

CHAPTER 202

PRIMARY ELECTIONS; GENERAL PROVISIONS

202.01 DATE OF PRIMARY ELECTIONS.

HISTORY. 1899 c. 349 ss. 1, 7; 1901 c. 216 s. 1; R.L. 1905 s. 181; Ex. 1912 c. 2 s. 1; 1913 c. 389 s. 1; G.S. 1913 s. 335; 1915 c. 76; 1923 c. 127 s. 1; G.S. 1923 s. 293; 1925 c. 420 s. 1; M.S. 1927 s. 293; 1939 c. 345 Pt. 3 c. 1 s. 1; M. Supp. s. 601-3(1).

The power of Congress under the Federal Constitution, Article 1, Section 4, to regulate "elections" of its members includes the power to regulate primary elections, where, under the law of the state, they are an integral part of the procedure for the choice of representatives in Congress, and, as a practical matter, almost invariably control that choice. *United States v Classic*, 313 US 299, 61 SC 1031, 85 L. Ed. 1368.

The primary election law is constitutional. *State ex rel v Jensen*, 86 M 19, 89 NW 1126; *Johnson v Schmahl*, 119 M 179, 137 NW 741; *State ex rel v Erickson*, 125 M 238, 146 NW 364.

The primary election act does not change the previous method of nominating candidates for state offices. *Davidson v Hanson*, 87 M 211, 91 NW 1124, 92 NW 93.

A campaign or party committee cannot nominate or designate a candidate and compel the proper officer to place his name upon the general election ballot as a candidate, under a party name, where no such party candidate was named upon the primary election ballot, and no nomination was made by or in behalf of the party at the primary election. *State ex rel v Scott*, 87 M 313, 91 NW 1101.

The provisions of the corrupt practices act requiring candidates to file verified itemized statements of their expenditures, do not apply in the village of Hibbing. *Aura v Brandt*, 211 M 281, 1 NW(2d) 381.

Procedure and time for filing or withdrawing petitions. OAG Jan. 5, 1944 (907o).

202.011 DATE OF MUNICIPAL PRIMARY ELECTIONS.

HISTORY. 1943 c. 408.

202.02 CANDIDATES TO BE CHOSEN AT PRIMARY ELECTION.

HISTORY. 1899 c. 349 s. 2; R.L. 1905 s. 182; Ex. 1912 c. 2 s. 1; 1913 c. 389 s. 2; G.S. 1913 s. 336; 1915 c. 167 s. 3; 1919 c. 230; 1923 c. 127 s. 2; G.S. 1923 s. 294; M.S. 1927 s. 294; 1939 c. 345 Pt. 3 c. 1 s. 2; M. Supp. s. 601-3(1)a.

The office of associate justice is non-partisan under section 202.02, and when four are nominated and one of the four dies, there being no political committee to act the fifth man on the primary poll is automatically raised to fourth man and becomes the candidate. *Enger v Holm*, 213 M 160, 6 NW(2d) 101.

The name of the candidate for county auditor cannot be placed on the general election ballot by petition in place of a deceased nominee. A blank space will appear on the official ballot, which may be used by the voter writing therein the name of a candidate or by pasting a sticker therein and making a cross after the sticker. There is no vacancy on the general election ballot as to any such non-partisan office so as to permit the making of nominations by petition, when there is nominated and available at the time of making up the ballot one person for each office to be filled. 1914 OAG 193, 1928 El. Op. 139.

Relative to the filling of a vacancy on a nonpartisan ticket caused by the resignation of a candidate, the candidate receiving the next largest vote becomes

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one of the candidates entitled to go on the general election ballot. 1928 El. Op. 149, 150.

The party organization, by action of its committee, has no right to nominate a candidate for an office where no nomination was made by the party at the primary. No person nominated by petition after the primary has the right to use a party name or to appear upon the ballot under a party designation. 1928 El. Op. 151.

Secretary of state may accept filing by petition for United States senator for both the long and the short term by payment of a filing fee of \$60.00 and 2,000 signatures on each petition. OAG July 28, 1936 (911s).

This section is applicable to primary elections held in villages operating under Laws 1933, Chapter 327. OAG Oct. 6, 1936 (186c).

Nonpartisan candidates. OAG Sept. 17, 1934.

Long and short term U. S. Senator. OAG July 28, 1936.

A legislative candidate having less than six months residence before the general election, is ineligible to file. 1940 OAG 75.

For control by political party of its own affairs, see 13 MLR 375.

202.03 AFFIDAVIT OF CANDIDACY; FEES.

HISTORY. 1899 c. 349 s. 1; 1901 c. 216 s. 2; R.L. 1905 s. 184; 1907 c. 226; 1909 c. 95 s. 1; Ex. 1912 c. 2; 1913 c. 389 s. 3; G.S. 1913 s. 339; G.S. 1923 s. 297; M.S. 1927 s. 297; 1933 c. 172 s. 1; 1933 c. 244 s. 1; M.S. 1927 s. 297; 1937 c. 93 s. 1; 1939 c. 345 Pt. 3 c. 1 s. 3; 1945 c. 127 s. 1; M. Supp. ss. 297, 601-3(1)b.

A candidate for nomination at the primary election may file his affidavit of candidacy with the county auditor by mail. The filing is not complete until the affidavit is received by the auditor. *State v Erickson*, 152 M 349, 188 NW 736. 1928 El. Op. 109.

It is not necessary that an alderman, who is a candidate for mayor, resign before the election or before becoming a candidate. If he should be elected mayor and qualify for the office, he would automatically upon such qualification vacate the office of alderman. He cannot serve in both capacities at the same time. *Hoffman v Downs*, 145 M 465, 177 NW 669.

A member of the board of county commissioners can file as a candidate for the office of sheriff without first resigning. 1928 El. Op. 29.

A political aspirant becomes a candidate at the time of filing his affidavit of intention of becoming a candidate for a specified office in accordance with this section. *State ex rel v Bates*, 102 M 104, 112 NW 1026.

The affidavit required of the candidate is sufficient, if it shows his residence is such as to render him eligible to the office he seeks. *State ex rel v Scott*, 110 M 461, 126 NW 70.

A certain person in the city of Eveleth, at the time he registered, made an affidavit that he was a native born citizen. He is not a candidate for office at the approaching city primary. If a challenge is interposed to the registration of this party and the affidavits are strong enough to withhold the registration until the court has passed thereon, his status as a candidate will not be affected thereby. 1928 El. Op. 28.

A legal voter in Minnesota changed his legal residence from another county to Houston county on May 13, 1926. He desires to file as a candidate for a nomination to a county office in Houston county at the primary election to be held June 21, 1926. The last day for filing as such candidate will be June 1. He will not then have acquired a voting residence in Houston county but will have acquired such voting residence by June 21. Assuming the foregoing facts with respect to voting residence appear upon the affidavit tendered for filing, his affidavit may not be accepted for filing on or prior to June 1, 1926, and his name placed on the primary ballot. 1928 El. Op. 27.

A legislative candidate having less than six months residence before the general election day is ineligible to file. 1940 OAG 75.

There is no rule of law which prevents the same man running for two incompatible offices. If he is elected to each, he may hold only one. If he qualified

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as to either office, he surrenders such other office upon qualifying for the one. 1940 OAG 74.

Under the Constitution, Article 6, Section 6, a person not an attorney at law is ineligible as a candidate for supreme or district court judge. State ex rel v Schmahl, 125 M 533, 147 NW 425.

Qualifications of county attorney. 1928 El. Op. 118.

The requirement for the payment of fees upon filing for nomination at the primary election is a reasonable regulation and constitutional. State ex rel v Scott, 99 M 145, 108 NW 828.

The filing fee must accompany the affidavit of candidacy and must be paid prior to the expiration of the time for filing. OAG June 1, 1936 (911d).

A candidate who has paid a fee on filing for one office cannot, on changing to another office, have the fee credited on the second filing, but must pay an additional fee. 1930 OAG 239.

Candidates for the offices of clerk of the district court and probate judge should file their affidavits of candidacy not less than 20 days before the primary election. OAG April 14, 1936 (911r).

One who files as a candidate for office as a member of a political party which becomes defunct before the election may, notwithstanding his candidacy, affiliate with another political party, and may at a succeeding election file for nomination as the candidate of such other party. State ex rel v Schmahl, 140 M 220, 167 NW 797.

A petition for nomination to an elective office, presented after the usual closing time of the office of the secretary of state on the last day on which it could be filed, is not entitled to filing. Johnson v Holm, 198 M 192, 269 NW 405.

The auditor is not obliged to receive a filing for a county office after he has closed his office at the regular time on the last day for filing; but, if he should, at his office at any time prior to midnight of that day, there accept a filing, if otherwise regular, it would be lawful. An affidavit of a person desiring to be a candidate at the primary election may not be accepted by the auditor on May 30, a legal holiday. The provision which requires an affidavit of candidacy to be filed with the auditor a specified number of days before the election is mandatory. A filing on May 30 is not legal and binding. 1916 OAG 268; OAG May 29, 1922; 1928 El. Op. 113, 114.

As to the county auditor's authority to leave the name of a person convicted of crime off the ballot, see 1940 OAG 73.

A candidate's name should be placed upon the ballots unless he gives formal written notice of withdrawal. OAG Sept. 22, 1936 (184n).

A person may change his name without legal proceedings and have nickname printed on ballot. OAG May 22, 1934.

One whose name appeared on the primary ballot as L. O. Merritt is not entitled to have his name placed on the ballot at the general election as "L. O. (Lon) Merritt". OAG Aug. 1, 1936 (184e).

A soldier overseas can file as a candidate provided he can qualify. OAG Jan. 20, 1944 (184).

The secretary of state may refuse to permit a filing for congress until the candidate files an affidavit that at his last voting a majority of those he voted for were of the party he now claims to affiliate with, but if he makes such affidavit, only the court may determine the truth or falsity of the affidavit. OAG March 31, 1944 (911).

A candidate who withdraws, and retains the refund, cannot after the time for filing expires, change his mind so as to come under the original filing. OAG April 25, 1944 (28b-1).

A candidate duly nominated at the primary may withdraw. The statute does not prescribe any technical procedure to effectuate such withdrawal. 1928 El. Op. 32.

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202.04 MARRIED WOMEN MAY USE THE PREFIX "MRS."

HISTORY. 1923 c. 384 s. 1; G.S. 1923 s. 298; M.S. 1927 s. 298; 1939 c. 345 Pt. 3 c. 1 s. 4; M. Supp. s. 601-3(1)c.

A married woman may use the prefix "Mrs." to her husband's full name, if she so desires, where filing as a candidate for office. In other words, a married woman may file as "Mrs. John Harry Doe", "Mrs. J. H. Doe", or "Mary Doe". 1928 El. Op. 8.

A widow who is a candidate for office may be named on the ballot by her deceased husband's last name and initials with the prefix "Mrs." provided she is commonly so known. OAG March 14, 1932.

Mrs. Ray Davis also known as Nellie Davis was a candidate. Two votes cast for Nellie Mann, her maiden name, were properly counted as votes for Mrs. Davis. 1942 OAG 65, July 2, 1941 (184-E).

202.05 AFFIDAVITS TO BE NUMBERED.

HISTORY. 1899 c. 349 s. 4; 1901 c. 216 s. 2; R.L. 1905 s. 185; 1909 c. 95 s. 2; G.S. 1913 s. 340; G.S. 1923 s. 299; M.S. 1927 s. 299; 1939 c. 345 Pt. 3 c. 1 s. 5; M. Supp. s. 601-3(1)d.

As to refund, see OAG June 26, 1934.

A candidate who has paid the fee for filing for one office is not entitled to have the fee credited to a different office, in view of the provision requiring the payment of the fee to the city or county treasurer. 1930 OAG 239.

202.06 ELECTION TO BE BY BALLOT.

HISTORY. 1899 c. 349 s. 5; 1901 c. 216 s. 3; R.L. 1905 s. 186; Ex. 1912 c. 2 s. 4; G.S. 1913 s. 341; 1915 c. 167 s. 4; G.S. 1923 s. 300; 1925 c. 420 s. 1; M.S. 1927 s. 300; 1933 c. 172 s. 2; 1933 c. 244 s. 2; 1939 c. 345 Pt. 3 c. 1 s. 6; M. Supp. ss. 601-3(1)e, 300.

The primary election law, in so far as it does not require blank spaces to be left in the primary ballots for electors to write the names of their candidates, is constitutional. State ex rel v Johnson, 87 M 221, 91 NW 604, 840

The holding that the preferential election was unconstitutional does not affect officers elected under such system, or their terms, no contest having been instituted or equivalent remedy sought. State ex rel v Prince, 131 M 399, 155 NW 628.

The Constitution, Article 7, Section 6, providing that all elections, except for town officers, shall be by ballot, was intended to secure to the elector the privilege of exercising his right of franchise secretly and effectively. Elwell v Comstock, 99 M 261, 109 NW 113, 698.

As applied to elections of public officers, voting by ballot signifies a mode of designating an elector's choice of a person for an office by the deposit of a ticket bearing the name of such person in a receptacle provided for the purpose, in such a way as to secure to the elector the privilege of complete and inviolable secrecy in regard to the person voted for. Brisbin v Cleary, 26 M 107, 1 NW 825.

202.07 NOMINEES OF POLITICAL PARTIES.

HISTORY. 1899 c. 349 s. 25; 1901 c. 216 s. 9; R.L. 1905 s. 201; Ex. 1912 c. 2 s. 12; G.S. 1913 s. 356; G.S. 1923 s. 315; M.S. 1927 s. 315; 1939 c. 345 Pt. 3 c. 1 s. 7; M. Supp. s. 601-3(1)f.

A campaign or party committee cannot nominate or designate a candidate and compel the proper officer to place his name upon the general election ballot as a candidate under a party name, where no such party candidate was named upon the primary election ballot and no nomination was made by or in behalf of such party at the primary election. State ex rel v Scott, 87 M 313, 91 NW 1101.

A candidate may withdraw at any time prior to the printing of the ballot. OAG March 21, 1931.

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For the procedure where non-partisan nominee withdraws, see OAG Aug. 29, 1934.

202.08 ERRORS IN BALLOTS.

HISTORY. 1899 c. 349 s. 27; R.L. 1905 s. 202; G.S. 1913 s. 357; G.S. 1923 s. 316; M.S. 1927 s. 316; 1939 c. 345 Pt. 3 c. 1 s. 8; M. Supp. s. 601-3(1)g.

When a board of canvassers have met, canvassed the vote, and adjourned sine die the board is *functus officio*. It has no power to reconvene, and the supreme court cannot compel it to do so. *Clark v Buchanan*, 2 M 346 (298).

Under this section, the court may order a canvassing board to reconvene after its adjournment to correct an error apparent on the face of the returns. Where the error has been made by the county canvassing board and the state canvassing board has acted upon it, the state board may be directed to reconvene and correct its proceedings to conform to the facts. *Haroldson v Norman*, 146 M 426, 178 NW 1003.

This section provides for a procedure which is, in substance, *mandamus* and the purposes sought to be effected are within the scope of the common-law use of that writ. Original jurisdiction in such cases may be conferred upon the supreme court. *Lauritsen v Seward*, 99 M 313, 109 NW 404.

The election contest provided for in this section must first be determined by the district court, and in so far as it attempts to confer upon the supreme court original jurisdiction to hear and determine election contests, is invalid and unconstitutional *Lauritsen v Seward*, 99 M 397, 109 NW 536, 820

A proceeding by a petition and order to show cause, under this section, is the proper proceeding 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 v Scott*, 105 M 513, 117 NW 845, 1044.

Members of the legislature which enacted Laws 1913, Chapter 400, are not prohibited by the Constitution, Article 4, Section 9, from becoming candidates for state auditor at the ensuing primary election, there being no increase made by that law in the emoluments received by the incumbent of that office at the time of its enactment or at the time of its taking effect. *State ex rel v Schmahl*, 125 M 104, 145 NW 794.

In a hearing on an order to show cause under this section it is held that absent any statutory restraint, a political party may make its own rules for self-government. The central committee may authorize the state chairman to change the date for holding the convention. *Holmes v Holm*, 217 M 264, 14 NW(2d) 312.

Where the wife notified the county auditor of her candidacy, but sent her husband in to sign and file the affidavit, the filing was a nullity and her name could not be placed on the ballot. 1942 OAG 72, Aug. 6, 1942 (911-1).

202.09 CONTESTS IN PRIMARY ELECTIONS.

HISTORY. G.S. 1866 c. 1 ss. 48 to 50; 1872 c. 57; 1878 c. 84 s. 13; G.S. 1878 c. 1 ss. 51 to 53, 89; 1887 c. 4 ss. 57, 61, 62; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 ss. 57, 61, 62; 1891 c. 4 ss. 91, 93, 95; 1893 c. 4 ss. 181, 183, 185; 1899 c. 349 s. 27; R.L. 1905 s. 203; G.S. 1913 s. 358; 1915 c. 167 s. 11; G.S. 1923 s. 317; M.S. 1927 s. 317; 1939 c. 345 Pt. 3 c. 1 s. 9; M. Supp. s. 601-3(1)h.

This section requires district courts to hear and determine election contests. The court will adopt such procedure as is necessary. *Whaley v Bayer*, 99 M 397, 109 NW 596, 820.

Within what time contests for nomination must be brought to trial and final determination. *Johnson v Dosland*, 103 M 147, 114 NW 465.

When a candidate or an elector neglects to take steps to have the name of a person not entitled to appear on the official ballot stricken therefrom, he cannot after the election is held raise valid objection to counting the votes properly marked for such person, there being no claim that the latter had violated any provision of the election laws. *John v Bauchle*, 149 M 144, 182 NW 987.

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202.10 POLITICAL PARTY CONVENTIONS.

HISTORY. 1893 c. 4 s. 31; 1923 c. 125 s. 1; G.S. 1923 s. 318; M.S. 1927 s. 318; 1939 c. 345 Pt. 3 c. 2 s. 1; M. Supp. s. 601-3(2); 1943 c. 47 s. 1.

202.11 DELEGATE CONVENTION MAY NOMINATE CERTAIN OFFICERS.

HISTORY. 1889 c. 3 s. 22; 1893 c. 4 s. 31; 1923 c. 125 s. 2; G.S. 1923 s. 319; M.S. 1927 s. 319; 1939 c. 345 Pt. 3 c. 2 s. 2; M. Supp. s. 601-3(2)a.

See 1928 El. Op. 152, 153, 154, 155.

202.12 STATE AND DISTRICT CONVENTIONS.

HISTORY. 1923 c. 125 s. 3; G.S. 1923 s. 320; M.S. 1927 s. 320; 1939 c. 345 Pt. 3 c. 2 s. 3; M. Supp. s. 601-3(2)b.

See 1928 El. Op. 152, 153.

202.13 OFFICERS OF CONVENTIONS.

HISTORY. 1923 c. 125 s. 4; G.S. 1923 s. 321; M. S. 1927 s. 321; 1939 c. 345 Pt. 3 c. 2 s. 4; M. Supp. s. 601-3(2)c.

See 1928 El. Op. 152, 153.

202.14 CONDUCT OF CONVENTIONS.

HISTORY. 1923 c. 125 s. 5; G.S. 1923 s. 322; M.S. 1927 s. 322; 1939 c. 345 Pt. 3 c. 2 s. 5; M. Supp. s. 601-3(2)d.

See 1928 El. Op. 152, 153.

202.15 CLERK TO KEEP RECORD.

HISTORY. 1923 c. 125 s. 6; G.S. 1923 s. 323; M.S. 1927 s. 323; 1939 c. 345 Pt. 3 c. 2 s. 6; M. Supp. s. 601-3(2)e.

202.16 APPLICATION.

HISTORY. 1923 c. 125 s. 7; G.S. 1923 s. 324; M.S. 1927 s. 324; 1939 c. 345 Pt. 3 c. 2 s. 7; M. Supp. s. 601-3(2)f.

202.17 FILLING OF VACANCIES.

HISTORY. 1923 c. 125 s. 8; G.S. 1923 s. 325; M.S. 1927 s. 325; 1939 c. 345 Pt. 3 c. 2 s. 8; M. Supp. s. 601-3(2)g.

See 1928 El. Op. 152, 153.

202.18 CERTIFICATES OF NOMINATION.

HISTORY. 1889 c. 3 s. 22; 1891 c. 4 s. 36; 1893 c. 4 ss. 32, 33, 42; 1923 c. 125 s. 9; G.S. 1923 s. 326; M.S. 1927 s. 326; 1939 c. 345 Pt. 3 c. 2 s. 9; M. Supp. s. 601-3(2)h.

202.19 NOMINATION BY PETITION.

HISTORY. 1891 c. 4 s. 37; 1893 c. 4 ss. 35, 42; G.S. 1894 s. 40; 1895 c. 135; R.L. 1905 s. 213; 1913 c. 389 s. 6; G.S. 1913 s. 371; 1921 c. 48; G.S. 1923 s. 329; M.S. 1927 s. 329; 1939 c. 345 Pt. 3 c. 3 s. 1; M. Supp. s. 601-3(3).

The primary election law repeals by implication, as to all elective offices within its purview, the provisions of the general election law providing for party nominating conventions; and no political party now has the right to nominate candidates for such offices by a party convention. *State ex rel v Jensen*, 86 M 19, 89 NW 1126.

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Where it appears that the electors' certificate of nomination for the office of governor, filed with the secretary of state, was signed by less than 2,000 qualified voters of the state; it was legally insufficient to entitle his name to be placed on the official ballots for any purpose. In re Official Ballot for the General Election of November, 1906, 99 M 517, 109 NW 1.

The provisions of this section have no application to filling a vacancy in the office of United States senator where the vacancy occurs after the primary. *Howard v Holm*, 208 M 589, 296 NW 30.

The filing of a candidate's nomination by petition under the provision of section 202.19 to fill a vacancy in office caused by the death of an incumbent district judge whose official term would not expire, had he lived, until January, 1947, and whose death occurred October 1, 1942, after the primaries, but more than 30 days before the next general election to be held November 3, 1942 falls within the provisions of section 202.27. *Flakne v Erickson*, 213 M 146, 6 NW(2d) 40.

The voters at a general election may cast their ballots in favor of one who was defeated candidate at the preceding primary. OAG June 28, 1932.

A person cannot file as an independent for congress prior to the primary. OAG Feb. 28, 1934.

A defeated candidate at the primary may run at the general election by sticker. OAG Sept. 17, 1934.

In the event of a vacancy in the office of judge of the district court (decease of Baldwin), there is no constitutional provision or statutory enactment authorized thereby for filling an unexpired term by election, the candidate who is elected successor holds for a term of six years. 1942 OAG 75, Oct. 1, 1942 (184-D).

No person who has voted at a primary shall be eligible as a petitioner to nominate for any nomination to an office for which nominees were voted upon at such primary; and the fact that no nomination was made for a political party because of lack of number of votes, does not prevent disqualification of the voter. 1942 OAG 78, Sept. 28, 1942 (28B-3).

Where only two candidates filed for nomination for a non-partisan office at the primary election and were nominated and after the primary election one of them died, a third person could then be nominated by petition. OAG April 3, 1944 (28b-1).

There should be a candidate from each commissioner in Lake county for the county school board, and if no one is nominated at the primary, nominations may be made by petition. OAG May 15, 1944 (28b-4).

A convicted felon may not file for office. OAG July 17, 1944 (184i).

Where "write-in" candidate for office of juror of second ward of parish of St. Bernard was ineligible because he was an unsuccessful participant in Democratic primary for nomination as candidate for such office, the votes cast for such ineligible candidate were void, but the election was not, and regular nominee receiving all legal ballots was entitled to the office. *Serpas v Trebucq*, (La.) 1 So.(2d) 346.

One who had participated in a primary election as a candidate was ineligible to become a "write-in" candidate in the general election. On application for rehearing. *Serpas v Trebucq*, (La.) 1 So. (2d) 705.

202.20 FORM OF CERTIFICATES.

HISTORY. 1889 c. 3 s. 22; 1891 c. 4 s. 35, 37; 1893 c. 4 s. 32, 36, 42; G.S. 1894 s. 37; R.L. 1905 s. 214; G.S. 1913 s. 372; G.S. 1923 s. 330; M.S. 1927 s. 330; 1939 c. 345 Pt. 3 c. 3 s. 2; M. Supp. s. 601-3(3)a.

The provisions of this section to the effect that a certificate of nomination of a candidate for a public office by the electors 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 v Grift*, 106 M 29, 117 NW 921.

Sections 202.20 to 202.22 do not authorize filing by petition in any case not permitted under section 202.19. *Enger v Holm*, 213 M 161, 6 NW(2d) 101.

A person cannot be nominated by petition for a partisan office by being designated in the petition as a "non-partisan candidate". The word "non-partisan"

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is not a declaration of a political principle, but rather emphasizes the absence of it. 1928 El. Op. 134, 147.

Where there is one candidate nominated for a non-partisan office, there is no vacancy, because the law does not require that there shall be two nominees for each office. 1928 El. Op. 138, 139; 1914 OAG 193.

The primary election law excludes presidential electors from its operation. 1928 El. Op. 143.

A certificate nominating a candidate for presidential elector may be signed by those who voted at the primary, and the oath may be modified accordingly. OAG March 7, 1940.

See OAG July 16, 1932; OAG Sept. 17, 1934.

202.21 NOT TO CONTAIN MORE THAN THE NAME OF ONE CANDIDATE.

HISTORY. 1891 c. 4 s. 37; 1893 c. 4 ss. 36, 38, 39; G.S. 1894 ss. 41, 43; 1903 c. 90; R.L. 1905 s. 215; G.S. 1913 s. 373; G.S. 1923 s. 331; M.S. 1927 s. 331; 1939 c. 345 Pt. 3 c. 3 s. 3; M. Supp. s. 601-3(3)b.

See 1928 El. Op. 140, 144, 146, and 147.

Where no candidate appeared on the primary ballot, due to the death of the one who filed, any one voting at the primary may sign a petition to place a candidate on the ballot at the general election. OAG June 22, 1944 (911J).

202.22 OATH OF SIGNERS.

HISTORY. 1891 c. 4 s. 37; 1893 c. 4 s. 37; G.S. 1894 s. 42; R.L. 1905 s. 216; G.S. 1913 s. 374; G.S. 1923 s. 332; M.S. 1927 s. 332; 1939 c. 345 Pt. 3 c. 3 s. 4; M. Supp. s. 601-3(3)c.

See 1928 El. Op. 136.

202.23 VACANCIES.

HISTORY. 1891 c. 4 s. 42; 1893 c. 4 ss. 40, 41; G.S. 1894 s. 45; R.L. 1905 s. 217; 1913 c. 389 s. 8; G.S. 1913 s. 395; G.S. 1923 s. 344; M.S. 1927 s. 344; 1939 c. 345 Pt. 3 c. 3 s. 5; M. Supp. s. 601-3(3)d.

Where a vacancy in a nomination for the office of associate justice of the supreme court occurs after the primary, the person receiving the next highest number of votes at the primary shall be the candidate. *Enger v Holm*, 213 M 154, 6 NW(2d) 101; 1942 OAG 77, Sept. 21, 1942 (184-D).

Where judicial district has two judges, and only one is nominated at primary, but other judge resigns before November general election, candidates nominated at primary may run only for the single district judgeship, and the other position should be voted upon separately. OAG May 11, 1932.

Where judge of the district court resigns after the primary, but more than 30 days before the November general election, his position should be filled by the voters at the general election. OAG May 11, 1932.

202.24 NOMINEES OF POLITICAL PARTIES.

HISTORY. 1891 c. 4 s. 41; 1899 c. 349 s. 24; 1901 c. 216 s. 8; R.L. 1905 s. 200; Ex. 1912 c. 2 s. 11; 1913 c. 389 s. 5; G.S. 1913 s. 355; 1915 c. 167 s. 10; G.S. 1923 s. 314; M.S. 1927 s. 314; 1929 c. 280 s. 1; 1939 c. 345 Pt. 3 c. 3 s. 6; M. Supp. ss. 314, 601-3(3)e.

Where a political party does not cast the required number of votes at a primary election, the provisions of section 202.24 do not limit filings by petition to the candidate of that party receiving the highest number of votes at the previous primary. *O'Brien v O'Brien*, 213 M 140, 6 NW(2d) 47.

No certificate of nomination may be issued legally to candidates who have not received the number of votes in the primary election required by Laws 1939, Chapter 345, part 3, Article 3, Section 6. 1942 OAG 80, Sept. 21, 1942 (672B-8).

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202.25 PRIMARY ELECTIONS; GENERAL PROVISIONS

1228

The auditor may use any fair and practicable rule. OAG May 18, 1934. See 1928 El. Op. 145, 158, 159.

202.25 ORIGINAL TO BE FILED WITH THE COUNTY AUDITOR WHERE PETITIONER RESIDES.

HISTORY. 1891 c. 4 s. 38; 1893 c. 4 s. 42; G.S. 1894 s. 47; R.L. 1905 s. 219; G.S. 1913 s. 397; G.S. 1923 s. 346; M.S. 1927 s. 346; 1939 c. 345 Pt. 3 c. 3 s. 7; M. Supp. s. 601-3(3)f.

The time of filing of certified copies of a nomination as required by section 202.25 is governed by section 202.27 and not by section 202.26. State ex rel v Erickson, 213 M 151, 6 NW(2d) 43.

The auditor of the county where the candidate resides need not prepare the certified copies or file them with the auditors of the other counties. The duty of preparing such certified copies and filing the same within the proper time is upon the petitioner or candidate filing the original petition. "One of which certified copies shall be filed within the proper time with the auditor of each such county" contemplates that such certified copy must be filed with the auditor of each such county at least 30 days before the time for holding the general election. 1934 OAG 386.

202.26 TIME OF FILING OF PETITION.

HISTORY. 1891 c. 4 s. 38; 1917 c. 68 s. 13; G.S. 1923 s. 508; M.S. 1927 s. 508; 1939 c. 345 Pt. 3 c. 3 s. 8; M. Supp. s. 601-3(3)g.

This section does not apply to the office of United States senator. Howard v Holm, 208 M 589, 296 NW 30.

See 1934 OAG 386.

Practice clarified as to the filing and withdrawing of a petition. OAG Jan. 5, 1944 (907o).

202.27 WHERE CERTIFICATES OF NOMINATION SHOULD BE FILED.

HISTORY. 1889 c. 3 s. 27; 1891 c. 4 s. 38; 1893 c. 4 s. 44; G.S. 1894 s. 49; R.L. 1905 s. 221; G.S. 1913 s. 399; G.S. 1923 s. 348; M.S. 1927 s. 348; 1937 c. 270 s. 3; 1939 c. 345 Pt. 3 c. 3 s. 9; M. Supp. ss. 348, 601-3(3)h; 1943 c. 410 s. 1.

If the last day for filing is Sunday, the next secular day becomes the last filing day. OAG Oct. 6, 1936.

See 1934 OAG 386.

See OAG Oct. 11, 1934; Oct. 15, 1934.

202.28 FILLING VACANCIES.

HISTORY. 1891 c. 4 s. 42; 1893 c. 4 s. 41; G.S. 1894 s. 46; R.L. 1905 s. 218; Ex. 1912 c. 2 s. 14; G.S. 1913 s. 396; G.S. 1923 s. 345; M.S. 1927 s. 345; 1939 c. 345 Pt. 3 c. 3 s. 10; M. Supp. s. 601-3(3)i.

The use of a sticker containing two names may be properly used at an election held by an independent school district where there are two officers to be elected. OAG July 24, 1933.

202.29 DESIGNATION OF CANDIDATES NOMINATED BY PETITIONS.

HISTORY. Ex. 1912 c. 12 s. 1; G.S. 1913 s. 402; G.S. 1923 s. 351; M.S. 1927 s. 351; 1939 c. 345 Pt. 3 c. 3 s. 11; M. Supp. s. 601-3(3)j.

Names of nominees by petition should be followed by the words "nominated by petition". 1942 OAG 63, Oct. 14, 1942 (28B-3).

202.30 NOMINATIONS IN CITIES OF THE FIRST CLASS.

HISTORY. 1919 c. 230 s. 1; G.S. 1923 s. 352; M.S. 1927 s. 352; 1939 c. 345 Pt. 3 c. 3 s. 12; M. Supp. s. 601-3(3)k.

MINNESOTA STATUTES 1945 ANNOTATIONS

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PRIMARY ELECTIONS; GENERAL PROVISIONS 202.31

202.31 FEES.

HISTORY. 1889 c. 3 s. 22; 1891 c. 4 s. 40; 1893 c. 4 s. 45; 1895 c. 136 s. 1; G.S. 1894 s. 50; 1903 c. 174; R.L. 1905 s. 222; 1907 c. 226 s. 1; G.S. 1913 s. 400; G.S. 1923 s. 349; 1925 c. 420 s. 1; M.S. 1927 s. 349; 1937 c. 270 s. 4; 1939 c. 345 Pt. 3 c. 3 s. 13; M. Supp. ss. 349, 601-3(3)L.

Party nominees go on the ballot without the payment of a fee. See section 205.80.