1907, c. 365, and Laws 1909, c. 175, § 1.)

Historical.—"An act to amend chapter 365 of the General Laws of Minnesota for the year 1907, as the same amends section 156 of the Revised Laws of Minnesota for the year 1905 relating to election districts, how constituted and altered." Approved April 13, 1909.

See section next preceding, designated as section 156.

[160—]1. Special elections in cities having more than 10,000 and less than 20,000 inhabitants.—That whenever a special election shall be required in any city of this state having a population of

more than ten thousand inhabitants and less than twenty thousand inhabitants, to fill any vacancy in the offices of such city and the charter of such city shall not provide by whom or by what body such special election may or shall be ordered, then in every such case, such special election may be ordered by the city council of such city. ('09 c. 180 § 1.)

Historical.—"An act relative to special elections in cities of the third class, the nomination of candidates for election and the registration of voters at such elections." Approved April 13, 1909.

[160—]2. **Same—Candidates, how nominated.**—That whenever a special election shall be ordered in any city of this state, having a population of more than ten thousand inhabitants and less than twenty thousand inhabitants, to fill any vacancy in the offices of such city, and the charter of such city shall require such special election to be ordered and held within ten days after such vacancy shall occur, candidates for election at such special election shall not be required to be nominated at a primary election. Candidates for election at such special election may be nominated by delegate conventions called and held in accordance with the laws of this state, relative to the nomination by conventions held to nominate candidates for election at a special election. Candidates for election at such special election may also be nominated by certificates in the manner provided by law relating to nominations by petition or certificates of voters. Provided, however, that all certificates of nomination of candidates for election at such special elections shall be filed with, and the nomination fee fixed by law paid to the city clerk of such city on or prior to the third day before the day appointed for holding such special election. ('09 c. 180 § 2)

[160—]3. **Same—Fees—Ballots.**—All nomination fees received by any city clerk under the provisions of this act shall be forthwith paid by him to the city treasurer of such city. Said city clerk shall cause the necessary ballots for use at such special election to be prepared, printed and bound in the form and manner provided by law relating thereto, and shall furnish the same to the judges of election for use at such special election, but such city clerk shall not be required to prepare or post any sample ballot in relation to such special election. ('09 c. 180 § 3)

[160—]4. **Same—Judges—Boards of election—Registers.**—It shall not be necessary to appoint judges or to make new registers of voters for such special election, but the judges of election at the last general election in any precinct or district shall continue to be judges of election for such special election and vacancies of judges may be filled the same as in case of general elections. Such judges shall constitute the boards of election for their respective election districts for such special elections. They shall meet on the third day, exclusive of any intervening Sunday, before the day appointed for such special election at six o'clock a. m. at the place where the last election was held; or at such other place as may be lawfully designated as the polling place for such district, and there remain in session until nine o'clock p. m. They shall at such session erase from the registers of voters used at the last election held in such district the names of all voters known to have since died, removed from the district or become disqualified and shall note on such registers opposite each name so erased the reason for such erasure. They shall enter at the proper places in such registers and in the form provided by law relating to the registration of voters, the names of legal voters of said district, who may be lawfully registered as voters at such special election. At the end of said day said board shall compare and correct said registers, shall cause the same to be signed by one of their number at the end of

the list on each page thereof, and shall attach certificates to such registers in the form, so far as applicable, required to be attached by boards of registration to registers of voters on completion of the registration of voters in such city. No list of the names of voters appearing on such registers shall be required to be prepared or posted. Before ten o'clock on the next week day, said registers shall be deposited by one of said board in the office of the city clerk, who shall safely keep the same. Such registers shall be used as the registers of voters at such special election. ('09 c. 180 § 4)

[160—]5. Same—Compensation.—The compensation for services at such special election shall be the same as provided by law for similar services at elections and with other expenses thereof shall be paid as provided by law relating to the payment of expenses at general elections. ('09 c. 180 § 5)

[160—]6. Same—General election law to apply.—Except as otherwise provided in this chapter, or in the charter of the city in which such special election shall be ordered, the nomination of candidates and the registration of voters for such special election and such special election and all things pertaining thereto, shall be in accordance with and controlled by the laws of this state. ('09 c. 180 § 6)

[163—]1. Intoxicating liquors at polling places forbidden.—Any person or persons introducing in any way upon any election day into a place where an election is being held any malt or spirituous liquors, and any judge or clerk of election, constable or challenger drinking any such liquors in such place, or being intoxicated therein, upon any election day, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding sixty days, or by both, such fine and imprisonment, in the discretion of the court. ('07 c. 307)

Historical.—"An act forbidding the introduction or use of any malt or spirituous liquors at polling places on any election day." Approved April 22, 1907.

[167—]1. Lavender ballot for questions relating to charter, bonds, etc.—All questions relating to the adoption of a city charter or any amendments thereto, or any proposition for the issuance of bonds, by any municipality as provided for by any statutes of this state enacted in pursuance of section 36 of article IV. of the Constitution of Minnesota, submitted at any election to the electors of the municipality, shall be printed on one separate lavender colored ballot and shall be prepared, printed and distributed under the direction of the city clerk at the same time and in the same manner as other city ballots. Such ballots, when voted, shall be deposited in a separate ballot box, painted in a lavender color, to be procured by the local authorities for each voting precinct. Such ballot shall be canvassed, counted and returned and the result thereof declared in the same manner as other city ballots. The person under whose direction tally sheets and blanks for election returns are printed shall print such tally sheets and blanks for election returns in such manner as to provide appropriate spaces and columns for counting, canvassing votes and making proper returns for the question so placed on such lavender colored ballot. ('05 c. 87 § 1)

Historical.—"An act to provide for placing questions relating to the adoption of a city charter or of any amendments thereto, or any proposition, for the issuance of bonds, under any statutes of this state enacted in pursuance of section 36 of article IV. of the Constitution of Minnesota to be voted on by the people of any municipality, on a separate ballot." Approved March 30, 1905.

Section 2 repeals inconsistent acts. By section 3 the act took effect June 1, 1905.

[168—]1. County auditor to send ballots to clerks and judges, etc.—Wherever the primary and general election laws now provide that the village and town clerks and judges of election in unorganized towns, go to the county seat and receive the official ballots; hereafter the auditor of each county shall, at least one week before the day of election, send by registered mail or express to the village and town clerks and judges of election, the official ballots that each is entitled to receive; also, sealing wax, stamp, and the necessary postage to register and mail the election returns and other papers, as provided in section two [316—1] of this act. (Laws 1903, c. 168, as amended by Laws 1905, c. 214, § 1.)

Historical.—"An act to amend chapter one hundred and sixty-eight of the General Laws of 1903, entitled 'An act to provide for sending official ballots to village and town clerks, and certain election judges, by registered mail or by express, and for sending election returns to county auditors by registered mail.'" Approved April 17, 1905.

Sections 2, 3, and 4 are inserted hereafter and designated as sections [316—] 1 to [316—]3. Section 5 repeals inconsistent acts.

Laws 1903, c. 168, was repealed by R. L. § 5546. So far as the amended section differs from the Revised Laws, it is to be construed by virtue of section 5504, as amendatory or supplementary.

NOMINATIONS BY DIRECT VOTE.

181. Primary election—Purpose—Time of holding—Notice.

Cited in State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

184. Names of candidates; when placed on primary ballot.—At least twenty days before the primary election, any person eligible and desirous of having his name placed upon the primary ballot as a candidate for any office, shall file his affidavit with the secretary of state when to be voted for in more than one county, and with the county auditor when in a single county, stating his residence, that he is a qualified voter in the subdivision where he seeks a nomination, the name of his party, and the office for which he desires to be a candidate; that he affiliated with said party at the last general election, and, either that he did not vote thereat or voted for a majority of the candidates of said party at such election and intends to so vote at the ensuing election. Upon payment by such candidate to the secretary of state of twenty dollars, if for any office to be voted for in more than one county, or if for any office to be voted for in only one county, upon payment of ten dollars to the county auditor thereof, the county auditor shall place the name of such candidate upon the primary election ballot of the party designated; provided, however, that candidates for the legislature shall pay ten dollars only to the secretary of state when the affidavit or petition is filed with him and ten dollars to the county auditor when filed with him. (R. L. § 184, as amended by Laws 1907, c. 226, and Laws 1909, c. 95, § 1.)

Constitutionality.—The requirement of the payment of fees upon filing for nomination is a reasonable regulation, and constitutional. State ex rel. Thompson v. Scott, 99 Minn. 145, 108 N. W. 828.

Candidate.—A political aspirant becomes a candidate at the time of filing his affidavit. State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

185. Order of filing—Fees, how disposed of.—The secretary of state and county auditor respectively shall number each affidavit and petition in numerical order as received. The auditor shall immediately pay to the city treasurer all fees paid by candidates for city offices, and all other fees received from candidates to the county treasurer. Immediately after the last day for filing nomination affidavits or petitions, the secretary of state shall divide the amount of all fees paid to him by candidates equally between the counties within which such candidates are to be voted for, and certify such division to the state auditor, who shall issue warrants

therefor on the state treasurer for the amount due to each county. (R. L. § 185, as amended by Laws 1909, c. 95, § 2.)

191. Hours for voting.

See section [191—]1.

[191—]1. **Same.**—The polls in the several election districts on the primary election day shall be kept open for the purpose of voting, and the same officers shall remain in session for the purpose of registration of voters, for the same length of time, which shall be from nine (9) o'clock in the morning until nine o'clock in the evening, in towns, and from six (6) o'clock in the morning until nine (9) o'clock in the evening in cities and villages and in places where incorporated villages and townships are one election precinct. If at the hour of closing there are any electors in the polling place, or in line at the door, desiring to vote, and who are qualified to register and participate therein, and have not been able to do so since appearing at the polling place, said polls shall be kept open reasonably long enough after the hour for closing to allow those present at that hour to register and vote. No one not present at the hour of closing shall be entitled to register and vote because the polls may not actually be closed when he arrives. No adjournment or intermission whatever shall take place until the polls shall be closed and until all the votes cast at such polls have been counted and the result publicly announced; but this shall not be deemed to prevent any temporary recess while taking meals or other necessary delay, provided that the board shall remain in session and that no more than one member of the board of election shall at any time be absent from the polling place. (Laws 1899, c. 349, § 15, as amended by Laws 1905, c. 92, § 1.)

Historical.—"An act to amend section fifteen of chapter three hundred and forty-nine of the General Laws of the year 1899, relating to the time for holding primary elections." Approved March 31, 1905.

Laws 1899, c. 349, was repealed by R. L. § 5343; the provisions of section 15 thereof being incorporated in section 191. So far as said section 15, as amended, differs from said section 191, it is to be construed, by virtue of R. L. § 5504, as amendatory or supplementary.

202. Review by courts.

Cited and applied in *Whaley v. Bayer*, 99 Minn. 397, 109 N. W. 596, 820.

Jurisdiction.—This section provides for a procedure which is, in substance, mandamus, and the purposes are within the scope of the common-law use of that writ. Original jurisdiction may therefore be conferred upon the Supreme Court. But section 203 provides for an election contest, which must first be determined by the district court. *Lauritsen v. Seward*, 99 Minn. 313, 109 N. W. 404.

A proceeding by petition and order to show cause, under this section, is proper to test the question whether members of the Legislature which enacts a law increasing the compensation of Senators and Representatives are disqualified from becoming candidates for such office for the ensuing term. *State ex rel. Olson v. Scott*, 105 Minn. 513, 117 N. W. 845, 1044.

203. Contests for nomination.

Cited and applied in *Lauritsen v. Seward*, 99 Minn. 313, 109 N. W. 404. Cited in *Johnson v. Dosland*, 99 Minn. 513, 109 N. W. 1133; *Elwell v. Comstock*, 99 Minn. 261, 109 N. W. 113, 698, 7 L. R. A. (N. S.) 621.

Constitutionality.—This section, in so far as it attempts to confer upon the Supreme Court original jurisdiction in election contests, is unconstitutional. *Lauritsen v. Seward*, 99 Minn. 313, 109 N. W. 404.

Jurisdiction.—This section requires the district courts to hear and determine election contests instituted thereunder in the manner authorized by section 202. *Whaley v. Bayer*, 99 Minn. 397, 109 N. W. 596, 820.

Procedure.—The court will adopt such procedure as is necessary. *Whaley v. Bayer*, 99 Minn. 397, 109 N. W. 596, 820.

Contests, within what time.—Contests for nomination must be brought to trial and final determination before the election, and the courts will not, where no questions of general public importance are involved, hear or determine them thereafter. *Johnson v. Dosland*, 103 Minn. 147, 114 N. W. 465.

NOMINATION BY VOTERS.

213. Certificate—Number of signatures.

See section [213—]1.

Number of signatures.—Where the certificate of nomination for Governor was signed by less than 2,000 qualified voters, it was insufficient to entitle his name to be placed on the ballots for any purpose. In re Official Ballot for the General Election of November, 1906, 99 Minn. 517, 109 N. W. 1.

[213—]1. **Same.**—The certificate of nomination of a candidate selected otherwise than by a convention of delegates shall be signed only after the holding of the regular primary election by electors resident within the district or political division from which the candidate is presented, as follows: If for a state office on a state ticket equal to one per cent of the entire vote of the state cast at the last preceding general election; if for a congressional or judicial district office, by five per cent of the entire vote cast in any such district at the last preceding general election; and if for a county, legislative or municipal office, by ten per cent of the entire vote cast in any such county, city, village, ward or other election district at the last preceding general election. Provided, that the number of signatures required shall not exceed two thousand for any state office, nor five hundred for any congressional or judicial district, nor for any other office. (Laws 1893, c. 4, § 35, as amended by Laws 1895, c. 135, as amended by Laws 1905, c. 134, § 1.)

Historical.—“An act to amend section 35 of chapter 4 of the General Laws of the State of Minnesota for the year 1893 as amended by chapter 135 of the General Laws of the State of Minnesota for the year 1895, entitled, ‘An act to regulate elections.’” Approved April 11, 1905.

Laws 1893, c. 4, and Laws 1895, c. 135, were repealed by R. L. §§ 5540, 5541; the provisions of Laws 1893, c. 4, § 35, as amended by Laws 1895, c. 135, being incorporated in R. L. § 213. So far as said section 35, as amended by Laws 1905, c. 52, differs from R. L. § 213, it is to be construed by virtue of section 5504, as amendatory or supplementary.

214. Form of certificate.

Construction in general.—The provision which requires that the certificate shall contain the name of the person nominated, the office, and the party or political principle, should be liberally construed, so as to effectuate the legislative intention, and to secure to the people their right to freely express their choice. *Quealy v. Warweg*, 106 Minn. 145, 118 N. W. 673.

Designation of party.—The provision that the certificate shall state the party or political principle of the nominee is mandatory, and a certificate which makes no attempt to comply with such provision is void. *State ex rel. Yngve v. Grift*, 106 Minn. 29, 117 N. W. 921.

The expression “Independent Party” is held to be a proper emblem for a candidate nominated by petition. *Quealy v. Warweg*, 106 Minn. 145, 118 N. W. 673.

215. But one name in certificate—Petitioners, how limited.

Contents of certificate.—The fact that it did not appear upon the certificate that the persons signing it had not voted at a primary election for any nominee to an office for which a nominee was voted for at that election did not invalidate the certificate. *Quealy v. Warweg*, 106 Minn. 145, 118 N. W. 673.

216. Oath of signers.

Oath.—A certificate signed by voters, which recites that the voter was sworn and knew the contents and the purposes of the certificate, and signed the same of his own free will, in which the form of jurat was “subscribed and sworn to before me,” followed by a statement of different days, is valid. *Quealy v. Warweg*, 106 Minn. 145, 118 N. W. 673.

GENERAL PROVISIONS.

222. Fees for placing names on ballots.—The secretary of state, county auditor and city clerks shall place upon the ballots prepared by them respectively, the names of all candidates duly nomi-

nated whose certificates of nomination have been duly filed, accompanied by fees, as follows:

1. If to appear upon the white ballot fifty dollars.
2. If upon the red ballot for a city of more than three thousand inhabitants, five dollars; if less, two dollars.
3. If upon the blue ballot, ten dollars in case the candidate is to be voted for in one county only; otherwise twenty dollars; provided, however, that candidates for the legislature shall in all cases pay ten dollars and candidates for county commissioner, whose compensation is less than three hundred dollars, five dollars.

But if no compensation be provided by law for the office or if the office be that of presidential elector, no nomination fee shall be required. (R. L. § 222, as amended by Laws 1907, c. 226, § 1.)

This section, so far as it requires fees from candidates nominated at primary elections, is repealed by the section next following.

[222—]1. No fee required, when.—Every candidate for public office who has been duly nominated at any primary election and who has paid the fee required by law to be paid on filing as a candidate at such primary election shall, for the general election subsequent thereto, have his name as such candidate placed on the general election ballot without the payment of any additional fee. ('07 c. 429 § 1)

Historical.—“An act to exempt a candidate who has been nominated at any primary election from paying any fee to have his name placed on the general election ballot.” Approved April 25, 1907.

Section 2 repeals inconsistent acts.

See note under section next preceding.

[226—]1. Change of voting place.—That whenever a majority of the legal voters of any township in this state shall petition the board of supervisors of such town to change the place of holding elections from where last held to an incorporated village, or to an incorporated city containing less than ten thousand inhabitants, located in whole or in part within such town, then said supervisors may procure a suitable hall or building in such village or city where the voters of such township shall hold their elections; and said township shall have power to purchase and own necessary real estate in such incorporated village or city for such purpose; provided, however, that no village or city election shall be held on the same day as a township election is held, in the hall, or place so procured by said town for election purposes. (Laws 1897, c. 239, § 1, as amended by Laws 1899, c. 59, as amended by Laws 1903, c. 26, as amended by Laws 1905, c. 149, § 1.)

Historical.—“An act to amend chapter 239 of the General Laws of 1897, as amended by chapter 59 of the General Laws of 1899, and by chapter 26 of the General Laws of 1903, entitled ‘An act to permit voters of any township in this state to hold their elections within an incorporated village when such village is located in said town.’” Approved April 11, 1905.

The several acts mentioned in the title were repealed by R. L. §§ 5542, 5543, 5546; their provisions in part being incorporated in section 226. So far as Laws 1905, c. 149, differs from said section 226, it is to be construed, by virtue of R. L. § 5504, as amendatory or supplementary.

235. Residence of voters, how determined.

Subd. 7—Family.—The word “family,” means any group of persons constituting a distinct domestic body. State ex rel. Young v. Hays, 105 Minn. 399, 117 N. W. 615.

[251—]1. Registration for special elections in cities having 50,000 inhabitants, etc.—It shall not be necessary to make new precincts, to appoint judges, or to make new registration of voters for special elections held for any purpose whatever, in and for cities having more than 50,000 inhabitants, but the registration for the last preceding general election shall be used, the precincts shall be the same as at the last preceding general election, the polling places shall be the same as near as may be and the judges of elec-

tion at the last general election in any precinct shall continue to be judges of election for such special election and vacancies of judges may be filled the same as in case of general elections, and such judges shall have the right to take from the city clerk or other legal custodian, and use at such special election, the registers used at said last general election, any name thereon being subject to challenge as at a general election. ('07 c. 148 § 1)

Historical.—"An act to provide for the method of registration for all special elections, held in and for cities having more than 50,000 inhabitants." Approved April 11, 1907.

Section 3 repeals inconsistent acts.

[251—]2. **Same—Qualified voter not registered may vote—Oath.**—If any person whose name does not appear on said registers shall ask to vote at said special election his name shall be entered upon such registers upon taking such oath, answering such questions and complying with such other provisions of the Revised Laws, 1905, as are required for registration. After his name is so entered and before he receives the ballot the judges shall administer the following oath: "You do swear that you are a citizen of the United States; that you are twenty-one years of age, and have been a resident of this state for six months immediately preceding this election; that you are a qualified voter in this district; and that you have not voted at this election." Upon taking this oath if the judges are satisfied he is a qualified voter he shall be allowed to vote. If such person refuse to take this oath he shall not be allowed to vote, and his name shall be removed from the registers. ('07 c. 148 § 2)

252. Hours for opening and closing polling places.—In towns and villages the polls shall be kept open from 9 o'clock a. m. until 5 o'clock p. m., in cities of the fourth class, from 6 o'clock a. m. until 7 o'clock p. m., and in all other cities from 6 o'clock a. m. until 9 o'clock p. m. No adjournment or intermission whatever shall be had until the polls are closed, all the votes counted, and the result publicly announced; but this shall not be construed to prevent any temporary recess for taking meals or other necessary purposes, provided, the board remains in session and not more than one member thereof is absent at the same time. (R. L. § 252, as amended by Laws 1909, c. 125, § 2.)

See note under section 156.

G. S. 1894, § 78, cited in *Wolfe v. City of Moorhead*, 98 Minn. 113, 107 N. W. 723.

[252—]1. **Hours for opening and closing polls in certain independent school districts.**—In all independent school districts in this state containing a population of fifty thousand inhabitants or over, to be based upon the census last preceding the election, and in which independent school districts elections are held exclusively for school purposes, and separate from, and at different dates from city and state elections, the polls at such school elections shall be opened at six o'clock a. m. on the day of such election, and shall remain open for purposes of voting until seven o'clock p. m. on said day. ('07 c. 278 §:1)

Historical.—"An act to fix the hours during which the polls shall be open for the holding of school elections in certain independent school districts in the state of Minnesota." Approved April 22, 1907.

253. Location of polling places.—No election shall be held or appointed to be held in any saloon or bar room, or in any room used or occupied as a place of resort for idlers or disreputable persons, or in any room adjoining either. Nor shall such election be held in any room wherein the requirements of this chapter relative to booths, railings and distances cannot be substantially complied with. Such polling places in all cities shall be upon the ground

floor, in a front room, the entrance to which is from a highway or public street at least forty feet wide, and as near the center of the voting population of the district as is practicable. Provided, That in cities of less than twenty thousand inhabitants polling places conveniently and clearly accessible may be in the second story of buildings complying in all other respects to the provisions of this act. (R. L. § 253, as amended by Laws 1907, c. 108, § 1.)

275. Marking ballots—Rules.

Identity of voter.—A ballot so marked by the elector that his identity is thereby disclosed is void. *Elwell v. Comstock*, 99 Minn. 261, 109 N. W. 113, 698, 7 L. R. A. (N. S.) 621; *Bloedel v. Cromwell*, 104 Minn. 487, 116 N. W. 947.

Pasters.—Ballots in the form of "pasters" were legal, and properly counted. *Snortum v. Homme*, 106 Minn. 464, 119 N. W. 59.

290. Canvass of votes, first proceedings.

Record of voters.—The poll list, a record of the names of voters made by election officers during the progress of the election as they appear and cast their ballots, is, in the absence of clear proof to the contrary, conclusive of the names and number of persons who voted. A ballot found in the ballot box by referee appointed in contest proceedings, which was not attached to the string of ballots counted by the officers of the election, and which, if counted, exceeded the number of ballots cast as shown by the poll list, is not sufficiently identified as lawfully cast. *In re Lannon*, 120 N. W. 1082.

302. Rules for counting marks on ballots.

Subd. 8.—Where a voter properly marked his ballot for contestant, and then attempted to obliterate the mark by pencil, and placed a proper mark after the name of contestee, it was held that the ballot was properly counted for contestee. *In re Lannon*, 120 N. W. 1082.

[316—]1. Returns, how delivered to county auditor—Compensation.—And wherever the said election laws require the election returns and other papers to be delivered to the county auditor by one of the judges or other manager; hereafter such returns and other papers shall, in the presence of all the judges of election, be deposited in duplicate, each in a separate envelope, one of which shall be sewed by drawing a substantial twine through said envelope and said returns, and tying the ends of said twine together, and then seal said envelope, with a stamp furnished by the county auditor, in three places, having one of the seals over the knot in said twine. Said judges shall designate one of their number to take, within twenty-four hours, said envelopes, containing said election returns and other papers, to the nearest postoffice, and cause them to be registered and mailed to the county auditor at his office. The person mailing such election returns and other papers shall receive for his compensation the sum of one dollar; and also ten cents per mile for each mile necessarily traveled in going to and returning from the postoffice where such election returns were mailed; said compensation to be paid out of the county treasury. (Laws 1903, c. 168, as amended by Laws 1905, c. 214, § 2.)

See note under section [168—]1.

[316—]2. Same—Failure to register and mail—Penalty.—Should the judge of election so designated fail to register and mail said election returns and other papers within the time herein specified he shall be deemed guilty of a misdemeanor, and punished accordingly. (Laws 1903, c. 168, as amended by Laws 1905, c. 214, § 3.)

See note under section [168—]1.

[316—]3. Same—Certain districts excepted.—Provided, however, that this act shall not apply to election districts where the place of holding the polls is within ten miles of the office of the county auditor by the nearest traveled route. (Laws 1903, c. 168, as amended by Laws 1905, c. 214, § 4.)

See note under section [168—]1.

326. State canvassing board.—The Secretary of the State shall call to his assistance two or more judges of the supreme court and two disinterested judges of the district court, and they shall constitute the state canvassing board. He shall appoint a meeting of such board to be held in his office on the fourth Tuesday of November after each general election, and within thirty days after a special election. When a vacancy in the membership of said board occurs by reason of inability or failure of any such judge to attend on the day appointed, he shall fill the vacancy by selecting another disinterested judge from either court: Provided, that not more than two judges of the supreme court shall be obliged to serve upon such board at one time. (R. L. § 326, as amended by Laws 1909, c. 76, § 1.)

336. Contesting state and municipal elections—Notices—Trial.

Village elections.—A "village," as defined in section 154, is a municipality, and an office therein is a "municipal office," within this section, which extends the right of contest to village elections, notwithstanding section 343. State ex rel. Village of Excelsior v. District Court of Hennepin County, 120 N. W. 894.

— **Jurisdiction.**—Laws 1895, c. 8, § 114, which confers upon the city council the power to canvass the results of votes cast at city elections, and makes the council the judge of the election and qualification of its members, was not repealed by Laws 1901, c. 365, or by this section. The council and the district court have concurrent jurisdiction to determine such election contests. State ex rel. Jarvis v. Craig, 100 Minn. 352, 111 N. W. 3.

— **Notice of appeal.**—Unless the notice is filed and served within 10 days after the canvass, no jurisdiction to hear the contest is acquired by the court. Odegard v. Lemire, 119 N. W. 1057.

Candidate improperly nominated.—Electors voting for a candidate whose name appears upon the official ballot as the regular nominee will not be disfranchised by rejecting their ballots on the ground that the candidate's nomination was secured by unlawful means. Johnson v. Dosland, 103 Minn. 147, 114 N. W. 465.

Place of trial.—The trial of a contested election proceeding at a place not the county seat, against the objection and exception of one of the parties, held reversible error. The objection was not waived by subsequently taking part in the proceedings. Bell v. Jarvis, 98 Minn. 109, 107 N. W. 547.

337. Inspection of ballots—How obtained.—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 a verified petition, stating that he cannot properly prepare his case for trial without an inspection of such ballots, and thereupon the judge of said court shall appoint three persons, if for a county or municipal office, one selected by each of the parties and a third by those two, by whom such inspection shall be made. If the contest relates to a state office, or to the declared result upon a constitutional amendment or other question submitted to popular vote throughout the state, a judge of said court shall appoint three persons in each county, one selected by each of the parties in each county and a third by those two by whom such inspection shall be made. It shall be conducted in the presence of the legal custodian of the ballots, and the party applying therefor shall file with the clerk a bond in the sum of two hundred and fifty dollars, with two sureties approved by the judge of such court. If the contest relates to a state office or to the declared result upon a constitutional amendment or other question submitted to popular vote throughout the state, the bond shall be for such sum as the court shall designate, conditioned, that he will pay the costs and expenses of such inspection in case he fails to maintain his contest. In case either party neglects or refuses to name an inspector, he shall be selected by the judge. (R. L. § 337, as amended by Laws 1907, c. 475.)

343. Application to towns and villages—Exception as to cities.

See State ex rel. Village of Excelsior v. District Court of Hennepin County, 120 N. W. 894, cited in note under section 336.

VOTING MACHINES.

344, 345. [Repealed. Laws 1905, c. 267, § 8.]

See note under section [347—]1.

346. [Superseded. Laws 1905, c. 267.]

See note under section [347—]1.

347. Election officers where voting machines are used.—No more than two clerks and no more than three judges shall be employed to officiate in any district wherein voting machines are used, except that in any district where two or more voting machines are used not to exceed two clerks may be employed for each voting machine used therein. The judges shall enforce the rules prescribed for the use of such machines, and carry out all the provisions of this chapter relating to the election, except such as are rendered inapplicable by the use of such machines. (R. L. § 347, as amended by Laws 1909, c. 64, § 1.)

See note under section [347—]1.

[347—]1. Cities, villages and towns may provide for use.—The governing body of any city, village or town in this state may provide for the use of voting machines in all or one or more election districts thereof at all elections to be held therein, including primary elections; and at any such elections, the vote or ballot may be had and taken, and the votes cast thereat registered or recorded and counted, and the results of such election or elections ascertained by the use of voting machines instead of in the mode and manner now established by law, provided, however, that the adoption, examination, purchase and use of such machines and their use at such elections, shall be subject to the provisions hereinafter contained. ('05 c. 267 § 1)

Historical.—“An act to authorize the use of voting machines at election, and to authorize cities, villages and towns to issue bonds to defray the cost of the purchase thereof and to repeal existing laws relating to voting machines.” Approved April 18, 1905.

R. L. §§ 344, 345, 347, incorporated the provisions of Laws 1899, c. 315, which was repealed by R. L. § 5543, as well as by Laws 1905, c. 267 (section [347—] 8, post). R. L. § 346, appears to have been new; but by virtue of section 5504 it was superseded by Laws 1905, c. 267. See section [347—] 8, post.

Constitutionality.—Laws 1905, c. 267, does not contravene the provision of the Constitution that all elections shall be by ballot. The subject is sufficiently expressed in its title. Nor is it unconstitutional, in that it delegates judicial or legislative functions; the duties of the commission being administrative. *Ellwell v. Comstock*, 99 Minn. 261, 109 N. W. 113, 698, 7 L. R. A. (N. S.) 621.

[347—]2. Arrangement of names—Machines, how constructed.—Where voting machines are authorized and employed, the arrangement of the names of the candidates thereon for each office shall be substantially the same as that prescribed by law where printed ballots are used, except that the provision contained in the general election law requiring the rotation of the names of candidates where more than one is to be elected to the same office, need not be observed. In such case the names of the candidates of the various political parties shall be arranged on the ballot form alphabetically according to surnames. The machine adopted or employed must be so constructed as to insure to every elector, an opportunity to vote in secret; to permit him to vote once and only once for all the candidates and upon all the propositions for whom or upon which he is legally entitled to vote; to permit him to vote by means of some device connected with the mechanism of the machine, for any person for any office elective by the voters of his election district at such election, although such person has not been regularly nominated for such office by any political party, and his name does not appear upon the ballot form on or in such ma-

chine as a candidate for such office; to prevent the elector from voting for more than one person for the same office, unless he is lawfully entitled to vote for more than one person therefor; and in that event to limit him to the number to be elected to that office; to prevent him at a primary election, from voting for the nomination of candidates of more than one party, or for any person whose name is not on the official ballot at such election; to prevent him from voting for any office or upon any proposed amendment, question or proposition, for whom or upon which he is not lawfully entitled to vote; to permit him to change or retract any vote he has attempted to cast for any candidate for any office or upon any proposition up to the time his vote has been completed, and his vote in favor of such person or proposition has been registered thereon. No machine which does not comply with these requirements shall be approved, authorized or employed. ('05 c. 267 § 2)

[347—]3. Voting machine commission—Appointment—Term—Duties—Approval of machines—Fees.—There is hereby created a body to be known as "The Minnesota Voting Machine Commission," consisting of three members, including the attorney general, who shall be chairman. Within thirty days after the passage of this act, there shall be appointed as members of said commission, two competent and responsible persons, who shall be master mechanics or graduates of a school of mechanical engineering. The governor shall appoint one of said members and the attorney general the other. None of the members of said commission shall, directly or indirectly, have any pecuniary interest in any voting machine. The said appointees shall serve for a term of four years from the date of appointment and until their successors are in like manner appointed. The appointing power may fill vacancies in said commission. The said members of said commission so appointed shall qualify without delay by taking and filing with the secretary of state an oath of office in writing in the usual form, and shall elect one of their members to be secretary and one to be treasurer. Any person, company or corporation owning or being interested in any voting machine may apply to said commission to examine such machine and to report as to its compliance with the requirements of the law and on its accuracy, durability, efficiency and capacity to register the will of electors. The commission shall thereupon examine the machine so submitted, and make and file its report thereon. Said examination shall not be required as to each individual machine, but only as to each particular kind or type of machine, before its adoption, use, or purchase as provided herein. The report of said commission shall be signed by the attorney general and at least one other member, and shall be filed with the secretary of state within ten days after the close of said examination. If, from said report, it shall appear that, in the opinion of the commission, the kind of machine so examined complies with the requirements of this act and can be used safely at elections in this state, under the conditions prescribed by this act and by the laws of the state where the same do not conflict herewith, then said machine shall be deemed approved by said commission, and machines of its kind may be adopted and purchased for use, and may be used at elections in this state as herein provided. No form of voting machine not so approved may be used at any election in this state. As the examination fee herein, said application shall be accompanied by the sum of one hundred and fifty dollars. After there has been deducted and paid out of said sum all expenses incurred by said commission in the discharge of its duties herein the balance shall, at such time as the commission may decide, be paid in equal parts to the members of said commission other than the attorney

general as full compensation for their services and expenses herein. ('05 c. 267 § 3)

Cited in *Elwell v. Comstock*, 99 Minn. 261, 263, 109 N. W. 113, 698, 7 L. R. A. (N. S.) 621.

See note under section [347—]1.

[347—]4. Rules for use to be approved by attorney general.—Whenever the governing body of any city, village or town shall determine to use such machines, it shall by resolution or ordinance prescribe suitable rules and instructions not inconsistent with the provisions of this act for using the same, submit the same to the attorney general for his approval, and when approved by him, cause notices thereof to be given, as in the case of election notices. ('05 c. 267 § 4)

[347—]5. Authorization to purchase.—The governing body of each city, village and town in this state is hereby authorized to purchase for the use of each election district, in which it has authorized the use of voting machines, one or more such machines in complete working order, and to make suitable provision for the adjustment, custody and care thereof. ('05 c. 267 § 5)

[347—]6. Judges and clerks—Election districts.—No more than three judges of election and no more than two clerks of election shall be employed to officiate in any district wherein voting machines are used. The judges shall enforce the rules prescribed for the use of such machines, and carry out all the provisions of the election laws of this state relating to elections, except such as are rendered inapplicable by the use of such machines. The election districts in which voting machines are to be used may be enlarged or reformed in the manner prescribed in the general election law, so that each district shall, when so first formed, contain not to exceed six hundred male electors, as shown by the registration books used at the then next preceding general election. ('05 c. 267 § 6)

[347—]7. Payment for machines—Tax levy—Bonds—Cities having 50,000 inhabitants.—Payment for such machines may be provided for in such manner as is deemed for the best interests of the political division adopting and purchasing them, and each city, village, and town is hereby authorized for said purpose, to appropriate money from the general fund, to levy a tax in the same manner as other taxes are levied, or to issue and sell bonds or other certificates of indebtedness, which shall be a charge upon such city, village or town so adopting and purchasing such voting machines, and to provide for the payment and redemption thereof, at maturity. Such bonds or other certificates of indebtedness when issued by a city having a population of more than fifty thousand inhabitants according to the last preceding state or national census, may be issued by a majority vote of its governing body, and when issued by a city of any other class or by a village or town, by vote of its governing body duly ratified by the electors of such city, village or town at the next election held therein. The bonds or certificates of indebtedness so issued may bear interest at a rate not exceeding six per cent per annum and may be made payable at such time not exceeding twenty years from the date thereof, as may be determined by the resolution or ordinance authorizing the issuance thereof, and may be issued exclusive of and in addition to any limit of indebtedness fixed by the charter of such city or village, or by the laws of this state for such city, village or town, but such bonds or certificates shall not be issued or sold at less than par and accrued interest thereon. ('05 c. 267 § 7)

[347—]8. Operation of election laws—Express repeal.—All laws and parts of laws now in force in this state relating to state, county, city, village and town elections, and defining the powers and

duties of election officers so far as applicable to the use of voting machines, shall remain in full force and effect, and all laws and parts of laws inconsistent herewith shall be suspended in each city, village, town or election district wherein such voting machines are used, so long as the same shall be used therein. Chapter 296, General Laws of 1897, and chapter 315, General Laws 1899, are hereby repealed. ('05 c. 267 § 8)

See note under section [347—]1.

[347—]9. Injuring machines—Misdemeanor.—Any person who shall wilfully injure or attempt to injure or render ineffectual, any voting machine provided in accordance with the provisions of this act, or who shall violate any of the provisions hereof, shall be guilty of a misdemeanor and punished accordingly. ('05 c. 267 § 9)

See section 367.

CORRUPT PRACTICES.

348. Candidates' expenditures—Legal expenses defined.

Candidate.—Within the meaning of the corrupt practices act (Laws 1895, c. 277), a political aspirant becomes a candidate at the time of filing his affidavit. State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

349. Limit to candidates' expenses.

Cited in State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

350. Candidates to file affidavits of expenditures.

Expenses included.—The statement of a candidate for nomination need not include expenses incurred or paid before filing the affidavit required by section 184. State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

351. Action for usurpation—Incriminating evidence.

Cited in State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

353. Determination of the court.

Cited in State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

354. Candidate receiving next highest vote made a party—Judgment.

Cited in State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

PENAL PROVISIONS.

367. Wilful injury to voting machines.

See section [347—]9.

379. Failure of candidate to file—No commission, etc., to issue.

Cited in State ex rel. Brady v. Bates, 102 Minn. 104, 112 N. W. 1026.

[379—]1. Certain corporations not to contribute—Penalty.—That it shall be unlawful for any corporation organized for pecuniary profit and are the subjects of public supervision to make a contribution of moneys from its corporation funds to any political committee or to any person for the purpose of aiding in carrying on any political canvass for the nomination or election of any person or persons to any office whatever. Any officer, stockholder, agent or employee of any such corporation who shall take part in or consent to the making of a contribution of moneys or of any other thing of value contrary to the provisions of this act, shall be deemed guilty of a felony and shall be fined not exceeding one thousand dollars or be imprisoned in the state prison not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. ('05 c. 291 § 1)

Historical.—“An act prohibiting certain corporations from making contributions to political candidates or committees, or for political purposes.” Approved April 19, 1905.