

CHAPTER 208

ELECTION CONTESTS

208.01 WHO MAY INSTITUTE CONTEST.

The incumbent of an office, the term of which is for a specified period, "and until his successor is elected and has qualified," is entitled to retain the office after the lapse of the specified period in the event of the election of another person to succeed him, who is ineligible; hence he has such an interest in such election that he may invoke a decision as to its legality. *Taylor v Sullivan*, 45 M 308, 47 NW 802.

The legislature has the power under the state constitution to pass an act prohibiting corrupt practices in elections, and prohibiting such practice and providing that the practice of corruption by a candidate in securing an office shall bar him from entering into possession. There are two remedies for violation, (1) by criminal prosecution and conviction and a judgment of ouster, and (2) by contest of the election in accordance with statutory provisions. *Saari v Gleason*, 126 M 378, 148 NW 293.

A showing that petition in election contest was in part signed by persons to whom false representations were made, does not divest the court of jurisdiction. *Exrieder v O'Keefe*, 148 M 278, 173 NW 434.

The statutory authorization for contesting an election for violations of the provisions of the corrupt practices act does not apply to an election upon questions relating to the erecting and establishing of a lighting and heating plant by a municipality. *Morgan v Village of Mountain Lake*, 194 M 104, 259 NW 689.

One who has no certificate of election to a state office from the state canvassing board is not entitled to quo warranto to test the title of an incumbent appointee. *State ex rel v Atwood*, 202 M 50, 277 NW 357.

The purpose of unlawfully influencing voters is the poison at which the corrupt practices act is directed. In the instant case the contestee mailed an anonymous letter to the contestant but as the letter received no circulation among the voters there was no violation of the corrupt practices act. Requirements for a successful contest are "deliberate, serious, and material" violations of the law. *Effertz v Schimelpfenig*, 207 M 324, 291 NW 286.

The time within which to appeal from an order determining an election contest is limited in cases involving legislative offices to five days after notice of filing the decision, and in cases involving other offices to the time allowed by law for appealing from an order denying a motion for a new trial or judgment as the case might be. *Hanson v Emanuel*, 210 M 51, 297 NW 176.

208.03 CANDIDATE MAY FILE CONTEST; NOTICE.

Courts and the several judges thereof have no jurisdiction over legislative election contests, and should not assume authority to take any steps in such contests unless clearly authorized and then only to the extent specifically given. *State ex rel v Nelson*, 141 M 501, 169 NW 788, 170 NW 224.

208.05 TRIAL.

A party to an election contest, though the basis of the contest is violation of the corrupt practices act and though it may result in an annulment of the election, is not entitled to a jury trial of the issues. *Hawley v Wallace*, 137 M 183, 163 NW 127.

208.07 VOTER MAY CONTEST ELECTION.

Requirements of the statute as to proceedings in elections are mandatory and there must be substantial compliance; but an irregularity not apparently affecting

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the result will not avoid a fair election. In re Special School Election, 183 M 547, 237 NW 412.

The question of whether one declared elected to a public office is a citizen of the United States and eligible to hold such office may be raised in an election contest. *Miller v Berg*, 190 M 352, 251 NW 682.

Statutory authorization for contesting an election for violation of the corrupt practices act does not apply to an election upon questions relating to the erecting and establishing of lighting and heating plant by a municipality. *Morgan v Village of Mountain Lake*, 194 M 104, 259 NW 689.

The statute affords an easy and adequate remedy for contesting the validity of a municipal election on such propositions as those involved in the instant case and the determination binds all within the municipality. *Ahluquist v Commonwealth*, 194 M 598, 261 NW 452.

The provision of the statute as to filing notice of appeal in an election contest is mandatory, and unless notice is filed within the ten-day limitation after canvass is completed no jurisdiction to hear the contest is acquired by the court. *Strom v Lindstrom*, 201 M 226, 275 NW 833.

While contestant's appeal must be dismissed, leave is granted to him to enter judgment in the trial court and appeal as in civil actions. *Aura v Brandt*, 211 M 615, 299 NW 910.

In case of a contest it is the duty of the city to defend the declared result of a local option election. It is not the duty of the attorney general to appear in such contest. OAG. March 21, 1947 (218-C-1).

208.09 APPEAL; BOND.

Time within which to appeal from an order determining an election contest is limited in cases involving legislative offices to five days after notice of the filing of the decision, and in cases involving other offices to the time allowed for appealing from an order denying a motion for new trial or judgment. *Hanson v Emanuel*, 210 M 51, 297 NW 176; *Aura v Brandt*, 211 M 281, 1 NW(2d) 381; 211 M 614, 299 NW 910.

208.10 DETERMINATION OF CONTEST.

See, notes under section 208.01.