

## CHAPTER 205

## GENERAL PROVISIONS

**205.01 DATE OF ELECTION.**

**HISTORY.** 1849 c. 3 s. 1; 1849 c. 21 s. 1; 1849 c. 22 s. 1; R.S. 1851 c. 5 s. 3; P.S. 1858 c. 6 s. 1; Ex. 1862 p. 18; G.S. 1866 c. 1 s. 1; 1878 c. 1 s. 1; G.S. 1878 c. 1 s. 1; 1885 c. 30; 1887 c. 4 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 1; 1889 c. 3 s. 1; 1891 c. 4 s. 1; 1893 c. 4 s. 1; G.S. 1894 s. 6; R.L. 1905 s. 153; G.S. 1913 s. 298; G.S. 1923 s. 255; M.S. 1927 s. 255; 1939 c. 345 Pt. 6 c. 1 s. 1; M. Supp. s. 601-6(1).

In regard to the legality of taking an unauthorized referendum at a general election. See 1940 OAG 83.

Schedule for filing or withdrawing an election petition. OAG Jan. 5, 1944 (907o).

**205.02 OFFICERS TO BE CHOSEN.**

**HISTORY.** 1849 c. 3 s. 2; R.S. 1851 c. 5 s. 3; P.S. 1858 c. 6 s. 1; Ex. 1862 p. 18; G.S. 1866 c. 1 s. 1; 1877 c. 4 s. 1; G.S. 1878 c. 1 s. 1; 1885 c. 30; 1887 c. 4 s. 1; 1889 c. 3 s. 1; 1891 c. 4 s. 1; 1893 c. 4 s. 1; G.S. 1894 s. 6; R.L. 1905 s. 153; G.S. 1913 s. 298; G.S. 1923 s. 255; M.S. 1927 s. 255; 1939 c. 345 Pt. 6 c. 1 s. 2; M. Supp. s. 601-6(1)a.

An election without any authority of law is void. *Howard v Holm*, 208 M 589, 296 NW 30.

An unauthorized referendum is improper. 1940 OAG 83.

**205.03 ELECTIONS IN CITIES AND VILLAGES.**

**HISTORY.** 1939 c. 345 Pt. 6 c. 1 s. 3; M. Supp. s. 601-6(1)b.  
See, OAG Sept. 29, 1934.

**205.04 COUNCIL MAY CHANGE DATE OF ELECTION.**

**HISTORY.** 1933 c. 71 ss. 1, 2; 1939 c. 345 Pt. c. 1 s. 4; M. Supp. ss. 255-1, 255-2, 601-6(1)c.

**205.05 SPECIAL ELECTION TO FILL VACANCY IN OFFICE OF UNITED STATES SENATE.**

**HISTORY.** 1913 c. 520 s. 8; G.S. 1913 s. 382; G.S. 1923 s. 340; 1925 c. 59; M.S. 1927 s. 340; 1939 c. 345 Pt. 6 c. 2 s. 1; M. Supp. s. 601-6(2); 1943 c. 158 s. 1.

The courts have no authority to enjoin the officials of the executive department from holding an election called by the governor to fill a vacancy in the representation of this state in the senate of the United States. *State ex rel v District Court*, 156 M 270, 194 NW 630.

In calling an election to fill a vacancy in the representation of this state in the senate of the United States, the governor is exercising a governmental and political power over which the courts have no control. *State ex rel v District Court*, 156 M 270, 194 NW 630; *State ex rel v District Court*, 141 M 1, 168 NW 634; *State ex rel v Christianson*, 179 M 337, 229 NW 313; *Cook v Iverson*, 108 M 388, 122 NW 251; *State ex rel v Kinsella*, 116 M 313, 133 NW 857.

An election may be held only under constitutional or statutory authorization. *Howard v Holm*, 208 M 589, 296 NW 30.

The term of senator in Congress ends at noon, January 3rd.

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In the instant case filing for the short term for the office of district judge in which a vacancy has occurred is not authorized and should not be accepted. 1942 OAG 76, July 27, 1942 (184-D).

### 205.06 GOVERNOR TO ISSUE WRIT.

HISTORY. 1861 c. 15 s. 37; G.S. 1866 c. 1 s. 34; G.S. 1878 c. 1 s. 37; 1883 c. 34; 1887 c. 4 s. 54; G.S. 1878 Vol 2 (1888 Supp.) c. 1 s. 54; 1891 c. 4 s. 88; 1929 c. 297 s. 1; 1939 c. 345 Pt. 6 c. 2 s. 2; M. Supp. ss. 270-1, 601-6(2)a.

Writ need not be issued if there is to be no session of the legislature before the expiration of the term. OAG April 30, 1934.

If there is to be a session of the legislature before the expiration of the term, the issuance of the writ is mandatory. OAG June 21, 1935.

### 205.07 VACANCIES IN CERTAIN CASES.

HISTORY. 1887 c. 4 s. 54; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 54; 1893 c. 4 s. 10; 1929 c. 297 s. 2; 1939 c. 345 Pt. 6 c. 2 s. 3; M. Supp. ss. 270-2, 601-6(2)b.

A vacancy in the office of state senator caused by death can be filled only upon a writ of the governor, and such writ must be published and posted at least 12 days before the primary. OAG June 3, 1932.

As to the power of the court to restrain the executive department, see 8 MLR 62.

### 205.08 WRIT SHALL ISSUE WITHIN TEN DAYS IN CERTAIN CASES.

HISTORY. 1893 c. 4 s. 10; 1929 c. 297 s. 3; 1939 c. 345 Pt. 6 c. 2 s. 4; M. Supp. ss. 270-3, 601-6(2)c.

In section 216.01, relating to the railroad and warehouse commission, the phrase "next general election" used in a provision relating to the filling of vacancies in the commission, means one occurring after there is sufficient time after the vacancy to give the notice required by law that the vacant office is to be filled at the election. *State ex rel v Atwood*, 202 M 50, 277 NW 357.

See, OAG June 9, 1937.

### 205.09 ISSUANCE OF WRIT.

HISTORY. 1929 c. 297 s. 4; 1939 c. 345 Pt. 6 c. 2 s. 5; M. Supp. ss. 270-4, 601-6(2)d.

See, OAG June 9, 1937.

### 205.10 CANDIDATES TO BE NOMINATED IN PRIMARIES.

HISTORY. 1929 c. 297 s. 5; 1939 c. 345 Pt. 6 c. 2 s. 6; M. Supp. s. 601-6(2)e.

As to the form of the notice, see 1928 El. Op. 182.

### 205.11 WRIT TO BE FILED WITH SECRETARY OF STATE.

HISTORY. 1891 c. 4 s. 89; 1929 c. 297 s. 6; 1939 c. 345 Pt. 6 c. 2 s. 7; M. Supp. ss. 270-6, 601-6(2)f.

The writ must be published 12 days before the primary. OAG Oct. 7, 1936.

### 205.12 CANDIDATES TO FILE AFFIDAVITS AS IN GENERAL ELECTION.

HISTORY. 1929 c. 297 s. 7; 1939 c. 345 Pt. 6 c. 2 s. 8; M. Supp. ss. 270-7, 601-6(2)g.

### 205.13 NAMES ON BALLOTS.

HISTORY. 1929 c. 297 s. 8; 1939 c. 345 Pt. 6 c. 2 s. 9; M. Supp. ss. 270-8, 601-6(2)h.

**205.14 ELECTION DISTRICTS.**

HISTORY. 1893 c. 4 s. 47; 1929 c. 297 s. 9; 1939 c. 345 Pt. 6 c. 2 s. 10; M. Supp. ss. 270-9, 601-6(2)i.

**205.15 RETURNS OF ELECTION.**

HISTORY. 1929 c. 297 ss. 10, 11; 1939 c. 345 Pt. 6 c. 2 s. 11; M. Supp. ss. 270-10, 270-11, 601-6(2)j.

The Federal House of Representatives has exclusive jurisdiction to determine whether the member declared elected was in fact the recipient of a plurality of the votes cast at the election. *State ex rel v Selvig*, 170 M 406, 212 NW 604; *Williams v Maas*, 198 M 516, 270 NW 586.

**205.16 GENERAL ELECTION LAWS STILL GOVERN.**

HISTORY. 1929 c. 297 s. 12; 1939 c. 345 Pt. 6 c. 2 s. 12; M. Supp. ss. 270-12, 601-6(2)k.

The existing registers of voters are to be used. 1940 OAG 85.

**205.17 CHANGES IN BOUNDARIES.**

HISTORY. 1861 c. 15 s. 39; G.S. 1866 c. 1 s. 39; G.S. 1878 c. 1 s. 42; 1887 c. 4 s. 56; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 56; 1891 c. 4 s. 90; 1893 c. 4 s. 12; G.S. 1894 s. 17; R.L. 1905 s. 161; G.S. 1913 s. 312; G.S. 1923 s. 271; M.S. 1927 s. 271; 1939 c. 345 Pt. 6 c. 2 s. 13; M. Supp. s. 601-6(2)L.

**205.18 SECRETARY OF STATE TO GIVE NOTICE OF STATE ELECTIONS.**

HISTORY. G.S. 1878 c. 1 s. 4; 1887 c. 4 ss. 4, 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 5; 1889 c. 3 s. 4; 1891 c. 4 s. 6; 1893 c. 4 s. 8; G.S. 1894 s. 13; R.L. 1905 s. 158; G.S. 1913 s. 303; G.S. 1923 s. 260; M.S. 1927 s. 260; 1939 c. 345 Pt. 6 c. 3 s. 1; M. Supp. s. 601-6(3).

**205.19 POSTING OF NOTICES.**

HISTORY. R.S. 1851 c. 5 s. 7; P.S. 1858 c. 6 s. 5; 1861 c. 15 ss. 4, 5; G.S. 1866 c. 1 ss. 4, 5; G.S. 1878 c. 1 ss. 4, 5; 1887 c. 4 s. 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 5; 1891 c. 4 s. 6; 1893 c. 4 s. 46; G.S. 1894 s. 51; 1899 c. 349 ss. 1, 7; 1901 c. 216 s. 1; R.L. 1905 ss. 181, 223; Ex. 1912 c. 2 s. 1; 1913 c. 389 s. 1; G.S. 1913 ss. 335, 403; 1915 c. 76; 1923 c. 127 s. 1; G.S. 1923 ss. 293, 353; M.S. 1927 ss. 293, 353; 1939 c. 345 Pt. 6 c. 3 s. 2; M. Supp. s. 601-6(3)a.

See, as to form of notice, OAG Sept. 22, 1930.

For holding the election at the town hall without a notice. OAG Oct. 1, 1930.

A notice posted for only one day did not invalidate the election. OAG Dec. 19, 1930.

**205.20 VILLAGE COUNCIL TO POST NOTICE OF VILLAGE ELECTIONS.**

HISTORY. 1861 c. 15 s. 4; G.S. 1866 c. 1 s. 4; G.S. 1878 c. 1 s. 4; 1885 c. 145 s. 16; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 219; 1889 c. 125; 1893 c. 4 s. 46; G.S. 1894 s. 1216; 1901 c. 60; R.L. 1905 s. 712; 1913 c. 413 s. 1; G.S. 1913 s. 1252; 1919 c. 282; G.S. 1923 s. 1169; M.S. 1927 s. 1169; 1939 c. 345 Pt. 6 c. 3 s. 3; M. Supp. s. 601-6(3)b.

**205.21 CITY CLERK TO GIVE PUBLISHED AND POSTED NOTICE OF CITY PRIMARY ELECTION.**

HISTORY. G.S. 1866 c. 1 s. 4; G.S. 1878 c. 1 s. 4; 1893 c. 4 s. 46; 1921 c. 13 s. 2; G.S. 1923 s. 1672; M.S. 1927 s. 1672; 1939 c. 345 Pt. 6 c. 3 s. 4; M. Supp. s. 601-6(3)c.

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## 205.22 ELECTION DISTRICTS DESIGNATED BY COUNCIL OR TOWN BOARD.

**HISTORY.** R.S. 1851 c. 5 ss. 4, 12, 18, 19; P.S. 1858 c. 6 ss. 2, 10, 16, 17; 1861 c. 15 s. 2; G.S. 1866 c. 1 s. 2; 1877 c. 9 s. 1; G.S. 1878 c. 1 s. 2; 1885 c. 172; 1887 c. 4 ss. 2, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 2; 1889 c. 3 s. 2; 1891 c. 4 s. 2; 1893 c. 4 s. 3; G.S. 1894 s. 8; 1899 c. 269; R.L. 1905 s. 156; 1907 c. 365; 1909 c. 175 s. 1; G.S. 1913 s. 301; G.S. 1923 s. 258; M.S. 1927 s. 258; 1939 c. 345 Pt. 6 c. 4 s. 1; M. Supp. s. 601-6(4).

Each village is a separate election district for the purpose of electing village officers. Some villages are separate election districts for general elections and some are not. The supervisors of the town in which a village is situated may sometimes make the village a separate election district. State ex rel v Spaude, 37 M 322, 326, 34 NW 164.

A special law dividing the town of Belle Plaine into two election districts, the borough of Belle Plaine being one, and the rest of the town the other, is unconstitutional. State ex rel v Fitzgerald, 37 M 26, 32 NW 788.

A statute which attempts to establish an election precinct out of portions of two counties is a nullity. Brattland v Calkins, 67 M 119, 69 NW 699.

The statutes of this state on the subject of elections extend over the White Earth Indian Reservation, and election districts may be established therein upon petition to the proper authorities by the requisite number of legal voters. Hankey v Bowman, 82 M 328, 84 NW 1002.

To divide a town into two or more election districts, the town board must adopt a resolution at least 90 days before an election, with 60 days' posted notice thereof. The board cannot redistrict such town into election districts within 30 days of a general election or any other election. 1928 OAG 203.

The town board may divide, consolidate, and re-arrange an election district or districts in its town from time to time so that the number of voters in each shall be substantially equal, by adopting a resolution at least 90 days before the next ensuing election, then posting 60 days' notice thereof. The attorney general has held that after an election district has once been established it cannot be changed or a new one created without an authorization from the electors at either the annual election or at a special election called for that purpose. 1935 OAG 396.

After an election district has once been established, it cannot be changed or a new one created at an annual or a special election. OAG Jan. 10, 1934.

When a voting precinct grows to a voting population of more than 700, it is the duty of the council or town board to re-district. OAG Feb. 15, 1944 (64s).

## 205.23 ELECTION DISTRICTS IN UNORGANIZED TERRITORY.

**HISTORY.** R.S. 1851 c. 5 s. 4; 1852 c. 39 s. 1; P.S. 1858 c. 6 ss. 2, 49; 1860 c. 15 s. 28; G.S. 1866 c. 8 s. 106; 1877 c. 9 s. 1; G.S. 1878 c. 8 s. 120; 1887 c. 4 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 3; 1891 c. 4 s. 3; 1893 c. 4 s. 5; G.S. 1894 s. 692; R.L. 1905 s. 443; G.S. 1913 s. 768; G.S. 1923 s. 774; M.S. 1927 s. 774; 1939 v. 345 Pt. 6 c. 4 s. 2; M. Supp. s. 601-6(4)a.

**Electors cannot vote without a polling place** and election officials; and, in the absence of such place and officers, they are not entitled to vote in an adjoining district; but the voters cannot be deprived of their right to vote by a failure to provide a place and officers, and the county board may, at any time prior to the election, designate a place and appoint elections officers upon such reasonable notice as the circumstances will permit. 1930 OAG 246; 1934 OAG 382.

The county board may, upon petition of not less than ten legal voters not residing within ten miles of any established district, create and establish an election district within the county at a point that will be most convenient for the persons petitioning. Hankey v Bowman, 82 M 328, 332, 84 NW 1002.

As to polling places in unorganized territory, see OAG Jan. 16, 1934.

Upon the dissolution of a town a duty devolves upon the county board to arrange voting districts and voting places. OAG July 31, 1933.

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As to the procedure to be followed where, after dissolution of a town, not enough voters left, see OAG May 1, 1934.

An attempt by the governor to establish an election precinct out of portions of two counties is a nullity. The voters were not entitled to vote at all until the territory was organized for voting purposes, which had never been done. *Brattland v Calkins*, 67 M 119, 123, 69 NW 699.

## 205.24 DIVISION OF WARDS.

HISTORY. 1861 c. 15 s. 2; G.S. 1866 s. 1 s. 2; 1877 c. 9 s. 1; 1878 c. 1 s. 2; 1885 c. 172; 1887 c. 4 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 2; 1889 c. 3 s. 2; 1891 c. 4 s. 2; 1893 c. 4 ss. 3, 4; G.S. 1894 s. 9; R.L. 1905 s. 157; G.S. 1913 s. 302; G.S. 1923 s. 259; M.S. 1927 s. 259; 1939 c. 345 Pt. 6 c. 4 s. 3; M. Supp. s. 601-6(4)b.

## 205.25 POLLING PLACES, TO BE DESIGNATED BY COUNCIL OR OTHER GOVERNING BODY.

HISTORY. R.S. 1851 c. 5 ss. 6, 12, 18, 19; P.S. 1858 c. 6 ss. 4, 10, 16, 17; 1861 c. 15 s. 2; G.S. 1866 c. 1 s. 2; 1877 c. 9 s. 1; G.S. 1878 c. 1 s. 2; 1887 c. 4 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) s. 1 s. 2; 1891 c. 4 s. 4; 1893 c. 4 ss. 47, 48; G.S. 1894 ss. 52, 53; R.L. 1905 s. 224; G.S. 1913 s. 404; 1915 c. 51; G.S. 1923 s. 354; M.S. 1927 s. 354; 1939 c. 345 Pt. 6 c. 5 s. 1; M. Supp. s. 601-6(5).

The mode of designating the place in unorganized territory for holding an election, where the place originally designated becomes unavailable, is stated. 1930 OAG 246.

## 205.26 TOWN BOARD TO DESIGNATE POLLING PLACES.

HISTORY. R.S. 1851 c. 5 s. 6; P.S. 1858 c. 6 s. 4; 1891 c. 4 s. 4; 1893 c. 4 ss. 47, 49; G.S. 1894 s. 54; R.L. 1905 s. 225; G.S. 1913 s. 405; 1921 c. 147; G.S. 1923 s. 355; M.S. 1927 s. 355; 1939 c. 345 Pt. 6 c. 5 s. 2; M. Supp. s. 601-6(5)a.

See, 1934 OAG 396.

## 205.27 TOWN BOARD TO DESIGNATE PLACE OF TOWN MEETING OR ELECTION.

HISTORY. 1917 c. 342 s. 1; G.S. 1923 s. 1030; M.S. 1927 s. 1030; 1939 c. 345 Pt. 6 c. 5 s. 3; M. Supp. s. 601-6(5)b.

See OAG Feb. 15, 1930.

## 205.28 TOWN BOARD MUST SECURE BUILDING.

HISTORY. R.S. 1851 c. 5 ss. 12, 18, 19; P.S. 1858 c. 6 ss. 10, 16, 17; 1891 c. 4 s. 4; 1893 c. 4 s. 49; G.S. 1894 s. 54; 1897 c. 239 s. 1; 1899 c. 59; 1901 c. 202; 1903 c. 26; 1905 c. 149 s. 1; R.L. 1905 s. 226; G.S. 1913 ss. 406, 407; G.S. 1923 ss. 356, 357; M.S. 1927 ss. 356, 357; 1939 c. 345 Pt. 6 c. 5 s. 4; M. Supp. s. 601-6(5)c.

This section is complied with if the entrances to the respective polling places are at least 75 feet apart, irrespective of the distance by a straight line between the interior of the two places. 1930 OAG 247.

See 1928 OAG 203; 1934 OAG 396, Jan. 10, 1934 (434b-9).

## 205.29 JUDGES MAY CHANGE POLLING PLACES IN CERTAIN CASES.

HISTORY. 1893 c. 4 s. 73; G.S. 1894 s. 80; R.L. 1905 s. 254; G.S. 1913 s. 439; G.S. 1923 s. 403; 1925 c. 420 s. 1; M.S. 1927 s. 403; 1939 c. 345 Pt. 6 c. 5 s. 5; M. Supp. s. 601-6(5)d.

## 205.30 JUDGES TO ANNOUNCE CHANGES IN POLLING PLACES.

HISTORY. 1893 c. 4 s. 76; G.S. 1894 s. 81; R.L. 1905 s. 255; G.S. 1913 s. 440; G.S. 1923 s. 404; M.S. 1927 s. 404; 1939 c. 345 Pt. 6 c. 5 s. 6; M. Supp. 601-6(5)e.

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### 205.31 POLLING PLACES NOT TO BE IN SALOON OR BAR ROOM.

HISTORY. 1887 c. 4 s. 7; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 7; 1889 c. 3 s. 37; 1893 c. 4 s. 74; G.S. 1894 s. 79; 1895 c. 137 s. 4; R.L. 1905 s. 253; 1907 c. 108; 1913 c. 27 s. 1; G.S. 1913 s. 438; G.S. 1923 s. 402; M.S. 1927 s. 402; 1939 c. 345 Pt. 6 c. 5 s. 7; M. Supp. 601-6(5)f.

### 205.32 NATIONAL FLAG TO BE DISPLAYED.

HISTORY. 1897 c. 183; R.L. 1905 s. 231; G.S. 1913 s. 412; G.S. 1923 s. 364; M.S. 1927 s. 364; 1939 c. 345 Pt. 6 c. 5 s. 8; M. Supp. s. 601-6(5)g.

### 205.33 SIZE OF POLLING PLACE; BOOTHS AND OTHER EQUIPMENT.

HISTORY. 1889 c. 3 ss. 27, 28; 1891 c. 4 ss. 44 to 46; 1893 c. 4 ss. 77, 78; G.S. 1894 ss. 82, 83; R.L. 1905 s. 256; G.S. 1913 s. 441; G.S. 1923 s. 405; M.S. 1927 s. 405; 1937 c. 270 s. 5; 1939 c. 345 Pt. 6 c. 5 s. 9; M. Supp. ss. 405, 601-6(5)h.

### 205.34 DUTIES OF PEACE OFFICERS.

HISTORY. 1878 c. 84 ss. 2, 3; G.S. 1878 c. 1 ss. 78, 79; 1887 c. 4 ss. 11; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 11; 1889 c. 3 ss. 9, 29; 1891 c. 4 s. 22; 1893 c. 4 ss. 79, 80; G.S. 1894 ss. 84, 85; R.L. 1905 s. 257; G.S. 1913 s. 442; G.S. 1923 s. 406; M.S. 1927 s. 406; 1939 c. 345 Pt. 6 c. 5 s. 10; M. Supp. s. 601-6(5)i.

### 205.35 USE OF INTOXICATING LIQUORS AT POLLING PLACE TO BE MISDEMEANOR.

HISTORY. 1878 c. 84 s. 18; G.S. 1878 c. 1 s. 94; 1887 c. 4 s. 70; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 70; 1889 c. 3 s. 38; 1891 c. 4 s. 107; 1893 c. 4 s. 17; 1907 c. 307; G.S. 1913 s. 315; G.S. 1923 s. 274; M.S. 1927 s. 274; 1939 c. 345 Pt. 6 c. 5 s. 11; M. Supp. s. 601-6(5)j.

### 205.36 VOTERS MAY NOT BE MOLESTED.

HISTORY. 1891 c. 4 s. 49; 1893 c. 4 s. 94; G.S. 1894 s. 99; R.L. 1905 s. 270; G.S. 1913 s. 455; G.S. 1923 s. 419; M.S. 1927 s. 419; 1939 c. 345 Pt. 6 c. 5 s. 12; M. Supp. s. 601-6(5)k.

The distribution of flour by the Red Cross is unlawful. OAG May 27, 1933.

### 205.37 BALLOT BOXES.

HISTORY. R.S. 1851 c. 5 ss. 12, 13, 19; P.S. 1858 c. 6 ss. 10, 16, 17; 1861 c. 15 s. 3; G.S. 1866 c. 1 s. 3; G.S. 1878 c. 1 s. 3; 1887 c. 4 s. 13; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 13; 1889 c. 3 s. 27; 1891 c. 4 s. 20; 1893 c. 4 ss. 77, 78; G.S. 1894 ss. 82, 83; R.L. 1905 s. 256; G.S. 1913 s. 441; G.S. 1923 s. 405; M.S. 1927 s. 405; 1937 c. 270 s. 5; 1939 c. 345 Pt. 6 c. 5 s. 13; M. Supp. ss. 405, 601-6(5)L.

### 205.38 SECRETARY OF STATE TO FURNISH BLANKS.

HISTORY. 1861 c. 15 s. 56; G.S. 1866 c. 1 ss. 44, 53; 1878 c. 84 s. 40; G.S. 1878 c. 1 ss. 47, 56, 116; 1887 c. 4 ss. 66, 67; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 67; 1889 c. 3 ss. 36, 62, 63; 1891 c. 4 ss. 66, 101; 1893 c. 4 s. 9; G.S. 1894 s. 14; R.L. 1905 s. 159; G.S. 1913 s. 304; G.S. 1923 s. 261; M.S. 1927 s. 261; 1939 c. 345 Pt. 6 c. 5 s. 14; M. Supp. s. 601-6(5)m.

### 205.39 SECRETARY OF STATE TO FURNISH UNIFORM INSTRUCTIONS.

HISTORY. 1893 c. 4 ss. 9, 15; G.S. 1894 s. 20; R.L. 1905 s. 162; G.S. 1913 s. 313; G.S. 1923 c. 272; 1925 c. 420 s. 1; M.S. 1927 s. 272; 1939 c. 345 Pt. 6 c. 5 s. 15; M. Supp. s. 601-6(5)n.

**205.40 AUDITOR TO SEND OUT ELECTION SUPPLIES.**

HISTORY. 1893 c. 4 ss. 9, 15, 22; G.S. 1894 ss. 14, 27; 1903 c. 168; 1905 c. 214 s. 1; R.L. 1905 ss. 159, 168; G.S. 1913 ss. 304, 321, 322; G.S. 1923 ss. 261, 280, 281; M.S. 1927 ss. 261, 280, 281; 1937 c. 270 s. 1; 1939 c. 345 Pt. 6 c. 5 s. 16; M. Supp. ss. 280, 601-6(5)o.

**205.41 ONE OF THE JUDGES TO SECURE SUPPLIES.**

HISTORY. 1893 c. 4 s. 81; G.S. 1894 s. 86; R.L. 1905 s. 258; G.S. 1913 s. 443; G.S. 1923 s. 407; 1925 c. 420 s. 1; M.S. 1927 s. 407; 1939 c. 345 Pt. 6 c. 5 s. 17; M. Supp. s. 601-6(5)p.

**205.42 CUSTODIAN OF BALLOTS TO DELIVER THEM TO POLLING PLACES.**

HISTORY. 1893 c. 4 s. 82; G.S. 1894 s. 87; R.L. 1905 s. 259; G.S. 1913 s. 444; G.S. 1923 s. 408; M.S. 1927 s. 408; 1939 c. 345 Pt. 6 c. 5 s. 18; M. Supp. 601-6(5)q.

**205.43 SHALL REPLACE STOLEN OR DESTROYED BALLOTS.**

HISTORY. 1893 c. 4 s. 83; G.S. 1894 s. 88; R.L. 1905 s. 260; G.S. 1913 s. 445; G.S. 1923 s. 409; M.S. 1927 s. 409; 1939 c. 345 Pt. 6 c. 5 s. 19; M. Supp. 601-6(5)r.

**205.44 UNOFFICIAL BALLOTS MAY BE USED IN CERTAIN CASES.**

HISTORY. 1893 c. 4 s. 84; G.S. 1894 s. 89; R.L. 1905 s. 261; G.S. 1913 s. 446; G.S. 1923 s. 410; M.S. 1927 s. 410; 1939 c. 345 Pt. 6 c. 5 s. 20; M. Supp. s. 601-6(5)s.

**205.45 JUDGES IN TOWN ELECTIONS.**

HISTORY. R.S. 1851 c. 5 s. 4; P.S. 1858 c. 6 s. 2; 1861 c. 15 s. 2; G.S. 1866 c. 1 s. 2; G.S. 1878 c. 1 s. 2; 1887 c. 4 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 4; 1891 c. 4 s. 4; 1893 c. 4 s. 50; G.S. 1894 s. 55; R.L. 1905 s. 227; G.S. 1913 s. 408; G.S. 1923 s. 358; M.S. 1927 s. 358; 1939 c. 345 Pt. 6 c. 6 s. 1; M. Supp. s. 601-6(6).

If one of the town supervisors cannot read or write the English language he should decline to serve as a judge of election and a substitute should be appointed in his place. 1930 OAG 243.

A member of the town board may be paid for his services as a member of the election board though such payments will increase his yearly compensation to more than the maximum amount provided for the compensation of a town supervisor. OAG Feb. 24, 1937 (183k).

The election judges should be appointed preceding the general, not the primary, election; except where a vacancy exists. OAG June 27, 1934.

The village of Hector, not being included in any town for election purposes, is a separate district where the village council shall be judges of election. 1942 OAG 73, Aug. 19, 1942 (183h); 1942 OAG 74, Oct. 16, 1942 (183f).

**205.46 JUDGES IN MUNICIPALITIES EXCEPT CITIES OF THE FIRST CLASS.**

HISTORY. 1861 c. 15 s. 2; G.S. 1866 c. 1 s. 2; 1877 c. 9 s. 1; 1878 c. 84 s. 1; G.S. 1878 c. 1 ss. 2, 77; 1887 c. 4 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 4; 1889 c. 3 s. 3; 1891 c. 4 ss. 4, 5; 1893 c. 4 s. 51; G.S. 1894 s. 56; R.L. 1905 s. 228; G.S. 1913 s. 409; G.S. 1923 s. 359; 1925 c. 420 s. 1; M.S. 1927 s. 359; 1939 c. 345 Pt. 6 c. 6 s. 2; M. Supp. s. 601-6(6)a; 1943 c. 396 s. 1.

The fact that a member of an election board was a non-resident of the district does not, of itself, affect the validity of the vote cast in that district. 1928 OAG 190.

This section governs the appointments of election officials in the city of Jackson. OAG Oct. 28, 1931.

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See, 1930 OAG 241; OAG Oct. 28, 1931; 1934 OAG 385.

### 205.47 JUDGES TO APPOINT CLERKS.

**HISTORY.** R.S. 1851 c. 5 s. 5; P.S. 1858 c. 6 s. 3; G.S. 1866 c. 1 s. 2; 1878 c. 84 s. 1; G.S. 1878 c. 1 ss. 2, 6; 1887 c. 4 ss. 8, 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 8; 1889 c. 3 ss. 6, 7; 1893 c. 4 s. 52; G.S. 1894 s. 57; R.L. 1905 s. 229; G.S. 1913 s. 410; G.S. 1923 s. 360; 1925 c. 420 s. 1; M.S. 1927 s. 360; 1939 c. 345 Pt. 6 c. 6 s. 3; M. Supp. s. 601-6(6)b.

The acts of election officers de facto, being in under color of election or appointment, are valid as to third parties and the public; and it is no ground for the rejection of the vote of an election precinct that some of the judges of election did not possess the qualifications required by law. *Quinn v Markoe*, 37 M 439, 35 NW 263. See 1929 El. Op. 119.

Political affiliations, how determined. 1928 OAG 189.

An election is not invalid because the clerk, who was a candidate for reelection, acted as one of the clerks of election. 1930 OAG 240.

Only a qualified voter may be a clerk in an election. 1930 OAG 242.

The judges of election in a heavily populated or congested district may not appoint more than two clerks. OAG Oct. 20, 1932.

Town clerk, filing for county commissioner, cannot act as a judge at an election, even if there is no contest. OAG May 28, 1932.

Supervisors who are candidates may not act. OAG April 18, 1934.

Candidates for office may not act as judges and clerks of election. OAG May 27, 1936 (183j).

The village clerk is entitled to compensation for acting as a clerk of the election board. OAG Nov. 24, 1933.

If every voter in the precinct belongs to one political party, all the judges and clerks must be chosen from said party. OAG Oct. 16, 1944 (183h).

### 205.48 COMMITTEES OF POLITICAL PARTIES MAY FURNISH LIST.

**HISTORY.** 1893 c. 4 s. 53; G.S. 1894 s. 58; R.L. 1905 s. 230; 1913 c. 395 s. 1; G.S. 1913 s. 411; G.S. 1923 s. 363; 1925 c. 420 s. 1; M.S. 1927 s. 363; 1939 c. 345 Pt. 6 c. 6 s. 4; M. Supp. s. 601-6(6)c.

See, 1928 El. Op. 119.

### 205.49 COUNTY BOARDS TO APPOINT JUDGES IN UNORGANIZED TERRITORY.

**HISTORY.** G.S. 1866 c. 8 s. 107; G.S. 1878 c. 8 s. 121; G.S. 1894 s. 693; R.L. 1905 s. 444; G.S. 1913 s. 769; G.S. 1923 s. 775; M.S. 1927 s. 775; 1939 c. 345 Pt. 6 c. 6 s. 5; M. Supp. s. 601-6(6)d.

The duty of the county board to appoint judges, considered apart from the time of making the appointment, is mandatory; but, if the board should fail to discharge that duty within the time set, it cannot be deemed to be relieved from the responsibility nor to have lost the power for making the appointment. *Kipp v Dawson*, 31 M 373, 17 NW 961; 18 NW 96; *McMillan v Board*, 83 M 16, 100 NW 384, 1125.

Should the county board altogether fail to appoint judges for any district, the qualified voters present at the opening of the polls on election day would have a right to elect judges from among their number. *Stemper v Higgins*, 38 M 222, 37 NW 95; *Hankey v Bowman*, 82 M 328, 84 NW 1002.

See, 1930 OAG 246.

### 205.50 MAY APPOINT RELIEF JUDGES IN CERTAIN CASES.

**HISTORY.** 1931 c. 256 ss. 1 to 6; 1939 c. 345 Pt. 6 c. 6 s. 6; M. Supp. ss. 359-1 to 359-6 (601-6(6)e).



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City is without authority to provide additional help for a primary, but may provide a substitute crew. OAG June 1, 1932.

"Not less than 15 days" is mandatory. OAG June 18, 1932.

## 205.51 ELIGIBILITY OF JUDGES.

HISTORY. 1923 c. 138 s. 1; G.S. 1923 s. 361; M.S. 1927 s. 361; 1939 c. 345 Pt. 6 c. 6 s. 7; M. Supp. s. 601-6(6)f.

A retired deputy weighmaster may act as a judge of election. OAG June 13, 1932.

The wife of a candidate's stepbrother may serve as a judge of election. OAG May 22, 1930.

## 205.52 MAY FILL VACANCIES IN JUDGES.

HISTORY. R.S. 1851 c. 5 s. 8; P.S. 1858 c. 6 s. 6; 1861 c. 15 s. 6; G.S. 1866 c. 1 s. 6; G.S. 1878 c. 1 s. 6; 1887 c. 4 s. 8; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 8; 1891 c. 4 s. 7; 1893 c. 4 s. 54; G.S. 1894 s. 59; R.L. 1905 s. 232; G.S. 1913 s. 413; G.S. 1923 s. 365; M.S. 1927 s. 365; 1939 c. 345 Pt. 6 c. 6 s. 8; M. Supp. s. 601-6(6)g.

A supervisor who was not present at the primary election day, but does appear for duty on the general election day, is entitled to act as judge on that day, even though his place had been filled by some one else on the primary election day. 1928 El. Op. 120.

Where the county board fails to designate a polling place and to elect officers therefor where the place originally designated has become unavailable, the qualified voters present at the opening of the polls on election day would have the right to elect judges from among their number, who might select a voting place. 1930 OAG 246.

## 205.53 JUDGES MAY FILL VACANCIES.

HISTORY. 1893 c. 4 ss. 64, 88; G.S. 1894 s. 93; R.L. 1905 s. 265; G.S. 1913 s. 450; G.S. 1923 s. 414; M.S. 1927 s. 414; 1939 c. 345 Pt. 6 c. 6 s. 9; M. Supp. s. 601-6(6)h.

## 205.54 OATH OF JUDGES AND CLERKS.

HISTORY. G.S. 1866 c. 1 s. 6; G.S. 1878 c. 1 s. 6; 1893 c. 4 s. 54; 1923 c. 138 s. 2; G.S. 1923 s. 362; M.S. 1927 s. 362; 1939 c. 345 Pt. 6 c. 6 s. 10; M. Supp. s. 601-6(6)i.

## 205.55 ADDITIONAL JUDGES AND CLERKS.

HISTORY. 1893 c. 4 ss. 54, 139, 140, 145, 147; G.S. 1894 s. 59; R.L. 1905 s. 233; G.S. 1913 s. 414; G.S. 1923 s. 366; M.S. 1927 s. 366; 1939 c. 345 Pt. 6 c. 6 s. 11; M. Supp. s. 601-6(6)j.

A city has no authority to provide additional help for counting and tabulating ballots at a primary election, but may only provide, 15 days before election, for a substitute crew. OAG June 1, 1932.

Ballot judges and clerks may not be appointed for a congested district without making this section applicable to all districts in the city. OAG Oct. 20, 1932.

## 205.56 DUTIES OF BALLOT JUDGES.

HISTORY. 1893 c. 4 s. 139 to 142; G.S. 1894 ss. 144, 145; R.L. 1905 s. 304; G.S. 1913 s. 493; G.S. 1923 s. 456; 1925 c. 420 s. 1; M.S. 1927 s. 456; 1939 c. 345 Pt. 6 c. 6 s. 12; M. Supp. s. 601-6(6)k.

## 205.57 CANVASSING AND COUNTING BALLOTS.

HISTORY. 1893 c. 4 s. 141; G.S. 1894 s. 146; R.L. 1905 s. 305; G.S. 1913 s. 494; G.S. 1923 s. 457; M.S. 1927 s. 457; 1939 c. 345 Pt. 6 c. 6 s. 13; M. Supp. 601-6(6)L.

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## 205.58 QUALIFICATIONS OF JUDGES AND CLERKS.

HISTORY. 1893 c. 4 s. 144; G.S. 1894 s. 149; R.L. 1905 s. 308; G.S. 1913 s. 497; G.S. 1923 s. 460; M.S. 1927 s. 460; 1937 c. 270 s. 11; 1939 c. 345 Pt. 6 c. 6 s. 14; M. Supp. ss. 460, 601-6(6)m.

## 205.59 VIOLATION A MISDEMEANOR.

HISTORY. 1893 c. 4 ss. 146, 147; G.S. 1894 ss. 151, 152; R.L. 1905 s. 310; G.S. 1913 s. 499; G.S. 1923 s. 461½; M.S. 1927 s. 461½; 1939 c. 345 Pt. 6 c. 6 s. 15; M. Supp. s. 601-6(6)n.

## 205.60 PRINTING OF BALLOTS.

HISTORY. 1893 c. 4 s. 19; G.S. 1894 s. 24; 1895 c. 275; R.L. 1905 s. 164 G.S. 1913 s. 316; G.S. 1923 s. 275; M.S. 1927 s. 275; 1939 c. 345 Pt. 6 c. 7 s. 1; M. Supp. s. 601-6(7).

The contention that section 205.72 prevented the democratic party from incorporating "Farmer-Labor" into its name until after the farmer-labor party had effected the change of name to "Fellowship party" is not available to petitioner. The section was enacted solely for protection of the party whose name is taken. The Farmer-Labor party is not, in the instant case, complaining. *Holmes v Holm*, 217 M. 264, 14 NW(2d) 312.

A printing contract between a newspaper and the county board is not binding with respect to sample ballots. OAG Oct. 5, 1934.

## 205.61 FORM AND COLOR OF BALLOTS.

HISTORY. R.S. 1851 c. 5 ss. 13, 14; P.S. 1858 c. 6 ss. 11, 12; 1878 c. 84 ss. 6, 7; G.S. 1878 c. ss. 82, 83; 1889 c. 3 s. 14; 1891 c. 4 s. 25; 1893 c. 4 ss. 20, 44; G.S. 1894 s. 25; 1897 c. 190; R.L. 1905 s. 165; G.S. 1913 s. 317; G.S. 1923 s. 276; M.S. 1927 s. 276; 1939 c. 345 Pt. 6 c. 7 s. 2; M. Supp. s. 601-6(7)a.

The secretary of state is not bound by the printing laws. 1916 OAG 234; 1928 El. Op. 21.

## 205.62 SECRETARY OF STATE TO PREPARE PINK BALLOTS.

HISTORY. 1878 c. 84 ss. 6, 7; G.S. 1878 c. 1 ss. 82, 83; 1887 c. 4 s. 17; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 17; 1889 c. 3 ss. 15, 17, 25; 1891 c. 4 ss. 25, 28; 1893 c. 4 s. 28; 1903 c. 251; R.L. 1905 s. 166; G.S. 1913 s. 318; 1919 c. 76; G.S. 1923 s. 277; M.S. 1927 s. 277; 1939 c. 345 Pt. 6 c. 7 s. 3; M. Supp. s. 601-6(7)b.

The functions of the officer required by law to prepare the official ballot are purely ministerial, and he is not authorized to exercise his discretion in the selection of party names for candidates, or to determine which of two party names should be chosen as the most appropriate designation thereon. *Lind v Scott*, 87 M 316, 92 NW 96.

The secretary of state directed to have the official ballot for the seventh proposed amendment printed with the words "Seven Senator Amendment" as provided by law. *Goodspeed v Schmahl*, 127 M 521, 149 NW 1069.

## 205.63 CITY CLERK TO PREPARE RED BALLOTS.

HISTORY. 1878 c. 84 ss. 6, 7; G.S. 1878 c. 1 ss. 82, 83; 1887 c. 4 s. 17; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 17; 1889 c. 3 ss. 16, 19; 1891 c. 4 ss. 26, 30; 1893 c. 4 s. 21; G.S. 1894 s. 26; R.L. 1905 s. 167; G.S. 1913 s. 319; G.S. 1923 s. 278; 1925 c. 420 s. 1; M.S. 1927 s. 278; 1939 c. 345 Pt. 6 c. 7, s. 4; M. Supp. s. 601-6(7)c.

Though a single sample ballot covering the whole city and four wards would not invalidate the election, the better practice would be to prepare separate ballots for each ward to prevent confusion. OAG April 9, 1936 (28a-7).

**205.64 LAVENDER BALLOTS FOR CITY CHARTER OR AMENDMENTS.**

HISTORY. 1887 c. 4 s. 17; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 17; 1889 c. 3 s. 15; 1891 c. 4 s. 25; 1893 c. 4 s. 22; R.L. 1905 c. 87 s. 1; G.S. 1913 s. 320; G.S. 1923 s. 279; 1925 c. 420 s. 1; M.S. 1927 s. 279; 1939 c. 345 Pt. 6 c. 7 s. 5; M. Supp. s. 601-6(7)d.

It is not illegal to use light blue paper for ballots on a bond issue proposition instead of lavender colored paper, such paper not being available. 1928 El. Op. 22.

**205.65 COUNTY AUDITOR TO PREPARE "INDIA TINT" BALLOTS.**

HISTORY. 1887 c. 4 s. 17; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 17; 1889 c. 3 ss. 15, 18; 1891 c. 4 ss. 27, 29; 1893 c. 4 ss. 22, 44; G.S. 1894 s. 27; R.L. 1905 s. 168; G.S. 1913 s. 321; G.S. 1923 s. 280; M.S. 1927 s. 280; 1939 c. 345 Pt. 6 c. 7, s. 6; M. Supp. s. 601-6(7)e.

The ballots prepared by the distributing officer were improperly separated. This was an irregularity and did not defeat the proposition by which Clearwater county was established. State ex rel v Falk, 89 M 269, 94 NW 879.

The names of candidates for Congress are not included within the names that may be placed on any other ballots and must be placed upon the india tint ballots. 1928 El. Op. 2.

The county auditor need prepare only a single sample ballot containing the names of candidates for county offices, either at the primary or the general election. The names of the candidates for county commissioner should be grouped on the sample ballot under separate headings, according to their respective districts. It is not necessary to have a separate sample ballot for each commissioner district. 1928 OAG 184.

**205.66 NUMBER OF BALLOTS.**

HISTORY. 1889 c. 3 ss. 20, 21; 1891 c. 4 ss. 31, 32; 1893 c. 4 s. 23; G.S. 1894 s. 28; R.L. 1905 s. 169; G.S. 1913 s. 323; G.S. 1923 s. 282; M.S. 1927 s. 282; 1939 c. 345 Pt. 6 c. 7 s. 7; M. Supp. s. 601-6(7)f.

How headed; the position of the congressional candidates on. 1940 OAG 69.

**205.67 FORM AND SIZE OF BALLOTS.**

HISTORY. 1887 c. 4 s. 18; G.S. 1878 Vol. 2 (1888 Supp.) c. 1 s. 18; 1891 c. 4 ss. 31, 33; 1893 c. 4 ss. 24, 26; G.S. 1894 s. 29; R.L. 1905 s. 170; G.S. 1913 s. 324; G.S. 1923 s. 283; M.S. 1927 s. 283; 1939 c. 345 Pt. 6 c. 7 s. 8; M. Supp. s. 601-6(7)g.

**205.68 FORM AND SIZE OF BALLOTS.**

HISTORY. 1893 c. 4 s. 25; G.S. 1894 s. 30; 1901 c. 109 s. 1; R.L. 1905 s. 171; G.S. 1913 s. 325; G.S. 1923 s. 284; M.S. 1927 s. 284; 1939 c. 345 Pt. 6 c. 7 s. 9; M. Supp. s. 601-6(7)h; 1943 c. 66 s. 1; 1945 c. 229 s. 7.

**205.69 FORM AND SIZE OF BALLOTS.**

HISTORY. 1893 c. 4 s. 25; G.S. 1894 s. 30; 1901 c. 109 s. 1; R.L. 1905 s. 172; G.S. 1913 s. 326; G.S. 1923 s. 284A; M.S. 1927 s. 284A; 1939 c. 345 Pt. 6 c. 7 s. 10; M. Supp. s. 601-6(7)i; 1943 c. 66 s. 2.

In making up the ballots for the primary election, blank spaces on lines need not be left after the name of the last candidate for each office, and under the title of each office for which candidates are to be selected, wherein an elector of a party can write the name of the candidate of his choice. State ex rel v Johnson, 87 M 221, 91 NW 604, 840.

A descriptive title, such as "doctor," may not be added to the name of a candidate on the ballot; but a man may adopt a combination of his real name and the name by which he is most commonly known, for the purpose of enabling the voters to identify him. 1928 El. Op. 4.

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The names of candidates, not their descriptions, go on the ballots. It is a question of fact what the name of any specified candidate is. 1928 El. Op. 6.

The use of a sticker or paster may take the place of writing. They should not be furnished the judges of election to be passed out to voters. They do not constitute a part of the election supplies and are not printed under official direction. 1928 El. Op. 184.

The use of stickers which contain the name of the candidate with a cross mark thereafter on the ballots, is legal. 1928 El. Op. 184.

A person cannot legally distribute stickers on election day within 100 feet of the polls. 1928 El. Op. 184.

This section is not applicable to the election of presidential electors. OAG Sept. 23, 1940.

Where a full term and a short term are voted upon, one should be separated from the other so the distinction is plainly shown. OAG Jan. 19, 1944 (28a-5).

### 205.70 FORM, STYLE, AND SIZE OF BALLOTS.

**HISTORY.** 1893 c. 4 s. 25; G.S. 1894 s. 30; 1901 c. 109 s. 1; R.L. 1905 s. 173; G.S. 1913 s. 327; 1915 c. 102; G.S. 1923 s. 285; M.S. 1927 s. 285; 1939 c. 345 Pt. 6 c. 7 s. 11; M. Supp. s. 601-6(7)j.

Although there is no statutory rule for ascertaining the approximate vote polled by the respective parties, still the position of the names of all candidates on the ballot must be determined by the vote polled by their respective parties. There being no prescribed rule, the officers charged with the duty of arranging and printing the official ballot may resort to any rule or means to ascertain approximately the vote polled by each party which he deems to be fair and practicable. *Higgins v Berg*, 74 M 11, 76 NW 788.

The Duluth charter (adopted in 1912) does not abrogate the provision of the general election law which confers upon the voter the right to vote for persons other than the regularly nominated candidates whose names are printed thereon. *Farrell v Hicken*, 125 M 407, 147 NW 815.

The largest number of votes polled by a political party is to be determined by the average vote received by such of its candidates as were not endorsed by any other party. 1934 OAG 364.

The rotation of names at a general election applies only to nominees for nonpartisan offices and to cases where two or more persons are to be elected to the same office. OAG Sept. 23, 1936 (911s).

As to the method of determining the position of the names of congressional candidates on the ballot. OAG Oct. 15, 1934.

The provision of this section that when the surnames of two or more candidates for the same or different offices appearing on the same ballot at any election are "the same" each candidate shall have added thereto on the ballot not to exceed three words of further identification does not apply where the surnames are different, as *Lodin and Ledin*. *Ledin v Holm*, 203 M 434, 281 NW 762.

The names *Lommen* and *Lohman* are not the same. 1940 OAG 67.

The names *Buckler* and *Butler* are not the same. OAG Sept. 23, 1940.

The expression "farmer-lawyer" is a proper descriptive phrase. OAG May 26, 1932.

The term "Ex-representative" is not a proper descriptive word. OAG May 25, 1932.

Sticker campaign by a candidate defeated at primary. 1940 OAG 71.

A defeated candidate for a nonpartisan office may be elected by sticker. OAG June 25, 1934.

"Jr." is a part of a name. 1940 OAG 68.

### 205.71 FORM AND SIZE OF BALLOTS.

**HISTORY.** 1893 c. 4 s. 25; G.S. 1894 s. 30; 1901 c. 109 s. 1; R.L. 1905 s. 174; G.S. 1913 s. 328; G.S. 1923 s. 286; M.S. 1927 s. 286; 1939 c. 345 Pt. 6 c. 7 s. 12; M. Supp. s. 601-6(7)k.

The names of all candidates nominated by petition should be placed on the ballot thus: "John Doe—nominated by petition." There need be no reference on the ballot to the fact, if so, that the nomination is for an unexpired term. 1928 El. Op. 3.

#### 205.72 CANDIDATES FOR POLITICAL PARTIES.

**HISTORY.** 1893 c. 4 ss. 25, 29; G.S. 1894 s. 30; 1901 c. 109 s. 1; 1901 c. 312; 1903 c. 232; R.L. 1905 s. 176; G.S. 1913 s. 330; G.S. 1923 s. 288; M.S. 1927 s. 288; 1939 c. 345 Pt. 6 c. 7 s. 13; M. Supp. s. 601-6(7)L.

A certificate of nomination designating a candidate as a "Real Democrat" is a violation of the democratic party's right to its name. The candidate so designated has no power to change the designation selected by his petitioners and omit the word "real". *O'Brien v O'Brien*, 213 M 140, 6 NW(2d) 47.

See *Holmes v Holm*, 217 M 264, 14 NW(2d) 312.

Party candidates may file by petition where regular nominations fail for lack of required votes under section 202.24. 1942 OAG 78, Sept. 28, 1942 (28b-3).

The democratic party changed its name to Democratic-Farmer-Labor party, and the Farmer-Labor party its name to Fellowship party, and the same three parties exist as before the change of names. OAG May 1, 1944 (28C-11).

#### 205.73 BACK OF BALLOTS.

**HISTORY.** 1893 c. 4 ss. 27, 89; G.S. 1894 s. 32; 1901 c. 88 s. 1; R.L. 1905 s. 178; G.S. 1913 s. 332; G.S. 1923 s. 290; M.S. 1927 s. 290; 1939 c. 345 Pt. 6 c. 7 s. 14; M. Supp. s. 601-6(7)m.

#### 205.74 NAMES ON BALLOTS.

**HISTORY.** 1893 c. 4 ss. 29, 45; G.S. 1894 s. 34; R.L. 1905 s. 179; G.S. 1913 s. 333; G.S. 1923 s. 291; M.S. 1927 s. 291; 1939 c. 345 Pt. 6 c. 7 s. 15; M. Supp. s. 601-6(7)n.

#### 205.75 ROTATION OF NAMES.

**HISTORY.** 1893 c. 4 s. 29; G.S. 1894 s. 34; 1901 c. 88 s. 3; R.L. 1905 s. 180; G.S. 1913 s. 334; 1915 c. 167 s. 2; G.S. 1923 s. 292; M.S. 1927 s. 292; 1939 c. 345 Pt. 6 c. 7 s. 16; M. Supp. s. 601-6(7)o.

The rotation of names at the general election applies only to nominees for nonpartisan offices and to cases where two or more persons are to be elected to the same office. There was never a rotation of party position. *Heilman v Olson*, 121 M 463, 141 NW 791.

This section does not require a rotation on the general election ballot of the names of the two candidates for one office chosen at the primary election. *Heilman v Olson*, 121 M 463, 141 NW 791.

In the absence of certain and specific directions to the contrary, the secretary of state may rotate the names of the three candidates for judge, although two of them were nominated at nonpartisan primaries and the other by petition without transgressing any of the provisions of our statutes. 1928 El. Op. 14.

#### 205.76 AUDITOR TO PREPARE PRIMARY ELECTION BALLOTS.

**HISTORY.** 1899 c. 349 s. 6; R.L. 1905 s. 187; Ex. 1912 c. 2 s. 5; 1913 c. 389 s. 4; G.S. 1913 s. 342; 1915 c. 167 s. 5; G.S. 1923 s. 301; M.S. 1927 s. 301; 1939 c. 345 Pt. 6 c. 7 s. 17; M. Supp. s. 601-6(7)p.

White paper is to be used. 1928 El. Op. 23; OAG Aug. 1, 1940.

A failure to comply with this section would not invalidate the election, at least without an affirmative showing of prejudice therefrom. 1928 El. Op. 13.

Where there are three candidates for a certain nonpartisan county office in a county, four for another, and five or more for another, it would be necessary to make 60 changes on the printer's forms in printing ballots. The printer should

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divide the number of ballots to be printed by 60, and when he has run off one-sixtieth of the total a change should be made in the forms, changing the rotation in each group of names, and this should be repeated 60 times. In making up the table of ballots for use in the several election districts of the county, substantially an equal number of the 60 different forms should be sent to each election district. 1930 OAG 232.

Where a judicial district has two district judges and one of them is about to resign, and the term of the other is about to expire, ballots should be prepared at the primary so as to provide for nominating candidates for both positions, and all candidates will be deemed to run for both positions. OAG May 11, 1932.

As to rotation in city elections, see OAG Oct. 17, 1934.

The death of a candidate after the ballots are printed does not require re-printing. OAG June 12, 1934.

### 205.77 SAMPLE PARTY BALLOTS.

HISTORY. 1899 c. 349 c. 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; 1939 c. 345 Pt. 6 c. 7 s. 18; M. Supp. s. 601-6(7)q.

Where the filing affidavit was mailed to the auditor on the last day for filing, but was received by him on the following day, that day was the date of filing. The statute is mandatory. A distinction is made by the courts between requirements and duties imposed upon election officers and things required of the voter, and acts made necessary to initiate a valid candidacy for office; the former being generally held directory, the latter mandatory. State ex rel v Erickson, 152 M 349, 188 NW 736.

Where, after the expiration of the time for filing nominations, a third vacancy was created by the resignation of a district court judge, the county auditor was directed to indicate on the official ballots for the primary and the general election that three vacancies were to be filled. Fish v Erickson, 126 M 525, 147 NW 661.

See 1928 El. Op. 16, 17, 19, 20; 1934 OAG 366, 367, 368.

Where there are two official newspapers either may be designated. OAG May 26, 1934.

### 205.78 ERRORS AND OMISSIONS; PROCEDURE.

HISTORY. 1889 c. 3 s. 26; 1891 c. 4 s. 43; 1893 c. 4 s. 43; G.S. 1894 s. 48; R.L. 1905 s. 220; G.S. 1913 s. 398; G.S. 1923 s. 347; M.S. 1927 s. 347; 1939 c. 345 Pt. 6 c. 7 s. 19; M. Supp. s. 601-6(7)r.

The office of county commissioner is within the prohibition of the Constitution, Article 4, Section 9, that no senator or representative shall hold "an office under the state" which has been created or the emoluments of which have been increased during the session of the legislature of which he was a member until one year after the expiration of his term of office. State ex rel v Erickson, 180 M. 246, 230 NW 637.

In the instant case the candidate did not sign the candidate's affidavit, but permitted her husband to sign for her. The filing was a nullity. 1942 OAG 72, Aug. 6, 1942 (911-I).

### 205.79 NOMINEES WITHOUT PARTY DESIGNATION.

HISTORY. Ex. 1912 c. 12 s. 1; G.S. 1913 s. 402; 1915 c. 167 s. 3; 1919 c. 230 s. 1; G.S. 1923 s. 352; M.S. 1927 s. 352; 1939 c. 345 Pt. 6 c. 7 s. 26; M. Supp. s. 601-6(7)s; 1943 c. 419 s. 1.

### 205.80 PRIMARY NOMINEES TO BE PLACED ON BALLOT WITHOUT ADDITIONAL FEE.

HISTORY. 1907 c. 429 s. 1; G.S. 1913 s. 401; G.S. 1923 s. 350; M.S. 1927 s. 350; 1939 c. 345 Pt. 6 c. 7 s. 21; M. Supp. s. 601-6(7)t.

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GENERAL PROVISIONS 205.81

## **205.81 COUNTY AUDITORS TO DESTROY BALLOTS AFTER ONE YEAR; EXCEPTIONS.**

**HISTORY.** 1927 c. 275; M.S. 1927 s. 836-1; 1929 c. 66 s. 1; 1937 c. 29 s. 1; 1939 c. 345 Pt. 6 c. 7 s. 22; M. Supp. ss. 467-1, 601-6(7)u, 836-1.

Where the county auditors turn ballots over to the salvage committee in furtherance of war effort, such act is equivalent to destroying them as directed by the statute. OAG May 1, 1944 (851f).