Chapter 250

Conduct of General and Special Elections

250.010

NOTES OF DECISIONS

School elections are not governed by the general election law. Breding v. Williams, (1900) 37 Or 433, 436, 61 P 858.

The time for city charter elections may be provided for by the cities under their constitutional authority. State v. Andresen, (1924) 110 Or 1, 222 P 585.

Failure to give statutory notice of a general election does not render it a nullity; voters are bound to take cognizance of the time, place and object of an election as fixed by law. Hill v. Hartzell, (1927) 121 Or 4, 252 P 552.

FURTHER CITATIONS: Bethune v. Funk, (1917) 85 Or 246, 166 P 931; Taylor v. Multnomah County, (1926) 119 Or 123, 248 P 167; Howell v. Bain, (1945) 176 Or 187, 156 P2d 576.

ATTY. GEN. OPINIONS: Date of election on state-wide initiative measure, 1960-62, p 252.

250.020

NOTES OF DECISIONS

Under former similar statute Secretary of State was required to certify to names of candidates, but not that persons named were nominees of any party or that nominations were regular or valid. Sears v. Kincaid, (1898) 33 Or 215, 220, 53 P 303.

ATTY. GEN. OPINIONS: Determination that population classification for district court creation has been reached, 1960-62, p 17.

250.030

ATTY. GEN. OPINIONS: Nomination of candidates for city offices, 1964-66, p 80.

250.070

NOTES OF DECISIONS

Municipality must certify municipal measure to county clerk within the time provided. State v. Poulsen, (1932) 140 Or 623, 15 P2d 372.

Statutory direction as to time for certifying measure must be substantially complied with. State v. Boyer, (1932) 140 Or 637, 15 P2d 375.

ATTY. GEN. OPINIONS: Nomination of candidates for city offices, 1964-66, p 80.

250.080

NOTES OF DECISIONS

This section is not mandatory in the sense that a voter's right will be lost because of some technical mistake of the county clerk in printing the names of candidates upon the ballot. Miller v. Pennoyer, (1893) 23 Or 364, 375, 31 P 830.

In making a contract for the printing of ballots the county clerk cannot bind the county to pay an unreasonable sum. Flagg v. Marion County, (1897) 31 Or 18, 21, 48 P 693.

ATTY. GEN. OPINIONS: Death of candidate immediately prior to general election, 1960-62, p 84; sharing regular election expenses between city and county, 1962-64, p 118.

250.090

CASE CITATIONS: State v. McKinnon, (1880) 8 Or 493; State v. Wolf, (1888) 17 Or 119, 20 P 316.

ATTY. GEN. OPINIONS: Death of candidate immediately prior to general election, 1960-62, p 84.

250.110

NOTES OF DECISIONS

1. In general

The prescribed manner of marking the ballot by the voter is mandatory. Van Winkle v. Crabtree, (1899) 34 Or 462, 55 P 831, 56 P 74.

The Secretary of State is not vested with any discretion as to form of ballots or designation of officer. State v. Kozer, (1924) 112 Or 286, 229 P 679.

The law, not the candidate, declares what designation shall follow his name upon the official ballot where he is nominated at the primary as a candidate of a particular party. Putnam v. Kozer, (1926) 119 Or 535, 250 P 625.

Candidate nominated at primary election is "party candidate," not independent candidate. Id.

The law was violated by printing in two groups of electors the name of one person nominated by two parties. Miller v. Pennoyer, (1893) 23 Or 364, 372, 31 P 830.

A ballot should not have been counted for a candidate at the left of whose name appeared a cross, where two pencil lines were drawn through his name indicating that the voter had changed his mind after making the cross. Van Winkle v. Crabtree, (1899) 34 Or 462, 55 P 831, 56 P 74.

Where two vacancies were to be filled, the ballot should not have indicated two candidates for office first vacated, and but one for the other; the office to be filled should merely have been designated as "Justice of Supreme Court," with three candidates, and directions to vote for two. State v. Kozer, (1924) 112 Or 286, 229 P 679.

A candidate who was nominated by an assembly of voters was entitled to have "Freedom from Dictatorship, Independent," put on ballot as expressing a political principle. Stanfield v. Kozer, (1926) 119 Or 324, 249 P 631.

The Secretary of State could not be compelled to go beyond the official records in making his certificate by entering the words "Opposed to prohibition" after the candidate's name. Putnam v. Kozer, (1926) 119 Or 535, 250 P 625.

2. Ballot title

The title of a measure should be printed only once where

two separate petitions for referendum of the measure are filed. State v. Kozer, (1923) 108 Or 550, 217 P 827.

Defects in ballot title do not invalidate election. State v. Osbourne, (1936) 153 Or 484, 57 P2d 1083.

A ballot title prepared by the Attorney General containing a fair and impartial statement of the purpose of the new law and which would enable the voters to identify the measure brought before them for a vote was not insufficient or unfair. Wieder v. Hoss, (1933) 143 Or 122, 21 P2d 780.

ATTY. GEN. OPINIONS: Printing of questions to be submitted to the county voters on general election ballots, 1946-48, p 38; validity of a married candidate for office using her maiden name in filing for office, 1952-54, p 129; vacancy created by resignation of district attorney designated on ballot as "Republican-Democrat," 1956-58, p 95; write-in votes, 1956-58, p 286; death of candidate immediately prior to general election, 1962-64, p 84; form of ballot for questions regarding proposed courthouse, 1964-66, p 149; necessity of making a check for write-in candidate, 1964-66, p 355; using mark authorized by vote tally system on special district election ballots, 1966-68, p 208.

250.121

NOTES OF DECISIONS

1. Under former similar statute

Statutory requirements as to notice of special elections were mandatory and had to be observed in order to render the election valid. Marsden v. Harlocker, (1906) 48 Or 90, 85 P 328, 120 Am St Rep 786; State v. Port of Tillamook, (1912) 62 Or 332, 124 P 637, Ann Cas 1914C, 483; State v. Sengstacken, (1912) 61 Or 455, 122 P 292, Ann Cas 1914B, 230; Salem v. Ore.-Wash. Water Serv. Co., (1933) 144 Or 93, 23 P2d 539.

As to whether the election was invalidated by noncompliance with the statutory requirements was a question which depended upon the nature of the election, i.e. whether it took place pursuant to general law, or was held at the direction of some public authority or for the submission of some special question—in the former case, the election was not invalidated; in the latter, it was. Marsden v. Harlocker, (1906) 48 Or 90, 85 P 328, 120 Am St Rep 786; Guernsey v. McHaley, (1908) 52 Or 555, 98 P 158; Hill v. Hartzell, (1927) 121 Or 4, 252 P 552.

The purpose of notice of election was to inform the legal voters of the time, place and object of the election. State v. Port of Tillamook, (1912) 62 Or 332, 124 P 637, Ann Cas 1914C, 483.

The manner of posting was the same whether the election was general or special. Smith v. Hurlburt, (1923) 108 Or 690, 703, 217 P 1093.

An election notice was sufficient if it thoroughly and fully stated the purposes of the election without misleading the affected voters. State v. Bailey, (1935) 151 Or 496, 51 P2d 671.

A notice of a road bond election did not vitiate the proceedings though it erroneously designated the initial point of one of the roads to be improved. Parker v. Clatsop County, (1914) 69 Or 62, 138 P 239.

Where election notices were in substantial compliance with the requirements of the statute, and it was impossible that the voters did not have notice of the election by reason of the first notices, the fact that subsequent notices were posted five days before the election instead of twelve days, was not fatal. Wiley v. Reasoner, (1914) 69 Or 103, 138 P 250.

ATTY. GEN. OPINIONS: Selecting newspapers to publish, 1960-62, p 395; duty to publish facsimile ballot prior to rural fire protection district election, 1966-68, p 35.

250.150

ATTY. GEN. OPINIONS: Death of candidate immediately prior to general election, 1960-62, p 84; duty to publish facsimile ballot prior to rural fire protection district election, 1966-68, p 35.

250.161

ATTY. GEN. OPINIONS: Duty of county clerk where nominee withdraws from nomination prior to forwarding certification of Secretary of State, 1924-26, p 18; applicability to general or special elections, 1942-44, p 463; effect of this section when no legal withdrawal, 1950-52, p 30; death of candidate immediately prior to general election, 1960-62, p 84.

250.190

ATTY. GEN. OPINIONS: Sharing regular election expenses between city and county, 1962-64, p 118; use of seals to lock cardboard ballot box, 1966-68, p 342.

250.200

CASE CITATIONS: Hughes v. Holman, (1893) 23 Or 481, 32 P 298; Links v. Anderson, (1917) 86 Or 508, 168 P 605, 1182.

250.230

ATTY. GEN. OPINIONS: When city measures may be printed upon the state and county ballots, 1932-34, p 319; use of separate ballot in establishing city tax base, 1958-60, p 62; sharing regular election expenses between city and county, 1962-64, p 118.

250.295

ATTY. GEN. OPINIONS: Election of Oregon State Bar Board of Governors after redistricting, 1964-66, p 350.

250.310

NOTES OF DECISIONS

As between ballots shown or admitted to be the identical ballots cast by the voters and the official count, the ballots are the best evidence. Hartman v. Young, (1888) 17 Or 150, 155, 20 P 17, 11 Am St Rep 787, 2 LRA 596.

ATTY. GEN. OPINIONS: Electors who avoid cancellation of registration, 1962-64, p 165; effect of failure to take an oath, 1964-66, p 89.

250.340

NOTES OF DECISIONS

Under a former similar statute, after the time for closing the polls, they could not be opened again to accommodate voters. Darragh v. Bird, (1870) 3 Or 229.

All general, special and presidential elections held in this state are to be under the provisions of the "Australian Ballot Law." Libby v. Olcott, (1913) 66 Or 124, 134 P 13.

That the polls were open for a longer time than that required by law did not vitiate the election. Parker v. Clatsop County, (1914) 69 Or 62, 138 P 239.

That the polls were kept open a shorter time than the law requires avails nothing unless it can be shown that some elector was thereby deprived of the right to vote and that the number thus excluded was sufficient to change the result. Links v. Anderson, (1917) 86 Or 508, 168 P 605, 1182.

The provision is directory only which requires the polls to be kept open from 8 a.m. until 8 p.m. Id.

ATTY. GEN. OPINIONS: Authority to use vote tally machine, 1962-64, p 295.

250.350

NOTES OF DECISIONS

1. Under a former similar statute

A challenged voter had no right, unsworn, to vote and the judges had no discretion but to reject his vote. Darragh v. Bird, (1870) 3 Or 229.

To become a qualified voter, a person challenged when offering to vote took a qualifying oath. McKay v. Campbell, (1870) 2 Abb US 120, 1 Sawy 374, Fed Cas No. 8,839.

The oath prescribed had to be tendered all persons offering to vote to whom a challenge was interposed and insisted upon. Wood v. Fitzgerald, (1870) 3 Or 568.

The duty devolved upon the chairman of the judges of determining the qualifications of an elector to whom a challenge was interposed. Breding v. Williams, (1900) 37 Or 433, 61 P 858.

In determining the qualifications of electors at school elections, the general election statutes were inapplicable. Id.

FURTHER CITATIONS: Ivie v. City of Oceanlake, (1956) 208 Or 417, 302 P2d 221.

ATTY. GEN. OPINIONS: Voting by corporation landowners and by property owners who reside outside rural fire protection district, 1954-56, p 155.

250.400

NOTES OF DECISIONS

Under a former similar statute, all rejected votes had to appear in the poll book. Darragh v. Bird, (1870) 3 Or 229; Wood v. Fitzgerald, (1870) 3 Or 568.

FURTHER CITATIONS: Ivie v. City of Oceanlake, (1956) 208 Or 417, 302 P2d 221.

250.410

NOTES OF DECISIONS

This regulation is a conventional one, applicable in its full force only to elections, and was not intended to be controlling over any other subject. Miller v. Miller, (1913) 67 Or 359, 136 P 15.

ATTY. GEN. OPINIONS: Residence of civilians residing at naval reservation, 1940-42, p 408; residence of serviceman as matter of intent, 1944-46, p 382; registration and residency requirements for candidacy, 1964-66, p 381; evidence sufficient to prove serviceman's residence, 1964-66, p 455; residency of Oregon student upon marriage to a nonresident, (1970) Vol 35, p 266.

250.420

ATTY. GEN. OPINIONS: Use of seals to lock cardboard ballot box, 1966-68, p 342.

250.461

ATTY. GEN. OPINIONS: Death of candidate immediately prior to general election, 1960-62, p 84; authority to use vote tally machine, 1962-64, p 295.

250.471

NOTES OF DECISIONS

Under a former similar statute, loose sheets of paper returned in the poll books, but not attached or identified in any way as parts thereof, could not be considered in making the canvass of returns. Simon v. Durham, (1881) 10 Or 52.

ATTY. GEN. OPINIONS: Authority of board completing count to convey returns to sheriff, 1934-36, p 116; vote challengers possessing voters' lists within 50 feet of polls, 1946-48, p 80; death of candidate immediately prior to general election, 1960-62, p 84.

250.510

NOTES OF DECISIONS

The rejection of ballots is not necessitated by the fact that the name of a candidate was printed thereon in more than one place. Miller v. Pennoyer, (1893) 23 Or 364, 31 P 830.

If a ballot varies in some material way from the manner prescribed, such ballot should not be counted. Van Winkle v. Crabtree, (1899) 34 Or 462, 472, 55 P 831, 56 P 74.

Where the law requires the elector to indicate his choice by a mark, the ballot should be counted if the mark is made anywhere in the space occupied by the name of the chosen candidate. Id.

FURTHER CITATIONS: State v. McKinnon, (1880) 8 Or 493; Bennett Trust Co. v. Sengstacken, (1911) 58 Or 333, 113 P 863.

ATTY. GEN. OPINIONS: The authority to decide which of two election boards shall convey the election returns to the county sheriff at county seat, 1934-36, p 116; validity of ballot when name is written in for office not appearing on the ballot, 1936-38, p 639; necessity of making a check for write-in candidate, 1964-66, p 355; marks indicating voter's choice, 1966-68, p 68.

250.545

CASE CITATIONS: Hovet v. Myers, (1970) 4 Or App 354, 478 P2d 435, Sup Ct review denied.

250.645

ATTY. GEN. OPINIONS: Voting by elector who has moved to another address within the same precinct, 1954-56, p 177; signing poll books in school elections, 1954-56, p 198; signing poll books in irrigation district, school district and similar subdivision elections, 1954-56, p 213.

250.655

NOTES OF DECISIONS

Under former similar statute the statutory requirement as to marking ballots had to be strictly observed. Van Winkle v. Crabtree, (1899) 34 Or 462, 55 P 831, 56 P 74.

250.680

NOTES OF DECISIONS

That the requirements as to marking ballots must be strictly observed would appear from the provision entitling the voter to a new ballot in place of a spoiled one. Van Winkle v. Crabtree, (1899) 34 Or 462, 55 P 831, 56 P 74.

ATTY. GEN. OPINIONS: Changing name of office for which candidate was running, 1940-42, p 135.

250.710

ATTY. GEN. OPINIONS: Authority to use vote tally machine, 1962-64, p 295.

250.810

NOTES OF DECISIONS

The certificate of a board of canvassers of election returns is the record of what was decided, and it is the legitimate evidence of the decision. Warner v. Myers, (1870) 3 Or 218.

In an action to contest an election, it was not error to include in the count the votes of a precinct four days late and to adjudge the certificate of election to issue to him who received the highest number of votes based on such count. Cresap v. Gray, (1882) 10 Or 345.

FURTHER CITATIONS: State v. Murrell, (1910) 57 Or 305, 307, 111 P 689.

250.820

NOTES OF DECISIONS

The permanent record provided for by this section is not the only source from which the court may obtain information and authority to declare the result of the election. State v. Murrell, (1910) 57 Or 305, 111 P 689.

Neglect or delay of the clerk in making the permanent record has no bearing upon the duty of the Secretary of State or other officers in determining the result of the election. Id.

250.830

NOTES OF DECISIONS

Where two or more candidates receive the highest and an equal number of votes, neither is elected; nor can either rightfully exercise the duties of the office until the matter has been decided by lot. State v. McKinnon, (1880) 8 Or 493.

In case of a tie in a city election, the recorder is not required to take the procedure prescribed by this section. Dunham v. Hyde, (1897) 30 Or 385, 48 P 422.

Where a town charter provides that the time and manner of canvassing the returns and declaring the result of a town election, it is doubtful whether a further charter provision, making applicable the general election laws, requires that effect be given to this section as to drawing lots. Id.

ATTY. GEN. OPINIONS: Application of the tie provision to non-high school district elections, 1950-52, p 13.

250.840

NOTES OF DECISIONS

A contest commenced prior to the canvass by the Secretary of State, and before the certificate of election had been granted to either candidate, was premature. Tazwell v. Davis, (1913) 64 Or 325, 330, 130 P 400.

FURTHER CITATIONS: Combs v. Groener, (1970) 256 Or 336, 472 P2d 281.

ATTY. GEN. OPINIONS: Application of the tie provision to non-high school district elections, 1950-52, p 13.

250.880

CASE CITATIONS: State v. Gruber, (1962) 231 Or 494, 373 P2d 657.