

CHAPTER 372

CHANGING COUNTY-SEATS

372.01 PETITION.

HISTORY. 1889 c. 174 s. 1; G.S. 1894 s. 647; R.L. 1905 s. 396; G.S. 1913 s. 655; G.S. 1923 s. 625; M.S. 1927 s. 625.

Laws 1889, Chapter 174, is constitutional. *Todd v Rustad*, 43 M 500, 46 NW 73.

Any signer has a right to withdraw his name from the petition at any time before the board of county commissioners completes its inquiry and determination in the matter of purging the petition committed to it by the statute; but the statute does not contemplate that the county auditor may, because of subsequent withdrawals, arrest a petition, sufficient on its face when presented to him on its way to the county commissioners. *Slingerland v Norton*, 59 M 351, 61 NW 322; *State v Geib*, 66 M 266, 68 NW 1081.

"The whole number voting at the last general election" is to be ascertained from the "poll lists". *Slingerland v Norton*, 59 M 351, 61 NW 322; *Smith v Board*, 64 M 16, 65 NW 956.

Where a petition is in due form, and contains the required number of signatures, and has been presented, no competing petition can be received or acted upon until an election has been held on the first nor until the expiration of five years thereafter. *Streissguth v Geib*, 67 M 360, 69 NW 1097.

It is not a judicial prerequisite that the affidavits attached to a petition for the removal of a county-seat include a statement that the parties executing the affidavit are signers of the petition. *Foss v Board*, 93 M 238, 101 NW 71.

If the petition when presented to the county auditor is sufficient on its face, it is mandatory upon the auditor to make the order and give the notice requisite to present it before the county board. *Slingerland v Norton*, 59 M 351, 61 NW 322.

Where the action of the county commissioners is a nullity, the county auditor may legally, within a reasonable time after such election has been adjudged to be void, call a lawful meeting of the board to consider the petition. *Gile v Stegner*, 92 M 429, 100 NW 101.

There must have been due notice and there must have been a hearing before the board, before any valid certificate that a proper petition has been filed can be issued by the board. *Kaufer v Ford*, 100 M 49, 110 NW 364.

A special election was held notwithstanding it was so designated by the city council and blank ballots were properly rejected in computing the total number of voters at the special election. *Godward v City of Minneapolis*, 190 M 51, 250 NW 719.

The number of signatures required on a petition is to be determined by the number of voters at the last preceding general election. OAG Nov. 27, 1934 (106a).

The county auditor is to determine whether the petition has been signed by the required number of legal voters. OAG March 24, 1938 (125a-19).

372.02 FORM OF NOTICE.

HISTORY. 1889 c. 174 s. 1; G.S. 1894 s. 647; R.L. 1905 s. 397; G.S. 1913 s. 656; G.S. 1923 s. 626; M.S. 1927 s. 626.

Publication and posting, that is, the giving of the required notice, is judicial and is a condition precedent to action by the board of county commissioners. *State ex rel v Board*, 42 M 284, 44 NW 64; *State ex rel v Board*, 43 M 322, 45 NW 614; *State ex rel v Butler*, 81 M 103, 83 NW 483.

The filing of a sufficient affidavit with the county auditor previous to the meeting of the board showing that a notice was posted in every town and village

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of the county is a necessary prerequisite to any action by the board to direct that a special election be held. *Tucker v Board*, 90 M 406, 97 NW 103.

Publication of the notice of intention to circulate a petition is required in but one legal newspaper in the county. *Foss v Board*, 93-M 238, 101 NW 71.

After a petition for the removal of a county-seat has been filed with the county auditor, the county commissioners alone have jurisdiction to determine whether the petition has been lost and the proceedings withdrawn and abandoned. *Evenson v O'Brien*, 106 M 125, 118 NW 364.

The voters who first give notice of intentions to circulate a petition for the removal of a county-seat have the exclusive right of way for the consideration and disposition of their petition before any other such petition can be filed and have the consideration of the county board. *Moore v Mayer*, 174 M 397, 219 NW 458.

Giving notice of intention to circulate a petition is judicial, but proof of the notice may be filed with the county auditor at any time before he gives notice of the calling of a special meeting to consider the petition. In re Change of County Seat of Scott County, 175 M 486, 221 NW 870.

372.03 DUTIES OF COUNTY BOARD.

HISTORY. 1889 c. 174 s. 2; G.S. 1894 s. 648; R.L. 1905 s. 398; G.S. 1913 s. 657; G.S. 1923 s. 627; M.S. 1927 s. 627.

The determination of the question of the sufficiency of the notice is not an act involving the exercise of judicial discretion; and where the proceedings are regular and the notice is sufficient, it is mandatory upon the commissioners to act upon the petition. *State ex rel v Board*, 43 M 322, 45 NW 614; *Smith v Board*, 64 M 16, 65 NW 956; *Tucker v Board*, 90 M 406, 97 NW 103; *Foss v Board*, 93 M 238, 101 NW 71; *Moore v Mayer*, 174 M 397, 219 NW 258.

Where the board illegally strikes from the petition the names of certain electors so that the number remaining is reduced below the minimum required, mandamus will lie to compel the restoration of those names to the petition. *State v Geib*, 66 M 266, 68 NW 1081.

Where a petition in due form has been presented, a competing petition cannot be received or acted upon until an election has been held on the first petition and until the expiration of five years thereafter. *Streissguth v Geib*, 67 M 360, 69 NW 1097.

An injunction will lie to prevent the unauthorized action by the county auditor and county commissioners on an illegal petition. *Gile v Stegner*, 92 M 429, 100 NW 101.

After a petition for the removal of a county-seat has been filed with the county auditor, the county commissioners alone have jurisdiction to determine whether the petition has been lost and the proceedings withdrawn and abandoned, and the filing of a second petition does not confer jurisdiction upon commissioners and they may not consider it until it shall be first determined that the original petition had been lost or the proceedings under the first one had been abandoned. *Evenson v O'Brien*, 106 M 125, 118 NW 364.

It is the duty of the county board to inquire and determine whether or not the signers on the petition are legal voters. OAG April 11, 1938 (106e).

372.04 ORDER FIXING TIME OF ELECTION.

HISTORY. 1889 c. 174 s. 3; G.S. 1894 s. 649; R.L. 1905 s. 399; G.S. 1913 s. 658; G.S. 1923 s. 628; M.S. 1927 s. 628.

Where the petition is illegal and the election based upon it is a nullity, the county auditor may legally, within a reasonable time after such election has been adjudged to be void, call a meeting of the board to consider the petition. *Tucker v Board*, 90 M 406, 97 NW 103; *Gile v Stegner*, 92 M 429, 100 NW 101.

372.05 NOTICE; MANNER OF SERVICE.

HISTORY. 1889 c. 174 s. 3; G.S. 1894 s. 649; R.L. 1905 s. 400; G.S. 1913 s. 659; G.S. 1923 s. 629; M.S. 1927 s. 629.

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372.06 PLACE OF ELECTION; NOTICE.

HISTORY. 1889 c. 174 s. 3; G.S. 1894 s. 649; R.L. 1905 s. 401; G.S. 1913 s. 660; G.S. 1923 s. 630; M.S. 1927 s. 630.

372.07 CONDUCT OF ELECTION.

HISTORY. 1889 c. 174 s. 3; G.S. 1894 s. 649; R.L. 1905 s. 402; G.S. 1913 s. 661; G.S. 1923 s. 631; M.S. 1927 s. 631.

372.08 CANVASS; CERTIFICATE OF CANVASSING BOARD.

HISTORY. 1889 c. 174 s. 4; G.S. 1894 s. 650; R.L. 1905 s. 403; G.S. 1913 s. 662; G.S. 1923 s. 632; M.S. 1927 s. 632.

For the purpose of determining the number of votes cast, all of the ballots, unintelligible as well as intelligible, must be considered. *Smith v Board*, 64 M 16, 65 NW 956.

372.09 ELECTIONS HELD ONLY ONCE IN FIVE YEARS.

HISTORY. 1889 c. 174 s. 5; G.S. 1894 s. 651; 1899 c. 111; R.L. 1905 s. 404; G.S. 1913 s. 663; G.S. 1923 s. 633; M.S. 1927 s. 633.

See annotations under section 372.04.

372.10 DUPLICATE PETITIONS CONSOLIDATED.

HISTORY. 1889 c. 174 s. 7; G.S. 1894 s. 653; R.L. 1905 s. 405; G.S. 1913 s. 664; G.S. 1923 s. 634; M.S. 1927 s. 634.

There cannot be two competing petitions at the same time. *Streissguth v Geib*, 67 M 360, 69 NW 1097.

372.11 ONE PLACE ONLY VOTED FOR.

HISTORY. 1889 c. 174 ss. 6, 8; G.S. 1894 ss. 652, 654; R.L. 1905 s. 406; G.S. 1913 s. 665; G.S. 1923 s. 635; M.S. 1927 s. 635.

372.12 FAILURE TO GIVE NOTICE.

HISTORY. 1889 c. 174 s. 9; G.S. 1894 s. 655; R.L. 1905 s. 407; G.S. 1913 s. 666; G.S. 1923 s. 636; M.S. 1927 s. 636.

Publication and posting are jurisdictional. *State ex rel v Board*, 42 M 284, 44 NW 64; *State ex rel v Brown*, 81 M 103, 83 NW 483.

372.13 NEGLECT OF DUTY A MISDEMEANOR.

HISTORY. 1889 c. 174 s. 10; G.S. 1894 s. 656; R.L. 1905 s. 408; G.S. 1913 s. 667; G.S. 1923 s. 637; M.S. 1927 s. 637.