

Chapter 249

Conduct of Primary Elections; Nominating Procedures

249.016

NOTES OF DECISIONS

Nomination of State Senator, not having been made at the primary nominating election, no nomination could be made to fill the vacancy. *Coovert v. Olcott*, (1916) 81 Or 415, 420, 421, 159 P 974.

Under former similar statute a political party which was subject to the provisions of the direct primary law was not authorized to nominate candidates for office in any way other than under its provisions. *Putnam v. Kozler*, (1926) 119 Or 535, 250 P 625.

FURTHER CITATIONS: *Patton v. Withycombe*, (1916) 81 Or 210, 159 P 78.

ATTY. GEN. OPINIONS: Making an original primary nomination by the central committee of the Republican or Democratic party where no one has filed a petition or declaration of candidacy for the particular office, 1942-44, p 439; primary election nominee having previous felony conviction, 1960-62, p 460.

249.020 to 249.110

CASE CITATIONS: *Bradley v. Myers*, (1970) 255 Or 296, 466 P2d 931.

249.020

NOTES OF DECISIONS

There was no amendment, revision or repeal of this statute by ORS 249.210 which provided an additional method of nomination. *Patton v. Withycombe*, (1916) 81 Or 210, 159 P 78.

ATTY. GEN. OPINIONS: Filing nomination petitions for office of justice of peace, 1936-38, p 589; validity of a married candidate for office using her maiden name in filing for office, 1952-54, p 129; filing nominating petitions for district judges, 1958-60, p 329; primary election nominee having previous felony conviction, 1960-62, p 460; construing temporary lapse of registration, 1964-66, p 356; determining meaning of "legally qualified candidate" under Oregon statutes, 1966-68, p 375; signature by presidential candidate, 1966-68, p 516; eligibility of 18-year-old to hold office, (1971) Vol 35, p 607.

249.031

NOTES OF DECISIONS

1. Under former similar statute

The legislature had power to provide for another method of nominating candidates. *Patton v. Withycombe*, (1916) 81 Or 210, 159 P 78.

The official candidate of a party had to be a registered member of the party. *State v. Boyer*, (1928) 127 Or 91, 271 P 46.

ATTY. GEN. OPINIONS: Secretary of State as required to accept and file a declaration of candidacy, 1936-38, p 612; authority of county clerk to place name on ballot differing from name as registered elector, 1938-40, p 604; authority to change names, as they appeared on primary ballot, for general election ballot, 1960-62, p 28; primary election nominee having previous felony conviction, 1960-62, p 460; registration and residency requirements for candidacy, 1964-66, p 381; obligation of delegate to support vice-presidential nominee, (1968) Vol 34, p 15; contribution for primary election candidates, (1970) Vol 34, p 1126; application to city candidate of law barring defeated primary candidate from general election ballot, (1970) Vol 35, p 38.

249.041

ATTY. GEN. OPINIONS: Withdrawal or disavowal of candidates, 1966-68, p 516; eligibility of 18-year-old to sign petition, (1971) Vol 35, p 607.

249.051

ATTY. GEN. OPINIONS: Eligibility of 18-year-old to sign petition, (1971) Vol 35, p 607.

249.055

ATTY. GEN. OPINIONS: Withdrawal or disavowal of candidates, 1966-68, p 516.

249.060

ATTY. GEN. OPINIONS: Deadline for filing opposition statements, 1956-58, p 255; removal of candidate's name when Secretary of State informed that candidate not qualified, 1958-60, p 366; primary election nominee having previous felony conviction, 1960-62, p 460; registration and residency requirements for candidacy, 1964-66, p 381.

249.150

NOTES OF DECISIONS

The manner of withdrawal prescribed by this section is exclusive. *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Member of armed forces as candidate for county commissioner, 1948-50, p 412; transfer of filing fee, 1954-56, p 200; removal of candidate's name when Secretary of State informed that candidate not qualified, 1958-60, p 366; registration and residency requirements for candidacy, 1964-66, p 381; effect of filing for second office prior to formal withdrawal of first filing, 1964-66, p 396; filing for more than one office, 1964-66, pp 313, 412.

249.210

NOTES OF DECISIONS

1915 c. 124 p 124 providing a method in addition to 1905 c. 1 providing for nominations without fee on petition does

not violate Ore. Const. Art. IV, §22, Art. II, §1, or Art. I, §20. *Patton v. Withycombe*, (1916) 81 Or 210, 159 P 78.

FURTHER CITATIONS: *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Filing of declarations of candidacy for the office of justice of the peace, 1936-38, p 589; a registered elector who is a commissioned officer in the United States Army, 1942-44, p 428; removal of candidate's name when Secretary of State informed that candidate not qualified, 1958-60, p 366; authority to change names, as they appeared on primary ballot, for general election ballot, 1960-62, p 28; effect of filing for second office prior to formal withdrawal of first filing, 1964-66, p 396; determining meaning of "legally qualified candidate" under Oregon statutes, 1966-68, p 375; eligibility of 18-year-old to hold office, (1971) Vol 35, p 607.

249.221

NOTES OF DECISIONS

The requirements of party registration for 180 days prior to filing are reasonable means to preserve the integrity of the party label. *Bradley v. Myers*, (1970) 255 Or 296, 466 P2d 931.

FURTHER CITATIONS: *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Member of armed forces as candidate for county commissioner, 1948-50, p 412; action by Secretary of State when informed that candidate no longer meets party affiliation requirement, 1958-60, p 366; candidate, defeated at nomination of major party with which he was affiliated, as write-in candidate of other major party, 1960-62, p 33; limits on obligation to support preference, 1964-66, p 3; filing for more than one office, 1964-66, p 313; registration and residency requirements for candidacy, 1964-66, p 381; defining "competent evidence" of name of candidate by which commonly known, 1964-66, p 455; authority of legislature to refer a question regarding Vietnam policy, 1966-68, p 428; obligation of delegate to support vice-presidential nominee, (1968) Vol 34, p 15; contributions for primary election candidates, (1970) Vol 34, p 1126; application to city candidate of law barring defeated primary candidate from general election ballot, (1970) Vol 35, p 38.

249.260

NOTES OF DECISIONS

An attempt to file a declaration of candidacy for an office is ineffectual where the law creating the office will not come into existence prior to some 41 days before special election. *Zimmerman v. Hoss*, (1933) 144 Or 55, 23 P2d 897.

FURTHER CITATIONS: *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Deadline for filing opposition statements, 1956-58, p 255; filing for more than one office, 1964-66, p 313.

249.310

NOTES OF DECISIONS

There was no amendment, revision or repeal of this statute by 1915 p 124 [ORS 249.210], which provided an additional method of nomination. *Patton v. Withycombe*, (1916) 81 Or 210, 159 P 78.

A primary election is a special election to the extent that it is only for the purpose of nominating candidates. *Henderson v. Salem*, (1931) 137 Or 541, 1 P2d 128, 4 P2d 321.

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

249.340

NOTES OF DECISIONS

A charter of an incorporated city read in connection with this statute and Ore. Const. Art. II, §§14, 14(a), is to be read as providing that there shall be a general election in the city on the first Tuesday after the first Monday in November, and a general primary nominating election for nominating candidates to be voted on at such city election shall be held on the third Friday of May biennially. *Henderson v. Salem*, (1931) 137 Or 541, 1 P2d 128, 4 P2d 321.

There is no authority for submitting charter amendments by initiative petition at the primary nominating election, where the charter does not designate its primary election as a general election and provide for the submission of the initiative measures at a regular election. *Id.*

FURTHER CITATIONS: *Taylor v. Multnomah County*, (1926) 119 Or 123, 248 P167; *Kneeland v. Multnomah County*, (1932) 139 Or 356, 10 P2d 342.

ATTY. GEN. OPINIONS: Election for purpose of voting upon adoption of county unit school law at general primary election, 1932-34, p 646; petition for recall specifying election to be held on day of primary election, 1932-34, p 672; date of election on state-wide initiative measure, 1960-62, p 252.

249.350

CASE CITATIONS: *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722; *Geiser v. Myers*, (1968) 249 Or 543, 439 P2d 859.

ATTY. GEN. OPINIONS: Amendment of certification requiring reprinting ballots, 1960-62, p 125.

249.352

CASE CITATIONS: *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Names not to be written on ballot for office vacant by death of incumbent after time for filing nomination certificates, 1936-38, p 639; nomination of candidates for city offices, 1964-66, p 80; filing for numbered legislative positions, 1964-66, p 238.

249.354

CASE CITATIONS: *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Placing on ballot the name of candidate for precinct committeeman who is also candidate for city councilman, 1930-32, p 602; writing in names of candidates on ballot for an office which became vacant by reason of death of incumbent after the time limited for filing certificates of nomination, 1936-38, p 639; when utility district election is held concurrently with general election, placing the questions on a separate ballot, 1940-42, p 589; placing on ballot the name of candidate for delegate to party convention who is also a candidate for the legislature, 1946-48, p 376; approval of tax levy over constitutional limits on nonpartisan judiciary ballot in a primary election, 1948-50, p 420; filing for numbered legislative positions,

1964-66, p 238; determining meaning of "legally qualified candidate" under Oregon statutes, 1966-68, p 375.

249.356

ATTY. GEN. OPINIONS: Selecting newspapers to publish, 1960-62, p 395.

249.358

ATTY. GEN. OPINIONS: Liability for cost of reprinting ballots, 1960-62, p 125.

249.366

ATTY. GEN. OPINIONS: Determining party affiliation of voter, 1966-68, p 236.

249.368**NOTES OF DECISIONS**

The person whose name is placed upon the ballot is not a candidate in the sense of seeking or running for office. *McCament v. Olcott*, (1916) 80 Or 246, 156 P 1034.

ATTY. GEN. OPINIONS: Application of the Corrupt Practices Act to this section, 1946-48, p 533; duty of Secretary of State to file petition as ministerial, 1950-52, p 349; authority of legislature to refer a question regarding Vietnam policy, 1966-68, p 428; one person as candidate for President and for Vice President, 1966-68, p 474; determination of eligibility of candidate to hold office, 1966-68, p 503; withdrawal or disavowal of candidates, 1966-68, p 516; obligation of delegate to support vice-presidential nominee, (1968) Vol 34, p 15.

249.370

ATTY. GEN. OPINIONS: Right of Republican who obtained nomination on Democratic ticket by a "write in" vote to run as a Democratic nominee, 1932-34, p 720; procedure to be followed in hospital district election to be held on same day as general primary election, 1950-52, p 346; authority to use vote tally machine, 1962-64, p 295.

249.380

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

249.410

ATTY. GEN. OPINIONS: Ministerial nature of county clerk's duties, 1958-60, p 9; duty of registrar regarding void certification, 1960-62, p 53; clerk's authority to withhold certificate, 1966-68, p 643; failure to give special election ballot to part of voters, 1966-68, p 644.

249.420

ATTY. GEN. OPINIONS: Right to become independent candidate, 1926-28, p 533; duties of county clerk relative to certifying name of an unsuccessful candidate at primary election as candidate of another political party or as an independent candidate, 1930-32, p 762; right of unsuccessful candidate to be candidate for other political party at general election, 1930-32, p 809; nomination of registered Republican as Democratic candidate for county commissioner by write-in votes, 1954-56, p 220; candidate, defeated at nomination of major party with which he was affiliated, as write-in candidate of other major party, 1960-62, p 33; directive to registrar who has made erroneous certification

of nominee, 1960-62, p 53; application to defeated candidate for city council, (1970) Vol 35, p 38.

249.440

ATTY. GEN. OPINIONS: Sharing regular election expenses between city and county, 1962-64, p 118.

249.450

ATTY. GEN. OPINIONS: Nomination of registered Republican as Democratic candidate for county commissioner by write-in votes, 1954-56, p 220; constitutionality, 1958-60, p 9; result when candidate receiving highest number of votes is ineligible, 1960-62, p 20; nomination of unsuccessful Democratic candidate as Republican candidate by write-in vote, 1960-62, p 33; vacancy when candidate receiving highest number of votes is dead or ineligible, 1960-62, p 33.

249.470**NOTES OF DECISIONS**

Where one whose name was printed on the Republican ballot at primary received the highest number of votes for nomination on the Democratic ticket, but not on the Republican, so that he was ineligible to receive the Democratic nomination, there was a vacancy which the congressional central committee of the Democratic party was authorized to fill. *Starkweather v. Hoss*, (1928) 126 Or 630, 270 P 768.

ATTY. GEN. OPINIONS: Authority of Secretary of State to reject certificate of nomination, 1926-28, p 620; right of defeated candidate to become an independent candidate, 1926-28, p 620; right of unsuccessful candidate to be candidate for other political party at general election, 1930-32, p 809; Secretary of State's authority to accept for filing, certificate of nomination of person as an independent candidate, where such person is a defeated candidate for nomination by the Republican party for the same office at primary election, 1934-36, p 71; defeated candidate filing for vacancy in nomination for judgeship, 1962-64, p 486; application to defeated candidate for city council, (1970) Vol 35, p 38.

249.650 to 249.680**NOTES OF DECISIONS**

Nomination not having been made at the direct primary nominating election, nomination could not be made to fill the vacancy. *Coovert v. Olcott*, (1916) 81 Or 415, 420, 421, 159 P 974.

Ineligibility of candidate need not arise subsequently to his nomination to authorize party committee to nominate another candidate. *Starkweather v. Hoss*, (1928) 126 Or 630, 270 P 768.

Before the party's committee can nominate a candidate for a vacancy, there must have been a candidate nominated under the provisions of the primary law and he must have died, withdrawn, or for some reason be ineligible. *Id.*

ATTY. GEN. OPINIONS: Nominations to fill vacancies on state ticket caused by nonacceptance of the candidate, 1924-26, p 11; right of candidate to resign nomination and accept another, 1934-36, p 46; names of candidates written in on a ballot for an office which became vacant by reason of death of incumbent after the time limited for filing certificates of nomination, 1936-38, p 639; filling vacancy caused when State Senator representing more than one county resigns, 1954-56, p 8.

249.665

ATTY. GEN. OPINIONS: Placing name of person other than major political party nominee on ballot, 1958-60, p 58; authority to fill vacancy by appointing candidate who won primary but was ineligible by reason of 180-day party affiliation requirement, 1960-62, p 20; certifying nominee after statute of limitations for election contests has run, 1960-62, p 33; including in Voters' Pamphlet material for substitute candidate filed after deadline, 1966-68, p 39.

249.680

ATTY. GEN. OPINIONS: Including in Voters' Pamphlet material for substitute candidate filed after deadline, 1966-68, p 39.

249.710 to 249.850

ATTY. GEN. OPINIONS: Authority of Secretary of State to revoke certificate of acceptance upon discovery of irregularities in nomination not apparent on face of certificate of nomination, 1960-62, p 51; nomination of district court judge after primary, 1960-62, p 74; organization of an assembly of electors, 1962-64, p 45; defeated candidate filling vacancy in nomination for judgeship, 1962-64, p 486; nomination of candidates to positions created from July 1, election year, 1966-68, p 476; signature requirement to nominate candidate for judge, (1968) Vol 34, p 25.

249.710

NOTES OF DECISIONS

Person, not nominee of existing political party, but nominated by regularly constituted assembly of voters, under this section, is "independent candidate" within ORS 248.010. *Stanfield v. Kozler*, (1926) 119 Or 324, 249 P 631.

Meeting of 22 persons for purpose of nominating candidates for Progressive party did not constitute a convention. *State v. Boyer*, (1928) 127 Or 91, 271 P 46.

No one but a registered member of the party can lawfully participate in a convention held to nominate candidates of that party, under this section. *Id.*

FURTHER CITATIONS: *Bradley v. Myers*, (1970) 255 Or 296, 466 P2d 931.

ATTY. GEN. OPINIONS: When party becomes political party within state, and use of term designating party where such word is already in use by a party, 1920-22, p 494; effect of candidate for Congress receiving five percent of entire vote as provided by this section, 1924-26, p 484; when an unsuccessful candidate may become an independent candidate, 1926-28, p 4; procedure by Republican and Democratic parties in nominating candidate for election to fill existing vacancy in office of Representative in Congress, 1926-28, p 274; sufficiency of attempt to band a political party, 1926-28, p 589; where no one has filed a petition or declaration of candidacy for a particular office, the central committee of the Republican or Democratic party making an original primary nomination, 1942-44, p 439; official running as "Independent," 1956-58, p 284; tax credit if contribution for non-partisan office, (1969) Vol 34, p 905.

249.720

NOTES OF DECISIONS

No independent candidate can have himself designated "Independent Republican," or "Independent Democrat" or the like. *Stanfield v. Kozler*, (1926) 119 Or 324, 249 P 631.

The words "Freedom from Dictatorship," express a polit-

ical principal and an independent candidate is entitled to have them placed after his name on the ballot. *Id.*

No right to have the words "Opposed to Prohibition" after the candidate's name existed where he was nominated by a political party which did not advocate such political principle as a slogan. *Putnam v. Kozler*, (1926) 119 Or 535, 250 P 625.

ATTY. GEN. OPINIONS: Sufficiency of certificate that fails to state which of two offices of "county commissioner" the candidate is seeking, 1950-52, p 37; placing name of person other than major political party nominee on ballot, 1958-60, p 58.

249.740

ATTY. GEN. OPINIONS: Verification of signatures and penalties involved in falsely swearing and forging of names on certificates of nomination, 1952-54, p 73; signature requirement to nominate candidate for judge, (1968) Vol 34, p 25; nominating candidates for port commissioner for vacancy on general election ballot, (1970) Vol 35, p 116.

249.750

NOTES OF DECISIONS

Nominees of national Democratic party for President and Vice President, adopted by Progressive party of state as their nominees, were not indispensable parties to suit by state to enjoin county clerk from using word "Progressive" after their names on official ballot. *State v. Boyer*, (1928) 127 Or 91, 271 P 46.

The second filing was void. *Pense v. McCall*, (1966) 243 Or 383, 413 P2d 722.

ATTY. GEN. OPINIONS: Prohibition against being candidate for more than one office, 1930-32, p 595; precinct committeeman as an "office," 1930-32, p 602; candidate for delegate to national convention of his party as candidate for "office," 1946-48, p 376; simultaneous candidacy for term created by vacancy and succeeding full term, 1958-60, p 353; filing for numbered legislative positions, 1964-66, p 238; effect of filing for second office prior to formal withdrawal of first filing, 1964-66, p 396; filing for more than one office, 1964-66, pp 313, 412; one person as candidate for President and for Vice President, 1966-68, p 474.

249.760

ATTY. GEN. OPINIONS: Requirements of formal acceptance by nominee of the Democratic party, 1950-52, p 30.

249.770

NOTES OF DECISIONS

The Secretary of State has a ministerial duty to file a certificate of nomination. *State v. Boyer*, (1928) 127 Or 91, 271 P 46.

ATTY. GEN. OPINIONS: An assembly of electors held prior to time fixed for filing certificates of nomination, 1942-44, p 471; determination that population classification for district court creation has been reached, 1960-62, p 17.

249.780

ATTY. GEN. OPINIONS: Applicability of this section to nominee of Democratic party, 1950-52, p 30; placing name of person other than major political party nominee on ballot, 1958-60, p 58.

249.820

NOTES OF DECISIONS

A certificate of nomination is not a public record until it is filed. State v. Brantley, (1954) 201 Or 637, 271 P2d 668.

249.830

ATTY. GEN. OPINIONS: Candidate nominated for office of county commissioner at primary election resigning such nomination and accepting nomination for office of county judge by county central committee of political party, 1934-36, p 46; effect of a withdrawal without formal acceptance, 1950-52, p 30; validity of attempted withdrawal, 1956-58, p 34.

249.840

CASE CITATIONS: Coovert v. Olcott, (1916) 81 Or 415, 159 P 974.

ATTY. GEN. OPINIONS: Nominations to fill vacancies on state ticket caused by nonacceptance of candidate, 1924-26, p 11.

249.850

ATTY. GEN. OPINIONS: Nominations to fill vacancies on state ticket caused by nonacceptance of candidates, 1924-26, p 11.