

CHAPTER 202

PRIMARY ELECTIONS; GENERAL PROVISIONS

202.01 DATE OF PRIMARY ELECTIONS.

Statutes relating to primaries and elections do not confer rights of qualified persons to become candidates for office but merely regulate the exercise of such rights in an orderly way. *Flakne v Erickson*, 213 M 146, 6 NW(2d) 40.

Procedure and time for filing or withdrawing petitions. OAG Jan. 5, 1944 (911o).

Law of primary elections. 2 MLR 97, 192.

202.02 CANDIDATES TO BE CHOSEN AT PRIMARY ELECTION.

Primary election law does not prohibit a candidate for a nonpartisan office from procuring endorsement and support from a political party. He may state his political affiliations, and engage in political activities. *Moon v Halverson*, 206 M 331, 288 NW 579.

Where two of three candidates were nominated at the 1946 primary, one of the nominees was privileged to withdraw not later than August 1, 1946. OAG July 24, 1946 (28-B-1).

Right to be an independent candidate after voting in the primary and pledging not to be a candidate. 5 MLR 393.

Right of political party to exclude negroes from party primaries. 13 MLR 375.

202.03 AFFIDAVIT OF CANDIDACY; FEES.

Candidates in Minneapolis for alderman may file for alderman 90 days prior to the primary election and the last date of filing is 20 days prior to the election. All aldermen may serve out the term for which they were elected notwithstanding changes in ward boundaries. OAG Nov. 26, 1946 (64-m).

202.08 ERRORS IN BALLOTS.

Vacancy in office of register of deeds of Hennepin county ensuing upon the death of Skog, nine days after being elected to office at the 1938 general election, was one to be filled by appointment for the balance of a four-year term, and relator was not entitled to file for that office at the 1940 primary or election. *State ex rel v Erickson*, 208 M 402, 294 NW 373.

202.18 CERTIFICATES OF NOMINATION.

A duly assembled convention of a political party may delegate its power, and confer upon a duly selected or properly designated committee full authority to nominate candidates for office, and those so named, upon complying with the statutory provisions become the nominees for the party at the general election. The certificates of nomination should be executed by the presiding officer and the secretary of the nominating committee. *White v Sanderson*, 74 M 118, 76 NW 1021.

202.19 NOMINATION BY PETITION.

The petition in the instant case cannot be accepted and the candidate's name be placed on the ballot without party designation, because in this case the named candidate had been a candidate at the previous primary, and the ban of section 202.19 is lifted by section 202.24 only so far as to permit the persons who had been such candidates to be nominated by petition by the party which failed to cast the requisite number of votes. *O'Brien v O'Brien*, 213 M 140, 6 NW(2d) 47.

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Where a vacancy occurs in the office after the primary but more than 30 days before the next general election, there is no statutory or constitutional limitation upon the number who may file by petition. *Flakne v Erickson*, 213 M 146, 6 NW(2d) 40.

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, and it is the duty of the secretary of state to place the name of such person on the ballot as the nominee and not accept a nomination by petition for that office of an unsuccessful candidate at the primary election. *Enger v Holm*, 213 M 154, 6 NW(2d) 101.

In case of a vacancy caused by the death of a candidate for state senator, a qualified person may file by petition on or before the third Tuesday preceding the day of election. OAG Oct. 8, 1946 (28-B-1).

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

Where only two candidates filed for office of senator, one of whom died before the general election, voters of the district may sign one petition nominating a candidate. OAG Oct. 8, 1946 (28-B-1).

202.23 VACANCIES.

The vacancy having occurred after August 8, the last date set for filing under L. 1945, c. 190, s. 14, the secretary of state should accept and file the certificate of nominations of the D.F.L. party naming a candidate for congress in the third congressional district. OAG Aug. 19, 1946 (28-B-1).

202.24 NOMINEES OF POLITICAL PARTIES.

Under section 202.03, one filing as a candidate for office as a member of a political party, which became defunct as a political party under section 200.08 before election, may affiliate with another political party, and at a succeeding election may file as a candidate of such party. *State v Schmahl*, 140 M 220, 167 NW 797.

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

The county auditor cannot be prevented, by writ of prohibition, from placing on ballots the name of a candidate for state senator whose name was presented by voter's certificate of nomination, the acts imposed upon the county auditor being purely administrative and not requiring judicial discretion. *O'Neill v Kallsen*, 222 M 379, 24 NW(2d) 715.

Candidate nominated to fill a vacancy should not only file his original certificate, but should file certified copies with the county auditors in all other counties in the district on or before the third Tuesday preceding election day. OAG Oct. 8, 1946 (28-B-1).

202.26 TIME OF FILING OF PETITION.

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

202.28 FILLING VACANCIES.

Persons may become candidates by use of stickers, and voters are privileged to write in names on the ballot when voting. OAG May 20, 1946 (911-J).

202.31 FEES.

A candidate who filed for county office died on May 20. The filing fee cannot be refunded. OAG June 11, 1946 (911q).