

In view of 6.50, 6.66 (1), and 11.63, Stats. 1957, if absentee ballots are improperly delivered in contravention of 11.57, the board of canvassers is under duty to invalidate and not include such ballots in the total count on a recount, whether or not they are challenged at the election. In re Recount Proceedings, 2 W (2d) 229, 85 NW (2d) 775.

Where certain absentee ballots were returned to the city clerk without bearing the notary's or other qualified officer's signature on the absentee-ballot envelope as provided by 11.59, Stats. 1957, there was no substantial compliance whether those provisions be deemed mandatory or directory, and hence such defective absentee ballots should have been rejected. (Sommerfeld v. Board of Canvassers, 269 W 299, distinguished.) Kaufmann v. LaCrosse City Board of Canvassers, 8 W (2d) 182, 98 NW (2d) 422.

Although 11.58 and 11.59, Stats. 1961, are deemed to be directory and not mandatory, nevertheless there must be substantial compliance with such statutory provisions. Where certain voters came to the city hall and each there received an absentee ballot from an employe in the city clerk's office but thereafter none of the required formalities were complied with, but everything concerning these absentee ballots was done at the city hall and in good faith by these voters, their absentee ballots should be considered as having sufficiently complied with the statutory requirement so as to be considered properly cast and so as to be properly counted. (Kaufmann v. LaCrosse City Board of Canvassers, 8 W (2d) 182, distinguished.) Schmidt v. Board of Canvassers, 18 W (2d) 316, 118 NW (2d) 154.

6.88 History: 1965 c. 666; Stats. 1965 s. 6.88; 1969 c. 419, 420.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 11.60, except reference to the county clerk is deleted.

Sub. (2) is a restatement of s. 11.61, except reference to the county clerk is deleted and therefore also deleted is the provision for mailing after the ballots are delivered to the inspectors. The receipt requirement is deleted. "Election officials" rather than "inspectors" is used for uniformity in this bill.

Sub. (3) (a) is a restatement of s. 11.62 (1st 3 sentences) but provides for witnesses. Par. (b) is a restatement of s. 11.62 (4th and 5th sentences), but includes the provision for 2 witnesses. The provision of s. 11.64 pertaining to the death of an elector voting under this section is repeated here. Par. (c) is a restatement of s. 11.62 (last sentence). [Bill 755-A]

Editor's Note: In connection with ch. 420, Laws 1969, see Gradinjan v. Boho, 29 W (2d) 674, 139 NW (2d) 557.

6.89 History: 1965 c. 666; Stats. 1965 s. 6.89.

Legislative Council Note, 1965: This section is a restatement of s. 11.605. [Bill 755-A]

6.92 History: 1965 c. 666; Stats. 1965 s. 6.92; 1967 c. 28.

Legislative Council Note, 1965: This section is a restatement of s. 6.50 except in the intro. par. in this section the words "for cause" are

added and a provision is made in sub. (3) (e) in this section for electors who move after registration closes so that they may still vote in their old precinct even though it is no longer their residence. [Bill 755-A]

6.93 History: 1965 c. 666; Stats. 1965 s. 6.93.

Legislative Council Note, 1965: This section is a restatement of s. 11.63. [Bill 755-A]

6.94 History: 1965 c. 666; Stats. 1965 s. 6.94; 1967 c. 28.

Legislative Council Note, 1965: This section is a restatement of s. 6.53, except it provides for electors moving after registration closes. [Bill 755-A]

If a challenged person takes the oath prescribed and answers the questions put, no matter how false such answers, nor how clearly they show that he is not entitled to vote, the inspectors must then, if he insists upon voting, tender him the oath prescribed in ch. 7, R. S. 1858, and if he takes it, receive his vote. Gillespie v. Palmer, 20 W 544.

6.95 History: 1965 c. 666; Stats. 1965 s. 6.95.

Legislative Council Note, 1965: This is based on s. 6.52. The provision for areas where voting machines are used is new to the statutes, but is the present practice in many areas. [Bill 755-A]

CHAPTER 7.

Election Officials, Boards, Observers; Selection and Duties, Canvassing.

7.03 History: 1965 c. 666; Stats. 1965 s. 7.03.

Legislative Council Note, 1965: This is s. 6.325 with 2 exceptions: (1) The present provision is "under this chapter." As there are duties in other chapters, this change was made. (2) Section 11.10 (1) (last sentence after the last comma) provides for voting machine custodians to be paid the same as inspectors and is therefore included here.

Sections 6.185 (9) and 10.27 were deleted as unnecessary. [Bill 755-A]

7.08 History: 1965 c. 666; Stats. 1965 s. 7.08; 1969 c. 136, 154.

Legislative Council Note, 1965: The intro. par. is new. It is intended to give a reference to 2 significant duties of the secretary of state provided for elsewhere in Title II.

Sub. (1) (a) is a restatement of s. 5.40 and the last 2 sentences of s. 6.77. Par. (b) is a restatement of the first 4 sentences of s. 6.77 except the "20 days prior" provision is changed to specific dates to provide more time for the county clerks. The delivery for the September primary will usually be 32 days and the general election will always be 25 days.

Sub. (1) (c) is new. There is no present statutory provision for checking voting machines to see that they fulfill statutory requirements, although it is apparently believed by some that the secretary of state is supposed to do this. To make certain that some procedure is established to see that the statutory requirements are complied with, this section is drafted in language broad enough to provide for the checking by the secretary of state of any "apparatus" used in an election.

Sub. (2) (a) is a combination of ss. 6.19 (1), 5.08 (1) and 5.25 (4) except the date provisions. Par. (b) is new in part. It establishes statutory procedure for placing presidential candidates on the ballot.

Sub. (3) is a restatement of s. 6.81.

Sub. (4) covers that part of s. 6.82 (4) giving the secretary of state the right to refer questions. The attorney general is added since he could more appropriately answer certain questions than the department of administration. [Bill 755-A]

Whether a circuit judge is prohibited by the state constitution from being elected to a federal office is not a question for the secretary of state to decide in determining upon the list of nominees to be certified to the county clerks under 5.08, Stats. 1921. 11 Atty. Gen. 600.

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. 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.

7.10 History: 1965 c. 666; Stats. 1965 s. 7.10.

Legislative Council Note, 1965: The purpose of this section is to set forth the duties of the county clerk. Sub. (1) (a) is a combination of ss. 5.11 (5) (1st sentence), 6.25 (1) (1st part of 1st sentence) and 11.09 (1) (a) as it applies to county clerks. The last sentence of par. (a) is s. 5.70 (1) (1st sentence) without substantive change. Par. (b) is s. 6.28 (1) without substantive change. Par. (c) is a restatement of s. 6.28 (2).

Sub. (2) is a combination of ss. 6.25 (1) (1st sentence, in part) and 5.11 (1).

Sub. (3) (a) is a restatement of ss. 5.11 (5) (last sentence), 6.29 (1) (1st sentence) and 6.78 (1st sentence). Par. (b) is based on s. 6.29 (1) (2nd sentence to the end of the subsection), but does not provide that 5% of the ballots shall be kept separate for absentee electors.

Sub. (4) restates that part of s. 6.82 (4) pertaining to the county clerk.

The duty assigned to the county clerk by s. 6.29 (4) pertaining to the filing of a receipt has been deleted to bring the statutes in line with present practice in many areas of the state, but this bill does not prevent the county clerk from still requesting receipts.

Also deleted is the duty presently assigned to the sheriff when there is no person authorized to act for the county clerk under s. 6.82 (6). There is always a deputy clerk or someone in the clerk's office who, although not so authorized, can fulfill the duties better than a sheriff who would be relatively unfamiliar with the election statutes and procedure. [Bill 755-A]

7.11 History: 1965 c. 666; Stats. 1965 s. 7.11.

Legislative Council Note, 1965: This is a restatement of s. 10.525 pertaining only to Menominee county. [Bill 755-A]

7.15 History: 1965 c. 666; Stats. 1965 s. 7.15.

Legislative Council Note, 1965: The purpose of this section is to set forth the duties of the municipal clerks. As previously noted,

the executive secretary of the municipal board of election commissioners by definition is now responsible for the municipal clerk's duties.

In sub. (1), pars. (a) to (f) are a restatement of ss. 6.46 (1st sentence in part), 10.30 (in part) and 10.33 (in part) and other scattered provisions. As par. (f) will now include Milwaukee, the provision will empower the executive secretary of the election commission to remove precinct officials, whereas s. 10.04 (7) gives this power to the entire board. The change was justified because such removals are usually of an emergency nature and should not be restricted to the entire board. The intro. par. and pars. (g) and (h) are a restatement of the remainder of ss. 10.29 and 10.33 except that s. 10.29 requires the board of election commissioners to furnish printed instructions. The secretary of state is now required to supply manuals for election officials which, if properly issued, are passed on down to the precinct officials. Also, the separate specifications for Milwaukee wherever possible have either been deleted or made statewide. The exclusion, however, does not prevent Milwaukee from printing any such manual which they may consider helpful to the election officials, in fulfilling their duties. Par. (c) is a combination of parts of ss. 6.78, 10.48, 10.56 and 11.09. Section 6.78 provides for the passing on of the election blanks received by the clerk to the precinct officials and provides for their use. That portion regarding their use which also stated that failure to do so would not invalidate the election was deleted because there is a substantial compliance provision in ch. 5 in this bill. Section 10.48 states village clerks shall print official and sample ballots. Section 10.56 (1) makes a cross reference to s. 10.48 and assigns the duties therein to the town clerks. The 2nd sentence of sub. (1) (c) covers the provision of s. 10.56 (3). Section 11.09 (1) (a) pertaining to ballots for voting machines assigns the duty in part to the city clerks and city board of election commissioners and (6) states that the necessary blanks and materials shall be supplied. As established, the executive secretary of the board of election commissioners will be primarily responsible. Par. (i) is new. It is necessary to assign this duty to the municipal clerk here for uniformity in this bill. The change was made to prevent the possible mix-up of official and blank ballots, should the blanks be destroyed at the precinct level while the official ballots are also there.

In sub. (2), par. (a) is based upon s. 10.38 except that part providing that cities over 200,000 may print their own ballots. The executive secretary of the board of election commissioners is made responsible for this provision. Par. (b) is a restatement of the remainder of s. 10.38, except the population figure was changed from 200,000. Par. (c) is a restatement of s. 11.09 (1) (b) (last sentence), except that the executive secretary of the county board of election commissioners will issue the consent. Par. (d) is based on s. 10.40 (2) although it presently pertains only to cities.

In sub. (3), par. (a) is a restatement of s. 11.09 (3) (1st sentence). Par. (b) is a restatement of s. 11.09 (5) (2nd sentence).

Sub. (4) is a restatement of s. 6.16(10).

Sub. (5) is a restatement of s. 6.29 (2) and (3) except that the provision for the municipal clerk to send a receipt to the county clerk has been deleted to reflect present practice. This does not prevent the county clerk from requesting a receipt.

Sub. (6) is a restatement of s. 6.29 (5) and (6).

Sub. (7) pertaining to requesting election officials to assist with the canvass is based upon s. 10.04 (5) (last sentence) but has been made state-wide.

Sub. (8) is based on s. 6.82 (4) which provides only for the county clerk. This change reflects present practice. [Bill 755-A]

7.20 History: 1965 c. 666; Stats. 1965 s. 7.20.

Legislative Council Note, 1965: This section combines the provisions of ss. 10.01 and 10.63. The population figure has been changed. The provision of s. 10.63 permitting service on both boards was deleted as the provision of s. 10.01 forbids it. The county executive has been included in sub. (2). The majority provision of ss. 10.28 and 10.66 (3rd sentence) has been included in sub. (5). [Bill 755-A]

7.21 History: 1965 c. 666; Stats. 1965 s. 7.21.

Legislative Council Note, 1965: Sub. (1) is based on ss. 10.02 (1) (last part), 10.23 (1st part and last sentence), 10.25 (1) and (2), 10.64 (1st sentence) and 10.66 (last sentence). The basic provisions for the city and county board of election commissioners have been combined.

Sub. (2) is based on ss. 10.02 (1) (1st part), 10.64 (2nd sentence) and 10.65. The provision for sharing salaries between the city and county when a person serves on both boards has been deleted since s. 7.20 in this bill no longer provides for serving on both boards.

Sub. (3) is a restatement of ss. 10.02 (3) and 10.66 (1st sentence, last part).

Sub. (4) is a restatement of ss. 10.02 (2) and 10.66 (1st sentence, 1st part).

Sub. (5) is based on ss. 10.02 (4) (in part), 10.23 (in part), 10.31, 10.66 (2nd sentence) and 10.68. [Bill 755-A]

7.22 History: 1965 c. 666; Stats. 1965 s. 7.22.

Legislative Council Note, 1965: Sub. (1) is a restatement of ss. 10.02 (4) (1st sentence, last part) and 10.26.

Sub. (2) is a restatement of s. 10.02 (4) (last 2 sentences).

Sub. (3) is a restatement of s. 10.02 (1) (in part).

Sub. (4) is based on s. 10.02 (5), but the report is changed from annual to biennial.

Sub. (5) is a restatement of s. 10.23 (3rd sentence). [Bill 755-A]

7.23 History: 1965 c. 666; Stats. 1965 s. 7.23; 1969 c. 419.

Legislative Council Note, 1965: Sub. (1) is based on ss. 5.05 (9) (in part), 6.60 (3) (last part), 6.60 (5) (last part), 6.60 (6), 6.83, 10.385 and 11.13 (1st sentence, last part and 3rd sentence). The necessary changes have been made to establish a definite and logical order for the destruction of election materials. S. 11.17 (2) is included.

Sub. (2) is a restatement of ss. 5.05 (9) (in part) and 6.60 (4). [Bill 755-A]

7.25 History: 1965 c. 666; Stats. 1965 s. 7.25.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 11.10 (1) (in part), except that the municipal clerk instead of the governing body is responsible for fulfilling the duty.

Sub. (2) is a restatement of s. 11.10 (2) except that the municipal clerk has been substituted for the governing body.

Sub. (3) is a restatement of s. 11.10 (3).

Sub. (4) is a restatement of s. 11.10 (4).

Sub. (5) is a combination of ss. 11.10 (5) and 11.11 (1). The instructions were made the responsibility of the municipal clerk instead of the custodian and the certificate for completion of the instructions was deleted.

Sub. (6) (a) is a restatement of s. 11.11 (2). Par. (b) is a restatement of s. 11.11 (3). Par. (c) is a restatement of s. 11.11 (4). [Bill 755-A]

7.30 History: 1965 c. 666; Stats. 1965 s. 7.30.

Legislative Council Note, 1965: Sub. (1) is based on ss. 6.05 (5), 6.32 (1) (1st sentence, 1st part and 2nd sentence), 10.04 (intro. par., in part) and (5) (1st sentence), 11.06 (2) and (3) without substantive change.

Sub. (2) (a) is based on ss. 6.32 (1) (remainder) and 10.04 (4) (a) but the provisions have been made uniform. The provision that an election official may be a precinct committeeman candidate is new. Par. (b) combines ss. 6.32 (4) (f) and 10.04 (6) and makes the provisions uniform. Par. (c) is a restatement of s. 6.32 (4) (h).

Sub. (3) is based on s. 6.32 (3), but the time limitation has been changed from 60 to 30 days.

Sub. (4) (a) is a restatement of s. 6.32 (4) (a) (except last sentence). Par. (b) 1 is based on ss. 6.32 (4) (a) (last sentence, in part), 10.04 (intro. par.), (1), (2) and (3) without substantive change as incorporated into this section of the bill although the date for selection has been clarified. Par. (b) 2 is based on s. 6.32 (4) (a) (last sentence), (b) (in part) and (c), but the provisions for all municipalities other than for the city of Milwaukee have been made uniform. Par. (c) is a restatement of ss. 6.32 (4) (b) (3rd sentence), (5) and 10.04 (8) with a uniform date.

Sub. (5) is based on ss. 6.32 (4) (g), 6.34 (except 1st sentence), 10.04 (4) (c) with changes made for clarification and uniformity. The form of oath has been deleted since the official oath includes the necessary provisions and all oaths are filed with the municipal clerk.

Sub. (6) (a) is a restatement of ss. 6.32 (4) (d) and 10.04 (4) (b). Par. (b) is a restatement of s. 6.32 (4) (e) with state-wide application. Par. (c) is a restatement of ss. 10.04 (7) and 10.33 (4a). [Bill 755-A]

In passing on the qualifications of those who offer to vote, inspectors are not criminally responsible for errors of law or judgment. *Byrne v. State*, 12 W 519.

The power of a board of election commissioners to remove inspectors and ballot clerks must be performed in the manner prescribed by 10.04, Stats. 1933. There must be some in-

vestigation of the facts and a review thereof by the board, and they cannot delegate one of their members to discharge and appoint inspectors and ballot clerks. State ex rel. Mayer v. Schuffenhauer, 213 W 29, 250 NW 767.

The only matter of great public concern in the administration of 6.32 and 10.04 (6), Stats. 1941, the latter providing for appointment of election officials in the city of Milwaukee, is that elections be honestly conducted and that the devices contrived by the legislature to secure this result be not so distorted as to defeat the purpose of the legislature. State ex rel. State Central Committee v. Board, 240 W 204, 3 NW (2d) 123.

Under 6.32, Stats. 1937, the basis of making appointments following a general election in a presidential year is the vote for presidential electors and the basis to be used following a general election in a nonpresidential year is the vote of each party for its candidate for governor. State ex rel. Milwaukee County Rep. Comm. v. Ames, 227 W 643, 278 NW 273.

A candidate for an office may not act as an election official at the election in which he is a candidate. 9 Atty. Gen. 426; 12 Atty. Gen. 146; 13 Atty. Gen. 138; 17 Atty. Gen. 318; 18 Atty. Gen. 218.

Inspectors, clerks and ballot clerks of election in towns may all belong to same political party, if at opening of polls there is present at polling place no member of another party for which votes were cast at last preceding election. 12 Atty. Gen. 146.

Election officials appointed under 6.32, Stats. 1933, are not to be changed during their terms on ground that there has been change as to majority parties during intervening general election. Those who have duly qualified at time of their appointment are not disqualified on ground of change in politics. In case of vacancies election officials are to be appointed on basis of last preceding general election. 24 Atty. Gen. 44.

Under 6.32, Stats. 1937, three election inspectors must be chosen notwithstanding provisions as to change of election official numbers. 27 Atty. Gen. 27.

7.31 History: 1965 c. 666; Stats. 1965 s. 7.31.

Legislative Council Note, 1965: This section is based on s. 10.07 with state-wide application. [Bill 755-A]

7.32 History: 1965 c. 666; Stats. 1965 s. 7.32.

Legislative Council Note, 1965: This section is based on s. 10.22 but the provision has been made state-wide and the exemption has been restricted. [Bill 755-A]

7.33 History: 1965 c. 666; Stats. 1965 s. 7.33.

Legislative Council Note, 1965: This is a restatement of s. 6.32 (1a) but the deadline has been deleted. [Bill 755-A]

Action taken by the governing body of a city, village or town under the provision authorizing change of election official numbers applies only to a forthcoming election. 24 Atty. Gen. 348.

7.35 History: 1965 c. 666; Stats. 1965 s. 7.35.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 6.36 (1). The provision of s.

10.48 (1) (last sentence) permitting one indorsement when allowed by law was deleted, but will be permitted where specifically provided.

Sub. (2) is a restatement of s. 6.36 (2), but the word intentionally is new.

Sub. (3) is a restatement of s. 5.18 (4th sentence, last part). [Bill 755-A]

Ballots cast by voters having no means of knowing that such ballots were in fact initialed by only one ballot clerk, who had written thereon his own initials and also the initials of the other clerk, were properly counted notwithstanding the provision in 6.36 (1), Stats. 1941, that each ballot clerk shall write his name or initials on each ballot, and the provision in 6.41 that in the canvass of the votes any ballot not so endorsed is not to be counted, since not to count a vote for no fault of the voter would deprive him of his constitutional right to vote. Ollman v. Kowalewski, 238 W 574, 300 NW 183.

7.36 History: 1965 c. 666; Stats. 1965 s. 7.36.

Legislative Council Note, 1965: Sub. (1) notes their principal duty which is described in detail in ch. 6 in this bill.

Sub. (2) is a restatement of s. 6.58 (last sentence). [Bill 755-A]

7.37 History: 1965 c. 666; Stats. 1965 s. 7.37.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 6.09.

Sub. (2) is a restatement of s. 6.47.

Sub. (3) is a restatement of ss. 6.38 (2nd sentence) and 6.56.

Sub. (4) is a restatement of s. 11.09 (3) (last sentence).

Sub. (5) notes a duty given in detail in ch. 6 in this bill.

Sub. (6) is new. It is intended to prevent confusion and the possibility of double counting of the same person's vote.

Sub. (7) is a restatement of s. 6.34 (1st sentence) with clarification. [Bill 755-A]

An inspector of election may sign an affidavit for a prospective voter as a freeholder, and such act does not disqualify him from challenging a voter or from passing upon challenge of others. 21 Atty. Gen. 335.

7.38 History: 1965 c. 666; Stats. 1965 s. 7.38; 1969 c. 161, 419.

Legislative Council Note, 1965: Sub. (1) is based on s. 6.31. The deadline is changed from 3 to 4 days so it will be a Friday.

Sub. (2) is a restatement of s. 6.27.

Sub. (3) is a restatement of s. 5.18 (in part). [Bill 755-A]

A person who had duly filed the nomination papers and declaration with the clerk, but subsequently filed an effective declination of the nomination, thereby disqualified himself as a nominee, and thereafter he could not withdraw his declination and thereby requalify himself or require that his name be printed on the primary ballots. State ex rel. Moon v. Annear, 253 W 257, 33 NW (2d) 634.

Where a candidate dies before ballots are printed his name should not appear on ballots. 21 Atty. Gen. 861.

Under 6.31, Stats. 1931, each political party is entitled to 2 watchers at polls; they are not prohibited from keeping their own lists of e-

lectors, checking off names as voting progresses or from passing on this information to others, who will use it in inducing tardy electors to vote. 25 Atty. Gen. 637.

Declination of a nomination under 5.18, Stats. 1957, must be both signed and acknowledged. 47 Atty. Gen. 258.

7.50 History: 1965 c. 666; Stats. 1965 s. 7.50.

Legislative Council Note, 1965: Sub. (1) (a) is based on s. 6.25 (2), but has been made general so it applies to all elections. Par. (b) is a restatement of ss. 5.39 (6) and 6.42 (2).

Sub. (2) (intro. par.) is based on s. 6.42 (intro. par.) but includes referenda questions and repeats a part of the substantial compliance clause of s. 5.01 (1) in this bill. Par. (a) is a restatement of s. 6.42 (1) with clarification and provision is made for stickers. Par. (b) is a restatement of s. 6.42 (5). Par. (c) is a restatement of s. 6.42 (3). Par. (d) is a restatement of ss. 6.25 (3) (1st part) and 6.42 (4). Par. (e) is a restatement of s. 6.60 (2). Par. (f) is new. Par. (g) is a restatement of s. 5.14 (1), but clarified. Par. (h) is a restatement of s. 11.16. [Bill 755-A]

Editor's Note: Ch. 451, Laws 1903, which authorized write-in votes on primary election ballots, was construed by the supreme court in *State ex rel. Pray v. Yankee*, 129 W 662, 109 NW 550. See also the opinions of the attorneys general, published in 24 Atty. Gen. 346 and 38 Atty. Gen. 132, construing 6.42 (4), Stats. 1933 and 1947.

Ballots cast for C.H.C., Jr., cannot be counted for C.H.C., Sr., for a town office for which the latter was a candidate, though the former was not a candidate therefor, but was a resident of the town and eligible to such office. Parol proof is not admissible to show that ballots containing the name of the former were cast for the latter. *State ex rel. Cremer v. Steinborn*, 92 W 605, 66 NW 798.

Where both the head of the column and a name in another column are marked, the ballot counts for the name so marked. When the head of the column is marked, a person's name in the same column erased, and a name written in the space below the erased name, the ballot counts for the person whose name was written in. *State ex rel. Schuetz v. Luy*, 103 W 524, 79 NW 776.

A ballot bearing only a surname is valid where there is but one candidate for that office, of that name. A name written opposite a printed name without erasure, is counted for the person whose name is written. *State ex rel. Blodgett v. Eagan*, 115 W 417, 91 NW 984.

Where the names of both candidates for an office were printed within the same space and a mark was made opposite a blank space where no name was written in, the ballot could not be counted for either candidate. *State ex rel. Crain v. Acker*, 142 W 394, 125 NW 952.

A ballot marked with a cross opposite the name of one candidate and with a cipher opposite the other candidate's name was properly counted for the first mentioned candidate. In *re Burke*, 229 W 545, 282 NW 598.

Where the official and sample ballots in a town election were exhausted and ballots from the previous year were altered to correspond with the official ballot with the acquiescence of

the candidates such ballots were valid. In *re Burke*, 229 W 545, 282 NW 598.

Where a voter had attempted to blot out his "X" mark and had not indicated a vote for the other candidate, the court could hold that he intended not to vote for the candidate. *Schmidt v. Board of Canvassers*, 18 W (2d) 316, 118 NW (2d) 154.

Where a voter placed a mark in 2 party circles his vote for an assemblyman on one ballot should be counted if there was no such candidate on the other ballot. 1902 Atty. Gen. 83.

Where ballot gives an elector the right to vote for 2 candidates, he may vote for one only. 27 Atty. Gen. 302.

Although a person's name appears as a candidate in the independent column he may be voted for by having his name written in as a party candidate for the same office for which he is an independent candidate. All such votes received as a party candidate of any party should be added to any votes the candidate receives as an independent in order to determine his total number of votes. 33 Atty. Gen. 188.

For discussion of statutes regulating the interpretation of the intent of voters in marking ballots under party and by individual names, see 52 Atty. Gen. 51.

7.51 History: 1965 c. 666; Stats. 1965 s. 7.51.

Legislative Council Note, 1965: In sub. (1), the intro. par. is a restatement of ss. 6.57 (1st sentence) and 10.57 and incorporates ss. 5.15 (1), 6.16 (6) (last part), 6.185 (7) (b) (last part) and 10.18 (2) (last part). Par. (a) is a restatement of s. 6.57 (except the 1st sentence). Par. (b) is a restatement of s. 11.12 (2).

Sub. (2) is a restatement of s. 6.60 (1).

Sub. (3) (a) is based on s. 6.60 (3) (1st part). Some detail has been deleted to reflect present practice without sacrificing security. Par. (b) is a restatement of s. 6.60 (5) (1st part). Par. (c) is based on ss. 11.13 (1st sentence, 1st part and 2nd and last sentences) and 11.65 (last sentence), but clarified and provision made for canvassing challenged elector ballots.

Sub. (4) (a) is based on s. 6.58, but has been changed so all election officials taking part in the canvass certify to its correctness. Par. (b) is based on s. 6.595 (1st sentence), but includes the municipal as well as county clerks and is applicable state-wide.

Sub. (5) is based on s. 6.59 and incorporates the provisions of ss. 5.15 (2), 5.26 (1), 6.45 (3), 10.49 (last sentence) and 10.59. The inspectors return all materials to the municipal clerk immediately upon completion of their canvass rather than up until 2 p. m. the following day. The municipal clerk rather than the inspectors is responsible for delivery to the county clerk. This is present practice in many areas. The special provision for paying the person delivering the town's ballots to the county clerk was deleted for uniformity. [Bill 755-A]

If the poll lists and oaths are not returned with the statement of votes the town clerk is competent to show by the records in his office that the election was regularly noticed and conducted and the canvass duly made. The chairman of the board may testify that he

acted as an inspector and that the inspectors were duly sworn. Attorney General ex rel. Carpenter v. Ely, 4 W 420.

A ballot which contains the names of 2 persons for an office for which only one is to be elected is void as to that office and should not be counted for either of such persons; but it is good as to the candidates named thereon for other offices. Attorney General ex rel. Carpenter v. Ely, 4 W 420; State v. Tierney, 23 W 430.

Repetition of name of candidate and office on a single ballot is not a "folding together." State ex rel. Hawes v. Pierce, 35 W 93.

If 2 or more ballots are so folded together as to present the appearance of but one, both must be destroyed, thus depriving the person casting them of his vote, whether so folded by mistake or intentionally. State ex rel. Guernsey v. Meilike, 81 W 574, 51 NW 875.

Defective ballots should be carefully supervised and preserved, in order to make them admissible in evidence; but it is only required that the court shall be satisfied that those offered are genuine. State ex rel. Schuetz v. Luy, 103 W 524, 79 NW 776.

The inference of unfairness, if not fraud, is almost irresistible, when the public was unlawfully excluded from their right to observe the count. State ex rel. Schuetz v. Luy, 103 W 524, 79 NW 776.

A certificate of the result of an election signed only by one inspector, but having the name of another inspector signed by an unauthorized person, is not prima facie evidence of the facts therein stated, even conceding that the duty to sign the certificate might be delegated. State ex rel. Bell v. Conness, 106 W 425, 82 NW 288.

Ballots not preserved as required by 6.60, Stats. 1915, or ballots the integrity of which has not been preserved are not competent evidence to impeach the determination of the canvassers. State ex rel. Plehn v. Widule, 164 W 3, 157 NW 769.

6.60, Stats. 1933, is directory, and although the ballots may not have been returned in strict conformity to the statute they may be recounted by the canvassing board, provided the ballots have not been tampered with and there is no reason to suspect fraud. State ex rel. Graves v. Wiegand, 212 W 286, 249 NW 537.

In recount proceedings, wherein it appeared that 314 votes were cast and only 313 voters were checked as voting, but that the election inspectors had taken no action under 6.57, Stats. 1939, action of the court in withdrawing a ballot, good on its face, and excluding it from the count, was unauthorized. Since excessive ballots are to be withdrawn by the election inspectors by lot and destroyed without being examined, such excessive ballots should not all be deducted from the candidate receiving the highest vote. Ollmann v. Kowalewski, 238 W 574, 300 NW 183.

Ballots not defective are competent evidence to impeach the official count. Hearsay or parol evidence is admissible to prove how a disqualified person cast his vote where ballot was challenged. 1902 Atty. Gen. 81.

A ballot placed in the wrong ballot box by the mistake of the election inspectors should

be counted on the proposition to which it relates. 5 Atty. Gen. 293.

Expense incurred by inspectors for making preliminary return to county clerk of election under 6.595, 1933 Stats., falls on the town, city or village on behalf of which the inspector acts. 22 Atty. Gen. 1035.

Returns of delegate and judicial elections must be reported in same manner as returns in general or primary elections under 6.595, 1935 Stats. 25 Atty. Gen. 230.

7.53 History: 1965 c. 666; Stats. 1965 s. 7.53.

Legislative Council Note, 1965: Sub. (1) is based on ss. 5.15 (1) and 10.58, but is broadened from only towns to include all municipalities with one precinct.

Sub. (2) combines ss. 5.15 (1), 5.26 (2), 10.25 (in part), 10.42 and 10.62 and makes the provisions uniform for all municipalities with more than one precinct.

Sub. (3) is based on s. 5.26 (3), but incorporates the provision of s. 5.51 in this bill whereby the municipal clerk, rather than the inspectors, has the responsibility of delivering the relevant materials to the county clerk.

Sub. (4) is a restatement of s. 10.37 (last sentence). [Bill 755-A]

7.60 History: 1965 c. 666; Stats. 1965 s. 7.60.

Legislative Council Note, 1965: Sub. (1) is a restatement of s. 6.595 (last sentence).

Sub. (2) is a restatement of s. 6.61 and incorporates s. 5.15 (3).

Sub. (3) is a restatement of s. 6.62 and incorporates ss. 5.15 (1) and (4) (1st sentence) and 8.05 (in part).

Sub. (4) (a) is a restatement of s. 6.63 (1st sentence) with clarification and incorporates s. 8.05 (in part) and makes it uniform. Par. (b) is a restatement of s. 6.64 (1st sentence and 2nd sentence, in part) and incorporates s. 8.05 (in part) and makes it uniform. Par. (c) combines ss. 6.63 (2nd sentence), 6.64 (2nd sentence, in part) and 6.67 (1) (last sentence). Par. (d) is a restatement of ss. 6.63 (last sentence) and 6.64 (3rd sentence, in part).

Sub. (5) combines ss. 5.15 (4) (in part), (5) and (6) and 6.67 (1) (except last sentence) and (2).

Sub. (6) is based on s. 6.65, but the requirement that it be delivered in person was deleted as unnecessary. The subsection incorporates s. 8.05 (in part) and makes it uniform.

Sub. (7) is based on s. 6.64 (2), but the detail as to newspapers of different political faiths was deleted.

Sub. (8) is a restatement of s. 6.68. [Bill 755-A]

In an action of quo warranto to inquire by what warrant a defendant holds an office, the court may inquire into the facts and go behind the returns of a canvassing board to determine the right to an office. State ex rel. Guernsey v. Meilike, 81 W 574, 51 NW 875.

The canvass and the certificate of election determine the right to the office for the time being and until a different result is reached in a proper proceeding to contest the title of the certificate holder thereto. An officer who remains in possession of his office after the expiration of his term, claiming that he was re-elected, is not an officer de facto as against

the certificate holder. State ex rel. Jones v. Oates, 86 W 634, 57 NW 1112.

Where a county canvass of the result of the primary has been had and the certificate issued to the person receiving the highest votes he is entitled to have his name placed upon the official ballot unless his right thereto is denied after a proper contest. The voluntary action of the canvassing board in making a new canvass and rescinding the former action cannot affect the right of the person holding the certificate to his place upon the ballot. State ex rel. Rinder v. Goff, 129 W 668, 109 NW 628.

Where the certificate of the county canvassers shows a certain number of votes for a candidate and the tabular exhibit can be reconciled with it, it will be presumed that the canvassers obtained corrected returns and that the certificate is correct. State ex rel. Kustermann v. Board of State Canvassers, 145 W 294, 130 NW 489.

Where two candidates for the assembly receive the same number of votes, the assembly itself must determine who was elected. The determination of the county board of canvassers would be only prima facie evidence of the election of either candidate. 1904 Atty. Gen. 92, 117.

"Scattering" votes are legal votes and are to be counted in determining if a candidate has received a majority of all votes cast for an office. 21 Atty. Gen. 420.

A county clerk is ineligible to act as a member of board of county canvassers when said county clerk is candidate in election for office for which returns are to be canvassed by said board. The county clerk selects board of county canvassers even though he is ineligible to act as member of said board. 21 Atty. Gen. 809.

Canvassers' determination for publication under 6.64, Stats. 1931, may be a summarized report. 21 Atty. Gen. 897.

7.70 History: 1965 c. 666; Stats. 1965 s. 7.70; 1967 c. 261; 1969 c. 276 ss. 1, 581 (4).

Legislative Council Note, 1965: Sub. (1) (a) is a restatement of s. 6.70 (1). Par. (b) is a restatement of s. 6.70 (2), but the deadline for receipt of materials from the county clerk is reduced from 30 to 15 days and 8 days so the deadline occurs before the state board of canvassers meet under sub. (3).

Sub. (2) (a) is a restatement of s. 6.69 (1st sentence). Par. (b) is a restatement of s. 6.69 (2nd sentence).

Sub. (3) (a) combines ss. 5.15 (1), 5.16, 6.71 (1) and 8.05 (last sentence). The dates are fixed and uniformity provided. Par. (b) is a restatement of s. 6.71 (2). Par. (c) is a restatement of s. 6.71 (3). Par. (d) is a restatement of s. 6.71 (4) and incorporates ss. 6.71 (7) (in part) and 8.05 (last sentence, in part). Par. (e) is a restatement of s. 6.71 (5). Par. (f) is a restatement of s. 6.71 (6) and incorporates s. 6.71 (7) (in part). Par. (g) is a restatement of ss. 6.10 (1) (b) (last sentence) and 6.71 (8). Par. (h) is based on s. 6.73 with clarification as to accepting corrected statements.

Sub. (5) (a) is a restatement of s. 6.72. Par. (b) is a restatement of s. 9.05. [Bill 755-A]

Duties of state canvassers are ministerial; they cannot take proof as to frauds. Attorney

General ex rel. Bashford v. Barstow, 4 W 567; State ex rel. McDill v. Board of State Canvassers, 36 W 498.

Returns which are void on their face must be rejected. State ex rel. McDill v. Board of State Canvassers, 36 W 498.

The state board of canvassers has no power to go behind the returns furnished it by the county canvassers. State ex rel. Kustermann v. Board of State Canvassers, 145 W 294, 130 NW 489.

Under 6.73, Stats. 1913, the state board of canvassers must make its decision from the county returns mentioned in 6.67 (1) and from such returns only. State ex rel. Husting v. Board of State Canvassers, 159 W 216, 150 NW 542.

The adjournment provision of the statute is directory, and the board may continue to a completion of its work but must not in any event delay by adjournments or otherwise so as to prevent an elected officer from beginning his term at the opening of the political year. State ex rel. Husting v. Board of State Canvassers, 159 W 216, 150 NW 542.

See note to sec. 24, art. VII, citing 57 Atty. Gen. 236.

7.75 History: 1965 c. 666; Stats. 1965 s. 7.75.

Legislative Council Note, 1965: This section is a restatement of s. 9.06. [Bill 755-A]

CHAPTER 8.

Nominations, Primaries, Elections.

8.01 History: 1965 c. 666; Stats. 1965 s. 8.01.

Legislative Council Note, 1965: This is a restatement of s. 5.02. [Bill 755-A]

8.02 History: 1965 c. 666; Stats. 1965 s. 8.02.

Legislative Council Note, 1965: This section is based on s. 5.05 (4), but the time for circulation has been changed from 60 days to a date specific which will result in a shorter period of time for circulation. This change conforms with other sections in this bill. [Bill 755-A]

8.03 History: 1965 c. 666; Stats. 1965 s. 8.03; 1967 c. 311.

Legislative Council Note, 1965: This section is a restatement of the combined provisions of ss. 5.14 (2) and 6.23 (12). [Bill 755-A]

8.04 History: 1965 c. 666; Stats. 1965 s. 8.04.

8.05 History: 1965 c. 666; Stats. 1965 s. 8.05; 1969 c. 137, 419.

Legislative Council Note, 1965: Sub. (1) (a) is based on s. 5.27 (1) (1st 2 sentences). The date for the caucus has been made earlier in some instances to facilitate county clerks in obtaining the necessary information. The other dates have been established to facilitate execution of the provisions. Par. (b) is a restatement of s. 5.27 (1) (3rd and 4th sentences). Par. (c) is based on s. 5.27 (1) (5th to 8th sentences) with clarification. Par. (d) is a restatement of s. 5.27 (1) (9th sentence). Par. (e) is a restatement of s. 5.27 (1) (10th and 11th sentences). Par. (f) is a restatement of s. 5.27 (1) (12th sentence). Par. (g) is a restatement of s. 5.27 (1) (13th sentence). Par. (h)