

TITLE II.

Elections.

CHAPTER 5.

NOMINATION OF CANDIDATES FOR OFFICE.

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5.01 Definition of terms; liberal construction. The words and phrases in this title, shall, unless the same be inconsistent with the context, be construed as follows:

- (1) The word "primary," the primary election provided for by this title.
- (2) The words "September primary," the primary election held in September to nominate candidates to be voted for at the ensuing general election.
- (3) The word "election," a general or municipal election, as distinguished from a primary election.
- (4) The words "November election," the general election held in November.
- (5) The word "precinct," a district established by law within which all qualified electors vote at one polling place.
- (6) This title shall be construed so as to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to comply with some of its provisions.

Note: Words "this title" in (6) refers to chapters 5 to 12 of the statutes. When election has been held, will of electors must be given effect, though there may have been informalities or failure to comply with statutes. State ex rel. Oaks v. Brown, 211 W 571, 249 NW 50.

See note to 10.36, citing Commonwealth Tel. Co. v. Public Service Commission, 219 W 607, 263 NW 665.

In any conflict between the provisions of 5.01 (6) and those of 12.24 (1), section 5.01 (6) controls by reason of the fact that it was enacted subsequently to 12.24 (1); and therefore, before a judgment of ouster can be entered under the provisions of 12.24 (1), there must be a finding that the act or omission complained of so affected or tended to affect the mind of the electors that the real will of the electors cannot be ascertained. In view of 5.01 (6), the failure of a candidate for the office of mayor to file under 12.14 (2) a declaration in the office of the county clerk

as to the nature and extent of his interest in a weekly newspaper in which articles relating to his candidacy were published, is held not to require a judgment of ouster from the office under 12.24 (1), where the electorate had much more widely published notice of the fact that such candidate was the editor and publisher and had a large financial interest in the newspaper than could have been given by mere filing of the statutory declaration. State ex rel. Pelishek v. Washburn, 223 W 595, 270 NW 541.

In view of 5.01 (6) a ballot legally cast should not be rejected if it expresses the will of the voter; and 5.01 (6), enacted later than 6.41, providing that any ballot not indorsed by the signatures or autograph initials of the ballot clerks shall not be counted, should be applied rather than 6.41 so far as the terms of the 2 are irreconcilable. Ollmann v. Kowalewski, 238 W 574, 300 NW 183.

5.02 Methods of nominations. Hereafter, all candidates for elective offices shall be nominated:

- (1) By a primary held in accordance with this chapter, or
- (2) By nomination papers signed and filed as provided by this chapter.

(3) Party candidates for the office of United States senator shall be nominated in the manner provided herein for the nomination of candidates for state offices.

(4) Except as otherwise specially provided in this chapter, there shall be no nomination by primary election of any candidate for the office of state superintendent, or county or district superintendent of schools, or board of education by whatever name designated, or constable or justice of the peace, or for any school district or judicial office.

Note: See note to 5.26, citing 27 Atty. Gen. 152.

5.025 No primaries in cities unless provided for. Except in cities of the first class, no primary election shall be held in any city for the nomination of candidates for city office, including city supervisor, unless ninety days prior to the city election such city either by a three-fourths vote of its governing body shall provide for, or by a petition signed by electors of said city equal in number to not less than fifteen per cent of the vote cast therein for governor at the last preceding general election and filed with the city clerk shall require, a primary for any specific election. When no primary election is held, the candidates for such offices shall be nominated in the manner provided in section 5.26. [1933 c. 433 s. 4]

Note: Affidavit verifying signatures on It is duty of city clerk to pass upon sufficiency of petition. 25 Atty. Gen. 93.

5.03 Primaries; time and place. (1) The September primary shall be held at the regular polling places in each precinct on the third Tuesday of September of each even-numbered year for the nomination of all candidates to be voted for at the next November election.

(2) Any primary other than the September or a special primary shall be held three weeks before the election for which such primary is held.

5.04 Notice of primaries. (1) At least sixty days before the time of holding such September primary, the secretary of state shall prepare and transmit to each county clerk, a notice in writing designating the offices for which candidates are to be nominated at such primary.

(2) Upon receipt of such notice the county clerk shall immediately prepare under his hand and official seal a similar notice containing so much of the notice received from the secretary of state as may be applicable to his county. He shall also specify the county offices for which candidates are to be nominated at such primary, and, within ten days, publish said notice once each week for four consecutive weeks, as provided in section 6.82. In all counties having a population of five hundred thousand or more such notice shall be published once each week for two consecutive weeks as provided in section 6.82.

(3) Not later than the fifteenth day of August the county clerk shall cause to be printed on heavy paper, suitable for posting, copies of the notice thus prepared and immediately forward to each city, village, and town clerk within his county a sufficient number of copies for the purposes hereinafter specified. At the bottom of such notice shall be printed a form to be executed by the local clerk specifying the place where the primary will be held and the hours at which the polls will be opened and closed in the precinct in which such notices are posted. Within ten days after receipt the city, village or town clerk shall complete such notices and cause them to be posted in five conspicuous places in each election district or precinct, and either file or post another copy in his office. At the request of the city clerk police officers shall post said notices as he shall direct. It shall be the duty of the town, city or village clerk to see that such notices are received and correctly posted.

(4) The city clerk of any city holding a primary to select nonpartisan candidates for city offices shall cause a similar notice thereof to be published once, and to be posted in 3 public places in each precinct therein, not more than 20 nor less than 10 days before such primary. [1939 c. 452; 1943 c. 275 s. 1]

5.05 Primary nomination papers, except for city primaries. (1) The name of no candidate shall be printed upon an official ballot used at any September primary unless not later than 5 p. m. central standard time on the last Tuesday of July of the year in which such primary is to be held a nomination paper shall have been filed in his behalf as provided in this chapter, in substantially the following form:

"I, the undersigned, a qualified elector of (the...precinct of the town of....) or (the...ward of the city of....), county of.... and state of Wisconsin, and a member of the...party, hereby nominate.... (include both given and surname), who resides (at No., on...street, city of....) or (in the town of....), in the county of.... as a candidate for the office of (here specify the office)...., to be voted for at the primary to be held on the third Tuesday in September, 19.., as representing the principles of said party, and I further declare that I intend to support the candidate named herein."

Name of signer.	In cities.		Date of signing.
	Street.	No.	
.....

(2) All nomination papers shall have substantially the above form written or printed at the top thereof. No signatures shall be counted unless they be upon sheets each having such form written or printed at the top thereof.

(3) Each signer of a nomination paper shall sign but one such paper for the same office, and shall declare that he intends to support the candidate named therein; he shall add his residence, with the street and number, if any, and the date of signing.

(4) No nomination paper shall be circulated prior to 60 days before the date on which such paper must be filed according to law, and no signature shall be counted unless it has been affixed to such nomination paper and bears date within 60 days prior to the time for filing such nomination paper; except that no nomination papers for any candidate for an office mentioned in section 5.06 and voted for in a city of the first class, and for any office mentioned in section 5.26 (6) and voted for wholly in a county having a population of 500,000 or more, shall be circulated prior to 45 days before the date on which such paper must be filed according to law, and no signature shall be counted unless it has been affixed to such nomination paper and bears date within 45 days prior to the time for filing such nomination paper.

(5) (a) For nominations of state officers, congressmen, county officers and all judicial officers elected by the voters of one or more counties, all signers on each separate nomination paper shall reside in the same county. For nomination of members of the assembly and senators, all signers on each separate paper shall reside in the same district, except that if the senatorial or assembly district includes more than one county, then such signers shall reside in the same county.

(b) The affidavit of a qualified elector stating his residence with street and number if his residence has any street and number shall be appended to each such nomination paper, stating that he is personally acquainted with all persons who have signed the same, and that he knows them to be electors of that precinct, ward, town, village or county, as the nomination papers shall require; that he knows that they signed the same with full knowledge of the contents thereof and that their respective residences are stated therein and that each signer signed the same on the date stated opposite his name, and that he, the affiant, resides within the district which the candidate (named therein) will represent if elected and that he intends to support such candidate. Such affidavit shall not be made by the candidate, but each candidate shall file with his nomination paper or papers, a declaration that he will qualify as such officer if nominated and elected.

(6) Such nomination papers shall be signed:

(a) If for a state office by at least one per cent of the voters of the party of such candidate in at least each of six counties in the state, and in the aggregate not less than one per cent nor more than ten per cent of the total vote of his party in the state.

(b) If for a representative in congress, by at least two per cent of the voters of his party, in each of at least one-half of the counties of the congressional district, and in the aggregate not less than two per cent nor more than ten per cent of the total vote of his party in such district.

(c) If for an office representing less than a congressional district in area, or a county office, by not less than 3 per cent nor more than 10 per cent of the total vote of his party in such district.

(d) The basis of percentage in each case shall be the vote of the party for governor at the last preceding gubernatorial election. But any political organization which at the last preceding general election was represented on the official ballot by either regular party candidates or by individual nominees only, may, upon complying with the provisions of this chapter, have a separate primary election ticket as a political party, if any of its candidates or individual nominees received one per cent of the total vote cast at the last preceding general election in the state, or subdivision thereof, in which the candidate seeks the nomination, under such designation as the chairman and secretary of such organization shall certify to the secretary of state as the name of such party, which shall not duplicate the name of any other party.

(e) Any other political organization which shall file with the secretary of state, not less than ninety days prior to the holding of a September primary, a petition signed by not less than one-sixth of the electors in at least ten counties therein, or by one-sixth of the electors

within any senatorial, assembly or congressional district, praying that said organization be given a party ticket at the said September primary, may have a separate party ticket as a political party in such district or in the state, as the case may be, at such primary; and all candidates of such party for the nomination as candidates for the office of member of the assembly or of the senate or for representative in congress, if the petition be signed by electors in the district only, or for the nomination as candidates for state offices, if the petition be signed by the above required number of electors in at least ten counties in the state, shall, upon complying with the provisions of law relative to nomination papers, be placed upon such ticket. The basis for ascertaining the number of signers required on any such petition shall be the same as for ascertaining the number of signers necessary on nomination papers as provided in this section.

(7) No filing officer shall accept nomination papers for any candidate to run in more than one party primary at the same time. [1933 c. 284; 1933 c. 433 s. 3; 1935 c. 36; 1937 c. 267; 1939 c. 452; 1941 c. 201; 1943 c. 107, 112, 252, 275; 1945 c. 116, 174]

Note: A petition, signed by one-sixth of the electors in ten counties or in any senatorial, assembly or congressional district, for a party ticket at the September primary, entitles the group to a separate party ticket as a political party, the words, "may have a separate party ticket as a political party in such district or in the state," being construed as having reference to territory and not to offices. The word "electors" in (6) (e) means the total number of persons voting for presidential electors at the last preceding presidential election. As to candidates of a new party, the statute makes no requirement as to the number of signatures necessary to qualify such candidates for a place upon the primary ballot. State ex rel. Ekern v. Dammann, 215 W 394, 254 NW 759.

Ch. 107, laws of 1943, amended 5.05 (1), so as to require that nomination papers of candidates be filed not later than "5 p.m. central standard time" on the last Tuesday of the preceding July. Ch. 567, laws of 1943, created 11.90, and provided in (11) that nomination papers of candidates at such primary must be filed not later than June 6, 1944, without specifying the hours. Held, that the legislative intention was merely to substitute the date of June 6th and not to change the hours for filing and that, therefore, a candidate who did not tender his nomination papers for filing until 7 p.m. on June 6, 1944, was not entitled to file them. State ex rel. Conlin v. Zimmerman, 245 W 475, 15 NW (2d) 32.

Candidate may not lawfully pay for circulation of his nomination papers. 21 Atty. Gen. 808.

5.06 City nomination papers. Papers for the nomination of any candidate for any city office at a city primary shall be signed by voters equal in number to not less than 2 per cent of those who voted for the candidate receiving the highest number of votes for such office at the last preceding city election, with not less than 100 voters in the case of any candidates for a city office to be voted for throughout the city, and shall be filed not less than 35 days before the primary, and not later than 5 p.m. central standard time on said last day. No elector shall sign such papers for more candidates for each office than there are persons to be elected to such office. [1933 c. 433 s. 3; 1933 c. 466; 1935 c. 421 s. 3; 1937 c. 150; 1943 c. 107; 1945 c. 174]

5.07 Filing of nomination papers; destruction. All nomination papers shall be filed as follows:

(1) For state officers, United States senators, representatives in congress, and those members of senate and assembly whose districts comprise more than one county, in the office of the secretary of state.

(2) For officers to be voted for wholly within one county, except representatives in congress, in the office of the county clerk of such county.

(3) For city officers, or other officers voted for exclusively within one city, in the office of the city clerk.

(4) When nomination papers shall be received which contain ten per cent of the total vote as limited in subdivisions (a), (b) and (c) of subsection (6) of section 5.05, the clerk with whom such papers are required to be filed, shall not receive or file further nomination papers for the candidate named therein.

(5) All nomination papers in the custody of any official under the provisions of this section shall, four months after the day of the primary at which the nominee sought to be named by such nomination papers have been voted for, be destroyed, by the official

Republican candidate who filed with nomination papers declaration that he would qualify, is nominated on Progressive ticket and receives certificate of nomination, need not file another declaration that he will qualify but is entitled to have name placed on ballot in Progressive column. 23 Atty. Gen. 725.

Provisions of (6) (a), (b) and (c) are applicable to third party so far as they require nomination papers to be filed from certain number of counties or precincts. 23 Atty. Gen. 396.

Affidavit to nomination paper which does not recite that affiant knows that elector lives in precinct stated may be amended to conform to fact if such be fact. 23 Atty. Gen. 596.

Prohibition party is not entitled to regular election ticket at 1936 September primary, unless it qualifies under (6) (e). If party candidate in any subdivision in state received one per cent of total vote cast at last preceding general election such party is entitled to regular party ticket in said subdivision. 25 Atty. Gen. 238.

Candidate for precinct committeeman must file nomination papers under (5) (b). 25 Atty. Gen. 508.

Affidavit to nomination paper may be amended after filing to conform to facts where paper has been circulated by county and sworn to by precinct. 25 Atty. Gen. 511.

Under (6) (d) Union party qualifies for party ticket at 1938 September primary. 26 Atty. Gen. 426.

having such custody. Such papers as are material to any investigation or litigation then pending, shall not be destroyed, however, until the final determination of such investigation or litigation.

5.08 Certification of names by secretary of state for primary ballot. (1) After the filing of nomination papers as provided in section 5.05, the secretary of state shall transmit to each county clerk not later than twenty-eight days before any September primary a certified list containing the name, given and surname, residence and post-office address of each person for whom nomination papers have been filed in his office, and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate, and the party or principle he represents; such lists shall designate the order in which the names of the candidates shall be printed upon the primary ballot in each assembly district.

(2) (a) For the purpose of determining the order in which the names of candidates for each state office shall be placed upon the primary ballot, the secretary of state shall number the assembly districts in the state consecutively, from one to one hundred, in the order of their population according to the last preceding published census, beginning with the district having the largest population, which shall be numbered one.

(b) In determining the order in which the names of candidates for representatives in congress, and state senators in districts comprising more than one county, shall be placed upon the primary ballot, the secretary of state shall number the assembly districts and parts of districts in each congressional or senatorial district from one upward, according to population, as aforesaid.

(c) In determining the order in which the names of candidates for members of assembly, in districts comprising more than one county, shall be placed upon the primary ballot, the secretary of state shall number the counties in each assembly district from one upward, according to population, as aforesaid.

(3) (a) The secretary of state shall arrange the surnames of all candidates for each office alphabetically for the first assembly district; thereafter for each succeeding district, the name appearing first for each office in the last preceding district shall be placed last.

(b) He shall arrange the surnames of all candidates for member of assembly alphabetically for the first county in each assembly district; thereafter for each succeeding county, the name appearing first in the last preceding county shall be placed last.

(4) Such clerk shall forthwith upon receipt thereof publish under the proper party designation, the title of each office, the names and addresses of all persons for whom nomination papers have been filed, giving the name, including given and surname, and address of each, the date of the primary, the hours during which the polls will be opened, and state that the primary will be held at the regular polling places in each precinct. The caption shall be set in twelve point bold face caps and the body of the notice in eight point type of which the party headings shall be in caps and the names of the several offices in bold face type as set forth in the model form printed in appendix to election laws. The columns shall not exceed two and one-sixth inches in width. The fee for such publication shall be paid for by the square as defined in section 6.82.

(5) It shall be the duty of the county clerk to publish such notice once each week for two consecutive weeks prior to said primary. [1931 c. 241, 297; 1933 c. 284; 1939 c. 269, 452; 1943 c. 66]

Note: The secretary of state is required to certify to the county clerks for placing on the ballot the names of those who have filed the requisite number of nomination papers; 5.08, 5.10. He may not refuse to certify a person who has properly qualified by filing papers upon the ground that the person should not be entitled to hold the office. 33 Atty. Gen. 98.

5.09 [Repealed by 1929 c. 332 s. 1]

5.10 Ballot for primaries. (1) An official ballot for September primaries shall be printed and provided for use at each voting precinct in substantially the form provided herein and annexed hereto. The names, including given and surnames, of all candidates for the respective offices for whom the nomination papers prescribed shall have been duly filed, shall be printed thereon.

(2) The name, including given and surname, of each nonpartisan candidate placed in nomination for a city primary as provided by section 5.06, and no others, shall be printed under a designation of the office for which he is named on the official ballot used at such primary, which ballot shall be so arranged as to admit of any other person being voted for by the elector if he so desires. Each candidate for a city office to be voted for throughout the city shall file, with his nomination paper or papers, or before 2 p. m. on the day first succeeding the last day for filing such nomination papers, a declaration that he will qualify as such officer if nominated and elected. Whenever a primary is held and the number of candidates placed in nomination for any city office, whether the

same is to be voted for throughout the city or only in wards, does not exceed 2 times the number of persons to be elected to any such office, no primary election shall be held for such office and the names of such candidates shall be printed upon the official ballot for the ensuing election. [1933 c. 284, 466; 1933 c. 494 s. 1; 1935 c. 421 s. 3; 1937 c. 167; 1945 c. 116]

Note: Filing of declaration to serve if elected, required under (2), is applicable only to candidates for city offices to be voted for throughout city who are nominated at, or by virtue of, primary or who would be required to be nominated at primary were it not for fact that not to exceed two times number of candidates placed in nomination filed for office under (2). Person may run for more than one nonpartisan city office on same ballot at same primary or election. 27 Atty. Gen. 683.

5.11 Preparation of primary ballots by county clerk; sample ballots. (1) Not later than twenty-two days before the September primary each county clerk shall prepare sample official ballots in substantially the annexed form which sample ballots shall be printed upon tinted or colored paper, and shall contain no blank indorsement or certificate. Said clerk shall place thereon, under the appropriate title of each office and party designation, the names of all candidates to be voted for in the precincts of his county. The names certified by the secretary of state shall be arranged in the order in which they were certified.

(2) For the purpose of determining the order in which the names of candidates for each office for whom nomination papers have been filed in the office of the county clerk shall be placed on the primary ballot, the county clerk shall prepare a list of the election precincts of his county. Such list shall be prepared by arranging the various towns, cities and villages of the county in alphabetical order, and the wards or precincts of each city, village or town in numerical order under the name of such city, village or town. The precincts in each assembly district within the county shall be arranged in the same manner.

(3) The county clerk shall arrange the surnames of all candidates for each office for whom nomination papers have been filed in his office alphabetically for the first precinct in the list; thereafter for each succeeding precinct; the name appearing first for each office in the last preceding precinct shall be placed last.

(4) Such clerk shall not later than twenty-one days before such primary submit the ticket of each party to the county chairman thereof, and mail a copy to each candidate for whom nomination papers have been filed with him as required by this act, to his post-office address as given in such nomination paper, and he shall post a copy of each sample ballot in a conspicuous place in his office.

(5) Not later than seventeen days before such primary the county clerk shall correct any errors or omissions in the ballot, cause the same to be printed, and, ten days prior to the primary to be distributed as required by law in the case of ballots for the general election. The number of ballots shall be the same, both as to official and sample ballots, as provided in subsections (1) and (2) of section 6.26 of the statutes.

(6) The order in which the names of nonpartisan candidates shall be printed on the ballot at city primaries shall be determined by the city clerk in the manner provided in subsections (2) and (3) for determining the order in which names of candidates for whom nomination papers have been filed in the office of county clerk shall be placed on the primary ballot, so far as such subsections are applicable. [1933 c. 39; 1937 c. 75; 1945 c. 85]

Note: Sample primary ballot shall be in substantially same form as official ballots as to arrangement of names. 25 Atty. Gen. 639.

5.12 [Repealed by 1929 c. 332 s. 1]

5.13 Form and use of ballot. (1) At all primaries there shall be an Australian ballot made up of the several party tickets herein provided for, all of which shall be securely fastened together at the bottom and folded and there shall be as many separate tickets as there are parties entitled to participate in said primary election. The party ticket of the party which had the greatest number of votes cast at the preceding general election for governor shall be the topmost ticket of the ballot, the other party tickets to follow in their order in accordance with the number of votes cast in each respective party at such preceding election for governor. The names of all candidates at the September primary, and the names of all nonpartisan candidates at city primaries, shall be arranged as provided in sections 5.08 and 5.11.

(2) If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and shall in no case be counted for such person as a candidate upon any other ticket.

(3) In case the person is nominated upon more than one ticket he shall forthwith file with the proper officer, or officers in charge of the preparation of the ballots, a written declaration indicating the party designation under which his name is to be printed on the

official ballot; provided, that in case a candidate is nominated on a ticket on which his name is printed and also on some other ticket by having his name written thereon, he shall not have the right of choice but shall be held to be the nominee of the party on which his name is printed.

(4) The ballots with the indorsements shall be in substantially the form heretofore annexed; provided, that ballots for any city primary may be varied as to the title of the offices to be printed thereon, so as to conform to the law under which each such primary is held.

(5) The provisions of section 6.37 of the statutes, so far as applicable, shall govern the preparation of the ballot.

(6) After preparing his ballot, the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and the printed indorsements and signatures or initials thereon seen.

(7) The remaining tickets attached together shall be folded in like manner by the elector, who shall thereupon without leaving the polling place, vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot box to be marked and designated as the blank ballot box.

(8) Immediately after the canvass, the inspector shall, without examination, destroy the tickets deposited in the blank ballot box. [1945 c. 116, 220, 506]

5.14 Vacancies occurring after primaries. (1) Vacancies occurring after the holding of any primary shall be filled by the party committee of the district, county or state, as the case may be. When such vacancies occur in cities, other nominations may be made as provided in section 5.26.

(2) If a person whose name is printed on the primary ballot shall die or file a declination to accept the nomination after the ballots are printed, or if he shall be disqualified to accept such nomination, the votes cast for him shall be counted and returned; and if he shall receive the greatest number of votes, as provided by section 5.15, the vacancy shall be filled by the party committee, as aforesaid.

Note: Where candidate dies before ballots are printed his name should not appear on ballots. 21 Atty. Gen. 361.

5.15 Canvass of primary votes, except for city primaries. (1) The party chairman of the precinct in a precinct canvass, of the county in a county canvass, of the state in a state canvass, or some duly appointed agent to represent each party, shall be allowed to be present and observe the proceedings.

(2) The precinct inspectors of election shall, on separate sheets on blanks to be provided for that purpose, make full and accurate returns of the votes cast for each candidate, and shall, within twenty-four hours, cause such returns to be delivered to the county clerk, if a September primary, or to the city clerk if a city primary; provided, always, that such returns shall be sent by registered mail where practicable.

(3) The county canvass of the returns of a September primary shall be made by the same officers, and in the manner provided in chapter 6, of the statutes, for the canvass of the returns of a November election.

(4) The canvassers shall meet and canvass such returns at ten o'clock on the Friday following the September primary. Their returns shall contain the whole number of votes cast for each candidate of each political party.

(5) The canvassers shall also make an additional duplicate return in the same form as provided in subsection (4), showing the votes cast for each candidate not voted for wholly within the limits of one county.

(6) The county clerk shall forthwith send to the secretary of state by registered mail one complete copy of all returns as to such candidates.

5.16 State board of canvassers of primaries. The board of canvassers provided by section 6.69 of the statutes to canvass returns of the November election shall constitute the state board of canvassers of the September primary. The board shall make a canvass of the votes cast for candidates for members of the senate and assembly in districts not wholly within one county, and all of the provisions of sections 6.70, 6.71, 6.72 and 6.73 of the statutes relating to the canvass of the returns of the November election, shall, as far as applicable, apply to the canvass, return and certification to the secretary of state of such primary. Such board shall meet at the office of the secretary of state, at ten o'clock A. M. on the second Tuesday after the September primary.

5.17 Determination of nominations made at primaries. (1) If all candidates for nomination for any one office voted for on any party ballot shall receive in the aggregate 5 per cent or more of the average of the vote cast for the nominee of such party for governor at the 2 last general elections, the person receiving the greatest number of votes at

such primary election as the candidate of such party for such office, shall be the candidate of that party for such office, and his name shall be placed on the official ballot at the following election. Provided, if such person receiving the greatest number of votes has not filed nomination papers as provided in sections 5.05 and 5.07 he shall not be the candidate of such party for such office or have his name placed on the official ballot as such unless he shall personally receive 3 per cent or more of the average of the votes cast for the nominee of such party for governor at the 2 last general elections.

(2) If all the candidates for nomination for any one office voted for on any party ballot, shall receive in the aggregate less than five per cent of such votes so cast at such last general election, no person shall be deemed to be the party nominee for such office, but the person receiving the greatest number of votes at such primary as the candidate of such party for such office, shall be deemed an independent candidate for such office, and his name shall be placed on the official ballot in the column of individual nominations and he shall be denominated in such column as "independent."

(3) No person, however, shall be entitled to have his name placed on such ballot who has not filed a nomination paper as provided in sections 5.05 and 5.07 of the statutes, unless he shall file within five days after receiving official notice of his nomination, a declaration that he will qualify as such officer if elected.

(4) The persons, equal in number to twice the number of persons to be elected to any office, receiving the highest vote for such office at any city primary, shall be the nominees for such office, and their names, and no others, shall be placed upon the official ballot at the ensuing city election in such city. [1945 c. 212]

Note: Subsection (1), Stats. 1933, has no application to new political groups. State ex rel. Ekern v. Dammann, 215 W 394, 254 NW 759.

A person may run for office of county superintendent of schools in April election even though not then qualified to hold such office. 22 Atty. Gen. 130, 163.

Person who receives greatest number of votes for certain office in party primary by having his name written in is candidate for that party for such office regardless of fact that he filed nomination papers for different office, for which he was defeated in primary; but he must file declaration that he will qualify. (Stats. 1933) 23 Atty. Gen. 658.

Incorrect nomination date in declaration filed pursuant to (3), Stats. 1935, does not invalidate same. 25 Atty. Gen. 632.

Nominees of Union Party need not comply with (1), Stats. 1937, to entitle them to place on November ballot as candidates of that party. 27 Atty. Gen. 667.

5.18 Canvass of votes cast at city primaries. (1) The canvass of the returns of a city primary shall be made by the same board or body of officers that is empowered to canvass the returns of the city election.

(2) Such board of canvassers shall meet at eleven o'clock in the forenoon of the day following the city primary and canvass the vote substantially as provided by sections 6.62 and 6.63.

(3) They shall make and certify returns as to the votes cast for the candidates and forthwith file the same with the city clerk.

(4) So far as applicable and not otherwise provided herein, the provisions of this chapter shall apply to all city primaries; provided that a list of candidates shall be posted and published at least ten days and the official ballot shall be printed at least ten days before the day of holding such primaries.

5.19 Party committees in counties, cities and precincts. (1) (a) At the September primary each voter may write in the space left on his ticket for that purpose the name of not to exceed one qualified elector of the precinct for his party precinct committeeman or he may vote for one whose name is on the ballot for such position. The person having the highest number of votes shall constitute such committeeman.

(b) The official return made by the inspectors shall show the name and address of each ward and party committeeman chosen.

(2) In counties containing a city of the first class there shall be elected at the September primary one committeeman for each political party from each ward, town and village and in all other counties one committeeman for each party from each precinct. Such committeemen shall be nominated by nomination papers to be signed by not less than three per cent and not more than ten per cent of the party vote for governor at the last preceding election in such precinct, ward, town or village. Nomination papers shall be in substantially the same form as provided in section 5.05 of the statutes and shall be filed with the county clerk not later than the last Tuesday of July before the primary. The county clerk shall arrange the names of candidates for such committeemen, as provided in section 5.11 of the statutes, and place the names so arranged in the proper party columns as candidates for such ward, town and village committeemen.

(3) In case of a tie, the inspectors of election shall decide by lot.

(4) The term of office of each party committeeman elected shall be for the two years next succeeding the date of his election.

(5) The city committee of each political party shall consist of the several precinct and ward committeemen in such city. It shall be the duty of the chairman of each party county committee to call, within ten days after the September primary, a meeting of such members of the city committee at a place to be designated by him. They shall at such meeting elect a chairman and such other officers as they shall deem necessary.

(6) Except in counties containing a city of the first class the county committee of each party shall consist of the several committees from each election precinct in the county elected at the September primary. In counties containing cities of the first class the county committee of each party shall consist of the committeemen from each ward, town and village.

(7) In all counties the chairman of the county committee shall within two days after the completion of the official county canvass of said primary call a meeting of said county committee, by giving each member thereof a notice in writing, at least five days prior to the holding of such meeting.

(8) The county committee shall at such meeting elect a chairman, secretary and treasurer of the county committee, and such other officers or subcommittees as they may deem necessary, and two persons from each assembly district in the county to be members of the congressional district committee, but where an assembly district comprises two or more counties, then there shall be one member from each county. In counties constituting one or more assembly or senatorial districts the members of the county committee residing within the territory of such assembly or senatorial districts shall constitute the party committee for such assembly or senatorial district and they may, at such meeting of the county committee, elect a chairman, secretary and treasurer and such other officers as they may deem necessary.

(9) In assembly districts or state senatorial districts embracing more than one county the county committee of each county shall elect two persons to be members of such assembly district or state senatorial district committee. The chairman of each county committee shall immediately certify to the chairman of the state central committee the name and post-office address of each person elected a member of said assembly or senatorial district committee, whose duty it shall be upon receipt thereof to call a meeting of the members of such assembly or senatorial district committee for the purpose of organization, such meeting to be called upon not less than five days' notice. The chairman of each county committee shall also certify to the chairman of the state central committee the name and post-office address of each person elected member of the congressional committee, upon receipt of which the said chairman shall immediately call a meeting of said members for the purpose of organization, such notice to be given at least five days prior to such meeting.

(10) Each committee and its officers shall have the powers usually exercised by such committees, and by the officers thereof, in so far as is consistent with this act.

(11) Any vacancy in any committee office shall be filled by the county committee, except that the chairman of the county committee may temporarily fill any vacancy.

(12) Meetings of the county committee shall be called by the county chairman as provided by statutes or upon written demand signed by a majority of the members of said committee. Should the chairman fail to call a meeting of such committee within 3 days after such demand the members demanding such meeting may designate one of their number to call such meeting and preside thereat. Any business transacted at such meeting shall have the same force and effect as if the meeting had been called by the county chairman.

(13) The county chairman, or other officers of any county committee may be removed from office at any meeting of the committee called pursuant to subsection (12), by a majority vote of those present and voting. Two-thirds of the members of the county committee shall constitute a quorum at a meeting for the removal of officers of such committee. [1935 c. 135; 1939 c. 452; 1943 c. 207]

Note: Limitation of time for calling meetings of party city committee and party county committee is not mandatory but directory; if such meetings are called at later time organization may be had and officers may be elected. 21 Atty. Gen. 1063.

Whether county and city committees of Democratic party may create regulations as to membership of party is question for party to determine and is not governed by statute.

Party committee has no power to change term of office of committeeman under (4). 25 Atty. Gen. 221.

Officers of party county committee need not be duly elected precinct party committeemen. 25 Atty. Gen. 621.

Person not elector of precinct cannot be appointed party precinct committeeman. Filling of vacancies discussed. 25 Atty. Gen. 627.

5.20 Platform convention; state central committee; presidential electors. (1) The candidates for the various state offices, and for the senate and assembly nominated by each political party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing, shall meet at the capitol at twelve o'clock noon on the second Tuesday after the September primary. They

shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a state central committee of at least two members from each congressional district and a chairman of such committee by ballot. In the years in which presidential elections are held the convention shall nominate, by a majority vote, one elector for president and vice president from each congressional district, and two such electors from the state at large. The names of such nominees shall be immediately certified by the chairman and secretary of the meeting to the secretary of state. They shall perform such other business as may properly be brought before such meeting. The platform of each party shall be framed at such time that it shall be made public not later than six o'clock in the afternoon of the following day.

(2) The chairman and secretary of the platform convention of each party shall, within thirty days after the holding of said convention, file with the secretary of state a certified copy of the proceedings thereof and of the platform adopted.

(3) The state central committee of any party which polled less than seventy-five thousand votes in this state for presidential electors at the last preceding election, with the approval of the national committee of said party, certified by the respective secretaries thereof to the secretary of state, may change the name of any such party; provided, that such new name shall not duplicate the name of any existing national party. Such action shall be certified to the secretary of state by chairman and secretary of the committee and thereafter the party shall be known and designated by the name so selected and certified.

5.21 Tie votes; election forms. (1) In every case of a tie vote, the tie shall forthwith be determined by lot by the canvassers.

(2) It shall be the duty of the secretary of state to prepare all forms necessary to carry out the provisions of this chapter, which forms shall be substantially followed in all primaries held in pursuance hereof. Such forms shall be printed with copies of this chapter for public use and distribution.

5.22 Delegates to national conventions. (1) There shall be chosen at an election held in each precinct of the state on the first Tuesday of April in each year in which electors for president and vice president of the United States are to be elected, delegates to the national convention of each party, to nominate candidates for president and vice president. The number of delegates to be chosen shall be the number specified by the party's national committee.

(2) Except as otherwise provided, such elections shall be noticed, held and conducted, and the results canvassed and returned in the manner provided for judicial elections.

(3) A plurality of votes cast shall determine which candidates are elected delegates.

(5) It shall be the duty of the state central committee of each political party after such election and at least fifteen days prior to the holding of the national convention, to meet and elect an alternate for each delegate. Said meeting shall be called by the chairman of the party state central committee, upon at least ten days' notice.

(6) For the purpose of enabling every voter to express his choice for the nomination of candidates for president and vice president of the United States, whenever there shall be filed with the secretary of state nomination papers as provided by sections 5.05 and 5.07 of the statutes, the names of such candidates shall be certified to the county clerks, and shall be printed as certified upon the official party ticket used at the election of delegates. No signature, statement or consent shall be required to be filed by any such candidate. [1933 c. 139 s. 1, 3, 4]

5.225 Political party recognition and qualification. (1) Notwithstanding any other provisions of this chapter, no party shall be recognized or qualified to participate in any election which is directly or indirectly affiliated, by any means whatsoever, with the communist party of the United States, the third communist international, or any other foreign agency, political party, organization or government which either directly or indirectly carries on, advocates, teaches, justifies, aids or abets the overthrow by any unlawful means of, or which directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against, the government of the United States or of this state.

(2) The secretary of state shall, with the advice and consent of the attorney-general, determine which parties are qualified to participate in any election. Such determination shall be subject to review as provided in chapter 227.

(3) This section is declared to be enacted in the exercise of the police power of this state for the protection of the public peace, safety and general welfare of the residents of this state.

(4) If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby. [1941 c. 105; 1943 c. 375 s. 3]

5.23 Nomination papers; president, vice president and delegates. (1) Nominations for candidates for president and vice president and for delegates shall be made by nomination papers, in the manner provided by sections 5.05 and 5.07, except that the nomination paper shall refer to the election to be held on the first Tuesday of April, in the year in which such candidates are to be voted for, and except that the nomination papers and ballot for any delegate may contain a statement of the principles or candidates favored by such candidate for delegate, which statement shall follow his name and be expressed in not more than five words. The number of signers on nomination papers of candidates for president, vice president and delegates at large shall be the same as for state officers, and of candidates for district delegates as for members of congress. Nomination papers for such candidates shall be filed in the office of the secretary of state not later than thirty-two days prior to said April election. Lists of such candidates shall be published in the manner provided by subsection (4) of section 5.08.

(2) No political party shall be entitled to participate in the election of delegates unless nomination papers have been filed with the secretary of state as provided herein.

5.24 Ballot for delegates. (1) (a) An official ballot shall be printed and provided for use at each voting precinct in the form provided herein and annexed hereto. The names of all candidates for delegates for whom nomination papers prescribed shall have been duly filed, shall be printed thereon.

(b) The names of the candidates for president and vice president shall be placed first in each party column underneath the party designation, and immediately above the names of said candidates, respectively, shall appear the words, "For President," "For Vice President."

(2) Said official ballot shall be made up of the several party tickets, arranged alphabetically according to party name, all of which shall be securely fastened together at the bottom; provided, that there shall be as many separate tickets as there are parties entitled to participate in said election.

(3) The names of all candidates shall be arranged according to surname under the appropriate title and under the proper party designation upon the party ticket, and rotated in accordance with the provisions of section 6.19.

(4) After preparing his ballot, the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and the printed indorsements and signatures or initials thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling place, vote the marked ballot forthwith and deposit the remaining tickets in a separate ballot box to be marked and designated as the blank ballot box.

(5) Immediately after the canvass the inspectors shall, without examination, destroy the tickets deposited in the blank ballot box.

(6) Whenever any elector shall vote for more delegates than are specified by section 5.22 his vote shall not be counted for any of such delegates.

(7) The official ballot for the election of delegates to the national convention shall be in substantially the same form as provided in section 5.10 of the statutes. [1933 c. 139 s. 2; 1945 c. 116]

Note: Form of ballot and provisions of statute with reference to election of four delegates at large and two district delegates are directory merely, and number of delegates provided by party machinery may be elected under statute. 21 Atty. Gen. 100. Form of ballot for delegates prescribed by (1) (a) should be changed in accordance with specifications of parties' national committees as to number of delegates. 25 Atty. Gen. 14. Voting machines cannot be used at election for delegates to national conventions of various parties unless constructed so that "principles" of candidates may be shown on ballot. 25 Atty. Gen. 175.

5.25 Primaries for special elections. (1) Whenever a special election shall be ordered as provided in section 7.04 of the statutes, all party candidates to be voted for at such election shall be nominated by a primary to be held three weeks prior to such special election. This section shall apply to the filling of vacancies in the office of member of the assembly, state senator or representative in congress; and, unless otherwise provided, to filling vacancies in United States senate and county offices.

(2) Notice of any such primary shall be given by the officer aforesaid forthwith upon the filing of the order for the special election, and publication thereof shall be made by the county clerk once in each week from the date of said order to the date of the primary.

(3) Nomination papers shall be filed not later than eighteen days before the day of the primary.

(4) When the primary embraces more than one county, the secretary of state shall, at least eighteen days prior thereto, transmit to each county clerk a certified list of all persons for whom nomination papers have been filed in his office.

(5) Except as otherwise provided and except when inconsistent herewith the provisions of this chapter respecting September primaries are applicable to all primaries held under this section. [1939 c. 3]

5.26 Nominations other than by primaries, and special primaries for certain judicial and school board nominations. (1) Independent or nonpartisan nominations may be made for any office to be voted for at any general, judicial, or special election.

(2) Except as otherwise provided in subsection (8) such nominations shall be made by nomination papers, containing the name of the candidate, the office for which he is nominated, his business or vocation, residence, post-office address, and except as otherwise provided by law the party or principle he represents, if any, expressed in not more than five words.

(3) To each separate nomination paper shall be appended the affidavit of a qualified elector as provided by paragraph (b) of subsection (5) of section 5.05.

(4) Except as provided in this subsection such nomination papers shall be signed, if for a candidate to be voted for throughout the state, by at least one thousand voters thereof; if for a candidate, other than a judicial candidate, to be voted for throughout a county, district, or other division less than the state, or within a city or ward, by at least three per centum and not more than five per centum of the whole number of electors voting therein for governor at the last preceding general election, but in no case by less than fifteen voters. Provided, however, that for candidates mentioned in subsection (8), such nomination papers shall be signed by at least one per centum and not more than three per centum of such electors. For judicial candidates in districts comprised of one county or more, except as herein provided, such nomination papers shall be signed by at least two per centum and not more than four per centum of such electors. Nomination papers for independent candidates for the office of governor, lieutenant governor, secretary of state, attorney-general and state treasurer shall be signed by at least five thousand voters; if for an independent candidate for the senate or assembly such papers shall be signed by at least eight per centum and not more than ten per centum of the whole number of electors voting in the respective district for governor at the last preceding general election.

(5) Each voter shall sign for but one candidate for the same office, and shall add his residence, post-office address and the date of signing.

(6) Such nomination papers shall be filed as follows: For candidates to be voted for throughout the state or any division or district embracing more than one county, in the office of the secretary of state, not more than 40 nor less than 32 days before the election for which the nominations are made; for candidates to be voted for wholly within one county, in the office of the county clerk, not more than 40 nor less than 25 days before such election; for candidates to be voted for wholly within one city in the office of the city clerk, not more than 20 nor less than 15 days before such election. Provided, that in counties having a population of 500,000 or more, nomination papers proposing candidates for judicial offices, members of the board of supervisors or for school board directors in the cases provided for in subsection (8) or for elective offices in cities of the first class in such counties, shall be filed not more than 55 nor less than 35 days before the primary therein provided for. Such nomination papers shall be filed not later than 5 p. m. central standard time on said last day before the primary therein provided for.

(7) All such nomination papers shall be destroyed by the officer with whom they are filed, on the first day of January next succeeding the election, except such papers as may be material to any investigation or litigation then pending, which shall be preserved until the final determination of such investigation or litigation.

(8) (a) Whenever such nomination papers propose three or more candidates for members of the county board of supervisors or for any elective town office in towns adopting the primary for elective town officers as provided in subsections (4) and (5) of section 5.27 in counties having a population of two hundred fifty thousand or more, for any judicial office, except the office of police justice or justice of the peace and constable, in any county having a population of three hundred thousand or more and containing an entire judicial circuit for which more than one circuit judge is provided by law, or propose more than twice as many candidates for any elective town office in any such towns or for members of the board of school directors or the board of education as are to be elected in any city of any such county, or for the office of county superintendent of schools in counties having a population of five hundred thousand or more, neither of the persons whose name is so presented shall become nominated as a candidate until nominated at a primary election held three weeks prior to the first Tuesday in April in the year in which such office is required to be filled by election except as provided by section 5.025.

(b) The nomination papers proposing said candidates, whether complying in all respects with the provisions of section 5.05 or not, shall be used for the purpose of pre-

paring the ballots for such primary election and for no other purpose. The order in which the names of candidates so presented shall be printed on such ballots shall be determined by drawing lots at two o'clock P. M., on the day immediately following the last day for filing nomination papers, by or under the supervision of the secretary of the county election commission at his office, in a case of candidates for a judicial office, or member of the county board of supervisors, and by or under the supervision of the secretary of the city election commission at his office in a case of candidates for members of a school board, or at the office of the town clerk in case of candidates for town office. The candidates for any such office shall be designated upon the primary ballot as follows: "For Circuit Judge (to succeed, Branch Number.);" "For Civil Judge (to succeed, Branch Number);" "For County Judge;" "For Member of the County Board of Supervisors, District;" "For Members of the Board of School Directors," "For Town Chairman," "For County Superintendent of Schools," "For Town Supervisor", etc., as the case may be. The two candidates for any judicial office, county superintendent of schools in counties having a population of five hundred thousand or more, member of the county board of supervisors in each district and twice as many candidates as are to be elected for members of the board of school directors, the board of education or elective officers receiving the highest number of votes cast at such primary shall be the nominees for such office, and their names, and none other, shall be placed on the official ballot at the ensuing judicial, school or town election.

(c) Except as otherwise provided in this section the general law relating to nomination of candidates at September primaries shall apply to nomination of judicial candidates, candidates for supervisor, under subsection (8) of this section and the general law relating to nomination of candidates at city primaries shall apply to nomination of school directors or members of a board of education pursuant to this section.

(9) When candidates shall have been nominated by primary election in any city for any city office, including supervisor, no additional candidates may be nominated for such offices by the method herein provided. [1933 c. 27 s. 2; 1933 c. 43 s. 2; 1933 c. 433 s. 3, 4; 1933 c. 466; 1933 c. 494 s. 2; 1937 c. 66, 70, 149; 1939 c. 269, 291; 1943 c. 107; 1945 c. 174]

Note: Where last day for filing primary nomination papers falls on legal holiday, filing on next day is sufficient. *Manning v. Young*, 210 W 588, 247 NW 61.

The provisions of this section apply to cases where there are party primary nominations or where there are nominations by nomination papers without a primary. Party nominations in elections for city offices are abolished. Independent nominations must be pursuant to the action of those who signed the nomination papers, but in the case of the election of city officers the nomination papers must be filed, and if the number is greater than twice the number of city officers to be elected then there must be a primary held as provided by statute. After such primary no other names may be placed on the ballot except the two highest at the primary. *Heindl v. Doherty*, 212 W 247, 249 NW 503.

Subsection (8) (a) of this section, (Stats. 1929) and 5.02 are construed to mean that unless nomination papers propose more than twice as many candidates for members of board of education as are to be elected in any city, no primary election shall be held in such city for purpose of nominating candidates, and name of no person except those proposed by nomination papers shall be placed upon ballots. 19 Atty. Gen. 113.

5.265 [Repealed by 1931 c. 79 s. 1]

5.27 **Nomination in towns and villages.** Every candidate for any elective town or village office shall be nominated as provided in this section:

(1) If a caucus is to be held the date for the caucus shall be set by resolution adopted by the town or village board at least 60 days before each first Tuesday of April in years in which there is to be a town or village election, which date shall not be less than 23 nor more than 32 days before said first Tuesday in April. The electors of any town or village may assemble in caucus and by ballot nominate candidates for the different town or village offices. The governing body of each municipality in which a caucus is to be held shall give at least 5 days' written notice of the time and place of holding the caucus, such notice to be given either by publishing a copy thereof in some newspaper published in such village or town, or by posting copies of such notices in at least 5 public places. The 2 candidates for each office at such caucus who receive the highest number of votes shall be certified by the caucus officers to the town or village clerk, together with the number of votes cast for each, and the name of such candidates shall be placed on the official

Verification under (3) is sufficient although word "electors" is used instead of word "persons," as found in statutes. 22 Atty. Gen. 154.

Each of twelve independent or non-partisan candidates for presidential elector may obtain one thousand signatures necessary for his nomination paper from any place within state rather than from any particular district. Each such candidate must file separate nomination paper containing at least one thousand signatures. 25 Atty. Gen. 466.

Political group that has not heretofore participated in election in state may have its presidential electors nominated by petition pursuant to 5.26, or such electors may be nominated at convention of political party pursuant to 5.20. 25 Atty. Gen. 610.

Primary election for offices of police judge, justice of peace and constable is not to be held in Milwaukee county in view of limitations contained in 5.02 (4), and 5.26 (8) (a). 27 Atty. Gen. 152.

(4) is applicable to office of county judge. Circulation of nomination papers at large throughout county is in compliance with said section. 28 Atty. Gen. 56.

ballot. Provided, that if the vote of the candidate receiving the second highest vote for any office at such caucus is not at least one-fifth as great as that of the candidate for the same office receiving the highest vote, or if the candidate receiving the second highest vote for any office at such caucus files with the town or village clerk within 5 days of the holding of the caucus a request that his name be not printed on the ballot, then only the name of the candidate receiving the highest number of votes shall appear thereon. A tie vote shall be determined by lot.

(2) Or such candidate may be nominated by nomination papers signed by electors of such town or village equal in number to 3 per cent and not more than 10 per cent of all the votes cast in such town or village for all candidates for governor at the last preceding general election. Such nomination papers shall conform to the provisions of section 5.26 (2) and (5), and shall be filed in the office of the town or village clerk at least 18 days before the election.

(3) In counties containing a population of 250,000 or more, every candidate for an elective town office shall be nominated by nomination papers signed by electors of such town equal in number to 10 per cent of all the votes cast in such town for all candidates for governor at the last preceding general election. Such nomination papers shall conform to the provisions of subsections (2) and (5) of section 5.26, and shall be filed in the office of the town clerk at least 20 days before the town meeting. The candidates so nominated shall be voted for and election had at the town meeting.

(4) (a) In counties containing cities of the first and second class and in such towns therein where by a referendum vote the electors have affirmatively approved the same or in any town containing a population of 2,500 or more, where the electors have approved the same either by referendum vote or at the town meeting, every candidate for an elective town office, shall be nominated at a nonpartisan primary conducted as directed in this chapter so far as applicable and more particularly in section 5.26; provided that nomination papers shall be signed by electors not less than 2 per cent nor more than 5 per cent of the electors voting for governor at the last preceding general election and that notices shall be given as in section 5.04 (4). Such nomination papers shall be filed in the office of the town clerk not less than 20 days before the date upon which said primary is to be held and not later than 5 p. m. central standard time on said last day for filing.

(b) The form of ballot for such town primaries shall be substantially as herein set forth:

SAMPLE OFFICIAL TOWN PRIMARY BALLOT.
MILWAUKEE COUNTY.

To vote for a person or persons whose names are printed on the ballot, make a cross (X) in the square after the name of the person or persons for whom you desire to vote. To vote for a person whose name is not printed on the ballot, write his name in the blank space provided for that purpose.

CHAIRMAN OF SUPERVISORS —	VOTE FOR ONE
William Jones*	
John Roberts	
James Underwood	
.....	
SUPERVISORS —	VOTE FOR TWO
James Ames*	
William Bennet	
Charles Osborn	
Jacob Watson	
John Zimmerman	
.....	
TOWN CLERK —	VOTE FOR ONE
Ole Carlson*	
Amos Duncan	
James Frisby	
.....	
TOWN TREASURER —	VOTE FOR ONE
Carl Matson	
Walter Newman	
George Price	
.....	
TOWN ASSESSOR —	VOTE FOR ONE
James Blanding	
Robert Gunderson	
Albert Manson	
.....	

*Order of names is determined by lot, 5.26 (8) (b).
(c) The ballot provided for in paragraph (b) shall have printed on the back thereof the following:

SAMPLE OFFICIAL TOWN PRIMARY BALLOT
FOR
..... Precinct,
Town of
MILWAUKEE COUNTY.
.....
.....
Ballot Clerks.

We certify that the within ballot was marked by us for an elector incapable under the law of marking his own ballot and as directed by him.
.....
..... of Election.
.....
..... of Election.

(5) (a) That for the purpose of submitting the question in any of said towns as to whether candidates for elective town offices shall be nominated at a nonpartisan primary as provided in subsection (4), the question may be submitted to the electors at any election therein, or at a special election called and held for such purposes as provided by law, and such question shall be so submitted when a petition addressed to the town clerk of any such town, signed by electors thereof of not less than ten per cent of the electors therein voting for governor at the last preceding general election, requesting that such question be submitted to the electors of such town.

(b) The referendum ballot used at such election shall be in the form now required by law and the question upon the same shall be: "Shall all candidates in the town of for elective town offices be nominated at a nonpartisan primary to be conducted and held as provided by law?"

(c) If a majority of the vote cast upon such referendum in any such town shall be in the affirmative, then all candidates for elective offices in such town shall thereafter be nominated as provided in this section at a nonpartisan primary.

(d) Any petition requesting the submission of such referendum question at a regular town election shall be filed with the town clerk thereof at least ten days before the date upon which the election is to be held; and the said town clerk shall upon the filing of such petition, if it be sufficient, and whether the same apply to a regular town election or a special election, give separate notice thereof by posting ten copies in ten public places in said town at least six days before said election.

(6) Any village may proceed pursuant to section 66.01 to elect that candidates for elective village offices shall be nominated by a nonpartisan primary conducted as directed in this chapter so far as applicable, provided that nomination papers shall be signed by electors not less than three per centum of the number of electors voting therein for governor at the last preceding general election, but not less than fifteen voters, which shall be filed with the village clerk not less than twenty days before such primary, not later than five P. M. on said last day. In such event no additional candidates may be nominated for such offices by the method provided by this section. [1931 c. 353; 1933 c. 27 s. 1; 1933 c. 43 s. 1; 1937 c. 336; 1939 c. 454; 1943 c. 173, 575; 1945 c. 327, 229]

Note: Ruling of secretary of state that papers under 5.27 (2) is controlling in ab-5.05 (4) applies to circulation of nomination sense of statute 26 Atty. Gen. 36.

5.28 Vacancies after nomination. Any person nominated to office may decline and annul the same by delivering to the officer with whom his certificate of nomination or nomination paper is filed, not less than twelve days before election in case of town, village or city officers, and twenty-five days in other cases, a declination in writing signed by him and acknowledged before some officer authorized to take acknowledgments. Upon such declination or the death of a nominee the vacancy or any vacancy caused by the insufficiency of certificates of nomination or nomination papers, may be filled in case the candidate is the nominee of a political party, by the committee representing the party, the chairman and secretary of which in such case shall make and deliver to the proper officer for filing a certificate, duly signed, certified and sworn to, as required in case of original certificates, setting forth the cause of the vacancy, name of new nominee, office for which nominated, and such other information as is required in case of original certificates. This certificate must be filed ten days before election in case of town, village or city offices, and twenty-three days in other cases, and when so filed shall have the effect of an original certificate. In case the candidate is a nonpartisan nominee, the vacancy shall be filled by the personal campaign committee of the candidate, who shall make and file a certificate in the manner above prescribed. If the candidate had no personal campaign committee, such vacancy shall be filled by the supervisors of the town, trustees of the village, council of the city, or board of supervisors of the county, as the case may be, and such board shall make and file a certificate as herein provided. If such declination, death or the permanent removal of a nominee take place after the ballots are printed and before election, the proper chairman of the committee above authorized to fill vacancies may make a nomination to fill the vacancy, and provide the election boards with pasters containing the name of such nominee only, which shall be pasted upon each of the official ballots by the ballot clerks, before signing their initials thereon and delivering them to voters. If the nominee die after the ballots are printed, and no nomination shall be made as herein provided, the votes cast for him shall be counted and returned, and if he shall receive a plurality the vacancy shall be filled as in case of vacancies occurring by death after election. [1939 c. 452]

Note: Where a nominee for the office of municipal judge, having no personal campaign committee, died 11 days before the election, it was the duty of the county board to make a nomination to fill the vacancy; and where the board made such nomination and filed the certificate thereof at the earliest possible date after the vacancy occurred, such nomination was valid and effective, limitations as to the time for filing such a certificate not being applicable thereto. *Petition of Leuch*, 244 W 305, 12 NW (2d) 61.

5.29 General election laws applicable; recount. (1) Except as otherwise specially provided all the provisions of chapter 6 of the statutes, relating to the qualification or registration of electors, notices of or pertaining to electors, poll lists, party challengers and challenges, officers and their duties, hours when the polls are to be opened and closed, canvass and return of votes, the solicitation of voters at the polls or to any other step or proceedings in preparation for or in the conduct of elections, are applicable to primaries in so far as they are consistent with this chapter.

(2) The provisions of section 6.66 shall apply to primaries except that the notices to candidates shall be served on opposing candidates for the same party nomination, only.