

Chapter 251

Election Contests; Recounts

Chapter 251

NOTES OF DECISIONS

This chapter provides procedure for contesting a park district election. *Cook v. Hill*, (1960) 224 Or 565, 356 P2d 1067.

251.015 to 251.090

CASE CITATIONS: *Cook v. Corbett*, (1968) 251 Or 263, 446 P2d 179; *Thornton v. Johnson*, (1969) 253 Or 342, 453 P2d 178.

251.015

ATTY. GEN. OPINIONS: Constitutionality of judicial reversal of voters' decision on a measure, (1969) Vol 34, p 704.

251.025

NOTES OF DECISIONS

The violation must be deliberate and material. *Cook v. Corbett*, (1968) 251 Or 263, 446 P2d 179; *Mosee v. Clark*, (1969) 253 Or 83, 453 P2d 176; *Thornton v. Johnson*, (1969) 253 Or 342, 453 P2d 178.

For a violation to be material, it is not essential to prove that the violation affected the result of the election. *Cook v. Corbett*, (1968) 251 Or 263, 446 P2d 179.

FURTHER CITATIONS: *Tazwell v. Davis*, (1913) 64 Or 325, 130 P 400; *Messick v. Duby*, (1917) 86 Or 366, 168 P 628; *State v. Johnson*, (1969) 1 Or App 363, 462 P2d 687.

ATTY. GEN. OPINIONS: Result when candidate receiving highest number of votes is ineligible, 1958-60, p 9; result when candidate becomes ineligible, 1958-60, p 366; constitutionality of judicial reversal of voters' decision on a measure, (1969) Vol 34, p 704.

251.035

NOTES OF DECISIONS

A former similar statute permitted the contestant to amend his complaint by delivering to his adversary the list of illegal votes which he intends to prove. *Tazwell v. Davis*, (1913) 64 Or 325, 130 P 400.

251.045

NOTES OF DECISIONS

Under former similar statute the petition was required to allege issuable facts indicating specific mistake or fraud. *Tazwell v. Davis*, (1913) 64 Or 325, 130 P 400.

251.060

NOTES OF DECISIONS

Under former similar statute there was no trial de novo

on an appeal and the trial court's findings were conclusive upon the appellate tribunal. *Ramsey v. Howard*, (1934) 148 Or 542, 36 P2d 602.

This chapter provides procedure for contesting a park district election. *Cook v. Hill*, (1960) 224 Or 565, 356 P2d 1067.

Subsection (2) is independent of other statutes governing contest proceedings. *Combs v. Groener*, (1970) 256 Or 336, 472 P2d 281.

251.070

NOTES OF DECISIONS

I. Under former similar statute

- (1) In general
- (2) Notice of contest
- (3) Function of court
- (4) Evidence

I. Under former similar statute

(1) **In general.** If it could be ascertained to whom a majority of the legal votes were given, the office would be awarded to him who was found to have such a majority. *Day v. Kent*, (1854) 1 Or 124, 128.

The main question in an election contest was which candidate received the highest number of legal votes cast. *Wood v. Fitzgerald*, (1870) 3 Or 568.

One already in possession of a certificate of election had no occasion to resort to the election contest. *Warner v. Myers*, (1870) 4 Or 72.

Costs and disbursements could not be recovered. *Wood v. Fitzgerald*, (1870) 3 Or 568. **But see** *Hughes v. Holman*, (1893) 24 Or 1, 38 P 4.

Findings of fact were required to be made by the court in an election contest; the written argument and reasoning of the court could not be treated as findings. *Breding v. Williams*, (1898) 33 Or 391, 54 P 206.

Failure to issue the citation was immaterial if the adverse party duly appeared. *Tazwell v. Davis*, (1913) 64 Or 325, 130 P 400.

The contest contemplated by the statute was a special summary proceeding, and was neither a suit nor an action. *Livesley v. Landon*, (1914) 69 Or 275, 138 P 853.

Only persons claiming the office were entitled to contest the election. *Messick v. Duby*, (1917) 86 Or 366, 168 P 628.

(2) **Notice of contest.** The notice served the purpose of a summons and a complaint had to be served and filed within 30 days, containing the title of the cause, the name of the court and the parties to the contest. *Whitney v. Blackburn*, (1889) 17 Or 564, 571, 21 P 874, 11 Am St Rep 857.

The statement of the cause consisted of averments of the facts which gave rise to the right to contest, or constituted the grounds of such contest. *Id.*

A notice consisting of mere general statements and which failed to point out with the requisite certainty any irregularity or illegality in the election was insufficient. *Id.*

(3) **Function of court.** A contest was in the nature of an action at law tried by the court without the intervention

of a jury. *Hartman v. Young*, (1888) 17 Or 150, 154, 20 P 17, 11 Am St Rep 787, 2 LRA 596; *Fenton v. Scott*, (1888) 17 Or 189, 20 P 95, 11 Am St Rep 801.

The only thing that could be considered by the court was the illegal votes, and the court could not open up the polls and count votes that had been rejected by the judges of election. *Darragh v. Bird*, (1870) 3 Or 229.

The function of the court was to determine who was duly elected, and order a certificate to be issued by the clerk to the person so declared to have been duly elected. *Warner v. Myers*, (1870) 4 Or 72.

The court had to resort to the statute to ascertain its powers in an election contest. *Tazwell v. Davis*, (1913) 64 Or 325, 130 P 400.

(4) **Evidence.** The burden of proof rested on the plaintiff. He had to establish that the ballots had been kept intact, and were the genuine, identical ballots cast at the election. *Hartman v. Young*, (1888) 17 Or 150, 20 P 17, 11 Am St Rep 787, 2 LRA 596; *Fenton v. Scott*, (1888) 17 Or 189, 20 P 95, 11 Am St Rep 801.

The official returns were prima facie evidence that the result was as declared, but such returns or canvass was never conclusive, unless made so by statute. *Hartman v. Young*, (1888) 17 Or 150, 20 P 17, 11 Am St Rep 787, 2 LRA 596.

The ballots constituted the best evidence of the intention and choice of the voters. *Fenton v. Scott*, (1888) 17 Or 189, 20 P 95, 11 Am St Rep 801; *Hartman v. Young*, (1888) 17 Or 450, 20 P 17, 11 Am St Rep 787, 2 LRA 596; *Hughes v. Holman*, (1893) 23 Or 481, 483, 32 P 298.

The votes of a precinct could not be rejected because a poll book was not sent to the county clerk. *Day v. Kent*, (1854) 1 Or 124.

FURTHER CITATIONS: *Cresap v. Gray*, (1882) 10 Or 345, 348; *Van Winkle v. Crabtree*, (1899) 34 Or 462, 55 P 831, 56 P 74; *Osborne v. Zimmerman*, (1940) 165 Or 92, 105 P2d 1097; *Combs v. Groener*, (1970) 256 Or 336, 472 P2d 281.

ATTY. GEN. OPINIONS: Annual meeting of a first class school district as election within the section, 1940-42, p 334.

251.080

NOTES OF DECISIONS

The contestant should have the burden of proving his case by clear and convincing evidence. *Thornton v. Johnson*, (1969) 253 Or 342, 453 P2d 178.

The Oregon Constitution vests sole jurisdiction of a contest involving a legislative office in the appropriate house of the Legislative Assembly. *Combs v. Groener*, (1970) 256 Or 336, 472 P2d 281.

FURTHER CITATIONS: *Cook v. Corbett*, (1968) 251 Or 263, 446 P2d 179; *State v. Johnson*, (1969) 1 Or App 363, 462 P2d 687.

ATTY. GEN. OPINIONS: Constitutionality of judicial reversal of voters' decision on a measure, (1969) Vol 34, p 704.

251.090

NOTES OF DECISIONS

1. Under former similar statute

On appeal the case was not to be tried de novo. *Hughes v. Holman*, (1893) 23 Or 481, 483, 32 P 298; *Breeding v. Williams*, (1898) 33 Or 391, 54 P 206; *Van Winkle v. Crabtree*, (1899) 34 Or 462, 481, 55 P 831, 56 P 74.

A contested election proceeding was not a "civil case" within statutes authorizing appeals from judgments in civil cases. *Tazwell v. Davis*, (1913) 64 Or 325, 342, 130 P 400.

There was no right of appeal except when conferred by statute. *Livesley v. Landon*, (1914) 69 Or 275, 282, 138 P 853.

FURTHER CITATIONS: *Cresap v. Gray*, (1882) 10 Or 345, 348.

251.510

ATTY. GEN. OPINIONS: Construing candidate, (1970) Vol 34, p 1126.

251.520

ATTY. GEN. OPINIONS: Setting date recount commences, (1968) Vol 34, p 354.

251.550

ATTY. GEN. OPINIONS: Setting date recount commences, (1968) Vol 34, p 354.

251.610

ATTY. GEN. OPINIONS: Wages paid to guards, 1956-58, p 54.

251.625

ATTY. GEN. OPINIONS: Setting date recount commences, (1968) Vol 34, p 354.