

Chapter 7

Contests

This chapter of the handbook contains information about contests for county, school, and city contests. It also provides a brief overview for state and federal offices.

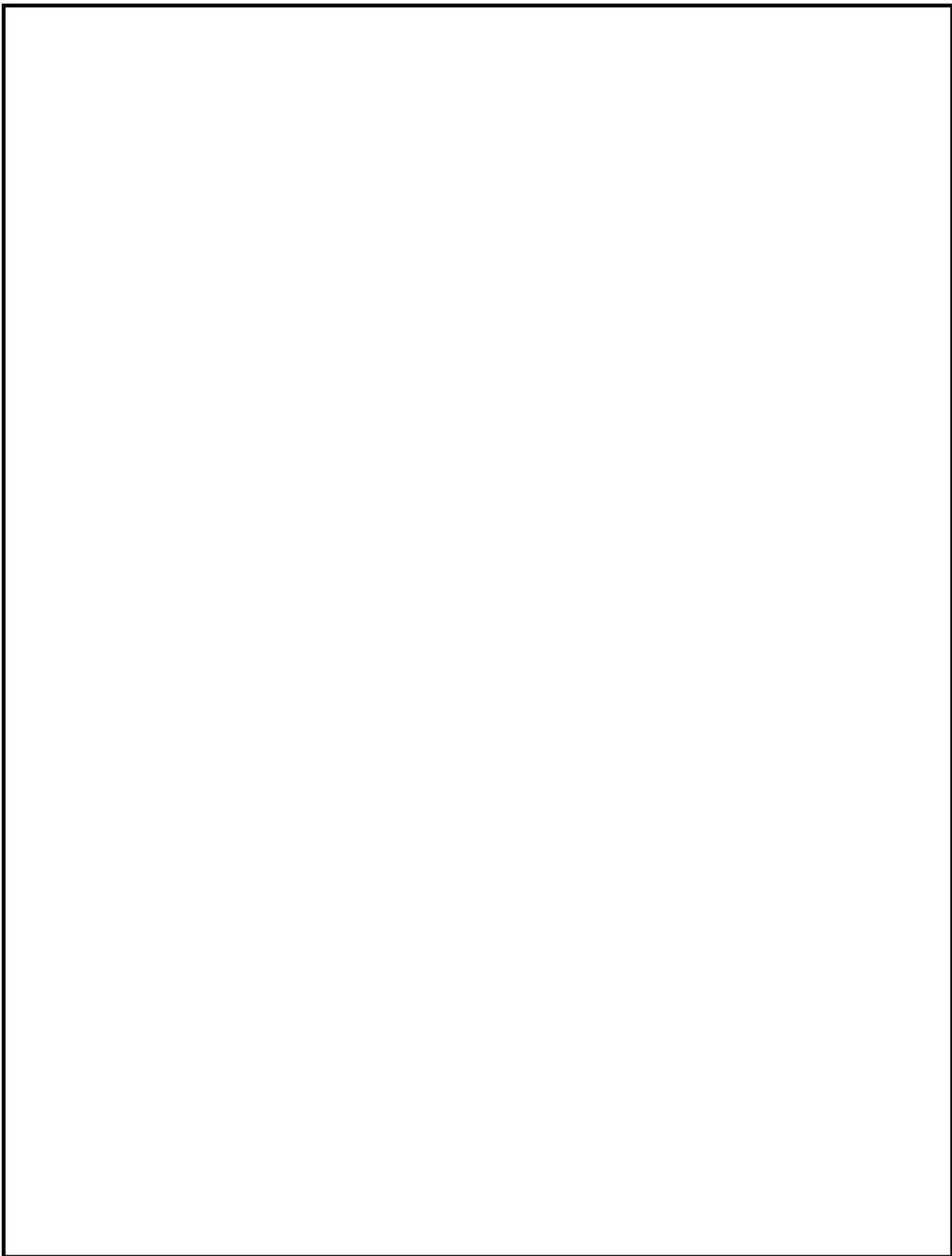


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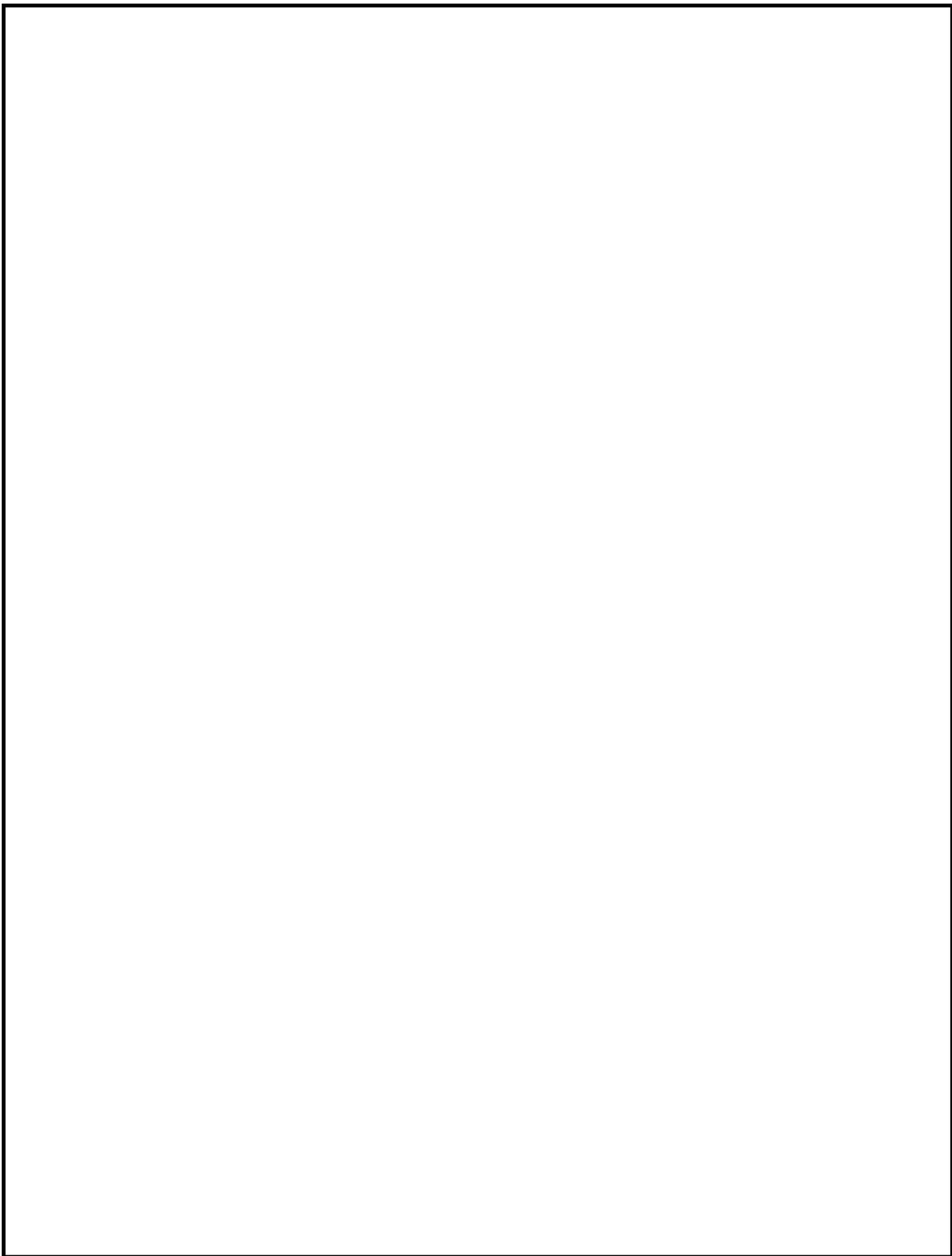
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Overview

An election contest is the formal process for challenging the results of an election by alleging that improper activities resulted in an incorrect outcome.

Legal Advice: The *Iowa Code* sections governing election contests are vague and do not answer all of the legal questions that may arise during the course of the contest. The SOS cannot provide the legal advice needed to resolve those legal questions. Please consult with your county attorney's office.

Elections that can be Contested

- County offices, school board offices, city offices
- General assembly and statewide offices, Congressional seats, and presidential electors
- Any public measure

[§57.1(1-2), 277.22, 376.10]

Grounds for Contesting an Election

1. Misconduct, fraud or corruption on the part of any election official or of any board of canvassers of sufficient magnitude to change the result of the election.
2. That the incumbent was not eligible to hold the office in question at the time of election.
3. That prior to the election the incumbent was convicted of a felony, as defined in §701.7, and that the judgment was not reversed, annulled, or set aside, nor the incumbent pardoned or restored to the rights of citizenship by the governor under chapter 914, at the time of the election.
4. That the incumbent has given or offered to any elector, or any precinct election official or canvasser of the election, any bribe or reward in money, property, or thing of value, for the purpose of procuring the incumbent's election.
5. That illegal votes have been received or legal votes rejected at the polls, sufficient to change the result of the election.
6. Any error in any board of canvassers in counting the votes, or in declaring the result of the election, if the error would affect the result.
7. That the public measure or office was not authorized or required by state law to appear on the ballot at the election being contested.
8. Any other cause or allegation which, if sustained, would show that a person other than the incumbent was the person duly elected to the office in question, or would show the outcome of the election on the public measure in question was contrary to the result declared by the board of canvassers.

County, School, and City Contests

Who May Contest

Elective Offices

Any eligible elector* who received votes for the office in question may contest an election.

Public Measures

Eligible electors* must sign a petition requesting the contest.

Required Number of Signatures

Petitions must have at least a number of signatures that equaling one percent of the total votes cast for the public measure or 10, whichever is greater.

[§57.1]

*An eligible elector is a person who was entitled to vote on the public measure in question or would have been so entitled if the person had registered to vote. Signers are not required to have voted in the election.

How Contests are Initiated

Elective Offices

Written statement of the intent to contest the election must be filed with the appropriate filing officer within a specified time period after the election or official canvass of votes is complete.

Public Measures

A petition of the intent to contest the election must be filed with the auditor within 20 days of the board of supervisors' canvass of votes for the election.

Note: When a recount is held after a county, school, or city election and that recount changes the outcome of the election (i.e. the winner or pass/failure of the measure), the deadline to the contest the election is 20 days from the recount canvass.

[§62.5]

See the "Contest Filing Officer, Deadline, and Notice for Elective Offices Table" on the following page for details about election contest filing officers and associated contest filing deadlines and notice requirements.

Contest Filing Officers, Deadlines, and Notices

Office:	File With:	Filing Deadline:	Code Cite:
School Board	County Auditor	Within 20 days of original canvass by board of supervisors OR Within 20 days of a canvass by board of supervisors that followed a recount that changed the winner of the election	§277.22, 57.6, 62.5
City Office	City Clerk or County Auditor	With the city clerk within 10 days of the election OR With the county auditor within 20 days of a canvass by board of supervisors that followed a recount changing the outcome	§376.10
County Office	County Auditor If auditor is party to the contest, the county treasurer.	Within 20 days of original canvass by board of supervisors OR Within 20 days of a canvass by board of supervisors that followed a recount changing the outcome	§62.5
State Senator State Representative (this information is not applicable to special elections)	1. Original notice to incumbent in the manner provided by the rules of civil procedure for service, and 2. Copy of notice to the SOS. The SOS will notify the presiding officer of the house or senate.	1. Notice to incumbent due at least 20 days before first day of the next session 2. Notice to the Secretary of State must be filed within five days of the incumbent being served	§59.1
Governor/Lt. Governor	Presiding officer of each house of the Iowa General Assembly.	30 days after state canvass for primary elections 30 days after proclamation of result by General Assembly for general elections	§58.1
Secretary of State, Auditor of State, Treasurer of State, Secretary of Agriculture, Attorney General	SOS If SOS is party to contest, the clerk of the supreme court or in absence of that person, the state auditor.	Within 30 days of the state canvass of votes	§61.3
U.S. Senator, U.S. Representative, & Presidential Elector	1. Original notice to SOS, and 2. Copy of notice to incumbent in the manner provided by the rules of civil procedure for service.	Both within 2 days of state canvass of votes	§60.4

Steps in the Contest Process

Contested elections for school offices, city offices, and public measures follow the provisions governing county officer contest proceedings.

[§57.6]

Step 1: Statement of Intent to Contest

County and School Offices

The notice of contest must include the following:

- The name of the contestant and that the contestant is qualified to hold such office.
- The name of the incumbent.
- The office contested.
- The date of the election.
- If a cause of the contest is an allegation that illegal votes were received or that legal votes were rejected, a statement must 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.
- The affidavit of the contestant, or some elector of the county, affirming the causes set forth are true (i.e. the reason for contest as listed in §57.1(2)).

[§62.5]

Before the statement is filed, ensure it meets all of the legal requirements for filing. Do not file a legally insufficient statement of intent. As with other filings, time and date stamp the statement upon filing. If you are unsure whether a statement is legally sufficient, consult with the county attorney.

Important Note: When the auditor is a party to the contest, the county treasurer is the filing officer for the statement of intent.

[§62.7]

City Offices

Notices of contests for city offices must meet the same requirements as county and school offices; however, notices are filed with the city clerk and in a shorter timeframe. It is not the auditor's responsibility to accept the filing unless the notice is filed after a recount which changed the outcome of the election.

Public Measures

The contest petition must include the following:

- A number of signatures from eligible electors that equals at least one percent of the total votes cast for the public measure or 10, whichever is greater
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- An affidavit of the signers, affirming the causes set forth are true (i.e. the reason for contest (listed in §57.1(2))
- The name of the person designated by the petitioners to serve on the contest court
- The date of the election at which the question appeared on the ballot
- The letter, number, or description of the public measure for which the contest is being petitioned
- 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

[§57.1, 57.7, 62.5]

Before the statement is filed, ensure it meets all of the legal requirements for filing. Do not file a legally insufficient statement of intent. As with other filings, time and date stamp the statement upon filing. If you are unsure whether a statement is legally sufficient, consult with the county attorney.

Step 2: Bond

Bond is always required. The purpose of collecting and holding a bond is to ensure the court costs are paid. The contestant or petitioners must file a bond that is sufficient to pay all the costs in case the election is confirmed, the statement is dismissed, or the prosecution fails (i.e. the contestant loses).

If the contest court determines the contestant won the election, the costs of the contest are paid by the county.

If the contest court determines that the passage or failure of the public measure should have been opposite, the costs of the contest are paid by the county.

If the bond is not filed by the deadline for initiating the contest, no jurisdiction exists to continue and the contest should be dismissed. (See AHST Comm. School Dist. Public Measure "B", 735 N.W.2d 605 (Iowa 2007)).

There are no bond amounts set by statute for contests as there are for recounts. The auditor must determine the amount of the bond. The amount of the bond cannot include costs not directly related to the contest court proceedings. The amount is not intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

When determining the amount of the bond, the auditor must consider the following aspects of the cost of the election contest proceedings:

- Fees of officers and witnesses
- Fees for judges (judges are entitled to \$100 per day)
- The cost of making an official record of the proceedings
[§62.6, IAC 721—21.20(62), 21.21(62)]

Important Note: When the auditor is a party to the contest, the county treasurer determines and holds the bond.

[§62.7]

What Happens with the Bond

The bond should be kept in a safe place under the control of the auditor (or treasurer when appropriate) until the election contest concludes.

If the contestant loses, the bond is collected by the court as payment of court costs. If there is an overage (the bond did not cover the entire cost) the overage is the responsibility of the contestant. If the contest determines the contestant is the winner of the election or if the election is set aside, the bond is returned to the contestant.

[§62.6, 62.22, 62.23, 62.24, 62.25]

Step 3: Certificate of Election/Duplicate Abstract & Certifications

Elective Offices

When a notice of contest is filed before the certificate of election is delivered to the apparent winner, withhold the certificate until the determination of the contest.

If the certificate of election has already been issued, the auditor must send to the persons or political subdivisions affected by the notice of contest a statement advising them that the election is being contested and that the certificate is not valid until the election contest is resolved.

Public Measures

If a contest petition is filed before the duplicate abstract of votes and the county board of supervisors' declaration is certified, withhold the abstract and certification until the determination of the contest.

If the duplicate abstract and declaration have already been issued, the auditor must send the persons or political subdivisions affected by the notice of contest a statement advising them that the election is being contested and that the duplicate abstract and declaration are not valid until the election contest is resolved.

[§57.2]

Step 4: Contest Court

Contest courts consist of three members.

Elective Offices

- One person designated by the contestant
- One person designated by the incumbent

If the incumbent fails to designate someone, the chief judge of the judicial district must be notified of the failure. The chief judge selects the second member. The chief judge must make a designation within one week of being notified.

There is no deadline for the incumbent to designate a member. Seek legal advice from the county attorney.

- One person mutually agreed upon by the first two members. This person will serve as the presiding member of the court.

The first two members must meet within three days of being chosen to select the third member. If the first two members cannot agree upon the third, the chief judge of the judicial district selects the third member. The chief judge must make a designation within one week of being notified.

There is no deadline for the two members to choose a third member. Seek legal advice from the county attorney.

[§57.6, 62.1A]

Public Measures

- One person designated by the petitioners requesting the contest
- One person designated by the auditor to represent the side opposing that of the petitioners
- One person mutually agreed upon by the first two members

If the first two members cannot agree upon the third, the chief judge of the district court selects the third person.

[§57.7]

Participant Roles

The auditor serves as the clerk of the court. The auditor will keep all papers and record the proceedings in a similar manner to the record and proceedings of the district court. If the auditor is a party to the contest, the contest court will appoint a suitable person as clerk. The third member of the contest court serves as the presiding member. If necessary, the court or presiding member of the court may request the attendance of the sheriff or a deputy.

[§62.1A, 62.3, 62.4]

Step 5: The Trial

The Date

The presiding judge chooses the day of the trial. The presiding judge may delay the trial if the trial date is set for less than 20 days from the day the notice of intent to contest is given and either party is not ready.

Elective Offices

The notice of the trial with a copy of the contestant's statement must be served on the incumbent at least 10 days before the trial date.

[§62.9]

Public Measures

There is nothing in *Iowa Code* regarding sending notice of the trial to another party. Seek legal advice from the county attorney.

The Location

The trial must take place at the county seat.

[§62.10]

Swearing In Members

The contest court members must be sworn in the same manner and form as trial jurors are sworn in trial of civil actions.

[§62.2]

Subpoena Power

The auditor or the treasurer may issue subpoenas for witnesses at any time after the notice of the trial is given.

[§62.11]

Powers of the Court

The contest court has all the power of the district court necessary:

- to the right hearing and determination of the matter
- to compel the attendance of witnesses, swear them in, 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
- to enforce its order by attachment

The court is to be governed by the rules of law and evidence applicable to the case.

[§62.13]

Witnesses

The court may require voters who voted in the election as witnesses to answer questions regarding their qualifications as voters. If anyone was not a properly registered voter in the county where the person voted, the court may ask for whom the person voted.

[§62.17]

Testimony

Testimony may be oral or by deposition.

[§62.16]

Recanvass

Parties in contested elections have the right to have the ballots opened and all errors of the precinct election officials in counting or refusing to count ballots corrected by the contest court or tribunal. This must occur in an open session of the court or tribunal trying the contest.

[§57.5]

Uniform standards for counting votes in Iowa are found in *Iowa Administrative Code* chapter 721—26.

Only One Precinct Involved

If the contest is filed due to misconduct, fraud, or corruption by precinct election officials in a precinct, the contest court cannot set aside the election unless the rejection of the votes of that precinct would change the result of the election.

[§57.4]

Step 6: The Judgment

Elective Offices

The contest court must decide whether the incumbent or any other candidate was elected.

- If the court decides against the incumbent and the incumbent has already received the certificate, the judgment must annul the certificate.
- If the court found that the election resulted in a tie vote, the tie must be resolved pursuant to §50.44.
- If the court found that no person was elected, the election will be set aside.

[§62.18]

The presiding judge will issue an order to carry out the judgment of the court if the judgment was against the party in possession of the office. The order will command the county sheriff to put the successful party into possession of the office without delay with all books and papers of the office.

[§62.19]

Public Measures

The contest court must decide whether the public measure passed or failed.

- If the court reverses the results of the public measure election and the applicable jurisdiction has already received the duplicate abstract of votes and the county board of supervisor's declaration has been certified, the judgment must annul the duplicate abstract and the certification.
- If the court found that the election resulted in a tie vote, the measure will be judged to have failed pursuant to *Iowa Code* Chapter 50.
- If the court found that the measure neither passed nor failed, the election will be set aside.

[§62.18]

Appeal

The party who lost the contest may appeal the judgment within 20 days of the judgment to the district court.

Elective Offices

When the losing party is already in possession of the office, the court's judgment will be in effect unless the party gives a substantial bond. For more information about this specific circumstance, see §62.20.

Trial Costs

The costs of the contest are paid by the contestant or petitioners if the results of the election are upheld, the statement is dismissed, or the prosecution fails.

If the contest court determines that the contestant won the election, the costs of the contest are paid by the county.

The contestant and incumbent or petitioners and the county are responsible for the expenses of the witnesses they called.

[§62.24]

Contest Procedures for Other Offices

The following information is provided for information purposes only. The auditor is not the filing officer for any of the contest proceedings listed below.

Governor/Lt. Governor

Contest Court

Each chamber will choose seven members from its own body by lot.

The names of the members of each house, except the presiding officer, must be written on separate paper tickets and placed in a box in the presence of the Senate secretary and House clerk, respectively. The secretary and clerk in the presence of their respective house will draw the names of seven members from the box.

[§58.4]

Notifications

As soon as the presiding officers receive notification of the notice of contest, they should notify the incumbent with a copy of the notice and specifications. The notification must be served in the manner provided by the rules of civil procedure for service of an original notice by the sergeant at arms. The presiding officers must also notify their respective chamber.

[§58.2, 58.3]

Bond and Trial Costs

There are no requirements or specifications in *Iowa Code* regarding bonds or trial costs in contests for this office.

The Trial

The contest court must hold its meeting publicly at the Capitol.

Powers of the Court

The contest court has the following powers:

- Send for persons and papers
- Take all means necessary to procure testimony, extending like privileges to the contestant and incumbent
- Report its judgment to both houses of the General Assembly.

[§58.5]

Judgment

The final decision on the election from the contest court is conclusive. *Iowa Code* does not mention an appeal process.

[§58.7]

Statewide Offices

Contest Court

The contest court will consist of three district judges chosen by the chief justice of the Supreme Court. The clerk of the Supreme Court must notify the judges chosen as soon as possible. The SOS will serve as the clerk of the court. If the SOS is absent or party to the contest, the clerk of the Supreme Court will serve as the clerk.

The court will convene in Des Moines within 10 days after receiving notification from the clerk of the Supreme Court. The judges must take an oath before beginning the proceedings.

[§61.1, 2, 5, & 6]

Notifications

The court must notify the incumbent and send a copy of the contest statement in the manner provided by the rules of civil procedure for service of an original notice.

[§61.10]

Bond and Trial Costs

There are no requirements or specifications in *Iowa Code* regarding bonds or trial costs in contests for this office.

The Trial

The trial cannot be held sooner than 20 days after the notice of the contest was sent to the incumbent but must be held before the last Monday in January following the election.

[§61.9, 61.10]

Powers of the Court

The court may call for witnesses during the trial. The following persons may issue subpoenas for witnesses:

- The Secretary of State
- The clerks of the Supreme Court and district courts
- The justices of the Supreme Court and the judges of the district courts

Testimony may be oral or by deposition.

The judges will receive \$12 per day for their travel and attendance to be paid from the state treasury.

[§61.11, 61.14]

Judgment

The final decision on the election from the contest court has the force and effect of a judgment of the Supreme Court.

General Assembly

Contest Court

Each chamber will try contests for its own chamber (i.e. state senate for state senate contests, state house of representatives for state house contests).

[§59.5]

Notifications

After receiving a copy of the notice of contest from the contestant, the SOS will notify the presiding officer of the chamber in which the contest will be tried.

[§59.1]

Bond and Trial Costs

There are no requirements or specifications in *Iowa Code* regarding bonds or trial costs for contests for this office.

The Trial

Any judge or clerk of court of record may issue subpoenas to compel the attendance of witnesses. Depositions may be taken.

The depositions and notice for taking depositions will be sealed and transmitted to the SOS. They must be marked with the nature of the papers, the names of the contesting parties, and the branch of the General Assembly before whom the contest is to be tried.

The SOS will deliver the sealed notice and depositions to the presiding officer of the chamber on or before the second day of the session. The presiding officer will immediately give notice to the chamber.

[§59.2, 59.3, 59.4, 59.5]

Powers of the General Assembly

The chambers of the General Assembly may grant commission to take depositions as well as send for and examine witnesses.

[§59.6]

Judgment

The presiding officer of the chamber must certify the results of the contest to the SOS.

[§59.7]

Presidential Electors and Congress

Contest Court

The contest court will consist of the chief justice of the Supreme Court and four district court judges to be selected by the Supreme Court.

The SOS will serve as the clerk of the court. If the SOS is absent, the clerk of the Supreme Court will serve as the clerk.

[§60.1, 60.2]

Notifications

The clerk of the court must notify the judges chosen by the Supreme Court and the parties to the contest.

[§60.5]

Bond and Trial Costs

The contestant must file a bond with the office of the clerk of the Supreme Court sufficient to pay all costs in case the election is confirmed or the contest dismissed. The presiding judge sets the amount of the bond and determines the date on which the bond must be filed.

[§60.7]

The Trial

The clerk of the court determines the date the court will convene. It must be convened to organize within two days after the notices were sent.

Before performing their duties, each member of the court must take an oath before the SOS.

The judges will determine the rules for the trial as they think necessary for the protection of each party's rights and for a just and speedy trial. The trial itself must commence as early as practicable.

Judgment

The judgment must be rendered at least 6 days before the first Monday after the second Wednesday in December. The judgment will be authenticated by the presiding judge and clerk of court and filed with the SOS. The court's judgment is the final determination.

[§60.3, 60.5, 60.6]