

Chapter 246

Administration of Election Laws

246.011

ATTY. GEN. OPINIONS: Authority to call city recall election, 1960-62, p 356; clerk's authority to prescribe form of certificate of nomination for office of school director, 1966-68, p 268.

246.021

ATTY. GEN. OPINIONS: Sufficiency of filing when check is returned "not sufficient funds" after filing deadline, 1958-60, p 372; determination that population classification for district court creation has been reached, 1960-62, p 17; when mailed document is delivered, 1966-68, p 555.

246.110

ATTY. GEN. OPINIONS: Authority to set aside nomination and declare vacancy, 1960-62, p 33; directive to registrar who has made erroneous certification of nominee, taking notice of erroneous certification of nominee, 1960-62, p 53; setting date recount commences, (1968) Vol 34, p 354.

246.120

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

ATTY. GEN. OPINIONS: Authority to set aside nomination and declare vacancy, 1960-62, p 33; directive to registrar who has made erroneous certification of nominee, taking notice of erroneous certification of nominee, 1960-62, p 53.

246.130

ATTY. GEN. OPINIONS: Authority to set aside nomination and declare vacancy, 1960-62, p 33; directive to registrar who has made erroneous certification of nominee, taking notice of erroneous certification of nominee, 1960-62, p 53.

246.150

ATTY. GEN. OPINIONS: Use of seals to lock cardboard ballot box, 1966-68, p 342; setting date recount commences, (1968) Vol 34, p 354.

246.210

ATTY. GEN. OPINIONS: Right of candidate or political party representative to be present during vote counting by mechanical process, 1966-68, p 97.

246.220

ATTY. GEN. OPINIONS: Authority to call city recall election, 1960-62, p 356.

246.230

ATTY. GEN. OPINIONS: Clerk's authority to prescribe form of certificate of nomination for office of school director, 1966-68, p 268; certification of voter's signature on petition if signer's address is different on registration records, 1966-68, p 344.

246.250

ATTY. GEN. OPINIONS: Chargeable expense incurred by county in conducting general and special state and county elections and elections of city officers and upon city measures held in connection therewith, 1934-36, p 35; conveyance of election returns to sheriff as a "necessary expense", 1946-48, p 429; liability for cost of reprinting ballots, 1960-62, p 125; sharing regular election expenses between city and county, 1962-64, p 118.

246.300

CASE CITATIONS: *School Dist. 1 v. Gleason*, (1946) 178 Or 577, 168 P2d 347; *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Duties of board of county commissioners and precinct supervisors not transferred to registrar of elections, 1944-46, p 223; right of candidate or political party representative to be present during vote counting by mechanical process, 1966-68, p 97.

246.310

ATTY. GEN. OPINIONS: Appointment of judges and clerks to fill vacancies, 1934-36, p 605; where by mistake both judges are of same party, 1938-40, p 744; procedure to be followed in hospital district election to be held on same day as general primary election, 1950-52, p 346; compensation of employe performing county and election board duties, 1964-66, p 17; election board on same day serving for school district and regular primary elections, (1968) Vol 34, p 39.

246.320

ATTY. GEN. OPINIONS: Appointment of judges and clerks to fill vacancies, 1934-36, p 605.

246.330

ATTY. GEN. OPINIONS: Compensation of election board members as being termed "fees" and excluded from social security coverage, 1950-52, p 369; sharing regular election expenses between city and county, 1962-64, p 118; compensation of employe performing county and election board duties, 1964-66, p 17; election board on same day serving for school district and regular primary elections, (1968) Vol 34, p 39.

246.410

NOTES OF DECISIONS

1. Under former similar statute

County court had power to readjust election precincts making their boundaries conform to the limits of an incorporated city. *State v. Schluer*, (1911) 59 Or 18, 115 P 1057.

A court could not take judicial notice that a certain town was in a designated precinct; it could not know precinct boundaries that are subject to change biennially by the county court. *State v. Carmody*, (1911) 60 Or 143, 91 P 441.

Where the dispute related to the voting place, the court held that the election would not be set aside in the absence of proof that some qualified electors were deprived of the right to vote. *Wiley v. Reasoner*, (1914) 69 Or 103, 109, 138 P 250.

Irregularity in having more than 500 registered voters in precinct did not render an election to establish a utility district invalid. *Ravlin v. Hood R. P.U.D.*, (1940) 165 Or 490, 106 P2d 157.

ATTY. GEN. OPINIONS: Right of person within newly annexed territory to vote in municipal election, 1956-58, p 22; dividing precinct alphabetically, 1956-58, p 216; precinct boundary changes for a special election, 1960-62, p 186; effect on incumbent committeemen, 1964-66, p 159; size of precinct using voting machines, 1964-66, p 464.

246.420

ATTY. GEN. OPINIONS: Counting ballots in consolidated precinct, 1966-68, p 628.

246.810 to 246.830

NOTES OF DECISIONS

1. Under former similar statute

(1) **Sufficiency of petition.** The words "legally sufficient," as used in the former section, referred only to a compliance with statutory procedure. *State v. Kozler*, (1928) 126 Or 641, 270 P 513; *State v. Newbry*, (1950) 189 Or 691, 222 P2d 737.

The petition to be "legally sufficient," had to be a valid petition signed by legal voters, and complying substantially with the requirements of the law. *State v. Olcott*, (1912) 62 Or 277, 125 P 303.

The Secretary of State was bound to file a sufficient initiative petition, and certify and print the ballot title and numbers on the official ballot, so that it could be voted on. *State v. Kozler*, (1928) 126 Or 641, 270 P 513.

An initiative petition which met statutory procedural requirements had to be filed by the Secretary of State even though it might fail to permit electors to vote separately

on separate amendments. *State v. Newbry*, (1950) 189 Or 691, 222 P2d 737.

(2) **Court procedure.** Filing of a petition to remove a county seat could be compelled by mandamus against the county clerk, where such petition was in the prescribed form. *Briggs v. Stevens*, (1926) 119 Or 138, 248 P 169; *Hill v. Hartzell*, (1927) 121 Or 4, 252 P 552.

The remedy of injunction could be invoked only by such executive officers of the state as were by law entrusted with the discharge of such duties, and suit had to be brought in name of state. *State v. Kozler*, (1928) 126 Or 641, 270 P 513; *Friendly v. Olcott*, (1912) 61 Or 580, 587, 123 P 53.

The court could determine a dispute as to whether a petition had been signed by the requisite number of legal voters. *State v. Kozler*, (1922) 105 Or 486, 210 P 179.

The Secretary of State could be enjoined from recognizing as sufficient a petition shown to be legally insufficient. *State v. Snell*, (1937) 155 Or 300, 60 P2d 964.

The provision for a writ of mandamus applied only to proceedings to compel the secretary to file an initiative or referendum petition, and not to a proceeding to compel him to place a referendum measure on the ballot for the next general election. *State v. Snell*, (1942) 168 Or 153, 121 P2d 930.

A taxpayer did not have the legal capacity to sue for an injunction restraining public officers, state or local, from placing a measure upon the ballot. *Portland Gen. Elec. Co. v. Judd*, (1947) 184 Or 386, 198 P2d 605, 6 ALR2d 547.

Where the proposed law was not in the record, the court would not determine whether or not it was a local law, but would issue a peremptory writ. *Schubel v. Olcott*, (1912) 60 Or 503, 518, 120 P 375.

FURTHER CITATIONS: *Kellaheer v. Kozler*, (1924) 112 Or 149, 228 P 1086.

ATTY. GEN. OPINIONS: Procedure when ballot title changed by the Supreme Court, 1952-54, p 148.

246.830

ATTY. GEN. OPINIONS: Authority to call city recall election, 1960-62, p 356.

246.910

NOTES OF DECISIONS

This section changes the common-law rule, is remedial and should be liberally construed. *Columbia R. Salmon & Tuna Packers Assn. v. Appling*, (1962) 232 Or 230, 375 P2d 71.