

tute. State ex rel. Lemieux v. Zimmerman, 40 W (2d) 1, 161 NW (2d) 129.

Nomination papers not verified by affidavit as to post-office address and date of signing are irregular and invalid and should not be filed. 1 Atty. Gen. 275; 3 Atty. Gen. 373.

Where a county clerk has received and filed nomination papers, even though the affidavit appended thereto is of questionable validity, he should not leave the name of the person so nominated off the ballot. 6 Atty. Gen. 156.

Independent nominations for President and Vice-President may be made by securing the signatures of not less than 3,000 nor more than 5,000 electors on nomination papers containing the names of the 2 candidates and 12 electors, at least 10 of whom reside in the 10 congressional districts. 57 Atty. Gen. 6.

8.25 History: R. S. 1849 c. 6 ss. 85, 87; R. S. 1858 c. 7 ss. 97, 99; 1862 c. 65; R. S. 1878 s. 128; 1881 c. 300 s. 1; Ann. Stats. 1889 ss. 128, 1792a; Stats. 1898 s. 128; 1911 c. 484; 1917 c. 622 s. 2; Stats. 1917 ss. 14.01, 14.02; 1965 c. 666; Stats. 1965 ss. 8.25, 14.01, 14.02; 1969 c. 241 ss. 3, 33; 1969 c. 276 ss. 7, 605; Stats. 1969 s. 8.25.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 9.04.

Sub. (2) is a restatement of s. 9.02 (1).

Sub. (3) is a restatement of s. 9.01. [Bill 755-A]

On the term of governor see note to sec. 1, art. V; and on election of governor and lieutenant governor see notes to sec. 3, art. V.

The custom of officers to begin their terms upon noon of the day fixed by statute is recognized as having the force of law. State ex rel. Emberson v. Byrne, 98 W 16, 73 NW 320.

8.30 History: 1965 c. 666; Stats. 1965 s. 8.30.

Legislative Council Note, 1965: This section is a restatement of the combined provisions of ss. 5.30, 10.29 (in part), 10.33 (6) and 10.64 (last part). [Bill 755-A]

Editor's Note: In opinions rendered before the enactment of ch. 349, Laws 1949, the attorneys general ruled that the county clerk acts in a ministerial capacity in respect to nomination papers and that he should put on the official ballot the names of all candidates who file nomination papers regular on their face; the citations are 5 Atty. Gen. 626 and 9 Atty. Gen. 385.

8.35 History: 1965 c. 666; Stats. 1965 s. 8.35; 1969 c. 392 s. 86.

Legislative Council Note, 1965: Sub. (1) combines ss. 5.18 (1st part) and 5.265 (1st part) and makes changes as necessary to provide uniformity.

Sub. (2) combines ss. 5.18 (in part) and 5.265 (last part), but permits a personal campaign committee to appoint only for nonpartisan offices.

Sub. (3) is a restatement of s. 5.18 (next to last sentence). [Bill 755-A]

Under 5.28, Stats. 1941, where a nominee, who was one of 2 selected at a primary, died 11 days before the election for the office of municipal judge, having no personal campaign committee, and where the county board made a nomination to fill the vacancy and filed the certificate thereof at the earliest possible date after the vacancy occurred, such nomination

was valid and effective. Petition of Leuch, 244 W 305, 12 NW (2d) 61.

When one who has secured enough signers to nomination papers to entitle him to have his name printed on the party primary ballot withdraws, no vacancy is created within the meaning of 5.18, Stats. 1917. 7 Atty. Gen. 478.

8.50 History: 1965 c. 666; Stats. 1965 s. 8.50; 1967 c. 261; 1969 c. 2, 355; 1969 c. 392 s. 86.

Legislative Council Note, 1965: The intro. par. combines ss. 5.29 (1) (last sentence), 7.01 (1) and 7.06 (3rd sentence) but is made general to include judicial offices, and the deadline for special elections before a general election has been changed from 60 days to September 1.

Sub. (1) (a) is based on s. 7.04 (1) and (3). The notice will no longer be given by the sheriff when a special election is held for county clerk as there will always be someone more familiar with the procedure in the county clerk's office. Par. (b) is based on ss. 5.29 (2), 7.03 and 7.05 (1st part). The notices have been made uniform with the notice provisions of ch. 10 in this bill and the posting requirement has been deleted. Par. (c) is based on s. 7.04 (2) (1st part), but adds other provisions of a type A notice under ch. 10 in this bill. Par. (d) is based on ss. 5.29 (4) and 7.05 (last sentence). The date when the secretary of state shall send the certified lists is changed from 18 to 15 days. The notice provisions are clarified and made uniform with ch. 10 in this bill.

Sub. (2) (a) is a restatement of s. 7.04 (2) (last part). Par. (b) is a restatement of s. 5.29 (1) (1st sentence, last part).

Sub. (3) (a) is a restatement of s. 5.29 (3) for the deadline. The beginning circulation date is new. Par. (b) is a restatement of s. 5.29 (5).

Sub. (4) (a) is a restatement of s. 7.01 (2a). Par. (b) is based on s. 7.01 (2), but the dates have been established so they can be more readily ascertained. Par. (c) is based on s. 7.01 (5). The dates have been established and the provisions clarified. Par. (d) is based on s. 7.01 (4), but the latest a special election can be held preceding a general election was changed from 60 days to September 1. Par. (e) is a restatement of s. 7.01 (3). Par. (f) is based on s. 8.02 (2) with established dates and clarification. Par. (g) combines ss. 7.02 (intro. par.), (1) and 7.06 (last sentence) without substantive change. Par. (h) is a restatement of s. 7.02 (2). Par. (i) is a restatement of s. 7.02 (3). [Bill 755-A]

Editor's Note: Antecedent statutes governing the holding of special elections to fill vacancies in elective offices were considered in the following cases (among others): Doberstein v. Dahl, 181 W 491, 195 NW 416; and Hauerwas v. Zimmerman, 230 W 449, 284 NW 51. See also 7 Atty. Gen. 399 and 41 Atty. Gen. 313.

CHAPTER 9.

Post Election Actions; Direct Legislation.

9.01 History: 1965 c. 666; Stats. 1965 s. 9.01.

Legislative Council Note, 1965: Sub. (1) (a) is a restatement of s. 6.66 (1) (1st sentence and 2nd sentence, in part). Par. (b) is in part

based on s. 6.66 (1) (1st sentence, last part). The recount procedure is not in the present law but states present practice. A specific time for the recount to begin is added.

Sub. (2) is a restatement of ss. 5.012 (2) and 6.66 (1) (2nd sentence, in part, and 3rd sentence).

Sub. (3) (a) is a restatement of s. 6.66 (1) (4th sentence). Par. (b) is a restatement of s. 6.66 (1) (last sentence).

Sub. (4) is based on s. 6.66 (1a) with 3 changes. Provision is made to allow municipalities to ask for a recount. The time provision is changed from ". . . within 5 days after the last day of a regular meeting . . .". Specific times for the deadline and for the recount to begin are added.

Sub. (5) is a restatement of s. 6.66 (2).

Sub. (6) is a restatement of s. 6.66 (3) (sentences 1 and 2).

Sub. (7) is a restatement of s. 6.66 (3) (last part).

Sub. (8) is a restatement of s. 6.66 (4). [Bill 755-A]

On appellate jurisdiction of the supreme court see notes to sec. 3, art. VII, and notes to 251.08; on jurisdiction of circuit courts see notes to sec. 3, art. VII, and notes to 252.03; and on appeals to the supreme court see notes to 274.09.

An unfinished recount, stopped by an order of a court, is not competent evidence in a subsequent proceeding to impeach the determination of the county canvassers. *State ex rel. Plehn v. Widule*, 164 W 3, 157 NW 769.

In a proceeding under 6.66, Stats. 1927, relating to a recount of the ballots cast in an election, the court acts solely pursuant to the election laws, the statute prescribing how a final result shall be reached; and where no appeal is provided from the determination of the court there is none. *Baxter v. Sleeman*, 196 W 562, 221 NW 382.

The method prescribed in 6.66, Stats. 1929, for serving the petition for a recount characterizes the service of papers and notice in taking the matter from the board into the circuit court. The effect of any other construction would be to make this law less efficient than the legislature intended it to be. *State ex rel. Thieme v. Gregory*, 202 W 326, 232 NW 546.

The 3-day statutory limitation cannot be tolled by a mistaken resolution of the board establishing a 4-day period for filing a petition for recount. *State ex rel. McIntyre v. Board of Election Comm.* 273 W 395, 78 NW (2d) 752.

In view of the provisions of 6.50, 6.66 and 11.63, Stats. 1957, if absentee ballots have been improperly delivered in contravention of 11.57, the board of canvassers is under a duty to invalidate and not include such ballots in the total count on a recount, whether or not they were challenged at the election. *Olson v. Lindberg*, 2 W (2d) 229, 85 NW (2d) 775.

The remedy provided by 6.66, Stats. 1957, relating to referendum elections, is exclusive. *Burke v. Madison*, 17 W (2d) 623, 117 NW (2d) 580.

As to defects, illegality, irregularities, mistakes, and fraud having as their immediate effect the disqualification of a ballot or ballots, the remedy provided by 6.66, Stats. 1961,

is exclusive; but the remedy covers only those matters which are of such a character that the board of canvassers can correct them; and the statute contemplates that after such correction a recount of the ballots which are properly determined valid votes in the election shall be made; but the statute does not contemplate a judicial determination by the board of canvassers of the legality of the entire election. *Clapp v. Joint School Dist.* 21 W (2d) 473, 124 NW (2d) 678.

There is no time limitation in 6.66 (3), Stats. 1965, within which a notice of appeal from a determination of the board of canvassers must be filed with the clerk of the circuit court, the only timeliness requirement expressed being that the notice be served upon contending candidates within 5 days after the recount determination. *Gradinjan v. Boho*, 29 W (2d) 674, 139 NW (2d) 557.

A petition for a recount is properly filed with the county clerk when it is presented to him on the last day allowed by law, even though the clerk has closed his office for day. 13 Atty. Gen. 606.

Where a senatorial district is comprised of 3 counties, a candidate for senator may file a petition for recount not later than 3 days after the last board of canvassers has completed its canvass. Failure to file proof of service of petition on opposing candidate is not fatal if the statute is otherwise complied with. 25 Atty. Gen. 634.

Each of the opposing candidates is entitled to only one complete recount under 6.66, Stats. 1945. 35 Atty. Gen. 342.

A town board of canvassers has authority to determine the legality of voting on referendum and to recertify results of the election. This includes authority to subtract 2 votes from totals based on affidavits of 2 ineligible voters as to how they voted, even though the voters were not challenged at the polls. 49 Atty. Gen. 32.

9.10 History: 1965 c. 666; Stats. 1965 s. 9.10.

Legislative Council Note, 1965: Sub. (1) is based on ss. 6.245 (1) and 10.44 (1) (1st sentence, in part and 4th sentence). The provision of s. 10.44 (1) requiring the petition to be filed with the clerk of circuit court is changed.

Sub. (2) (a) is a restatement of ss. 6.245 (2) (1st sentence) and 10.44 (1) (1st sentence, in part) and (2) (1st sentence). Par. (b) is based on ss. 6.245 (2) (2nd sentence) and 10.44 (2) (2nd sentence).

Sub. (3) (a) is provided for clarification. Par. (b) is a restatement of s. 6.245 (3). Par. (c) is based on s. 6.245 (4), but the deadline of 32 days prior to the election has been changed.

Sub. (4) (a) is based on ss. 10.44 (1) (2nd and 3rd sentences) and 10.44 (3). The requirement that the petition be filed with the clerk of circuit court who then transmits it to the municipal clerk has been changed. Par. (b) is a restatement of s. 10.44 (4). Par. (c) is based on s. 10.44 (5) and (6). A specific deadline for the incumbent's resignation has been added. The 40-day deadline was changed to 6 weeks. The 5 p.m. deadline was added for uniformity.

Sub. (5) is a restatement of ss. 6.245 (5) and 10.44 (7).

Sub. (6) is a restatement of s. 6.245 (6) but is new for cities.

Sub. (7) is based on s. 6.245 (7) and is broadened to include cities. [Bill 755-A]

On recall of elective officers see note to sec. 12, art. XIII.

10.44 (3), Stats. 1925, relating to the recall of elective officials of cities, was construed in State ex rel. Baxter v. Beckley, 192 W 367, 212 NW 792.

9.20 History: 1965 c. 666; Stats. 1965 s. 9.20; 1969 c. 419.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 10.43 (1) except it adds that with the petition there shall be filed the name of a person or organization to facilitate execution of sub. (3).

Sub. (2) is a restatement of s. 10.43 (2).

Sub. (3) is a restatement of s. 10.43 (3), except it adds a provision to allow placing the proposed ordinance or resolution in proper form which is intended to prevent mere technicalities from defeating the petition's purpose.

Sub. (4) is based on s. 10.43 (4). The 40-day provision was changed to 6 weeks.

Sub. (5) is based on s. 10.43 (5) (1st sentence). The dates were changed from "... not more than 20 nor less than 5 days. . .". The publication provision was changed.

Sub. (6) is a restatement of s. 10.43 (5) (last sentence).

Sub. (7) is based on s. 10.43 (6) (1st sentence, in part and 3rd sentence). The provision has been changed so the ordinance takes effect upon publication rather than immediately.

Sub. (8) is a restatement of s. 10.43 (6) (1st sentence, in part and the 2nd and 4th sentences). [Bill 755-A]

Where an election on the aldermanic form of city government was held, notice was given, an ordinance was published, and the form of the question presented the issue, this was sufficient, though the notice was not that required by the governing statute. State ex rel. Oaks v. Brown, 211 W 571, 249 NW 50.

The electors, upon such a referendum as is provided by 10.43, Stats. 1939, exercise only such legislative power or authority as is conferred upon the common council. They are permitted to vote upon a proposed ordinance or resolution only when the common council is duly authorized to pass it and has failed or refused to adopt it. This would seem clearly to imply that if the common council is without authority to fix or change salaries of city officers at a given time, the electors upon a referendum may not do so. Feavel v. Appleton, 234 W 483, 291 NW 830.

A referendum under 10.43, Stats. 1953, cannot modify an express statutory power conferred by another section, but is advisory only. Denning v. Green Bay, 271 W 230, 72 NW (2d) 730.

10.43, Stats. 1963, does not authorize the filing of petitions to compel a city council to repeal an existing ordinance or resolution, or, in default of repeal, to submit the question to a popular vote. Landt v. Wisconsin Dells, 30 W (2d) 470, 141 NW (2d) 245.

Initiative powers under 10.43, Stats. 1965, relate solely to those matters which are legis-

lative in character and do not extend to executive or administrative actions of local legislative bodies. Heider v. Wauwatosa, 37 W (2d) 466, 155 NW (2d) 17.

A specific provision of ch. 66, Stats. 1937, relating to municipal home rule, controls the more general provision under 10.43 (6). 27 Atty. Gen. 593.

CHAPTER 10.

Dates and Notices.

10.01 History: 1965 c. 666; Stats. 1965 s. 10.01; 1969 c. 360.

Legislative Council Note, 1965: This section has several new provisions. The provision of sub. (1) whereby the secretary of state prescribes the form of notice is new. As a part of the attempt to establish more significant notices of elections, the secretary of state is assigned this duty to provide more uniformity and more effective notices throughout the state.

Sub. (2) establishes 4 basic types of election notice. Each is based on present statutes, but the frequency of publication is made uniform, the times for giving the notices are changed to provide the notice intended at the proper time, and the components of the notices are changed as necessary to include all relevant information which should be given at the time of the notice. Par. (a) is based on s. 5.04. Par. (b) is based on s. 6.21 (3) (a), (b) and (c) and (4) (1st part). Par. (c) is based on s. 6.10 (in part). Par. (d) is based on s. 6.21 (2) (1st part) and 6.22 (3) (last part). [Bill 755-A]

10.02 History: 1965 c. 666; Stats. 1965 s. 10.02; 1969 c. 55.

Legislative Council Note, 1965: Sub. (1) is based on s. 6.21 (1), but made general in some respects to allow the secretary of state to prescribe the form.

Sub. (2) (a) is a restatement of s. 6.22 (2) (a) (1st part). Par. (b) is based on s. 6.21 (2) (last part) and provision added for the municipal clerk to publish the instructions when the county clerk will not be publishing them. Par. (c) is based on ss. 6.21 (3) (c) and (4), and 6.22 (2) (a) (3rd sentence).

Sub. (3) is a restatement of s. 6.22 (1), except for the required changes in instructions to adopt changes made elsewhere in this bill.

Sub. (4) is based on s. 6.22 (3) (1st part). [Bill 755-A]

10.03 History: 1965 c. 666; Stats. 1965 s. 10.03.

Legislative Council Note, 1965: This section is based on s. 6.22 (2) (b) (2nd, 3rd and 4th sentences), but its application has been changed from only facsimile ballot notices to all election notices. [Bill 755-A]

10.04 History: 1965 c. 666; Stats. 1965 s. 10.04.

Legislative Council Note, 1965: Sub. (1) is based on s. 6.82 (2) (1st sentence), but the provision has been changed from "one to 4 newspapers" to remove any restriction. The provisions of s. 6.82 (2) establishing which newspapers should be used based on party affiliation was deleted.