

## CHAPTER 62

## CONTESTING ELECTIONS OF COUNTY OFFICERS

Referred to in [§43.5](#), [50.12](#), [57.6](#), [58.1](#), [59.2](#), [60.4](#), [61.3](#), [331.505](#), [376.10](#)

Chapter applicable to primary elections, §43.5

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**62.1 Definitions.**

As used in [this chapter](#), unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in [section 445.1](#).

[2000 Acts, ch 1148, §1](#)

**62.1A Contest court established.**

The court for the trial of contested county elections shall consist of one member named by the contestant and one member named by the incumbent. If the incumbent fails to name a member, the chief judge of the judicial district shall be notified of the failure to appoint. The chief judge shall designate the second member within one week after the chief judge is notified. These two members shall meet within three days and select a third member to serve as the presiding member of the court. If they cannot agree on the third member of the court within three days after their initial meeting, the chief judge of the judicial district shall be notified of the failure to agree. The chief judge shall designate the presiding member within one week after the chief judge is notified.

[C51, §343; R60, §573; C73, §695; C97, §1201; C24, 27, 31, 35, 39, §1020; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.1]

[97 Acts, ch 170, §76](#)

C2001, §62.1A

[2009 Acts, ch 133, §16](#)

Referred to in [§331.383](#)

**62.2 Contest court members sworn.**

Members of the contest court shall be sworn in the same manner and form as trial jurors are sworn in trials of civil actions. When a member fails to appear on the day of trial, that member’s place may be filled by the appointment of another member under the same rule.

[C51, §347, 348; R60, §577, 578; C73, §700; C97, §1206; C24, 27, 31, 35, 39, §1021; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.2]

[97 Acts, ch 170, §77](#); [2009 Acts, ch 133, §17](#)

**62.3 Clerk.**

The county auditor shall be clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of

the district court, but when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded.

[C51, §344; R60, §574; C73, §696; C97, §1202; C24, 27, 31, 35, 39, §1022; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.3]

Referred to in [§331.508](#)

#### **62.4 Sheriff to attend.**

The court or presiding judge may direct the attendance of the sheriff or a deputy when necessary.

[C51, §359; R60, §589; C73, §708; C97, §1214; C24, 27, 31, 35, 39, §1023; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.4]

Referred to in [§331.653](#)

#### **62.5 Statement of intent to contest.**

1. Within twenty days after the board of supervisors declares a winner from the canvass of an election, the contestant shall file with the commissioner a written statement of intention to contest the election. If a recount is held for the office in question, and the recount board finds that the winner was someone other than the person declared at the original canvass of votes, a contest may be filed within twenty days after the board of supervisors declares a winner from the recount of votes.

2. The contestant's statement shall include the following:

- a. The name of the contestant and that the contestant is qualified to hold such office.
- b. The name of the incumbent.
- c. The office contested.
- d. The date of the election.

e. The particular causes of the contest pursuant to [section 57.1, subsection 2](#). If a cause of the contest is an allegation that illegal votes were received or that legal votes were rejected, a statement shall be included setting forth the names of the persons who are alleged to have voted illegally or whose votes were rejected and the precinct where they voted or offered to vote.

f. The affidavit of the contestant, or some elector of the county, affirming the causes set forth are true.

[C51, §345; R60, §575; C73, §697; C97, §1203; C24, 27, 31, 35, 39, §1024; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.5]

[2002 Acts, ch 1134, §75, 114, 115](#)

#### **62.6 Bond.**

The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail.

[C51, §345; R60, §575; C73, §697; C97, §1203; C24, 27, 31, 35, 39, §1025; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.6]

#### **62.7 When auditor is party.**

When the auditor is a party, the county treasurer shall receive such statement and approve such bond.

[C73, §697; C97, §1203; C24, 27, 31, 35, 39, §1026; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.7]

[93 Acts, ch 70, §1](#)

**62.8** Repealed by 2002 Acts, ch 1134, §114, 115. See §62.5.

#### **62.9 Trial — notice.**

The presiding judge shall fix a day for the trial, not more than thirty days thereafter, and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial. If the trial date is set for less than

twenty days from the day notice is given and either party is not ready, the presiding judge shall delay the trial.

[C51, §347, 349, 350; R60, §577, 579, 580; C73, §699; C97, §1205; C24, 27, 31, 35, 39, §1028; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.9]

[97 Acts, ch 170, §78](#)

Referred to in [§331.383](#)

#### **62.10 Place of trial.**

The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties.

[C51, §357; R60, §587; C73, §707; C97, §1213; C24, 27, 31, 35, 39, §1029; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.10]

#### **62.11 Subpoenas.**

Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the county treasurer or by the county auditor, and shall command the witnesses to appear at ....., on ....., to testify in relation to a contested election, wherein ..... (Insert contestant's name) is contestant and ..... (Insert incumbent's name) is incumbent.

[C51, §352, 356; R60, §582, 586; C73, §704, 706; C97, §1210; C24, 27, 31, 35, 39, §1030; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.11]

[93 Acts, ch 70, §2](#); [2000 Acts, ch 1058, §11](#)

#### **62.12 Postponement.**

The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement shall be in the discretion of the court.

[C51, §353; R60, §583; C73, §701; C97, §1207; C24, 27, 31, 35, 39, §1031; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.12]

#### **62.13 Procedure — powers of court.**

The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination, to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

[C51, §354, 358, 361; R60, §584, 588, 591; C73, §702; C97, §1208; C24, 27, 31, 35, 39, §1032; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.13]

#### **62.14 Sufficiency of statement.**

The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest.

[C51, §355; R60, §585; C73, §705; C97, §1211; C24, 27, 31, 35, 39, §1033; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.14]

#### **62.15 Amendment — continuance.**

If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment, if the incumbent states on oath that the incumbent has matter of answer to the amended causes, for the preparation of which the incumbent needs further time. Such adjournment shall be upon such terms as the court thinks reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be

at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

[C51, §355, 361; R60, §585, 591; C73, §705; C97, §1211; C24, 27, 31, 35, 39, §1034; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.15]

#### **62.16 Testimony.**

The testimony may be oral or by deposition, taken as in an action at law in the district court.

[C51, §351; R60, §581; C73, §703; C97, §1209; C24, 27, 31, 35, 39, §1035; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.16]

Depositions in general, [R.C.P. 1.701 et seq.](#)

#### **62.17 Voters required to testify.**

The court may require any person called as a witness, who voted at such election, to answer touching the person's qualifications as a voter, and, if the person was not a registered voter in the county where the person voted, then to answer for whom the person voted.

[C51, §360; R60, §590; C73, §709; C97, §1215; C24, 27, 31, 35, 39, §1036; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.17]

[2001 Acts, ch 56, §5](#)

#### **62.18 Judgment.**

The court shall adjudge whether the incumbent or any other person was duly elected, and that the person elected is entitled to the certificate. If the court finds that the election resulted in a tie vote for any office, the tie shall be resolved pursuant to [section 50.44](#). If the judgment is against the incumbent, and the incumbent has already received the certificate, the judgment shall annul the certificate. If the court finds that no person was elected, the judgment shall be that the election be set aside.

[C51, §362; R60, §592; C73, §714; C97, §1220; C24, 27, 31, 35, 39, §1037; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.18]

[90 Acts, ch 1238, §32](#)

#### **62.19 How enforced.**

When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of the party's antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to the successful party all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

[C73, §715; C97, §1221; C24, 27, 31, 35, 39, §1038; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.19]

Referred to in [§62.20, 331.653](#)

#### **62.20 Appeal.**

The party against whom judgment is rendered may appeal within twenty days to the district court, but, if the party be in possession of the office, such appeal will not supersede the execution of the judgment of the court as provided in [section 62.19](#), unless the party gives a bond, with security to be approved by the district judge in a sum to be fixed by the judge, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that the party will prosecute the appeal without delay, and that, if the judgment appealed from be affirmed, the party will pay over to the successful party all compensation received by the party while in possession of said office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case.

[C73, §716; C97, §1222; S13, §1222; C24, 27, 31, 35, 39, §1039; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.20]

Presumption of approval of bond, [§636.10](#)

**62.21 Judgment.**

If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages, against the appellant and the sureties thereon.

[C73, §717; C97, §1223; C24, 27, 31, 35, 39, §1040; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.21]

**62.22 Process — fees.**

The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits.

[C51, §356, 374; R60, §586, 604; C73, §706, 724; C97, §1212; C24, 27, 31, 35, 39, §1041; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.22]

**62.23 Compensation.**

The judges shall be entitled to receive one hundred dollars a day for the time occupied by the trial.

[C51, §363; R60, §593; C73, §710; C97, §1216; C24, 27, 31, 35, 39, §1042; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.23]

[93 Acts, ch 143, §39](#)

**62.24 Costs.**

The contestant and the incumbent are responsible for the expenses of the witnesses called by them, respectively. If the results of the election are upheld by the contest, if the statement is dismissed, or if the prosecution fails, the costs of the contest shall be paid by the contestant. If the court or tribunal trying the contest determines that the contestant won the election, or if the election is set aside, the costs of the contest shall be paid by the county.

[C51, §364; R60, §594; C73, §711; C97, §1217; C24, 27, 31, 35, 39, §1043; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.24]

[93 Acts, ch 143, §40](#)

**62.25 How collected.**

A transcript of the judgment may be filed and recorded in the office of the clerk of the district court and shall have the effect of a judgment of that court and execution may issue thereon.

[C51, §365; R60, §595; C73, §712; C97, §1218; C24, 27, 31, 35, 39, §1044; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.25]