

Chapter 251

Contest of Nominations and Elections

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CROSS REFERENCES

- City council to judge qualifications and election returns of its members, in cities organized under 1893 Act, 221 910
- Jurisdiction of each house of the Legislative Assembly in judging of the election and returns of its own members, Const. Art IV, § 11
- Manner in which contested elections for Governor shall be determined, Const. Art. V, § 6
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CONTEST BETWEEN PERSONS CLAIMING NOMINATION BY PRIMARY ELECTION

251.010 Notice of contest of nomination; when given. Any person wishing to contest the nomination of any other person to any state, county, district, township, precinct or municipal office may give notice in writing to the person whose nomination he intends to contest. The notice shall state that his nomination will be contested and, briefly, the cause of the contest. The notice shall be given within five days from the time the person claims to have been nominated.

251.020 Serving notice of contest; return; hearing by court. (1) The notice shall be served in the same manner as a summons issued out of the circuit court. It shall be served three days before any hearing upon the contest takes place. It shall state the time and place of the hearing.

(2) Upon return of the notice served to the clerk of the county, he shall enter it upon his issue docket as an appeal case and it shall be heard immediately by the circuit court. If the case cannot be determined by the circuit court in term time, within 15 days after the termination of the primary election, the judge of the circuit court may hear and determine it at chambers immediately. He shall make all necessary orders for the trial of the case and carrying his judgment into effect. The circuit court provision of this section shall not apply to township or precinct officers.

(3) In case of contest between any persons claiming to be nominated to any township or precinct office, the notice shall be served in the manner described in this section and returned to the county court of the county.

251.030 Procedure for hearing a contest of a nomination. (1) Each party to a contest of a nomination shall be entitled to subpoenas and subpoenas duces tecum, as in ordinary cases of law. The court shall hear and determine the contest without the intervention of a jury. This shall be in a manner as shall carry into effect the expressed will of a majority of the legal voters of the political party as indicated by their votes for the nominations. Technicalities or errors in spelling the name of any candidate for the nomination shall not be regarded.

(2) The county clerk shall issue a certifi-

cate to the person declared to be nominated by the court. This shall be conclusive evidence of the right of the person to hold the nomination.

251.040 Appeal. The judgment or decision of the circuit court in term time, or a decision of a judge thereof in vacation, as the case may be, may be removed to the Supreme Court, in such manner as may be provided for removing such causes from the circuit court to the Supreme Court. Appeals may be taken from the decision of the county court to the circuit court. In all cases the party removing any such judgment or decision by appeal shall file in the proper court a bond to the opposite party, in such sum and with such sureties as shall be prescribed by a judge thereof, conditioned for the payment of all costs that may be properly taxed against him. On any such appeal it shall be advanced on the docket and heard and decided on appeal soon enough to place the name of the successful contestant on the official white ballot as such nominee at the ensuing election; and the courts shall make the necessary rules to accomplish this result.

251.050 ORS 251.130 and 251.160 to apply to contests for nomination. ORS 251.130 and 251.160, so far as they do not conflict with ORS 251.010 to 251.040, apply to primary elections held under the provisions of the primary election law, which includes those sections referred to in ORS 249.010 as the primary election law.

251.060 to 251.100 [Reserved for expansion]

CONTEST OF ELECTION (OTHER THAN PRIMARY ELECTION) BY PERSON CLAIMING THE OFFICE

251.110 Notice of contest of election; when given. (1) Any person wishing to contest the election of any person to any county, district, township, city, town or precinct office, may give written notice to the person whose election he intends to contest. The notice shall state that his election will be contested and, briefly, the cause of the contest. This shall be done within 30 days from the time the person claims to have been elected.

(2) Subsection (1) of this section, in so far as it relates to incorporated cities and towns, shall apply to incorporated cities and

towns having a population of over 2,000 inhabitants according to the last United States census.

251.120 Serving notice of contest; return; hearing by court. (1) The notice shall be served in the same manner as a summons issued out of the circuit court. It shall be served 10 days before any hearing upon the contest takes place. It shall state the time and place of the hearing.

(2) Upon return of the notice served to the clerk of the county, he shall enter it upon his issue docket as an appeal case and it shall be heard in its order by the circuit court. If the case cannot be determined by the circuit court in term time, within one month after the termination of the election, the judge of the circuit court may hear and determine it at chambers as soon as practicable. He shall make all necessary orders for the trial of the case and carrying his judgment into effect. This section shall not apply to township or precinct officers.

(3) In case of contest between any persons claiming to be elected to any township or precinct office, the notice shall be served in the manner described in this section and returned to the county court of the county.

251.130 Hearing by county court of contest for township or precinct office. Upon return of the notice to the county court, as provided in subsection (3) of ORS 251.120, and on the day and at the place named, the county judge shall hear and determine the contest. He shall make all necessary orders for trial of the cause and carrying his judgment into effect.

251.140 Procedure for hearing a contest of an election. (1) Each party shall be entitled to subpoenas and subpoenas duces tecum, as in ordinary cases of law. The court shall hear and determine the contest without the intervention of jury. This shall be done in a manner as shall carry into effect the expressed will of a majority of the legal voters as indicated by their votes for the office. Technicalities or errors in spelling the name of any candidate for the office shall not be regarded.

(2) The county clerk shall issue a certificate to the person declared to be elected by the court. This shall be conclusive evidence of the right of the person to hold the office.

251.150 Appeal. The judgment or decision of the circuit court in term time, or a

decision of a judge thereof in vacation, as the case may be, may be removed to the Supreme Court, in such other manner as is provided for removing causes from the circuit court to the Supreme Court. Appeals may be taken from the decision of the county court to the circuit court, as in other cases. In all cases the party removing any such judgment or decision by appeal shall file in the proper court a bond to the opposite party, in such sum and with such sureties as shall be prescribed by a judge thereof, conditioned for the payment of all costs that may be properly taxed against him.

251.160 Construction of ORS 251.110 to 251.150. ORS 251.110 to 251.150 shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by law.

251.170 to 251.300 [Reserved for expansion]

CONTEST OF NOMINATION OR ELECTION BY ANY ELECTOR

251.310 Grounds of contest. Any elector of the state, or of any political or municipal division of the state, may contest the right of any person to any nomination or office for which the elector has the right to vote. This may be done for any of the following causes and not otherwise:

(1) On the ground of deliberate, serious and material violation of any of the provisions of the law defining corrupt and illegal practices in nominations and elections, or of any other provisions of the law relating to nominations or elections.

(2) When the person whose right was contested was not, at the time of election, eligible for the office.

(3) On account of illegal votes, or an erroneous or fraudulent count or canvass of votes.

251.320 Contest on ground of illegal votes. Nothing in subsection (3) of ORS 251.310 is to be construed to authorize a nomination or election to be set aside on account of illegal votes, unless it appears:

(1) Either that the candidate or nominee whose right is contested had knowledge of or connived in the illegal voting; or

(2) That the number of illegal votes, if taken from the person whose right to the nomination or office is contested, would re-

duce his legal votes below the number given to some other person for the same nomination or office, after deducting therefrom the illegal votes which are shown to have been given to the other person

251.330 Procedure for proof when contest is on the ground of illegal votes. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts, illegal votes were given to the person whose nomination or election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office. No testimony shall be received of any illegal votes unless the party contesting delivers to the opposite party, at least three days before trial, a written list of the number of illegal votes, and by whom given, which he intends to prove at the trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in the statement if he did not know and by reasonable diligence was unable to learn of the additional illegal votes, and by whom given, before delivering the written list.

251.340 General contents of a petition contesting a nomination or election. (1) Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested and the grounds of the contest. It shall not thereafter be amended except by leave of the court.

(2) A petition or complaint filed under the provisions of ORS 251.310 to 251.410 shall be sufficient if it is substantially in the following form:

In the Circuit Court of the State of Oregon, for the County of

A. B , (or A. B and C. D.) contestant, }
 vs.
 E. F., contestee. }

The petition of contestant [or contestants] above named alleges:

That an election was held in [the state, district, county or city of], on the day of, A. D. 19...., for the [nomination of a candidate for] [or election of a] [state the office].

That and were candidates at the election and the board of canvassers has returned as being nominated [or elected] at the election.

That contestant A. B voted [or had a right to vote, as the case may be] at the election [or claims to have had a right to be returned as the nominee or other officer elected or nominated at the election or was a candidate at the election, as the case may be] and the contestant C. D. [here state in like manner the right of each contestant].

And the contestant [or contestants] further alleges [here state the facts and grounds on which the contestant relies].

Wherefore, your contestant prays that it may be determined by the court that was not nominated [or elected] and that the election was void [or that A B or C D., as the case may be, was duly nominated or elected], and for such other and further relief as the court may deem just and legal in the premises

The complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases

251.350 Petitioner's bond to the state.

Before any proceeding on the petition contesting the right of any person to a nomination or election, the petitioner shall give bond to the state in the sum the court may order, not exceeding \$2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds. The bond shall be conditioned upon the payment of all costs, disbursements and attorney's fees that may be awarded against him if he does not prevail. The prevailing party shall recover his costs, disbursements and reasonable attorney's fees against the losing party. If judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond.

251.360 Notice and hearing of contested nominations or elections.

On the filing of the petition contesting the right of any person to a nomination or election, the clerk shall immediately notify the judge of the court and issue a citation to the persons whose nomination or office is contested, citing them to appear and answer not less than three nor more than seven days after the date of filing the petition. The court shall hear the cause and every contest shall take precedence over all other business on the court docket. It shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of these cases.

251.370 Removal, appeal and bond for petitions contesting elections. The judgment or decision of the circuit court in term time, or a decision of a judge in vacation, on the petition contesting the right of any person to a nomination or election, may be removed or appealed to the Supreme Court in the manner provided for removing or appealing other cases from the circuit court to the Supreme Court. Appeals may be taken from the decision of the county court as in other cases. In all cases the party removing or appealing the judgment or decision shall file in the proper court a bond to the opposite party. It shall be in the sum the court may adjudge, with one or more sureties, who shall justify in the manner required of sureties on bail bonds. It shall be conditioned upon the payment of the judgment and all costs, disbursements and attorney's fees that may be awarded against him if he does not prevail.

251.380 Parties to contests; consolidation of causes; use of a jury. (1) The petitioner and the contestee may appear and produce evidence at the hearing. No person other than the petitioner and contestee shall be made a party to the proceedings on the petition; and no person other than the parties and their attorneys shall be heard on it, except by order of the court.

(2) If more than one petition is pending, or the election of more than one person is contested, the court may, in its discretion, order the cases to be heard together and may apportion the costs, disbursements and attorneys' fees between them. The court shall finally determine all questions of law and fact, save only that the judge may empanel a jury to decide on questions of fact.

251.390 Certification of decision; issuance of certificates of nomination or election. In the case of a contested nomination or election for Senator or Representative in the Legislative Assembly, or for Senator or Representative in Congress, the court shall immediately certify its findings to the Secre-

tary of State. He shall transmit them to the presiding officer of the body in question. In the case of other nominations or elections, the court shall immediately certify its decision to the board or official issuing certificates of nomination or election. The board or official shall then issue certificates of nomination or election to the persons entitled thereto by such decision.

251.400 Judgment of ouster; filling vacancies. If judgment of ouster against a defendant is rendered, the judgment shall award the nomination or office to the person receiving next to the highest number of votes. This shall be done unless it is further determined in the action, upon appropriate pleading and proof by the defendant, that some act has been done or committed which would have been ground in a similar action against such person, had he received the highest number of votes for the nomination or office, for a judgment of ouster against him. If it is so determined at the trial, the nomination or office shall be by the judgment declared vacant and shall then be filled by a new election, or by appointment, as may be provided by law regarding vacancies in nomination or office.

251.410 Determination of contest based on casting of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that another person than the one returned has the highest number of legal votes, after the illegal votes have been eliminated, the court must declare that person nominated or elected, as the case may be.

251.420 Application of ORS 260.010 to 260.520 to contests. ORS 260.010 to 260.520 are applicable, in so far as provided by the terms thereof, to ORS 251.310 to 251.410; and the definitions contained in ORS 260.010 are applicable to ORS 251.310 to 251.410, unless other meanings are clearly apparent from the language or context or unless such meanings are inconsistent with the manifest intent of the law.