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STATE DOCUMENTS

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# **ELECTION LAWS**

OF THE

## **STATE OF MONTANA**

### **1970**

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Arranged and Compiled from the Revised  
Codes of Montana of 1947,  
as Amended

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Compiled by  
Frank Murray, Secretary of State  
Helena, Montana

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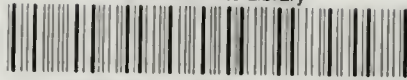
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# CONSTITUTION

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## ARTICLE III

### A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

**Section 2.** The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state, and to alter and abolish their constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the constitution of the United States.

**Section 5.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

## ARTICLE V

### LEGISLATIVE DEPARTMENT

**Section 1.** The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives; but the people reserve to themselves power to propose laws, and to enact or reject the same at the polls, except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article V, section 26, of this constitution, independent of the legislative assembly; and also reserve power, at their own option, to approve or reject at the polls, any act of the legislative assembly, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article V, section 26, of this constitution. The first power reserved by the people is the initiative and eight per cent. of the legal voters of the state shall be required to propose any measure by petition; provided, that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition eight per cent. of the legal voters in such county, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state, not less than four months before the election at which they are to be voted upon.

The second power is the referendum, and it may be ordered either by petition signed by five per cent. of the legal voters of the state, provided that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition five per cent. of the legal voters in such county, or, by the legislative assembly as other bills are enacted.

Referendum petitions shall be filed with the secretary of state, not later than six months after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is

demand. The veto power of the governor shall not extend to measures referred to the people by the legislative assembly or by initiative referendum petitions.

All elections on measures referred to the people of the state shall be had at the biennial regular general election, except when the legislative assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen per cent. of the legal voters of a majority of the whole number of the counties of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law. The whole number of votes cast for governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state; and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor. The enacting clause of every law originated by the initiative shall be as follows:

"Be it enacted by the people of Montana."

This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. (As amended by Ch. 61, Laws 1905, effective December 7, 1906.)

**Section 2.** Senators shall be elected for the term of four years, and representatives for the term of two years, except as otherwise provided in this constitution.

**Section 3.** No person shall be a representative who shall not have attained the age of twenty-one years, or a senator who shall not have attained the age of twenty-four years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

#### **Sec. 4.**

##### **Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

##### **Constitutionality**

The portion of this provision which

states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

**Section 9.** The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The house of representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.



**Section 26.** The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

**Sec. 45.**

**Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election

of November 8, 1966, effective under governor's proclamation, December 6, 1966.

**Sec. 46.** The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate

from other provisions of the Montana constitution, including but not limited to the following sections:

- (1) Section 3, Article X, seat of state government.
- (2) Section 2, Article XVI, seat of county governments.
- (3) Section 16, Article VII, succession to governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.

**Compiler's Notes**

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at

the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

## ARTICLE VI

### APPORTIONMENT AND REPRESENTATION

**Section 1.** One representative in the congress of the United States shall be elected from the state at large, the first Tuesday in October, 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new appointment shall be made by congress the legislative assembly shall divide the state into congressional districts accordingly.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

**Compiler's Notes**

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966,

effective under governor's proclamation, December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.



**Compiler's Notes**

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

**Secs. 4 to 6.**

**Repeal**

These sections were repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

**Constitutionality**

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

**ARTICLE VII**

**EXECUTIVE DEPARTMENT**

**Section 1.** The executive department shall consist of a governor, lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the Union, and shall end on the first Monday of January, A. D. 1893. The officers of the executive department, excepting the lieutenant-governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The state treasurer shall not be eligible to his office for the succeeding term.

**Cross-References**

Section 46, Article V would permit deviation from this section under emergency conditions.

**Section 2.** The officers provided for in section 1 of this article, shall be elected by the qualified electors of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall forthwith by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

**Section 3.** No person shall be eligible to the office of governor, lieutenant-governor, or superintendent of public instruction, unless he shall have

attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state, or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state or territory two years next preceding his election.

## ARTICLE VIII

### JUDICIAL DEPARTMENTS

#### SUPREME COURT

**Section 6.** The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided.

**Section 7.** The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.

**Section 8.** There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

**Section 9.** There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

**Section 10.** No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the



supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

#### DISTRICT COURTS

**Section 12.** The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

**Section 13.** Until otherwise provided by law judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; second district, Silver Bow county; third district, Deer Lodge county; fourth district, Missoula county; fifth district, Beaverhead, Jefferson and Madison counties; sixth district, Gallatin, Park and Meagher counties; seventh district, Yellowstone, Custer and Dawson counties; eighth district, Choteau, Cascade and Fergus counties.

**Section 16.** No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the supreme court of the territory or state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

**Section 18.** There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

#### COUNTY ATTORNEYS

**Sec. 19.** There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

**Compiler's Note**

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the constitution.

**JUSTICES OF THE PEACE**

**Section 20.** There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices' courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; provided, that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

**Proposed Repeal**

Section 5, Ch. 121, Laws 1961, proposed

repeal of sections 20 to 24. Approved March 2, 1961.

**MISCELLANEOUS PROVISIONS**

**Section 34.** Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorney, clerk of the district court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

**ARTICLE IX****RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE**

**Section 1.** All elections by the people shall be by ballot.

**Section 2.** Every person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to



citizenship by the governor: provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote. (As amended by Ch. 101, Laws 1931, effective December 9, 1932.)

**Proposed Amendment**

Chapter 14, Laws 1969, proposes to amend this section to read as follows:

"Section 2. Every person of the age of nineteen (19) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy,

debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor: provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote."

**Section 3.** For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison.

**Section 4.** Electors shall in all cases, except treason, felony or breach of peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

**Section 5.** No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

**Section 6.** No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

**Section 7.** No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.

**Section 8.** No idiot or insane person shall be entitled to vote at any election in this state.

**Section 9.** The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

**Section 10.** All persons possessing the qualifications for suffrage prescribed by Section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office. (As amended by Ch. 97, Laws 1923, effective December 9, 1924.)

**Section 11.** Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be prescribed by the legislative assembly for city offices and offices hereafter created.

**Section 12.** Upon all questions submitted to the vote of the taxpayers of the state, or any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote.

**Section 13.** In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.

## ARTICLE X

### STATE INSTITUTIONS AND PUBLIC BUILDINGS

**Section 2.** At the general election in the year one thousand eight hundred and ninety-two, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the state, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be, and is hereby, submitted in like manner to the qualified electors at the next general election thereafter; provided, that until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena.

**Section 3.** When the seat of government shall have been located as herein provided the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question at a general election at which the question of the location of

the seat of government shall have been submitted by the legislative assembly.

**Cross-References**

Section 46, Article V would permit deviation from this section under emergency conditions.

**ARTICLE XI**

**EDUCATION**

**Section 10.** The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

**ARTICLE XII**

**REVENUE AND TAXATION**

**Section 9.** The rate of taxation on real and personal property for state purposes, except as hereinafter provided, shall never exceed two and one-half mills on each dollar of valuation; and whenever the taxable property of the state shall amount to six hundred million dollars (\$600,000,000.00) the rate shall never exceed two (2) mills on each dollar of valuation, unless the proposition to increase such rate, specifying the rate proposed and the time during which the rate shall be levied shall have been submitted to the people at the general election and shall have received a majority of all votes cast for and against it at such election; provided, that in addition to the levy for state purposes above provided for, a special levy in addition may be made on live stock for the purpose of paying bounties on wild animals and for stock inspection, protection and indemnity purposes, as may be prescribed by law, and such special levy shall be made and levied annually in amount not exceeding four mills on the dollar by the state board of equalization, as may be provided by law. (As amended by Ch. 4, Laws 1909, effective December 6, 1910.)

**ARTICLE XIII**

**PUBLIC INDEBTEDNESS**

**Section 2.** The legislative assembly shall not in any manner create any debt except by law which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the



same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

**Section 5.** No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.

**Section 6.** No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt. (As amended by Ch. 193, Laws 1949, effective December 6, 1950; Ch. 161, Laws 1957, effective December 8, 1958.)

## ARTICLE XVI

### COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

**Section 2.** The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.

#### Cross-References

Section 46, Article V would permit deviation from this section under emergency conditions.

**Section 4.** In each county there shall be elected three county commissioners, whose term of office shall be six years; provided that each county in the state of Montana shall be divided into three commissioner districts,

to be designated as commissioner districts, numbers one, two and three, respectively.

The board of county commissioners shall in every county in the state of Montana, at their regular session, on the first Monday in May, 1929, or as soon thereafter as convenient or possible, not exceeding sixty days thereafter, meet and by and under the direction of the district court judge or judges of said county, divide their respective counties into three commissioner districts as compact and equal in population and area as possible, and number them respectively, one, two and three, and when such division has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each of said commissioners districts, which certificate shall be signed by said judge or judges; provided, also that at the first regular session of any newly organized and created county, the said board of county commissioners, by and under the direction of the district court judge or judges of said county, shall divide such new county into commissioner districts as herein provided.

Upon such division, the board of county commissioners shall assign its members to such districts in the following manner; each member of the said board then in service shall be assigned to the district in which he is residing or the nearest thereto; the senior member of the board in service to be assigned to the commissioner district No. 1, the next member in seniority to be assigned to commissioner district No. 2, and the junior member of the board to be assigned to commissioner district No. 3; provided, that at the first general election of any newly created and organized county, the commissioner for district No. 1, shall be elected for two years, for No. 2, for four years, and for No. 3, for six years, and biennially thereafter there shall be one commissioner elected to take place of the retiring commissioner, who shall hold his office for six years.

That the board of county commissioners by and under the direction of the district court judge or judges of said county, for the purpose of equalizing in population and area such commissioner districts, may change the boundaries of any or all of the commissioner districts in their respective county, by filing in the office of the county clerk and recorder of such county, a certificate signed by said judge or judges designating by metes and bounds the boundary lines of each of said commissioner districts as changed, and such change in any or all the districts in such county, shall become effective from and after filing of such certificate; provided, however, that the boundaries of no commissioner district shall at any time be changed in such a manner as to affect the term of office of any county commissioner who has been elected, and whose term of office has not expired; and provided, further, that no change in the boundaries of any commissioner district shall be made within six months next preceding a general election.

At the general election to be held in 1930, and thereafter at each general election, the member or members of the board to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board



shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board, who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office.

When a vacancy occurs in the board of county commissioners the judge or judges of the judicial district in which the vacancy occurs, shall appoint someone residing in such commissioner district where the vacancy occurs, to fill the office until the next general election when a commissioner shall be elected to fill the unexpired term. (As amended by Ch. 72, Laws 1927, effective December 8, 1928.)

#### Cross-References

Section 46, Article V would permit deviation from this section under emergency conditions.

**Section 5.** There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by section 2 of article IX of this constitution and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid offices, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order. (As amended by Ch. 93, Laws 1937, effective December 2, 1938.)

**Section 6.** The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as pre-



scribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

#### Cross-References

Section 46, Article V would permit deviation from this section under emergency conditions.

**Section 7.** The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved. (As enacted by Ch. 113, Laws 1921, effective December 14, 1922.)

**Section 8.** Any county or counties in existence on the first day of January, 1935, under the laws of the state of Montana or which may thereafter be created or established thereunder shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state. (As added by Ch. 102, Laws 1935, effective December 2, 1936.)

## ARTICLE XIX

### MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

**Section 1.** Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the

compensation allowed by law, so help me God." And no other oath, declaration or test shall be required as a qualification for any office or trust.

**Section 8.** The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

#### Referred Measure

Laws 1969, ch. 65 submitted to electors the question whether a constitution convention should be called. The act read:

"Section 1. At the general election to be held in November 1970 there shall be submitted to the electors of the state of Montana the question whether the legislative assembly at the 1971 session, and in accordance with article XIX, section 8 of the Montana constitution, shall call a convention to revise, alter, or amend the constitution of Montana."

#### Constitutional Revision Commission [Chapter 53, Laws 1969]

An act to establish the Montana constitution revision commission to study the Montana constitution.

**Section 1. Constitution revision commission — creation — composition — term.**  
(1) A temporary state agency known as the Montana constitution revision commission consisting of sixteen (16) members is hereby created to study the Montana con-

stitution. Members of the commission shall be appointed for two (2) year terms beginning April 1, 1969, consideration being given to geographic, economic, and other pertinent factors, as follows:

(a) four (4) members of the house of representatives appointed by the speaker, no more than two (2) of whom shall be affiliated with the same political party;

(b) four (4) members of the senate appointed by the committee on committees, no more than two (2) of whom shall be affiliated with the same political party;

(c) four (4) members appointed by the governor, no more than two (2) of whom shall be affiliated with the same political party;

(d) four (4) members appointed by the supreme court, no more than two (2) of whom shall be affiliated with the same political party.

(2) Commission members who are not government employees or elective officials shall be reimbursed for actual and necessary expenses incurred as commission members. However, the term "elective officials," as used in this subsection, ex-



cludes members of the legislative assembly.

**Section 2. Detailed study of Montana constitution to be conducted—written report before September 1, 1970—contents of report—progress report.** (1) The commission shall conduct a detailed study of the Montana constitution, compile factual data on whether the constitution impairs effective state government, compare the Montana constitution with those of other states and publish a written report to the forty-second legislative assembly prior to September 1, 1970. The report shall contain the findings of the commission, recommendations, a draft of any proposals for change in the Montana constitution, and recommendations of the most feasible and desirable method of implementing any proposals for change.

(2) The commission may publish progress and other reports during its study and disseminate information on the constitution as deemed desirable. Upon request, commission members shall meet with the legislative council, governor, and supreme court to report progress on the study.

**Section 3. Chairman selected—rules adopted—written record—staff and compensation—special consultants—state agencies to co-operate.** (1) The commission shall elect a chairman and other

necessary officers, and shall establish its own rules relating to procedures, meetings, and quorums.

(2) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

(3) The commission may employ any necessary staff, assign their duties, and fix their compensation. Staff appointed shall serve at the pleasure of the commission.

(4) The commission may retain special consultants, appoint advisory groups, and consult with or request assistance from any state agency, private group, or individual deemed desirable.

(5) Upon request, state agencies shall co-operate with the commission by furnishing assistance and data to the extent possible.

**Section 4. Federal or private funds.** The commission may accept and expend any federal or private funds which may be available for support of the study.

#### **Effective Date**

Section 5 of Ch. 53, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

**Section 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; provided, however, that not more than three amendments to this constitution shall be submitted at the same election.**

#### **Proposed Amendment**

Chapter 66, Laws 1969, proposes to amend this section to read as follows:

"Section 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the

members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper

in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately. Not more than three amendments to this constitution shall be submitted at the same election, except that there may be submitted at each of the general elections held in the years 1972, 1974 and 1976, in addition to the three amendments otherwise author-

ized by this section, an amendment or amendments providing for the reorganization of the executive department of government which may include the revision or repeal of sections of this constitution relating to any boards, offices, and departments other than legislative and judicial offices. The reorganization of the executive department is a single subject, and an additional amendment relating to that subject authorized by this section may be submitted to the qualified electors of the state in the form of a title clearly expressing its subject."

#### **Cross-Reference**

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

# **TITLE 1**

## **AERONAUTICS**

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### **CHAPTER 8**

#### **ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES— MUNICIPAL AIRPORTS ACT**

**Section 1-804. Tax levy for establishment and operation of airports.**

**1-804. (5668.38) Tax levy for establishment and operation of airports.** For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, based upon the benefits it is determined each shall derive from the project. Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the taxpayers affected thereby, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due

to the uniqueness of the subject matter, and are hereby declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969.



## TITLE 4

### ALCOHOLIC BEVERAGES

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#### CHAPTER 1

##### STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

- Section 4-142. Local option law—petition—time for election.  
4-143. Notice of election.  
4-144. Ballots, what to contain.  
4-145. Election, how held.  
4-146. Dealing in intoxicating liquors prohibited if majority of vote against sale.  
4-147. No election more than once in two years.  
4-148. Sale of liquors prohibited.  
4-149. Election, how contested.

**4-142.** (2815.96) **Local option law—petition—time for election.** Election to be ordered upon application of one-third of the voters of any county. Upon application by petition, signed by one-third of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty days after the reception of such petition, to determine whether or not any spirituous or malt liquors, wine, or cider, or any intoxicating liquors or drinks may be sold within the limits of the county. No election, under this section must take place in any month in which general elections are held. The board of county commissioners must determine on the sufficiency of the petition presented from the roll of registered electors of the territory affected.

**History:** En. Sec. 37, Ch. 105, L. 1933.

**4-143.** (2815.97) **Notice of election.** The notice of election must be published once a week for four weeks in such newspapers of the county where the election is to be held as the board of county commissioners may think proper.

**History:** En. Sec. 38, Ch. 105, L. 1933.

**4-144.** (2815.98) **Ballots, what to contain.** The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of intoxicating liquors, yes"; "Sale of intoxicating liquors, no"; and the elector in order to vote must mark an X opposite one of the answers.

**History:** En. Sec. 39, Ch. 105, L. 1933.

**4-145.** (2815.99) **Election, how held.** The polling places must be estab-

lished, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state.

**History:** En. Sec. 40, Ch. 105, L. 1933.

**4-146. (2815.100) Dealing in intoxicating liquors prohibited if majority of vote against sale.** If a majority of the votes cast are "Sale of intoxicating liquors, no," the board of county commissioners must publish the result once a week for four weeks in the paper in which the notice of the election was given. The provisions of this act shall take effect at the expiration of the time of the publication of the notice, and thereupon all existing licenses shall be cancelled.

**History:** En. Sec. 41, Ch. 105, L. 1933.

**4-147. (2815.101) No election more than once in two years.** No election must be held in the same county oftener than once in two years thereafter.

**History:** En. Sec. 42, Ch. 105, L. 1933.

**4-148. (2815.102) Sale of liquors prohibited.** If a majority of the votes at the election are, "Sale of intoxicating liquors, no," it shall not be lawful for any person within the county in which the vote was taken, to sell, either directly or indirectly, or give away, to induce trade at any place of business, or furnished to any person, any alcoholic, spirituous, malt, or intoxicating liquors.

**History:** En. Sec. 43, Ch. 105, L. 1933.

**4-149. (2815.103) Election, how contested.** Any election held under the provisions of this act may be contested in the same manner as provided by the general laws.

**History:** En. Sec. 44, Ch. 105, L. 1933.

### CHAPTER 3

#### MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section 4-303. Closing hours for licensed retail beer establishments.

4-350. Election to determine whether or not beer should be sold in county to be ordered upon application of one-third of the voters.

4-351. Notice of election.

4-352. Ballots—what to contain.

4-353. Election—how held.

4-354. Effect when vote is against sale of beer.

4-355. No election more than once in two years.

4-356. Election—how contested.

**4-303. Closing hours for licensed retail beer establishments.** Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open,

but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the times such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

**History:** En. Sec. 1, Ch. 161, L. 1943;  
amd. Sec. 1, Ch. 162, L. 1959.

**4-350. (2815.53) Election to determine whether or not beer should be sold in county to be ordered upon application of one-third of the voters.** Upon application by petition, signed by one-third ( $1/3$ ) of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty (40) days after the reception of such petition, to determine whether or not the sale of beer as herein provided for shall be permitted within the limits of the county. No election, under this section must take place in any month in which the general elections are held. It shall be the duty of the board of county commissioners to determine the sufficiency of the petitions presented from an examination of the roll of qualified electors within the county.

**History:** En. Sec. 50, Ch. 106, L. 1933.

**4-351. (2815.54) Notice of election.** The notice of election must be published once a week for four (4) weeks in such newspapers of the county where the election is to be held as the board of county commissioners may think proper.

**History:** En. Sec. 51, Ch. 106, L. 1933.

**4-352. (2815.55) Ballots—what to contain.** The county clerk must furnish the ballots to be used at such election, as provided in the general election laws, which ballots must contain the following words: "Sale of beer, yes"; "Sale of beer, no." And the elector in order to vote must mark an "X" opposite one (1) of the answers.

**History:** En. Sec. 52, Ch. 106, L. 1933.

**4-353. (2815.56) Election—how held.** The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the general election laws of the state of Montana.

**History:** En. Sec. 53, Ch. 106, L. 1933.

**4-354. (2815.57) Effect when vote is against sale of beer.** If a majority of the votes cast are against the sale of beer the board of county commissioners must publish the result once a week for four (4) weeks in the newspapers in which the notices of election were published, and from the date of the election no further licenses to vend beer in the county shall be issued by the board of equalization, and after the publication of notice



proclaiming the result of the election as against the sale of beer, all licenses then existing shall be cancelled by the state board of equalization, and thereafter it shall be unlawful to sell any beer in any such county.

**History:** En. Sec. 54, Ch. 106, L. 1933.

**4-355.** (2815.58) **No election more than once in two years.** No election shall be held in the same county oftener than once in any two (2) years.

**History:** En. Sec. 55, Ch. 106, L. 1933.

**4-356.** (2815.59) **Election — how contested.** Any election held under the provisions of this act may be contested in the same manner as other elections under the laws of this state.

**History:** En. Sec. 56, Ch. 106, L. 1933.

## CHAPTER 4

### MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section 4-414. Hours for sale of liquor.

4-431. Act when effective—protests—elections.

4-432. Publication notice of election.

4-433. Form of ballots.

4-434. Polling places—conduct of elections.

4-435. Effect of election—penalty—liquor store sales not affected.

4-436. Contest of election.

4-437. Restriction on holding second election.

**4-414. Hours for sale of liquor.** No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which the sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

**History:** En. Sec. 12, Ch. 84, L. 1937;  
**amd. Sec. 2, Ch. 162, L. 1959.**

**4-431. Act when effective—protests—elections.** The provisions of this act as to the issuance of licenses as herein provided shall be effective thirty (30) days after the passage and approval of this act. In the event that during the said period of thirty (30) days, a duly verified petition in writing signed by not less than thirty-five per centum (35%) of the registered qualified electors of any county file with the board of county commissioners their protest against the issuance of any licenses as herein provided by the Montana liquor control board under the provisions of this act, then the said Montana liquor control board shall not issue any license or licenses within said county, except as herein provided.

The board of county commissioners must within five (5) days after the filing of said petition, meet and determine the sufficiency of the petition presented by ascertaining whether or not at least thirty-five per centum (35%) of the signers of said petition are registered electors of the territory or county affected. The board of county commissioners must within ten (10) days after the filing of such petition, if such petition be sufficient therefor make an order calling an election to be held within the county in the manner and at the places of holding an election for county offices in such county. Such election to be held on a day fixed by the board of county commissioners not more than thirty (30) days after the filing of such petition for the purpose of determining whether or not any license for the sale of spirituous liquors may be sold within the limits of the county as provided by the provisions of this act.

**History:** En. Sec. 30, Ch. 84, L. 1937.

**4-432. Publication notice of election.** The notice of election must be published once a week for four (4) weeks in such newspapers in the county where the election is to be held as the board of county commissioners may think proper.

**History:** En. Sec. 31, Ch. 84, L. 1937.

**4-433. Form of ballots.** The county clerk must furnish the ballots to be used at such election, as provided in the general election law, which ballots must contain the following words: "Sale of Alcoholic Beverages, Yes," "Sale of Alcoholic Beverages, No," and the elector in order to vote must mark an "X" opposite one of the answers.

**History:** En. Sec. 32, Ch. 84, L. 1937.

**4-434. Polling places—conduct of elections.** The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the laws of the state.

**History:** En. Sec. 33, Ch. 84, L. 1937.

**4-435. Effect of election—penalty—liquor store sales not affected.** If a majority of the votes cast are "Sale of Alcoholic Beverages, Yes," the provisions of this act shall take effect immediately. If a majority of the votes cast are "Sale of Alcoholic Beverages, No," the board of county commissioners must publish the result once a week for four (4) successive weeks in the paper in which the notice of election was given, and at the expiration of the time of the publication of such notice all existing licenses shall be cancelled and it shall thereupon be unlawful to sell, either directly or indirectly, any liquor in such county under penalty of a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment; provided, however, that nothing herein contained shall be construed to prevent or prohibit the sale of liquor at or by a state liquor store under the liquor control act.

**History:** En. Sec. 34, Ch. 84, L. 1937.

**4-436. Contest of election.** Any election held under the provisions of the act may be contested in the same manner as provided by the general election laws.

**History:** En. Sec. 35, Ch. 84, L. 1937.

**4-437. Restriction on holding second election.** If no petition protesting against the issuance of licenses as herein provided be filed with the board of county commissioners within thirty (30) days after the passage and approval of this act, or if a majority of the votes cast at any election held in pursuance of the filing of said petition as herein provided, are "Sale of Alcoholic Beverages, No," then there shall not be submitted to the qualified electors of said county any other or further question as to the sale of alcoholic beverages within said county for a period of two (2) years from and after the date of the filing of said petition protesting the issuance of said license as herein provided with the board of county commissioners.

**History:** En. Sec. 36, Ch. 84, L. 1937.



## TITLE 9

### CEMETERIES

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#### CHAPTER 2

##### PUBLIC CEMETERY DISTRICT ACT

- Section 9-201. Public cemetery district act.  
9-202. Petition to board of county commissioners.  
9-203. Hearing.  
9-204. Final hearing.  
9-205. Order of board as respects election.  
9-206. Favorable vote—commissioners to organize district.  
9-207. Government of district—appointment and terms of trustees.  
9-208. Powers of district.  
9-209. Budget and tax levy.  
9-209.1. Disbursement of tax proceeds.  
9-209.2. Validating act.  
9-209.3. Payment of validated warrants.  
9-210. Regulations.  
9-211. Withdrawal of portion of district, petition for.  
9-212. Hearing.  
9-213. Alteration of boundaries.  
9-214. Notice, publication of.  
9-215. Power of county commissioners.

**9-201. Public cemetery district act.** There is hereby deemed and declared a public cemetery district act for the state of Montana. A cemetery district may contain the entire territory embraced within a county or any portion or subdivision thereof.

**History:** En. Sec. 1, Ch. 221, L. 1943;  
amd. Sec. 1, Ch. 16, L. 1945.

**9-202. Petition to board of county commissioners.** Whenever a petition, signed by not less than twenty (20%) per cent of the citizens who are owners of land located within a proposed cemetery district, whose names appear as such owners of land upon the last completed assessment roll of the county in which said proposed district is situated, which petition shall definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public cemetery district, the petition shall be presented to the board of county commissioners of the county in which the proposed district is situated, at a regular or special meeting of said board. The said board of county commissioners, by resolution, shall fix a time for the hearing of said petition at not less than two (2) nor more than five (5) weeks from the time of presentation thereof, and shall cause notice to be given of the time and place of said hearing by publication as prescribed by law, for not less than two (2) weeks prior to the time of said hearing. Said notice shall state that any person residing in or owning property within said proposed district or within any existing cemetery district, any part of the territory of which is described in said

petition, may appear before said board at the hearing and show cause why the said district should not be created or the proposed boundaries changed.

**History:** En. Sec. 2, Ch. 221, L. 1943;  
amd. Sec. 2, Ch. 16, L. 1945.

**9-203. Hearing.** At the time fixed for said hearing, the board shall determine whether or not it complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required, and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not to exceed two (2) weeks in all.

**History:** En. Sec. 3, Ch. 221, L. 1943;  
amd. Sec. 3, Ch. 16, L. 1945.

**9-204. Final hearing.** If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the notice required has been published, it shall thereupon proceed to a final hearing of the matter. Said board shall make such changes in the boundaries of the proposed district as it may deem advisable and shall define and establish such boundaries, as described in the petition and shall call an election.

**History:** En. Sec. 4, Ch. 221, L. 1943;  
amd. Sec. 4, Ch. 16, L. 1945.

**9-205. Order of board as respects election.** The board, must in its order, designate whether or not a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the time and place for such election, the voting place, and shall in said order appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws: and provided, further, that the polls shall be open from eight (8) o'clock A. M. to six (6) P. M., on the day appointed for such election. At such election, the ballots must contain the words "Cemetery District, Yes" and "Cemetery District, No." The judges of the election shall certify to the board of county commissioners the results of said election.

**History:** En. Sec. 5, Ch. 221, L. 1943;  
amd. Sec. 5, Ch. 16, L. 1945.

**9-206. Favorable vote—commissioners to organize district.** In the event that a majority of the votes cast are in favor of the formation of said cemetery district, the board of county commissioners shall proceed with the organization thereof as herein specified.

**History:** En. Sec. 6, Ch. 221, L. 1943;  
amd. Sec. 6, Ch. 16, L. 1945.

**9-207. Government of district — appointment and terms of trustees.** Said cemetery district shall be governed and managed by three (3) trustees, appointed by the board of county commissioners. The trustees shall be appointed from the freeholders residing within said district for terms of one (1), two (2) and three (3) years respectively, and until their successors



shall be appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of three (3) years or until his successor shall be appointed and qualified. The trustees at their first meeting shall adopt by-laws for the government and management of the district. They shall serve without pay.

**History:** En. Sec. 7, Ch. 221, L. 1943;  
amd. Sec. 7, Ch. 16, L. 1945.

**9-208. Powers of district.** Said district may maintain a cemetery or cemeteries within said district; may hold title to property by grant, gift, devise, lease, or any other method; and perform all acts necessary or proper for the carrying out of the purposes of this act, including the selling or leasing of burial lots.

**History:** En. Sec. 8, Ch. 221, L. 1943;  
amd. Sec. 8, Ch. 16, L. 1945.

**9-209. Budget and tax levy.** The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed two (2) mills on each dollar of taxable valuation on the property of said district. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided herein and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district. Insofar as the same can be made applicable, the county budget system, sections 16-1901 to 16-1911, shall govern the operation of cemetery districts created under this act.

**History:** En. Sec. 9, Ch. 221, L. 1943;  
amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1,  
Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955.

**9-209.1. Disbursement of tax proceeds.** The proceeds of taxes collected by the county treasurer for the public cemetery fund shall be disbursed to the various cemetery districts upon the submission of a claim by said cemetery districts to the board of county commissioners for their pro rata share of the proceeds of the taxes collected. Upon approval of said claim by the board of county commissioners the county clerk shall issue a trust fund warrant drawn upon the public cemetery fund and payable to each claimant.

**History:** En. Sec. 1, Ch. 94, L. 1951.

**9-209.2. Validating act.** All warrants heretofore issued by any cemetery district for services actually rendered or goods, wares, merchandise or material actually furnished to said cemetery district are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power of such cemetery district to authorize or issue such warrants by reason of non-compliance with any budget act or their being in excess of any cemetery



district budget or because of failure to include provision for the same in any cemetery district budget or otherwise and said warrants so issued for value received by said cemetery district shall be binding, legal, valid and enforceable obligations of such cemetery district.

**History:** En. Sec. 2, Ch. 4, L. 1955.

**9-209.3. Payment of validated warrants.** All cemetery district warrants validated, ratified, approved and confirmed by the provisions of this act shall be paid by the cemetery district which issued the same from any funds which the cemetery district may have on hand which are not appropriated for other purposes. Any such cemetery district is also authorized and directed to make provision for the payment of said warrants by including in its budget each year in which such warrants remain outstanding an item providing for the payment of such warrants as can be paid within the proceeds of the two (2) mill maximum levy on each dollar of taxable valuation of the property of said district specified in section 9-209, taking into consideration other income of the cemetery district and after having provided for the other budget requirements submitted by the board of cemetery trustees to the board of county commissioners and such maximum two (2) mill levy shall be made annually until said warrants are paid, provided, that no interest or other charges for the use of the money represented by said warrants shall be paid by the cemetery district. All cemetery district warrants validated, ratified, approved and confirmed by the provisions of this act shall be listed by the cemetery district having issued the same in the order in which they were issued by said cemetery district and the warrants shall be paid in the order in which they were issued as funds become available for the payment thereof under the provisions of this act.

**History:** En. Sec. 3, Ch. 4, L. 1955.

**9-210. Regulations.** The trustees shall make proper rules and regulations for the management of the cemeteries. The procedure of the collecting of the tax and the distribution of the funds shall be in accordance with the existing laws of the state of Montana.

**History:** En. Sec. 10, Ch. 221, L. 1943;  
amd. Sec. 10, Ch. 16, L. 1945.

**9-211. Withdrawal of portion of district, petition for.** Any portion of a public cemetery district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty (50) or more freeholders residing in, or owning property within the portion desired to be withdrawn by any public cemetery district or by a majority of such freeholders, if there are less than one hundred (100) residing within the portion sought to be withdrawn, on the grounds that such portion will not be benefited by remaining in said district. The board of county commissioners shall fix a time for the hearing of such withdrawal petition which shall not be more than sixty (60) days after the receipt thereof. The said board shall, at least

thirty (30) days prior to the time so fixed, publish a notice of such hearing for two (2) issues as provided by law.

**History:** En. Sec. 11, Ch. 221, L. 1943;  
amd. Sec. 11, Ch. 16, L. 1945.

**9-212. Hearing.** Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider all objections, pass upon the merits thereof and make an order in accordance therewith. This order is subject to review by any court of competent jurisdiction.

**History:** En. Sec. 12, Ch. 221, L. 1943;  
amd. Sec. 12, Ch. 16, L. 1945.

**9-213. Alteration of boundaries.** The boundaries of any such public cemetery district may be altered and outlying districts be annexed thereto in the following manner: A petition signed by fifty (50) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than one hundred (100) residing within the portion proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public cemetery district, shall be presented to the board of county commissioners of the county in which said public cemetery district is situated.

**History:** En. Sec. 13, Ch. 221, L. 1943;  
amd. Sec. 13, Ch. 16, L. 1945.

**9-214. Notice, publication of.** At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published according to law for two (2) weeks prior to the date to be fixed by said board for the hearing of said petition. Upon the date fixed for such hearing or continuance thereof said board shall take up and consider said petition and any objections which may be filed to the inclusion of any property in said district.

**History:** En. Sec. 14, Ch. 221, L. 1943;  
amd. Sec. 14, Ch. 16, L. 1945.

**9-215. Power of county commissioners.** Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public cemetery district and to annex thereto, all, or such portion of said territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public cemetery district and shall be taxed, together with the remainder of said district, for all taxes to be thereafter levied by said board of county commissioners for the operation and maintenance of said public cemetery district.

**History:** En. Sec. 15, Ch. 221, L. 1943;  
amd. Sec. 15, Ch. 16, L. 1945.



## TITLE 11

### CITIES AND TOWNS

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#### CHAPTER 2

##### CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

- Section 11-203. Organization of cities and towns—petition and census.  
11-204. Election—how conducted.  
11-205. First election for officers.  
11-206. Officers elected and conduct of election.  
11-209. Old officers continue in office—election.

**11-203. (4961) Organization of cities and towns—petition and census.** Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than fifty qualified electors, residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards.

**History:** First general municipal incorporation act was that of Feb. 17, 1881 (L. 1881, pp. 13-38); superseded by Secs. 315-440, 5th Div. Comp. Stat. 1887. Many of the provisions of this act are so different from the present law that exact his-

torical comparisons of the several sections cannot be made. This section en. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921.

**11-204. (4962) Election—how conducted.** After filing the petition and census, if there be the requisite number of inhabitants for the formation of a municipal corporation, as required in the preceding section, the county commissioners must call an election of all the qualified electors residing in the territory, described in the petition. Said election must be held at a convenient place within the territory described in the petition, to be designated by the board, notice of which election must be given by publication in some newspaper published within the limits of the territory to be incorporated, or, if none be published therein, by posting notice in three public places within said limits. The notice must be published thirty days



prior to the election, and must specify the time and place when and where the same is held, and contain a description of the boundaries of the city or town. The board must appoint judges and clerks of election, who must qualify as required by law, and after the election they must report the result to the board, together with the ballots cast at said election. The ballots used at the election must be "For incorporation" or "Against incorporation," and all elections must be conducted as provided in Title 23 of this code.

**History:** En. Sec. 316, 5th Div. Comp. 3209, Rev. C. 1907; re-en. Sec. 4962, R. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; C. M. 1921.  
re-en. Sec. 4721, Pol. C. 1895; re-en. Sec.

**11-205. (4963) First election for officers.** When the incorporation of a city or town is completed, the board of county commissioners must give notice for thirty days in a newspaper published within the limits of the city or town, or, if none be published therein, by posting notices in six public places within the limits of the corporation, of the time and place or places of holding the first election for offices of the corporation. At such election all the electors qualified by the general election laws of the state, and who have resided within the limits of the city or town for six months, and within the limits of the ward for thirty days preceding the election, are qualified electors and may choose officers for the city or town, to hold office as prescribed in the next succeeding section.

**History:** Ap. p. Sec. 318, 5th Div. Comp. 3210, Rev. C. 1907; re-en. Sec. 4963, R. C. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4722, Pol. C. 1895; re-en. Sec. M. 1921.

**11-206. (4964) Officers elected and conduct of election.** At such election there must be elected, in a city of the first class, a mayor, a police judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided; in a city of the second class, a mayor, a police judge, a city treasurer, a city marshal, and two aldermen from each ward; in a town, a mayor, and two aldermen from each ward, who hold office until the first Monday of May after the first annual election, and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

**History:** En. Sec. 318, 5th Div. Comp. 3211, Rev. C. 1907; re-en. Sec. 4964, R. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; C. M. 1921.  
re-en. Sec. 4723, Pol. C. 1895; re-en. Sec.

**11-209. (4967) Old officers continue in office—election.** All officers of such city or town holding office at the time of the adoption of this code remain in office until the next annual election and the first Monday of May next ensuing thereafter, and until their successors are elected and qualified. The duties and compensation of such officers and the liabilities of sureties

on official bonds remain the same. All elections must be held under the provisions of this code relative to the government of cities and towns.

**History:** En. Sec. 5034, Pol. C. 1895;  
re-en. Sec. 3483, Rev. C. 1907; re-en. Sec.  
4967, R. C. M. 1921.

### CHAPTER 3

#### CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

Section 11-303. **New officers—election.**

**11-303. (4971) New officers—election.** The first election of officers of the new municipal corporation organized under the provisions of this chapter must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

**History:** En. Sec. 4952, Pol. C. 1895;  
re-en. Sec. 3449, Rev. C. 1907; re-en. Sec.  
4971, R. C. M. 1921.

### CHAPTER 4

#### ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-405. **Election on the question of annexation.**

**11-405. (4979) Election on the question of annexation.** When a city or town desires to be annexed to another and contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities respectively, the terms and conditions on which the annexation can be made, and if the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare, and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare, and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated, and when so filed the annexation is complete, and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation. Such annexations do not affect or impair any rights, obligations, or liabilities then existing, for or against either of such cities or towns.

**History:** En. Sec. 322, 5th Div. Comp. re-en. Sec. 3215, Rev. C. 1907; re-en. Sec.  
Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; 4979, R. C. M. 1921.

### CHAPTER 5

#### ALTERATION OF BOUNDARIES, EXCLUSION AND INCLUSION OF TERRITORY

Section 11-506. **Alteration of boundaries of cities and towns—inclusion of territory—petition and election.**



- 11-507. Submission of question of annexation—election, how conducted and returned—annexation when complete.
- 11-508. Territory which may not be annexed.
- 11-509. Lands used for certain purposes may not be annexed.
- 11-510. Act applicable to cities of what population.

**11-506. Alteration of boundaries of cities and towns—inclusion of territory—petition and election.** (1) The boundaries of any incorporated town or city, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof, upon proceedings being had and taken as in this act provided. The council, or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to such corporation, and signed by not less than thirty-three and one-third per cent ( $33\frac{1}{3}\%$ ) of the resident free holder electors of the territory proposed to be annexed must, without delay, submit to the electors of such municipal corporation and to the electors residing in the territory or territories proposed by such petition to be annexed to such corporation, the question whether such new territory or territories shall be annexed to, incorporated in, and made a part of said municipal corporation.

(2) Such question may be so submitted at the next general municipal election to be held in such municipal corporation, or it may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other municipal election therein, except an election at which the submission of such question is prohibited by law; and such council or legislative body is hereby empowered to and it shall be its duty to cause notice to be given of such election by the publication of a notice thereof in a newspaper printed and published in such municipal corporation at least once a week for a period of three (3) successive weeks next preceding the date of such election, or if there is no newspaper printed in such municipal corporation, then such notice shall be published in like manner for a like period in the nearest town or city in the county in which said territory or territories to be annexed is situated, in which such newspaper is printed. Such notice shall distinctly state the proposition to be submitted, i. e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof; and in said notice the qualified electors of said municipal corporation, and the qualified electors residing in said territory or territories so proposed to be annexed, shall be invited to vote upon such proposition by placing upon their ballots the words "for annexation" or "against annexation," or words equivalent thereto.

(3) Such council or legislative body is hereby empowered, and it shall be its duty, to establish, and in such notice of election designate the voting precinct or precincts, the date of said election, the place or places at which, and the hours between which the polls will be opened for such election, and such other information regarding said election as the said council or legislative body may deem proper. Such place or places shall be that or those commonly used as voting places within such municipal corporation, and



also that or those commonly used by the electors residing in such new territory or territories.

**History:** En. Sec. 1, Ch. 168, L. 1945.

**11-507. Submission of question of annexation—election, how conducted and returned—annexation when complete.** (1) If the question of annexation is submitted at a special election called for such purpose, the city or town council, or other legislative body, shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of judges than is required at a general city or town election, but in no case shall there be less than three (3) judges in a precinct and such judges shall act as their own clerks. If the question of annexation is submitted at a general city or town election, the polls shall be kept open during the same hours as are fixed for the general election, and the judges and clerks for such general election shall act as the judges and clerks thereof.

(2) Whenever the question of annexation under this title is submitted at either a general city or town election, or at a special election, separate ballots, white in color and of convenient size, shall be provided therefor. The election shall be conducted, and the returns made in the same manner as other city or town elections; and all election laws governing city and town elections shall govern insofar as they are applicable, but if such question be submitted at a general city or town election, the votes thereon must be counted separately, and separate returns must be made by the judges and clerks at such election. If the said annexation election is held at the same time as a general city or town election, then the returns shall be canvassed by the city or town council at the same time as the returns for such general election; but if the question of annexation is submitted at a special election, then the city or town council shall meet within ten (10) days after the date of the holding of such special election and canvass the returns.

(3) If it is found that a majority of such votes were cast in favor of the annexation, the city or town council, or other legislative body shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for such annexation. Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of thirty-three and one-third per cent ( $33\frac{1}{3}\%$ ) of the resident free holder electors of the territory proposed to be annexed; a description of the boundaries of the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation, and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(4) The clerk or other officer performing the duties of clerk of such

council or legislative body, shall promptly make and certify under the seal of said municipal corporation, a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed, is situated. From and after the date of the filing of said document in the office of the said county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete and thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made, has the power to pass all necessary ordinances pertaining thereto.

**History:** En. Sec. 2, Ch. 168, L. 1945.

**11-508. Territory which may not be annexed.** No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated town or city, shall be annexed under the provisions of this act.

**History:** En. Sec. 3, Ch. 168, L. 1945.

**11-509. Lands used for certain purposes may not be annexed.** No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto, shall be annexed under the provisions of this act.

**History:** En. Sec. 4, Ch. 168, L. 1945.

**11-510. Act applicable to cities of what population.** This act shall not be applicable to cities having a population, as shown by the last preceding federal census of less than twenty thousand (20,000) and not more than thirty-five thousand (35,000) and shall not repeal section 11-403 having reference to extension of the corporate limits of cities of the first, second and third classes to include contiguous land, but is intended and does provide an alternative method for the annexation of territory or territories to municipal corporations. When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this act the provisions of this act and of such amendments thereto as may thereafter be adopted, and no other, shall apply to such proceedings.

**History:** En. Sec. 5, Ch. 168, L. 1945.



## CHAPTER 7

## OFFICERS AND ELECTIONS

- Section 11-701. Officers of city of the first class.  
 11-702. Officers of city of second and third classes.  
 11-703. Officers of towns.  
 11-707. City or town to be divided into wards.  
 11-708. Division of cities and towns into wards.  
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 11-710. Qualification of mayor.  
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 11-716. Qualifications of electors.  
 11-717. Election judges and clerks—voting places.  
 11-718. Canvass—when and how made.  
 11-719. Oath and bonds—vacancy.  
 11-720. When duties of office begin.  
 11-721. Vacancies—how filled—removal of officer.

**11-701. (4995) Officers of city of the first class.** The officers of a city of the first class consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city attorney, one city clerk, one chief of police, one assessor, one street commissioner, one city jailer, one city surveyor, and whenever a paid fire department is established in such city, a chief engineer and one or more assistant engineers, and any other officers necessary to carry out the provisions of this title. The city council may, by ordinance, prescribe the duties of all city officers and fix their compensation, subject to the limitations contained in this title.

**History:** En. Sec. 4740, Pol. C. 1895;  
 re-en. Sec. 3216, Rev. C. 1907; re-en. Sec.  
 4995, R. C. M. 1921.

**11-702. (4996) Officers of city of second and third classes.** The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex-officio city assessor, one chief of police, one city attorney, and any other officer necessary to carry out the provisions of this title. The city council may prescribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title.

**History:** En. Sec. 4741, Pol. C. 1895;  
 re-en. Sec. 3217, Rev. C. 1907; re-en. Sec.  
 4996, R. C. M. 1921.

**11-703. (4997) Officers of towns.** The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be ap-



pointed by the mayor, with the advice and consent of the council, one clerk, who may be ex-officio assessor and a member of the council, and one treasurer, who may be ex-officio tax collector, and one marshal, who may be ex-officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title.

**History:** En. Sec. 4742, Pol. C. 1895;  
re-en. Sec. 3218, Rev. C. 1907; re-en. Sec.  
4997, R. C. M. 1921.

**11-707. (5001) City or town to be divided into wards.** The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

**History:** En. Sec. 4746, Pol. C. 1895;  
re-en. Sec. 3222, Rev. C. 1907; re-en. Sec.  
5001, R. C. M. 1921.

**11-708. (5002) Division of cities and towns into wards.** Cities of the first class must be divided into not less than four nor more than ten wards; cities of the second class into not less than three nor more than six wards; and cities of the third class into not less than two nor more than four wards; and towns into not less than two nor more than three wards. Provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires. All changes in the number and boundaries of wards must be made by ordinance, and no new ward must be created unless there shall be within its boundaries one hundred and fifty electors, or more.

**History:** En. Sec. 4747, Pol. C. 1895; Ch. 74, L. 1909; re-en. Sec. 5002, R. C. M.  
re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, 1921; amd. Sec. 1, Ch. 39, L. 1943.

**11-709. (5003) Annual elections in cities and towns—terms of office.** On the first Monday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect a mayor and two aldermen from each ward, to be voted for by the wards they respectively represent; the mayor to hold office for a term of two (2) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of two (2) years, and until the qualification of his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of two (2) years, and until the qualification of their successors; provided, however, that in all cities and towns when the term of office of the incumbent mayor, alderman, police judge or city treasurer will not expire until the first Monday in May, 1936, a special election must be held on the first Monday in April, 1936, at which election a successor to such mayor, alderman, police judge or city treasurer shall be elected for a term of one (1) year, and thereafter no election shall be held for the election of city officers, except every second year.

**History:** Ap. p. Sec. 4, p. 122, L. 1893; 3224, Rev. C. 1907; re-en. Sec. 5003, R.  
amd. Sec. 4748, Pol. C. 1895; re-en. Sec. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935.

**11-710. (5004) Qualification of mayor.** No person shall be eligible to the office of mayor unless he shall be at least twenty-five (25) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. amd. Sec. 4749, Pol. C. 1895; re-en. Sec. M. 1921; amd. Sec. 1, Ch. 76, L. 1961.

**11-711. (5005) Terms of aldermen—how decided.** At the first annual election held after the organization of a city or town under this title, the electors of such city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, one from each ward to hold for a term of two years, and one for the term of one year, and until the qualification of their successors.

History: En. Sec. 4750, Pol. C. 1895;  
re-en. Sec. 3228, Rev. C. 1907; re-en. Sec.  
5005, R. C. M. 1921.

**11-712. (5006) Terms of office—when to begin.** The terms of all officers elected at a municipal election are to commence on the first Monday in May after such election.

History: En. Sec. 4751, Pol. C. 1895;  
re-en. Sec. 3227, Rev. C. 1907; re-en. Sec.  
5006, R. C. M. 1921.

**11-713. (5007) Who eligible.** No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city or an area which has been annexed by such town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. 5007, R. C. M. 1921; amd. Sec. 2, Ch. 76,  
Stat. 1887; amd. Sec. 4752, Pol. C. 1895; L. 1961.  
re-en. Sec. 3228, Rev. C. 1907; re-en. Sec.

**11-714. (5008) Qualification of aldermen.** No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him, or a resident of an area which has been annexed by the city or town and placed in a ward, for at least sixty (60) days preceding such election.

History: En. Sec. 366, 5th Div. Comp. 5008, R. C. M. 1921; amd. Sec. 3, Ch. 76,  
Stat. 1887; amd. Sec. 4753, Pol. C. 1895; L. 1961; amd. Sec. 1, Ch. 144, L. 1967.  
re-en. Sec. 3229, Rev. C. 1907; re-en. Sec.

**11-715. (5009) Registration of electors.** The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered: but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided. However, when an area is annexed by a city or town after the date for registration has expired, opportunity



must be provided for residents of such area to register, if otherwise qualified, for all future elections.

**History:** En. Sec. 4754, Pol. C. 1895; 5009, R. C. M. 1921; amd. Sec. 4, Ch. 76, re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. L. 1961.

**11-716. (5010) Qualifications of electors.** All qualified electors of the state who have resided in the city or town or an area which has been annexed by such city or town for six months and in the ward or an area which has been annexed and placed in a ward for thirty days next preceding the election are entitled to vote at any municipal election, including elections involving or held under the commission form of government, commission-manager plan or other form of municipal government.

**History:** En. Sec. 4755, Pol. C. 1895; 5010, R. C. M. 1921; amd. Sec. 5, Ch. 76, re-en. Sec. 3231, Rev. C. 1907; re-en. Sec. L. 1961.

**11-717. (5011) Election judges and clerks—voting places.** The council or other governing body must appoint judges and clerks of election, and places of voting. Where the city or town is divided into wards there must be at least one (1) voting place in each ward and there may be as many more as the council or other governing body shall fix, and the elector must vote in the ward in which he resides. In cities and towns divided into wards the election precincts must correspond with the wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides. In cities and towns operating under the commission, or the commission-manager plan of municipal government, where there are no wards for election purposes and the officers of the city or town are elected at large, the election precincts shall correspond with the election precincts in such city or town as fixed by the board of county commissioners for state and county elections, but such precincts may be by the city commission divided into as many voting precincts, to facilitate the voting and counting of the vote, as the city commission shall by ordinance provide, and the elector shall vote in the voting precinct so designated, in which he resides. For all municipal elections the city council or other governing body may appoint a second or additional board of election judges for any voting precinct in which there were cast three hundred and fifty (350) or more votes in the last general city election or in which council or other governing body believes as many as three hundred and fifty (350) ballots will be cast in the next general city election, and such additional board of election judges shall have the same powers and duties, and under the same conditions, as the second or additional board of election judges for general elections appointed by boards of county commissioners under the provisions of section 23-601. Provided that in municipal corporations of less than one thousand five hundred (1,500) population, as determined by the last official census, the council or other governing body may by ordinance provide that there shall be but one polling or voting place for municipal elections, notwithstanding the number of wards or precincts in the municipality otherwise provided for. All municipal elections must be conducted in accordance with the general laws of the state of Montana relating to such election.



**History:** En. Sec. 1, Ch. 187, L. 1907; 1921; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R. C. M. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955.

**11-718. (5012) Canvass—when and how made.** On the Monday following any election, the council must convene and publicly canvass the result, and issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for any one of the offices voted for, the council must thereafter, at its first regular meeting, decide by vote between the parties which is elected. If the council from any cause fails to meet on the day named, the mayor must call a special meeting of the council within five days thereafter, and, in addition to the notice provided for calling special meetings, must publish the same on two successive days in some newspaper published in such city or town. If the mayor fails to call said meeting within said five days, any three councilmen may call it. At such special meeting all elections, appointments, or other business may be transacted that could have been on the day first herein named.

**History:** En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907; re-en. Sec. 5012, R. C. M. 1921.

**11-719. (5013) Oath and bonds—vacancy.** Each officer of a city or town must take the oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if any one, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

**History:** En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R. C. M. 1921.

**11-720. (5014) When duties of office begin.** The officers elected enter upon their duties the first Monday of May succeeding their election, and officers appointed by the mayor, with the advice and consent of the council, within ten days after receiving notice of their appointment.

**History:** En. Sec. 4759, Pol. C. 1895; re-en. Sec. 3235, Rev. C. 1907; re-en. Sec. 5014, R. C. M. 1921.

**11-721. (5015) Vacancies—how filled—removal of officer.** When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualifica-

tion of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any officer.

**History:** En. Sec. 1, Ch. 72, L. 1903;  
re-en. Sec. 3236, Rev. C. 1907; re-en. Sec.  
5015, R. C. M. 1921.

## CHAPTER 9

### POWERS OF CITY AND TOWN COUNCILS

- Section 11-964. Disposal or lease of city property—approval of electors, when required.  
11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.  
11-988. Power of cities and towns to acquire natural gas and distributing system therefor.

**11-964. (5039.61) Disposal or lease of city property—approval of electors, when required.** The city or town council has power; to sell, dispose of, or lease any property belonging to a city or town, provided, however, that such lease or transfer be made by ordinance or resolution passed by a two-thirds vote of all the members of the council; and provided further that if such property be held in trust for a specific purpose such sale or lease thereof be approved by a majority vote of taxpayers of such municipality cast at an election called for that purpose; and provided further that nothing herein contained shall be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by subdivision 5 of section 62-204.

**History:** En. Subd. 62, Sec. 5039, R. C. amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; 1, Ch. 35, L. 1937.

**11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing,



reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words "value of the taxable property" being used herein in the same sense as in section 6 of article XIII of the constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and carried in the affirmative by a vote of the majority of said taxpayers who vote upon such question.

(3) It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six (6) months from and after final judgment is entered in the condemnation proceedings. For the purpose of



providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure and appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

(4) Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: En. Subd. 64, Sec. 5039, R. C. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, 158, L. 1963. See also history of Sec. Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 11-901.

**11-988. (5039.85) Power of cities and towns to acquire natural gas and distributing system therefor.** The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase or development of an adequate supply of natural gas, and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of said city or town or vicinity; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed three per centum (3%) of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 128, L. 1927.

## CHAPTER 10

### POWERS OF CITY AND TOWN COUNCILS (continued)

- Section 11-1008. Public baths.  
 11-1015. Parking meters in cities or towns of 2,500 population or less.  
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**11-1008. (5045) Public baths.** All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town, and to defray the cost and expense of maintaining said public bathing place, said city or town is hereby authorized and empowered to contract an indebtedness, upon behalf of said city or town, upon the credit thereof, by borrowing money or issuing bonds; provided, that no money may be borrowed, and no bonds may be issued for said purpose, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and a majority vote be cast therefor.

**History:** En. Sec. 1, Ch. 12, L. 1905;  
re-en. Sec. 3294, Rev. C. 1907; re-en. Sec.  
5045, R. C. M. 1921.

**11-1015. Parking meters in cities or towns of 2,500 population or less.** Any city or town council of any incorporated city or town of twenty-five hundred (2500) population or less is hereby empowered to enact an ordinance or ordinances:

(a) To purchase, rent, lease or otherwise acquire coin operating parking meters, or other devices, or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked.

(b) To install, maintain and operate said meters, devices or instruments at or near any public street, highway, avenue or other public place within the corporate limits of such city or town.

(c) To provide for such regulations as necessary to govern the use of its public streets, highways, avenues or other public places for the purpose of parking automobiles or other vehicles, and the use of said meters, devices or instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices or instruments are to be used.

**History:** En. Sec. 1, Ch. 91, L. 1949.

**11-1016. Referendum on parking meters required before ordinance.** Provided, however, that no ordinance or ordinances providing for the purchasing, renting, leasing or otherwise acquiring or installing, maintaining, operating or using such parking meters, devices or instruments shall be enacted until and unless the question of whether or not such ordinance or ordinances shall be enacted has been submitted to the qualified electors of such city or town at a general election or special election called for that purpose, and unless at such election a majority of the votes cast for and against the question shall have been in favor of the enacting of said ordinance or ordinances.

**History:** En. Sec. 2, Ch. 91, L. 1949.

**11-1017. Existing meters and ordinances unaffected.** Nothing herein contained shall affect the validity of any ordinance relating to parking meters or similar devices or instruments heretofore adopted by any city or town, or any extension thereof hereafter made.

**History:** En. Sec. 3, Ch. 91, L. 1949.



**11-1019. Operation of bus lines—contracting indebtedness.** Whenever a city or town is not being served by a bus company or operator, operating on a regular schedule, and under the jurisdiction of the Montana railroad and public service commission or if such service is to be or is likely to be discontinued in the immediate future, the city or town council of any incorporated city or town shall have the power to contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation or leasing of motor buses and bus lines for the transportation of passengers within the corporate limits of such cities and towns, and to operate the same to any point or points beyond said limits not to exceed eight (8) miles, measured along the route of said bus line; provided that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed five per centum (5%) of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

**History:** En. Sec. 1, Ch. 101, L. 1951;  
amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1,  
Ch. 120, L. 1957.

**11-1020. Operation subject to Motor Carrier Act—exception.** The said city or town council or commission shall have authority to provide for the management and operation of said system; and to do all the things necessary for the successful operation of said transportation system. Such operations shall be subject to all the provisions of the Motor Carrier Act (sections 8-101 to 8-129, Revised Codes of Montana, 1947) except that such municipality may be issued a certificate of public convenience and necessity without proof of the existence of public convenience and necessity, and except that the municipality shall be exempt from the payment of fees provided by sections 8-116 and 8-127, Revised Codes of Montana, 1947.

**History:** En. Sec. 2, Ch. 101, L. 1951;  
amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1,  
Ch. 120, L. 1957.

**11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax.** Whenever a city or town is not being served by a bus company or operator, operating on a regular schedule, and under the jurisdiction of the Montana railroad and public service commission or if such service is to be, or is likely to be, discontinued in the immediate future, the city or town council of any incorporated city or town shall have the power to enter into a contract or contracts, or to enter into a lease or a lease and operating agreement, with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed eight (8) miles measured along the route of said bus line or lines; and for the purpose of



raising the necessary moneys to defray the cost of such transportation service pursuant to such contract or contracts, lease or lease and operating agreement, with such independent carrier or carriers the city or town council shall have power to annually levy a tax on the taxable value of all taxable property within the limits of such city or town; provided, however, that whenever the council of such city or town shall deem it necessary to raise money by taxation for such purpose in excess of the levy now allowed by law the council of such city or town shall in the manner prescribed by law, submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy in excess of the levy now allowed by law shall not exceed one and one-half ( $1\frac{1}{2}$ ) mills.

**History:** En. Sec. 3, Ch. 211, L. 1955;  
amd. Sec. 1, Ch. 120, L. 1957.

**11-1022. Bids for service—operation of carriers.** The said city or town council shall have power and authority to call for bids from independent carriers for such transportation service, and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease or lease and operating agreement.

**History:** En. Sec. 4, Ch. 211, L. 1955;  
amd. Sec. 1, Ch. 120, L. 1957.

## CHAPTER 11

### ORDINANCES—INITIATIVE AND REFERENDUM

- Section 11-1104. Initiative in cities—petition.  
 11-1105. Submission of question at regular election.  
 11-1106. No ordinance to be effective until thirty days after passage.  
 11-1107. Referendum petition.  
 11-1108. Referendum to be had at regular election.  
 11-1109. Special election may be ordered.  
 11-1110. Proclamation of election.  
 11-1111. Ballots and method of voting.  
 11-1112. Qualifications of voters.  
 11-1113. Forms of petitions and conduct of proceedings.  
 11-1114. To what ordinances applicable.

**11-1104. (5058) Initiative in cities—petition.** (1) Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty (60) days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or

modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act.

(2) If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel on the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible, and have precedence over other cases, except criminal and taxation cases.

(3) The court shall have jurisdiction in such cases to determine whether or not the change made by the city council is material, and also whether the petition was regular in form or substance, and shall also have power to decide, if the fact be put in issue by the defendant, whether or not the petition was signed by a sufficient number of voters and was regular in form. If the court shall decide that the change was material and that the petition was regular in form and signed by a sufficient number of legal voters, then the ordinance proposed by the petition shall be submitted to the people as provided in this act. If the court shall decide that the ordinance passed by the council was not materially different from that proposed in the petition, or the petition was not regular in form, or not signed by a sufficient number of legal voters, the ordinance shall not be submitted to the people. If the court shall decide that the changes made by the council were material, but that the petition was irregular for some reason, or not properly or sufficiently signed, a new petition, regular in form, may be presented by the required number of legal voters, asking the council to submit such ordinance to the people, and thereupon the same shall be so submitted as provided in this act.

(4) If the council shall not, within sixty days, pass an ordinance on the subject of the ordinance proposed in the petition, then the ordinance proposed by the petition shall be submitted to the people. Before submitting such ordinance to the people, the mayor or city or town council may direct that a suit be brought in the district court in and for the county, in the name of the city or town, to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed



would be valid and constitutional. The complaint shall name as defendants not less than ten nor more than twenty of the petitioners. In addition to the names of such defendants, in the caption of the complaint, there shall be added the words, "and all petitioners whose names appear on the petition for an ordinance filed on the ..... day of ....., in the year .....,," stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition thereto shall be published at least once, at the expense of the city, in at least one newspaper published in the city or town.

(5) In all suits brought under this section the decision of the district court shall be final except in cases where it shall decide that the proposed ordinance would be unconstitutional or invalid as being beyond the powers of the city or town council, and in such excepted cases the petitioners, or any of them, may appeal to the supreme court as in other cases, but shall not be required to give any bond for costs. The decision of the district court holding such ordinance valid or constitutional shall not, however, prevent the question being raised subsequently, if the ordinance shall be passed and go into effect, by anyone affected by the ordinance. No costs shall be allowed to either side in suits or appeals under this section.

(6) If an ordinance shall be repealed pursuant to a proposal initiated by the legal voters of a city or town, as in this section provided, the city or town council may not, within a period of two years thereafter, re-enact such ordinance or any ordinance so similar thereto as not to be materially different therefrom. If during such two-year period the council shall enact an ordinance similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether such new ordinance be a re-enactment without material change of the one so repealed, and the provisions of subsections 2 and 3 hereof shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of an ordinance repealed pursuant to initiative of the voters.

History: En. Ch. 167, L. 1907; Sec. R. C. M. 1921; amd. Sec. 1, Ch. 24, L. 3266, Rev. C. 1907; re-en. Sec. 5058, 1951; amd. Sec. 1, Ch. 126, L. 1967.

**11-1105. (5059) Submission of question at regular election.** Any ordinance proposed by petition as aforesaid, which shall be entitled to be submitted to the people, shall be voted on at the next regular election to be held in the city or town, unless the petition therefor shall ask that the same be submitted at a special election, and such petition be signed by not less than fifteen per cent of the electors qualified to vote at the last preceding municipal election.

History: En. Ch. 167, L. 1907; Sec. 3267, Rev. C. 1907; re-en. Sec. 5059, R. C. M. 1921.

**11-1106. (5060) No ordinance to be effective until thirty days after passage.** No ordinance or resolution passed by the council of any city or town shall become effective until thirty days after its passage, except general appropriation ordinances providing for the ordinary and current ex-



penses of the city or town, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting of any property for a period exceeding one year, nor the purchase or sale of personal property exceeding five thousand dollars in value.

**History:** En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R. C. M. 1921.

**11-1107. (5061) Referendum petition.** During the thirty (30) days following the passage of any ordinance or resolution, ten per cent (10%) of the qualified electors of the city or town may, by petition addressed to the council and filed with the clerk of the city or town, demand that such ordinance or resolution, or any part or parts thereof, shall be submitted to the electors of the city or town.

**History:** En. Ch. 167, L. 1907; re-en. Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1967.

**11-1108. (5062) Referendum to be had at regular election.** Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the city or town at the next municipal election; provided, the petition or petitions shall have been filed with the city clerk at least thirty days before such election. If such petition or petitions be signed by not less than fifteen per cent of the qualified electors of the city or town, the measure shall be submitted at a special election to be held for the purpose.

**History:** En. Ch. 167, L. 1907; re-en. Sec. 3270, Rev. C. 1907; re-en. Sec. 5062, R. C. M. 1921.

**11-1109. (5063) Special election may be ordered.** The city or town council may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any ordinance passed by the city or town council, and may likewise submit to the electors, at a general election, any ordinance passed by the city or town council.

**History:** En. Ch. 167, L. 1907; re-en. Sec. 3271, Rev. C. 1907; re-en. Sec. 5063, R. C. M. 1921.

**11-1110. (5064) Proclamation of election.** Whenever a measure is ready for submission to the electors, the clerk of the city or town shall, in writing, notify the mayor thereof, who, forthwith, shall issue a proclamation setting forth the measure and the date of the election or vote to be had thereon. Said proclamation shall be published four days in four consecutive weeks in each daily newspaper in the municipality, if there be such,

otherwise in the weekly newspapers published in the city or town. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the city or town.

**History:** En. Ch. 167, L. 1907; re-en.  
Sec. 3272, Rev. C. 1907; re-en. Sec. 5064,  
B. C. M. 1921.

**11-1111. (5065) Ballots and method of voting.** The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the municipality shall be on separate sheets, and returned to the clerk of the municipality. The returns shall be canvassed in the same manner as the returns of regular elections for municipal officers. The mayor of the municipality shall issue his proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the municipality for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five days after the vote is officially announced.

**History:** En. Sec. 167, L. 1907; re-en.  
Sec. 3273, Rev. C. 1907; re-en. Sec. 5065,  
B. C. M. 1921.

**11-1112. (5066) Qualifications of voters.** The qualifications for voting on questions submitted to the electors, under the provisions hereof, shall be the same as those required for voting at municipal elections in the city or town at elections for mayor or aldermen thereof. And where, by the laws of the state, or by ordinance of the city or town made in pursuance thereof, electors are required to register in order to be qualified to vote at municipal elections, the registration book or books shall be prima facie evidence of the right to sign any petition herein provided for.

**History:** En. Ch. 167, L. 1907; re-en.  
Sec. 3274, Rev. C. 1907; re-en. Sec. 5066,  
B. C. M. 1921.

**11-1113. (5067) Forms of petitions and conduct of proceedings.** The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act. The city clerk shall perform the duties which, under the state laws, devolve upon the county clerk and secretary of state, insofar as the provisions relating thereto may be made to apply to the case of the city or town clerk; but it shall not be necessary to mail or distribute copies of the petitions or measures to the electors of the city or town.

**History:** En. Ch. 167, L. 1907; re-en.  
Sec. 3275, Rev. C. 1907; re-en. Sec. 5067,  
B. C. M. 1921.



**11-1114. (5068) To what ordinances applicable.** The provisions of this act regarding the referendum shall not apply to ordinances which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any city or town.

**History:** En. Ch. 167, L. 1907; re-en. Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R. C. M. 1921.

## CHAPTER 12

### CONTRACTS AND FRANCHISES

Section 11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1206. Franchise, how granted.

11-1207. Grant of franchise must be submitted to tax-paying freeholders.

11-1208. Same—notice of election.

11-1209. When voted, council must pass ordinance.

**11-1202. (5070) Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.** All contracts for the purchase of any automobile, truck, or other vehicle or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, or for the construction of any building, for which must be paid a sum exceeding two thousand five hundred dollars (\$2,500.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of five (5) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ( $\frac{3}{4}$ ) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye



and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed two thousand five hundred dollars (\$2,500.00) the council may provide for the payment of such an amount in installments extending over a period of not more than five (5) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ( $\frac{1}{3}$ ) thereof shall be paid each year, and if such amount is extended over a term of four (4) years, at least one-fourth ( $\frac{1}{4}$ ) is to be paid each year, and if such amount is extended over a term of five (5) years, at least one-fifth ( $\frac{1}{5}$ ) is to be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; 153, L. 1947; amd. Sec. 1, Ch. 139, L. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. R. C. M. 1921; amd. Sec. 1, Ch. 22, L. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. 121, L. 1969. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch.

**11-1206. (5074) Franchise, how granted.** The council must not grant a franchise or special privilege to any person save and except in the manner specified in the next section. The powers of the council are those only expressly prescribed by law and those necessarily incident thereto.

History: En. Sec. 4813, Pol. C. 1896; Ch. 29, L. 1921; re-en. Sec. 5074, R. C. M. re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, 1921.

**11-1207. (5075) Grant of franchise must be submitted to tax-paying freeholders.** No franchise for any purpose whatsoever shall be granted by

any city or town, or by the mayor or city council thereof, to any person or persons, association, or corporation, without first submitting the application therefor to the resident freeholders whose names shall appear on the city or county tax-roll preceding such election.

**History:** En. Sec. 1, Ch. 85, L. 1903; 5075, R. C. M. 1921.  
re-en. Sec. 3291, Rev. C. 1907; re-en. Sec.

**11-1208. (5076) Same—notice of election.** A notice of such election must be published at least in one daily newspaper, if there be one published in the city or town, and if not, in some weekly newspaper of general circulation, at least once a week for three successive weeks, and such notice must be posted in three public places in the city or town. The notice must state the time and place of holding the election, and the character of any such franchise applied for, and the valuable consideration, if any there be, to be derived by the city. At such election the ballots must contain the words, "For granting franchise," "Against granting franchise," and in voting, the elector must make a cross thus, "X," opposite the answer he intends to vote for. Such election must be conducted and canvassed and the return made in the same manner as other city or town elections.

**History:** En. Sec. 2, Ch. 85, L. 1903;  
re-en. Sec. 3292, Rev. C. 1907; re-en. Sec.  
5076, R. C. M. 1921.

**11-1209. (5077) When voted, council must pass ordinance.** If the majority of the votes cast at the election be "For granting franchise," the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

**History:** En. Sec. 3, Ch. 85, L. 1903;  
re-en. Sec. 3293 Rev. C. 1907; re-en. Sec.  
5077, R. C. M. 1921.

## CHAPTER 17

### MUNICIPAL COURTS

Section 11-1703. Election of judges—term of office.

**11-1703. (5094.3) Election of judges—term of office.** There shall be elected at the general city election in the year 1936 in all cities with a population of twenty thousand (20,000) and over, one judge of municipal court. The term of such judge so elected shall commence on the first Monday in May, 1936, and terminate on the first Monday in May, 1938. Thereafter, judges of municipal courts shall be elected at the general city elections in all even numbered years. Such judges shall hold office for the term of two years from the first Monday of May in the year in which they are elected and until their successor is elected and qualified. All elections of municipal judges shall be under and governed by the laws applicable to the election of city officials, except that the names of candidates for municipal judge shall be placed on the ballot to be used at such election without any party designation or any statement, measure or principal which the candidate advocates or any slogan after his name.

**History:** En. Sec. 3, Ch. 177, L. 1935.



## CHAPTER 20

FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS,  
COMPANIES AND DISTRICTS

Section 11-2010. Trustees of fire districts—mutual aid agreements.

**11-2010. (5149) Trustees of fire districts—mutual aid agreements.**

(a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable by-laws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district. Likewise, the trustees may enter into contracts with public or private parties under which the district fire company may extend fire protection to public or private property lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest



limits of the district, whether such public or private property shall lie within the same county or another county; and the district fire company may use the fire district equipment and facilities outside of the district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Fire district trustees may enter such agreements with the proper authority of

- (1) other fire districts
- (2) unincorporated municipalities
- (3) incorporated municipalities
- (4) state agencies which have fire prevention services
- (5) private fire prevention agencies
- (6) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 77, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, amd. Sec. 1, Ch. 333, L. 1969. L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd.

## CHAPTER 22

## SPECIAL IMPROVEMENT DISTRICTS

- Section 11-2217. Cities and towns may establish sewage treatment and disposal plants and systems and water supply and distribution systems.
- 11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
- 11-2271. Loans from revolving fund for paying improvement district warrants—authorization by electors.
- 11-2275. Creation and maintenance of fund.
- 11-2276. Issuance of bonds—submission to electors.

**11-2217. Cities and towns may establish sewage treatment and disposal plants and systems and water supply and distribution systems.** Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

**History:** En. Sec. 1, Ch. 149, L. 1943;  
amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1,  
Ch. 98, L. 1955.

**11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.** (1) Any such municipality may issue and sell negotiable revenue

bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, and must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

(3) At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(4) The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

(5) Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

(6) Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds in the manner provided in this section, to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law. Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby,



be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ( $\frac{3}{8}$  of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars (\$1,000,000), and

shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: Banks for Cooperatives, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Land Banks, and the Federal National Mortgage Association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943;  
amd. Sec. 1, Ch. 146, L. 1951; amd. Sec.  
2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38,  
L. 1957; amd. Sec. 1, Ch. 51, L. 1963.

**11-2271. (5277.3) Loans from revolving fund for paying improvement district warrants—authorization by electors.** (1) Whenever any special improvement district bond or warrant, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine, shall be paid from the money so loaned or from the money so loaned when added to such insuffi-



cient amount, as the case may require; provided, however, that the above provisions of sections 11-2269, 11-2270 and 11-2271 of this code shall not apply to any district or districts heretofore created, unless and until, at an election, either the regular annual municipal election or a special election called by the council, a majority of the electors whose names appear as the owners of property in the city or town on the last completed tax roll of the county in which the city or town is situated, shall authorize the city or town council to proceed thereunder, such election to be called and conducted in the manner and under such regulations as the council may provide. At such election no person other than such qualified elector and taxpayer shall vote on said question, and a majority of those voting thereat shall be sufficient to determine, and shall determine, the question whether the council be authorized or not to proceed under sections 11-2269, 11-2270 and 11-2271 of this code.

(2) In connection with any public offering of special improvement district bonds or warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or warrants so offered, or any interest thereon; remain unpaid.

**History:** En. Sec. 3, Ch. 24, L. 1929;  
amd. Sec. 1, Ch. 179, L. 1945.

**11-2275. Creation and maintenance of fund.** A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

**History:** En. Sec. 2, Ch. 260, L. 1947.

**11-2276. Issuance of bonds—submission to electors.** At any time after the award of the contract for any of the improvements described in section



11-2274 and prior to the issuance of bonds or warrants therefor under the provisions of section 11-2231 the council may by resolution determine that such improvement is of a character that bonds may be issued hereunder in lieu of bonds under said section 11-2231, and may submit to the qualified electors of the city or town the question whether such bonds shall be issued. The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

**History:** En. Sec. 3, Ch. 260, L. 1947.

## CHAPTER 23

### MUNICIPAL BONDS AND INDEBTEDNESS

- Section 11-2301. Creation of indebtedness—submission to taxpayers.  
 11-2306. Petition for election—form—proof.  
 11-2307. Consideration of petition—calling election.  
 11-2308. Notice of election—election hours—election officers.  
 11-2309. Form of ballots and conduct of election.  
 11-2310. Who are entitled to vote—registration of electors.  
 11-2311. Percentage of voters required to authorize the issuing of bonds.  
 11-2312. Canvass of election returns—resolution for bond issue.

#### **11-2301. (5278.1) Creation of indebtedness—submission to taxpayers.**

Whenever the council or commission of any city or town having a corporate existence in this state, or hereafter organize under any of the laws thereof, shall deem it necessary to issue bonds for any purpose whatever, under its powers as set forth in any statute or statutes of this state, or amendments thereto, the question of issuing such bonds shall first be submitted to the electors of such city or town who are qualified to vote on such question, in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding: provided further that no refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent ( $\frac{1}{2}$  of 1%) less than the interest rate of the outstanding bonds to be refunded. In order to issue bonds to refund bonds theretofore issued and outstanding it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds, and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in this act for the sale and issuance of such bonds.

**History:** En. Sec. 1, Ch. 160, L. 1931; 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. amd. Sec. 1, Ch. 100, L. 1933; amd. Sec. 1, Sec. 1, Ch. 62, L. 1945.  
 Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L.

**11-2306. (5278.6) Petition for election—form—proof.** No bonds shall be issued by a city or town for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the

qualified electors of the city or town, and approved, as hereinafter provided, and no such election shall be called unless there has been presented to the city or town council a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

(2) Which, and how many of the persons whose names are subscribed to such petition, are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town.

**History:** En. Sec. 6, Ch. 160, L. 1931; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943.

**11-2307. (5278.7) Consideration of petition — calling election.** When such petition has been filed with the city or town clerk and he has found it has a sufficient number of signers qualified to sign the same, he shall place the same before the city or town council at its first meeting held after he has attached his certificate thereto. The council shall thereupon examine such petition and make such other investigation as it may deem necessary.

If it is found the petition is in proper form, bears the requisite number of signatures of qualified petitioners, and is in all other respects sufficient,



the council shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its filing and presentation, the purpose or purposes for which the bonds are proposed to be issued, and fix the exact amount of bonds to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition, determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in section 11-2303, and making provision for having such question submitted to the qualified electors of the city or town at the next general city or town election, or at a special election which the council may call for such purpose.

**History:** En. Sec. 7, Ch. 160, L. 1931.

**11-2308. (5278.8) Notice of election—election hours—election officers.** Whether such election is held at the general city or town election, or at a special election, separate notice shall be given thereof. Such notice shall state the date when such election will be held, the hours between which the polls will be open, the amount of bonds proposed to be issued, the purpose thereof, the term of years through which the bonds will be paid, and such other information regarding the election and the proposed bonds as the board may deem proper. If the bonds proposed to be issued are for two (2) or more purposes, each purpose and the amount thereof must be separately stated. Such notice shall be posted in each voting precinct in the city or town at least ten (10) days prior to the date for holding such election, and must also be published once a week for a period of not less than two (2) consecutive weeks immediately preceding the date for holding such election in some newspaper published in the city or town, if there be one, and if not then in a newspaper published in the state at a point in the state nearest to the city or town, and designated by the city or town council.

If the question of issuing bonds is submitted at a special election called for such purpose, the city or town council shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of judges than is required at a general city or town election, but in no case shall there be less than three (3) judges in a precinct and such judges shall act as their own clerks.

If the question of issuing bonds is submitted at a general city or town election, the polls shall be kept open during the same hours as are fixed for the general election and the judges and clerks for such general election shall act as the judges and clerks thereof.

**History:** En. Sec. 8, Ch. 160, L. 1931.

**11-2309. (5278.9) Form of ballots and conduct of election.** Whenever the question of issuing bonds is submitted at either a general city or town election, or at a special election, separate ballots shall be provided therefor. Such ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink,



in one (1) line or more, as required, the word "FOR" (stating the proposition and the terms thereof explicitly and at length), and thereunder the word "AGAINST" (stating the proposition and terms in like manner as above); and there shall be before the word "FOR" and before the word "AGAINST," each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in the following manner:

☐ FOR (stating the proposition)

☐ AGAINST (stating the proposition)

If bonds are sought to be issued for two (2) or more separate purposes, then separate ballots must be provided for each purpose or proposition.

The election shall be conducted, and the returns made, in the same manner as other city or town elections; and all election laws governing city and town elections shall govern, insofar as they are applicable, but if such question be submitted at a general city or town election the votes thereon must be counted separately and separate returns must be made by the judges and clerks at such election. Returns must be made separately for each proposition or question submitted at such election.

**History:** En. Sec. 9, Ch. 160, L. 1931.

**11-2310. (5278.10) Who are entitled to vote—registration of electors.** Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-515 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

**History:** En. Sec. 10, Ch. 160, L. 1931;  
amd. Sec. 1, Ch. 182, L. 1939; amd. Sec.  
17, Ch. 64, L. 1959.

**11-2311. (5278.11) Percentage of voters required to authorize the issuing of bonds.** Wherever the question of issuing bonds for any purpose is

submitted to the qualified electors of a city or town, at either a general or special election, not less than forty per centum (40%) of the qualified electors entitled to vote on such proposition or question must vote thereon, otherwise such proposition shall be deemed to have been rejected; provided, however, that if forty per centum (40%) or more of such qualified electors do vote on such proposition or question at such election, and a majority of such votes shall be cast in favor of such question or proposition, then such proposition or question shall be deemed to have been adopted and approved.

**History:** En. Sec. 11, Ch. 160, L. 1931.

**11-2312. (5278.12) Canvass of election returns — resolution for bond issue.** If the bonding election is held at the same time as a general city or town election, then the returns shall be canvassed by the city or town council at the same time as the returns from such general election; but if the question of issuing bonds is submitted at a special election then the city or town council shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more of the qualified electors of the city or town entitled to vote on such question or proposition voted thereon, and that a majority of such votes were cast in favor of the issuing of such bonds, the city or town council shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, and that any thereof may be redeemed in full, at the option of the city or town, on any interest payment date from and after ten (10) years from the date of issue; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two (2) or more series or installments.

**History:** En. Sec. 12, Ch. 160, L. 1931.

## CHAPTER 24

### MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2404. Authorization of undertaking—form and contents of bonds.

**11-2404. Authorization of undertaking—form and contents of bonds.** The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308



to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

**History:** En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963.

#### **Compiler's Notes**

Section 16-1201, referred to in the second paragraph of this section, has been repealed. For similar provisions in current law, see sec. 16-1230.

## **CHAPTER 25**

### **ABATEMENT OF SMOKE NUISANCE**

- Section 11-2504. Bonds.**  
**11-2505. Election.**  
**11-2506. Notice of election.**  
**11-2511. Provisions concerning election.**



**11-2504. (5292) Bonds.** For the purpose of raising moneys to meet the payments under the terms and conditions of said contract, and other necessary and proper expenses in and about the same, and the approval or disapproval thereof, it shall be the duty of the board of county commissioners, if the petition be presented to it within thirty days thereafter, to ascertain the existing indebtedness of the county in the aggregate, and within sixty days after ascertaining the same to submit to the electors of such county the proposition to approve or disapprove the said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed five per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring said indebtedness; and if said petition be presented to the council of any incorporated city or town, then within thirty days thereafter they shall ascertain the aggregate indebtedness of such city or town, and, within sixty days after ascertaining the same, submit to the electors of such city or town the proposition to approve or disapprove said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed three per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner hereinbefore provided, and if disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

**History:** En. Sec. 4, p. 143, L. 1893; 3433, Rev. C. 1907; re-en. Sec. 5292, R. C. re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. M. 1921.

**11-2505. (5293) Election.** The vote upon such proposition shall be had at an election for that purpose to be held, conducted, counted, and results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise herein provided, and the proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds," "Against the contract and bonds," the former above the latter, and the elector shall indicate his vote by a cross opposite the one or the other for which he votes; and if it appears from the result of such election that a majority of the votes cast were "For the contract and bonds," then said contract shall be in full force and effect, and the said bonds shall be issued and disposed of in the manner hereinafter provided. If it shall appear from the result of such election that there was a tie, or a majority of said votes were cast "Against the contract and bonds," then the said contract and bond given for its fulfilment shall be null and void and of no effect, and said bonds and none thereof shall be issued.

**History:** En. Sec. 5, p. 144, L. 1893; 3434, Rev. C. 1907; re-en. Sec. 5293, R. C. re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. M. 1921.

**11-2506. (5294) Notice of election.** The board of county commissioners of the county in which such election is to be held, or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating the objects thereof, the time and place of holding the same, such

conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them, the amount of bonds proposed to be issued, when payable, and the interest they are to bear, with a description of the tickets or ballots to be used, in some newspaper printed and published and circulated in the county, or city, or town, as the case may be, in which such election shall be held, at least three times a week for at least six consecutive weeks next preceding such election, and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

**History:** En. Sec. 6, p. 144, L. 1893; 3435, Rev. C. 1907; re-en. Sec. 5294, B. C. re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. M. 1921.

**11-2511. (5299) Provisions concerning election.** No registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control as if especially had and done for the purposes of the election to be held under this act.

**History:** En. Sec. 11, p. 146, L. 1893; 3440, Rev. C. 1907; re-en. Sec. 5299, B. C. re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. M. 1921.

## CHAPTER 31

### COMMISSION FORM OF GOVERNMENT

- Section 11-3101. Any city may reorganize under commission form.  
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 11-3136. Requirements of petitions.  
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**11-3101. (5366) Any city may reorganize under commission form.** Any city may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

**History:** En. Sec. 1, Ch. 57, L. 1911;  
 re-en. Sec. 5366, B. C. M. 1921.



**11-3102. (5367) Submission to electors—petition and order of election.** Upon a petition being filed with the city council, signed by not less than twenty-five per cent of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this act be submitted to the qualified electors of such city, said city council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such city, under the provisions of this act, shall be submitted to the qualified electors of such city.

Such order of the city council shall specify therein the time when such election shall be held, which must be within ninety days from the date of the filing of such petition.

**History:** En. Sec. 2, Ch. 57, L. 1911;  
am. Sec. 1, Ch. 2, L. 1915; re-en. Sec.  
5367, B. C. M. 1921.

**11-3103. (5368) Proclamation of election.** Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such city.

**History:** En. Sec. 3, Ch. 57, L. 1911;  
re-en. Sec. 5368, B. C. M. 1921.

**11-3104. (5369) Ballots—form.** At such election the ballots to be used shall be printed upon plain, white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of .....the question of reorganization of the city of .....under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly," and shall be substantially in the following form:

For reorganization of the city of ..... under chapter (name of chapter containing this act) of the act of the twelfth legislative assembly.

Against reorganization of the city of .....under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly.

Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

**History:** En. Sec. 4, Ch. 57, L. 1911;  
re-en. Sec. 5369, B. C. M. 1921.

**11-3105. (5370) Certificate of result of election—no further election for two years.** If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder, each, a certificate stating that such proposition was adopted.



If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of two years thereafter.

**History:** En. Sec. 5, Ch. 57, L. 1911;  
re-en. Sec. 5370, R. O. M. 1921.

**11-3106. (5371) Calling of election to elect city officers.** If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said city, and also in at least ten of the most public places in said city.

**History:** En. Sec. 8, Ch. 57, L. 1911;  
amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec.  
5371, R. O. M. 1921.

**11-3107. (5372) Manner of conducting election — canvassing votes.** Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections.

**History:** En. Sec. 7, Ch. 57, L. 1911;  
re-en. Sec. 5372, R. O. M. 1921.

**11-3108. (5373) Laws governing city—ordinances—territorial limits and property.** All laws governing cities of the first, second, and third classes, and not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All by-laws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this act. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description, which were vested in any such city under its former organization, shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided for in this act.

**History:** En. Sec. 8, Ch. 57, L. 1911;  
re-en. Sec. 5373, R. O. M. 1921.

**11-3109. (5374) Number of councilmen—vacancies, how filled.** In every city of the third class, there shall be a mayor and two councilmen; in every city of the second class, a mayor and two councilmen; in every city of the first class having a population of less than twenty-five thousand (25,000), a mayor and two (2) councilmen, and in every city of the first class having a population of twenty-five thousand (25,000), or more, a

mayor and four (4) councilmen, and the mayor and all councilmen shall be elected at large.

Vacancies in the office of mayor or councilmen shall be filled by appointment made by a majority vote of the remaining members of the council, and if, in filling such vacancy, a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

**History:** En. Sec. 9, Ch. 57, L. 1911;  
re-en. Sec. 5370, R. C. M. 1921; amd. Sec.  
1, Ch. 18, L. 1945.

**11-3110. (5375) Beginning of term of office.** The mayor and councilmen elected at such special election shall qualify, and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

**History:** En. Sec. 10, Ch. 57, L. 1911;  
re-en. Sec. 5375, R. C. M. 1921.

**11-3111. (5376) Tenure of office — expiration of term.** The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in May of the year following their election. At the first regular city election held in the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than twenty-five thousand. The mayor elected at such first general city election shall hold office for two years; one of the councilmen elected at such first city election shall hold office for one year; and the other of such councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; a mayor and four councilmen shall be elected in cities having a population of twenty-five thousand or more; and the mayor elected at such first general city election shall hold office for two years. Two of the councilmen elected at such first general city election shall hold office for one year, and the other two of the councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; and the terms of office of the mayor and all councilmen thereafter elected shall be two years.

The councilmen elected at the first general city election shall decide by lot in such manner as they may select, which thereof shall hold the office of councilman the term of which expires one year thereafter, and which



thereof shall hold the office of councilman, the term of which expires two years thereafter.

History: En. Sec. 11, Ch. 57, L. 1911;  
re-en. Sec. 5376, R. C. M. 1921.

**11-3112. (5377) Nomination of candidates — primary election.** (1) Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the second Monday preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

(2) Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy in substantially the following form:

State of Montana, }  
County of ..... } ss.

I, \_\_\_\_\_, being first duly sworn, say that I reside at \_\_\_\_\_ street, city of \_\_\_\_\_, county of \_\_\_\_\_ state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the \_\_\_\_\_ Monday of \_\_\_\_\_, 19\_\_\_\_, and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by .....  
..... on this ..... day of ....., 19....

(Signed) .....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of.....  
....., and residing at the places set opposite our respective  
names hereto, do hereby request that the name of (name of candidate) be  
placed in the ballot as a candidate for nomination for (name of office) at  
the primary election to be held in such city on the ..... Monday of



....., 19..... We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors.	Number.	Street.
.....	.....	.....

(4) Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

(5) Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballot shall be printed upon plain substantial, white paper, and shall be headed:

Candidates for nomination for mayor and councilmen of the city of  
..... at the

Primary Election;

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form: (Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions).

Official Primary Ballot.

Candidates for nomination for mayor and councilmen of the city of  
..... at the

Primary Election.

For Mayor.

(Name of candidate.)

(Vote for one.)

For councilman.

(Name of candidate.)

(Vote for ..... (Giving number to be voted for).)

Official ballot attest:

(Signature) .....

City Clerk.

(6) Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 23-1220 of these codes, and the provisions of sections 23-1221 to 23-1228, inclusive, of these codes shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count the ballots and ascertain the number of votes cast in such precinct for each of the candidates for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made.

(7) If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal election, the four persons receiving the highest number of votes shall be the candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen, and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

(8) All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

(9) Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the judge of the district court of the



county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911; the bonds of mayor and councilmen at re-en. Sec. 5377, R. C. M. 1921. \$10,000.00 is superseded by Sec. 1, Ch. 9,

NOTE.—Par. 9 of this section fixing Laws 1943 (11-3124) fixing them at \$5,000.

**11-3113. (5377.1) Receipt of majority of all votes cast at primary election elects candidate and dispenses with general election, when.** Whenever, in any city operating under a commission form of government, at a primary election held in accordance with section 11-3112, a councilman or councilmen or a mayor and councilman or councilmen are to be elected, one person or candidate for any office to be filled shall receive a majority of all votes cast for such office, then such person or persons shall be deemed duly elected to the respective office or offices for which he or they receive such majority vote. If at such primary election more than two (2) persons are candidates for the same office and no one person receives a majority of all votes cast for such office then the names of the two persons receiving the highest number of votes shall be placed upon the general municipal election ballot under the provisions of section 11-3112. If, in any year, all officers to be elected are thus elected by a majority vote at such primary election, then, in that event, no general municipal election shall be held in said city for said year.

History: En. Sec. 1, Ch. 13, L. 1933.

**11-3114. (5378) Penalty for working for candidate.** Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars or be imprisoned in the county jail not exceeding thirty days.

History: En. Sec. 13, Ch. 57, L. 1911;  
re-en. Sec. 5378, R. C. M. 1921.

**11-3115. (5378.1) Fees for filing for office.** Every candidate for mayor and every candidate for councilman in cities operating under the commission form of government shall, at the time of filing his nominating petition pay the following fees to the city clerk as filing fee: A candidate for mayor shall pay twenty dollars (\$20.00), and a candidate for councilman shall pay fifteen dollars (\$15.00).

History: En. Sec. 1, Ch. 137, L. 1933.

**11-3116. (5379) Bribery — false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any

person wilfully voting or offering to vote at such election who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars; and be imprisoned in the county jail not less than ten nor more than ninety days.

**History:** En. Sec. 14, Ch. 57, L. 1911;  
re-en. Sec. 5379, R. C. M. 1921.

**11-3126. (5388) Ordinances and franchises—how adopted or granted.** Every ordinance or resolution appropriating money, or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas, or water-works, electric light, or power plant, heating plant, telegraph or telephone systems, or other public service utilities, or renewal or extension of any such franchise or grant within such city, must be authorized or approved by a majority of the electors voting thereon at a general or special election, as provided in sections 11-1207, 11-1208 and 11-1209 of this code.

**History:** En. Sec. 23, Ch. 57, L. 1911;  
re-en. Sec. 5388, R. C. M. 1921.

**11-3127. (5389) Officers not to be interested in contracts, receive passes, or do electioneering.** No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or materials, supplies, or services to be furnished or performed for the city; and no such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gas-works, water-works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city, any interurban railway, street railway, gas-works, water-works, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly, from any such person, firm, or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this



section shall be a misdemeanor, and every such contract and agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views, or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

**History:** En. Sec. 24, Ch. 57, L. 1911;  
re-en. Sec. 5389, R. C. M. 1921.

**11-3128. (5390) Civil service.** (1) Immediately after organizing, the council shall, by ordinance, appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for six years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than three years next preceding their appointment.

(2) The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

(3) Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, and to obey the laws, and to aid to secure and maintain an honest and efficient force, free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(4) Said commission shall, on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical, and shall fairly test the

fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who, according to the records, have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed thirty days.

(5) All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall, within twenty-four hours thereafter, report such suspension or discharge, and the reason therefor, to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension, according to the facts. Such employee (or the officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

(6) The council shall have the power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect, and under the same penalties, as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

(7) Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time; and said council may prescribe such rules and regulations for the proper conduct of the business of the said commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and restrictions on payment to persons improperly employed.

(8) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil service commission.

(9) The provisions of this section shall apply to all appointive officers and employees of such city, except those especially named in section 11-3121 of this code, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

(10) All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations.



(11) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(12) Every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in the daily newspaper of general circulation, or weekly, if there be no daily newspaper published, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section shall be a misdemeanor, and give ground for the removal from office.

History: En. Sec. 25, Ch. 57, L. 1911;  
re-en. Sec. 5390, R. C. M. 1921.

**11-3132. (5394) Recall of elective officers.** (1) The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent of all qualified electors registered for the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(2) Within ten days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

(3) The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be con-

ducted, returned, and the result thereof declared, in all respects as are other elections.

(4) As far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to a vote at said special election, equal in number to at least ten per cent of the entire number of persons registered to vote at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in section 11-3112 of this code, so far as the same is applicable, substituting the word "special" for the word "primary" in such statement and petition, and stating therein that such person is a candidate for election instead of nomination.

(5) The ballot for such special election shall be in substantially the following form:

Official Ballot.

Special election for the balance of the unexpired term of.....  
as ..... for .....

(Vote for one only.)

(Name of candidates.)

Name of present incumbent.

Official ballot attest.

(Signature).....,

City Clerk.

(6) The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of the election, the office shall be deemed vacant. If the incumbent receive the highest number of votes, he shall continue in office. The said method of removal shall be cumulative, and additional to the methods heretofore provided by law.

**History:** En. Sec. 29, Ch. 57, L. 1911;  
amd. Sec. 3, Ch. 2, L. 1915; re-en. Sec.  
5394, R. C. M 1921.

**11-3133. (5395) Ordinance — how submitted — petition and election.** Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required. The signature, verification, inspection, certification, amendment, and submission of such petition shall be the same as provided for petition under the preceding section. If the petition accompanying the proposed



ordinance be signed by electors equal in number to twenty-five per centum of the entire number of persons registered to vote at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either:

(a) Pass each ordinance without alteration within twenty days after the attachment of the clerk's certificate to the accompanying petition; or,

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed by law within thirty days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted to the vote of the electors of such city.

But if the petition is signed by not less than ten nor more than twenty-five per centum of the electors, as above defined, then the council shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring after the clerk's certificate of sufficiency is attached to said petition.

The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by the petition of which shall be adopted by a vote of the people cannot be repealed or amended except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section; but there shall not be more than one special election in any period of six months for such purposes.

The council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers published in such city, and if there be none, then one time in each weekly newspaper published therein; such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

**History:** En. Sec. 30, Ch. 57, L. 1911;  
re-en. Sec. 5395, B. C. M. 1921.

**11-3134. (5396) Taking effect and suspension of ordinances.** No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this act, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency, and is passed by a two-thirds vote of the council,

shall go into effect before ten days from the time of its final passage; and if, during said ten days, a petition signed by electors of the city equal in number to at least twenty-five per centum of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by subdivision (b) of the preceding section, to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of the preceding section, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

History: En. Sec. 31, Ch. 57, L. 1911;  
re-en. Sec. 5396, R. C. M. 1921.

**11-3135. (5397) Abandonment of commission form.** Any city which shall have operated for more than one year under the provisions of this act may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population.

Upon the petition of not less than ten per cent (10%) of the electors of such city registered for the last preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition be filed at least sixty (60) days prior to the date of such election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population; or if formerly organized under special charter shall resume said special charter?"

If the majority of the votes cast at such election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such city, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided for by section 11-2132 of this code, insofar as the provisions thereof are applicable; or if now organized under special charter, may resume said special charter. Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question shall not be submitted again for a period of two (2) years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of two (2) years.



**History:** En. Sec. 32, Ch. 57, L. 1911; 5397, R. C. M. 1921; amd. Sec. 1, Ch. 105, amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. L. 1951.

**11-3136. (5398) Requirements of petitions.** Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

**History:** En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R. C. M. 1921; amd. Sec. 2, Ch. 105, L. 1951.

**11-3137. (5399) Effect of act upon existing laws.** All acts and parts of acts, and all laws, not inconsistent with any of the provisions of this act, now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect, and shall be considered and construed as not repealed by this act, except insofar as the same may be in conflict or inconsistent with the provisions of this act.

**History:** En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R. C. M. 1921.

## CHAPTER 32

### COMMISSION-MANAGER FORM OF GOVERNMENT

- Section 11-3201. Any city may reorganize under commission-manager form.
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**11-3201. (5400) Any city may reorganize under commission-manager form.** Any municipality may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

**History:** En. Sec. 1, Ch. 152, L. 1917;  
re-en. Sec. 5400, R. C. M. 1921.

**11-3202. (5401) Submission of question to electors—petition and order of election.** Upon a petition being filed with the city or town council, signed by not less than twenty-five per cent of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this act be submitted to the qualified electors of such municipality, said city or town council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this act shall be submitted to the qualified electors of such municipality.

Such order of the city or town council shall specify therein the time when such election shall be held, which must be within ninety days from the date of filing of such petition.

**History:** En. Sec. 2, Ch. 152, L. 1917;  
re-en. Sec. 5401, R. C. M. 1921.



**11-3203. (5402) Proclamation of election.** Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said municipality, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such municipality.

**History:** En. Sec. 3, Ch. 152, L. 1917;  
re-en. Sec. 5402, R. C. M. 1921.

**11-3204. (5403) Ballots—form.** At such election, the ballots to be used shall be printed on plain white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly," and shall be substantially in the following form:

For reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly.

Against reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly.

Such election shall be conducted, and vote canvassed and result declared in the same manner as provided by law in respect to other municipal elections.

**History:** En. Sec. 4, Ch. 152, L. 1917;  
re-en. Sec. 5403, R. C. M. 1921.

**11-3205. (5404) Certificate of result of election—election not to be held within two years after failure to adopt.** If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state and to the county clerk and recorder, each a certificate stating that such proposition was adopted. If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of two years from the date of the last submission.

**History:** En. Sec. 5, Ch. 152, L. 1917;  
re-en. Sec. 5404, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1923.

**11-3206. (5405) Special election for electing commissioners.** If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within one week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same, which

proclamation shall be published for ten successive days in each daily newspaper published in such municipality if there be such, otherwise for two successive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

**History:** En. Sec. 6, Ch. 152, L. 1917;  
re-en. Sec. 5405, R. C. M. 1921; amd. Sec.  
2, Ch. 31, L. 1923.

**11-3207. (5406) Manner of conducting election — canvassing votes.** Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

**History:** En. Sec. 7, Ch. 152, L. 1917;  
re-en. Sec. 5406, R. C. M. 1921.

**11-3208. (5407) Laws governing city — ordinances — territorial limits and property.** All laws governing municipalities of like population, and not inconsistent with the provisions of this act, shall apply to and govern municipalities organized under this act. All by-laws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this act. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change, unless otherwise provided for in this act.

**History:** En. Sec. 8, Ch. 152, L. 1917;  
re-en. Sec. 5407, R. C. M. 1921.

**11-3209. (5408) Organization of communities or groups of communities as municipality—election proclamation—election of commissioners.** Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part, or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this act, the board of county commissioners of such county may, or upon the presentation of a petition signed by not less than twenty-five per cent of the qualified electors in such community or group of communities must, issue a proclamation ordering a special election to be held, at which election the question of the organization of such community or group of communities as a municipality under the provisions of this act shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be within ninety days from the date of filing such petition, and shall define the bound-



aries of said proposed municipal district, which shall include all such communities and cities, and such additional adjacent territory as shall, in the judgment of the board of county commissioners, provide for future urban growth.

If a majority of the legal voters at said election vote in favor of the organization of such municipal district, or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said elections, and immediately thereafter shall give notice for thirty days in a newspaper published within the proposed municipal district, or if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for six months are qualified electors. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner prescribed by law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers.

**History:** En. Sec. 9, Ch. 152, L. 1917;  
amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec.  
5408, R. O. M. 1921.

**11-3210. (5409) Powers of municipalities under commission-manager plan.** The inhabitants of any municipality, coming under the provisions of this act, as its limits now are, or may hereafter be, shall be a body politic and corporate and have a corporate name, and as such shall have perpetual succession, and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest, or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality, and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings, and

the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices, and fix the salaries and compensations of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality, and for the performance of the functions thereof. The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this act, or when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917;  
re-en. Sec. 5409, R. C. M. 1921.

**11-3211. (5410) Form of government to be known as commission-manager plan—composition of commission—powers.** The form of government provided for in this chapter shall be known as the "commission-manager plan," and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided. The commission shall consist of three (3) commissioners for all municipalities having a population of less than fifteen thousand (15,000) and five (5) commissioners for all cities having a population of fifteen thousand (15,000) or more. The commission shall constitute the governing body, with powers as hereinafter provided, to pass ordinances, adopt regulations and appoint a chief administrative officer to be known as the "city manager," and exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917;  
re-en. Sec. 5410, R. C. M. 1921; amd. Sec.  
1, Ch. 60, L. 1943.

**11-3212. (5411) Qualification of commissioners—tenure of office—expiration of terms.** The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this act shall cease and terminate, and the terms of office of all their appointed officers, and of all of the employees of such city or town, shall cease and terminate as soon as the commissioners shall by resolution declare.

All commissioners shall serve for a term of four years and until their successors are elected and have qualified; except that at the first election the two candidates having the highest number of votes shall hold office for a period of four years, less the time elapsed since the 31st day of December of the odd numbered year last preceding. The terms of office of all other candidates shall expire on the 31st day of December in any odd numbered year following the special election provided for in this act, at which the first commissioners are elected.

History: En. Sec. 13, Ch. 152, L. 1917;  
re-en. Sec. 5411, R. C. M. 1921; amd. Sec.  
3, Ch. 31, L. 1923.



**11-3213. (5412) Filling of vacancies in commission.** Vacancies in the commission shall be filled by the commission for the remainder of the unexpired term, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

**History:** En. Sec. 14, Ch. 152, L. 1917;  
re-en. Sec. 5412, R. C. M. 1921.

**11-3214. (5413) Qualifications of commissioners—holding other public office forbidden—interest in contracts not allowed—accepting gratuities forbidden.** Members of the commission shall be residents of the city or town and have the qualifications of electors, and own real estate situated therein to the assessed value of not less than one thousand dollars. Commissioners and other officers and employees shall not hold any other public office or employment, except in the state militia, as school trustees, or notary publics, and shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality. Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

**History:** En. Sec. 15, Ch. 152, L. 1917;  
re-en. Sec. 5413, R. C. M. 1921; amd. Sec.  
4, Ch. 31, L. 1923.

**11-3215. (5414) Nomination of candidates—primary election.** (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least ten days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana,	} ss.
County of .....	

I, \_\_\_\_\_, being first duly sworn, say that I reside at \_\_\_\_\_ street, (city, town) of \_\_\_\_\_, county of \_\_\_\_\_, state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19\_\_\_\_\_, and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signed) \_\_\_\_\_

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of \_\_\_\_\_, and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19\_\_\_\_\_. We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors.	Number.	Street.
-------------------------------	---------	---------

(Space for Signatures.)

State of Montana,	}	
	}ss.	
County of _____	}	

\_\_\_\_\_, being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public.

This petition, if found insufficient, shall be returned to \_\_\_\_\_ at No. \_\_\_\_\_ street, \_\_\_\_\_, Montana.

(4) Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to



be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed, and authenticated with a facsimile of his signature.

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot.

**History:** En. Sec. 16, Ch. 152, L. 1917;  
re-en. Sec. 5414, B. C. M. 1921; amd. Sec.  
1, Ch. 38, L. 1961.

**11-3216. (5415) Ballots—form, contents and distribution—qualification of electors—conduct of election.** (1) All ballots used in all elections held under authority of this act shall be without party mark or designation. The ballots shall be printed on plain, substantial white paper.

(2) Except that the crosses here shown shall be omitted, and that in place of the names of persons here shown, there shall appear the names of the persons who are candidates for nomination, the primary ballots shall be substantially as hereinafter designated. Primary, regular and special election ballots provided under authority of this act for the nomination or election of commissioners shall not bear the name of any person or persons or any issue other than those of candidates for the nomination or election to the office of commissioner.

Official Primary Ballot.

Vote for (insert here a number equal to the number of persons to be elected to the office of commissioner at the next regular municipal election.)

If you wrongly mark, tear or deface this ballot, return it and obtain another.

Candidates for nomination to the office of commissioner at the primary election.



John Doe



Henry Smith



George Jones



James Richards



Richard Doe

---

Official Ballot Attest:

(Signature) .....  
Clerk of the Commission.

---

(3) Having caused said ballots to be printed, the clerk of the commission shall cause to be delivered at each polling place a number of said ballots, ten per cent in excess of the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election, shall be qualified to vote at such primary election, and any person offering to vote, may be orally challenged by any elector of the municipality upon any or all grounds set forth and specified in section 23-1220, and the provisions of sections 23-1221 to 23-1228, inclusive, shall apply at all challenges made at such election. Judges of election shall immediately upon the closing of the polls, count the ballots and ascertain the number of such votes cast in such precinct for each of the candidates, and make return thereof to the clerk of the commission upon proper blanks to be furnished by the clerk of the commission within twelve hours of the closing of the polls. Not later than the first legal day after he shall have received such returns, the clerk of the commission shall canvass said returns so received from all the polling precincts and shall make and publish in all the newspapers in said municipality, at least once, the result thereof. Said canvass by the clerk of the commission shall be made publicly.

(4) The candidates for nomination to the office of commissioner who shall have received the greatest vote in such primary election shall be placed on the ballot at the next regular municipal election, in number not to exceed double the number of vacancies in the commission to be filled.

(5) Except as otherwise in this act provided all electors of municipalities under this act, who, by ordinances governing cities and towns incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities or towns, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal elections, shall be in the same general form as for such primary election so far as applicable, and in all elections in such municipalities, the election precincts, voting places, method of conducting the elections, canvassing of votes and announcing the results, shall be the same as by law provided for the election of officers in such cities or towns so far as the same are applicable and not inconsistent with the provisions of this act.

History: En. Sec. 17, Ch. 152, L. 1917;  
re-en. Sec. 5415, R. C. M. 1921; amd. Sec.  
5, Ch. 31, L. 1923.

**11-3217. (5416) Arrangement of names of candidates on ballot.** The names of candidates on all ballots used in any election held under the authority of this act shall be printed in rotation, as follows:

The ballot shall be printed in as many series as there are candidates for the office of commissioner. The whole number of ballots to be printed shall be divided by the number of series, and the quotient so obtained



shall be the number of ballots in each series. In printing the first series of ballots, the names of candidates shall be arranged in alphabetical order. After printing the first series, the first name shall be placed last and the next series printed, and the process shall be repeated until each name in the list shall have been printed first an equal number of times. The ballots so printed shall then be combined in tablets, so as to have the fewest possible ballots having the same order of names printed thereon together in the same tablet.

History: En. Sec. 18, Ch. 152, L. 1917;  
re-en. Sec. 5416, R. C. M. 1921.

**11-3218. (5417) Date of holding regular elections—special elections.** A regular election for the choice of commissioners, provided for in this act, shall be held on the first Tuesday after the first Monday in November of any odd-numbered year, and on the first Tuesday after the first Monday in November in each second year thereafter. Elections so held shall be known as regular municipal elections. All other elections held under the provisions of this act, excepting those for the nomination of candidates for the office of commissioner, shall be known as special municipal elections.

History: En. Sec. 19, Ch. 152, L. 1917;  
re-en. Sec. 5417, R. C. M. 1921.

**11-3218.1. Dispensing of general election.** Whenever, in any city operating under a commission-manager form of government at a primary election held in accordance with section 11-3215, the number of nominees shall not exceed the number of officers to be elected, then such nominees shall be deemed duly elected to the respective offices. Then, in that event, no general municipal election shall be held in said city for said year. All matters, other than the election of officers, upon which the general public shall vote shall be disposed of at the primary election unless a special election is held for that purpose.

History: En. Sec. 1, Ch. 75, L. 1955.

**11-3219. (5418) Filing of election expenses of candidates—penalty for violations.** Every candidate for commissioner shall, within thirty (30) days after the election, file with the clerk of the commission his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section, shall be a misdemeanor and if committed by a successful candidate, give ground for the removal from office.

History: En. Sec. 20, Ch. 152, L. 1917;  
re-en. Sec. 5418, R. C. M. 1921; amd. Sec.  
6, Ch. 31, L. 1923.

**11-3220. (5419) Recall of commissioners—petition for recall.** Any or all of the commissioners provided for in this act may be removed from office by the electors. The procedure to effect such removal, shall be as follows:

A petition demanding that the question of removing such officers be submitted to the electors shall be filed with the clerk of the commission.

Such petition for the recall of any or all of the commissioners shall be signed by at least twenty-five per cent of the total number of registered voters in the municipality.

The signature to such petition need not be appended to any one paper.

**History:** En. Sec. 21, Ch. 152, L. 1917;  
re-en. Sec. 5419, B. C. M. 1921.

**11-3221. (5420) Issuance of petition papers.** Petition papers shall be procured only from the clerk of the commission, who shall keep a sufficient number of such blank petitions on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more qualified electors and filed with the clerk of the commission, stating the name and the office of the officer or officers sought to be removed. The clerk of the commission, upon issuing any such petition papers to an elector, shall enter in a record, to be kept in his office, the name of the elector to whom issued, the date of such issuance, and the number of papers issued, and shall certify on such papers the name of the elector to whom issued, and the date issued. No petition papers so issued shall be accepted as part of the petition unless it bears such certificate of the clerk of the commission, and unless it be filed as provided herein.

**History:** En. Sec. 22, Ch. 152, L. 1917;  
re-en. Sec. 5420, B. C. M. 1921.

**11-3222. (5421) Signatures and affidavit to petition papers.** Each signer of a recall petition shall sign his name in ink or indelible pencil, and shall place thereon, after his name, his place of residence by street and number. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper was made in his presence and is the genuine signature of the person whose name it purports to be.

**History:** En. Sec. 23, Ch. 152, L. 1917;  
re-en. Sec. 5421, B. C. M. 1921.

**11-3223. (5422) Assembling and filing of petition papers.** All papers comprising a recall petition shall be assembled and filed with the clerk of the commission as one instrument within thirty days after the filing with the clerk of the commission of the affidavit stating the name and the office of the officer sought to be removed.

**History:** En. Sec. 24, Ch. 152, L. 1917;  
re-en. Sec. 5422, B. C. M. 1921.

**11-3224. (5423) Notification of officer—recall election.** The clerk of the commission shall at once submit the recall petition to the commission, and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy nor more than eighty days after the petition has been presented to the commission, at the same time as any other general or special election held within



such period; but if no such election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

History: En. Sec. 25, Ch. 152, L. 1917;  
re-en. Sec. 5423, R. C. M. 1921.

**11-3225. (5424) Ballots at recall election—requirements—nomination of candidates to fill vacancies.** The ballots at such recall election shall conform to the following requirements:

With respect to each person whose removal is sought, the question shall be submitted, "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there shall be printed on the ballots the two propositions, in the order set forth:

"For the recall (name of person).

Against the recall (name of person)."

Immediately to the left of the proposition shall be placed a square in which the electors, by making a cross mark (X), may vote for either of such propositions. Under said questions shall be placed the names of candidates to fill the vacancy or vacancies. The name of the officer or officers whose removal is sought shall not appear on the ballot as a candidate or candidates to succeed himself or themselves.

Before any such recall election for the removal of commissioners shall be had, there shall be nominated candidates to fill the vacancy or vacancies, the nominations therefor to be made by petition, which petition for each candidate shall be signed by at least twenty-five registered electors, and shall be filed at least thirty days prior to the date fixed for holding such recall election; and the form and requirements for said petition shall be the same as hereinbefore provided in the case of primary nominations.

History: En. Sec. 26, Ch. 152, L. 1917;  
re-en. Sec. 5424, R. C. M. 1921.

**11-3226. (5425) Effect of majority vote for or against recall.** Should a majority of the votes cast at a recall election be against the recall of the officer named on the ballot, such officer shall continue in the office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at a recall election shall be for the recall of the officer named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office.

History: En. Sec. 27, Ch. 152, L. 1917;  
re-en. Sec. 5425, R. C. M. 1921.

**11-3227. (5426) Limitation upon time of filing recall petition.** No recall petition shall be filed against a commissioner within six months after he takes his office, nor, in case of an officer reelected in a recall election, until six months after that election.

History: En. Sec. 28, Ch. 152, L. 1917;  
re-en. Sec. 5426, R. C. M. 1921.

**11-3228. (5427) Working for candidate forbidden.** Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable

thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both such fine and imprisonment.

**History:** En. Sec. 29, Ch. 152, L. 1917;  
re-en. Sec. 5427, R. C. M. 1921.

**11-3229. (5428) Bribery — false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person wilfully voting or offering to vote at such election, who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than ten nor more than ninety days, or both such fine and imprisonment.

**History:** En. Sec. 30, Ch. 152, L. 1917;  
re-en. Sec. 5428, R. C. M. 1921.

**11-3230. (5429) Proposed ordinances—how submitted—requirements of petition to submit.** Any proposed ordinance may be submitted to the commission by petition signed by at least ten per cent of the total number of registered voters in the municipality. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full, and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition, and shall constitute a committee of the petitioners for the purposes hereinafter named.

**History:** En. Sec. 31, Ch. 152, L. 1917;  
re-en. Sec. 5429, R. C. M. 1921.

**11-3231. (5430) Signatures and affidavit to petitions.** Each signer of a petition shall sign his name in ink or indelible pencil, and shall place on the petition papers, after his name, his place of residence by street and number. The signatures of any such petition papers need not all be appended to one paper, but to each such paper there shall be attached an affidavit by the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper is the genuine sig-



nature of the person whose name it purports to be, and was made in the presence of the affiant.

History: En. Sec. 32, Ch. 152, L. 1917;  
re-en. Sec. 5430, R. C. M. 1921.

**11-3232. (5431) Assembling and filing of petition papers—hearing upon proposed ordinances—submission to electors.** All papers comprising a petition shall be assembled and filed with the clerk of the commission as one instrument, and when so filed, the clerk of the commission shall submit the proposed ordinance to the commission at its next regular meeting. Provision shall be made for public hearings upon the proposed ordinances.

The commission shall at once proceed to consider it, and shall take final action thereon within thirty days from the date of submission. If the commission rejects the proposed ordinance, or passes it in a different form from that set forth in the petition, the committee of the petitioners may require it to be submitted to a vote of the electors in its original form, or that it be submitted to a vote of the electors with any proposed change, addition, or amendment, if a petition for such election is presented bearing additional signatures of fifteen per cent of the electors of the city or town.

History: En. Sec. 33, Ch. 152, L. 1917;  
re-en. Sec. 5431, R. C. M. 1921.

**11-3233. (5432) Submission of petition and proposed ordinance to clerk.** When an ordinance proposed by petition is to be submitted to a vote of the electors, the committee of the petitioners shall certify that fact and the proposed ordinance to the clerk of the commission within twenty days after the final action on such proposed ordinance by the commission.

History: En. Sec. 34, Ch. 152, L. 1917;  
re-en. Sec. 5432, R. C. M. 1921.

**11-3234. (5433) When proposed ordinance is to be submitted to electors.** Upon receipt of the certificate and certified copy of the proposed ordinance, the clerk shall certify the fact to the commission at its next regular meeting. If an election is to be held not more than six months nor less than thirty days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall then be submitted to a vote of the electors. If no such election is to be held within the time aforesaid, the commission shall provide for submitting the proposed ordinance to the electors at a special election.

History: En. Sec. 35, Ch. 152, L. 1917;  
re-en. Sec. 5433, R. C. M. 1921.

**11-3235. (5434) Contents of ballot—when proposed ordinance becomes effective.** The ballots used when voting upon any such proposed ordinance shall state the title of the ordinance to be voted on, and below it the two propositions, "For the ordinance," and "Against the ordinance." Immediately at the left of each proposition there shall be a square, in which, by making a cross (X), the voter may vote for or against the proposed ordi-

nance. If a majority of the electors voting on any such proposed ordinance shall vote in favor thereof, it shall thereupon become an ordinance of the municipality.

History: En. Sec. 36, Ch. 152, L. 1917;  
re-en. Sec. 5434, R. C. M. 1921.

**11-3236. (5435) Repealing ordinances—publication, amendment and repeal of initiated ordinances.** Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding section for initiating ordinances. Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission as in the case of other ordinances.

History: En. Sec. 37, Ch. 152, L. 1917;  
re-en. Sec. 5435, R. C. M. 1921.

**11-3237. (5436) When ordinances of commission take effect—petition for repeal suspends effect unless law is complied with.** No ordinance passed by the commission, unless it be an emergency measure, shall go into effect until thirty days after its final passage by the commission. If at any time within the said thirty days, a petition signed by twenty-five per cent of the total number of registered voters in the municipality be filed with the clerk of the commission, requesting that any such ordinance be repealed or submitted to a vote of the electors, it shall not become operative until the steps taken herein shall have been taken.

History: En. Sec. 38, Ch. 152, L. 1917;  
re-en. Sec. 5436, R. C. M. 1921.

**11-3238. (5437) Reconsideration of ordinance—submission to electors—failure to approve operates as repeal.** The clerk of the commission shall deliver the petition to the commission, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed, the commission shall provide for submitting to a vote of the electors, and in so doing, the commission shall be governed by the provisions herein contained, respecting the time of submission and manner of voting on ordinances proposed to the commission by petition. If, when submitted to a vote of the electors, any such ordinance be not approved by a majority of those voting thereon, it shall be deemed repealed.

History: En. Sec. 39, Ch. 152, L. 1917;  
re-en. Sec. 5437, R. C. M. 1921.

**11-3239. (5438) Contents and requirements of referendum petitions—ballots.** Referendum petitions need not contain the text of the ordinance, the repeal of which is sought, but shall be subject in all other respects to the requirements for petitions submitting proposed ordinances to the commission. Ballots used in referendum elections shall conform in all respects to those provided for in section 11-3235 of this code.

History: En. Sec. 40, Ch. 152, L. 1917;  
re-en. Sec. 5438, R. C. M. 1921.



**11-3240. (5439) Other ordinances subject to referendum.** Ordinances submitted to the commission by initiative petition and passed by the commission without change, or passed in an amended form and not required to be submitted to a vote of the electors by the committee of the petitioners, shall be subject to a referendum in the same manner as other ordinances.

History: En. Sec. 41, Ch. 152, L. 1917;  
re-en. Sec. 5439, R. C. M. 1921.

**11-3241. (5440) Highest affirmative vote prevails when referendum ordinances conflict.** If the provisions of two or more ordinances adopted or approved at the same election conflict, the ordinance receiving the highest affirmative vote shall prevail.

History: En. Sec. 42, Ch. 152, L. 1917;  
re-en. Sec. 5440, R. C. M. 1921.

**11-3242. (5441) Emergency ordinances subject to referendum—rules applicable.** Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: En. Sec. 43, Ch. 152, L. 1917;  
re-en. Sec. 5441, R. C. M. 1921.

**11-3243. (5442) Ordinances providing for expenditures, bond issues, public improvements submitted to electors—preliminary steps prior to election—qualifications of electors.** In case a petition be filed requiring that a measure passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such expenditure, actual issuance of the bonds, or actual execution of the contract for such improvement, may be taken prior to the election; and at such election only resident taxpayers of such city or town whose names as such appear upon the assessment roll and who are also qualified electors of said city or town, shall be entitled to vote at such election. And at any and all elections in such city or town at which questions relating to bond issues, tax levies, or the expenditure of money shall be submitted, no person shall be entitled to vote unless qualified as in this section provided.

History: En. Sec. 44, Ch. 152, L. 1917;  
re-en. Sec. 5442, R. C. M. 1921; amd. Sec.  
7, Ch 31, L. 1923.

**11-3244. (5443) Oath of commissioners.** Every person who has been declared elected commissioner, shall within ten (10) days thereafter take and file with the clerk of the commission his oath of office in the form and manner provided by law.

History: En. Sec. 45, Ch. 152, L. 1917; 8, Ch. 31, L. 1923; amd. Sec. 9, Ch. 67,  
re-en. Sec. 5443, R. C. M. 1921; amd. Sec. L. 1967.

**11-3245. (5444) Designation of mayor—procedure in case of tie vote—vacancy in office of mayor—powers and duties of mayor.** The mayor shall be that member of the commission, who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission. In event of a vacancy in the office of the mayor, by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred, and perform all duties imposed upon him by this act, the ordinances of the municipality and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: En. Sec. 46, Ch. 152, L. 1917;  
re-en. Sec. 5444, R. C. M. 1921; amd. Sec.  
9, Ch. 31, L. 1923.

**11-3246. (5445) Selection of successor to mayor in event of his recall—mayor when all commissioners are recalled.** In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successor shall serve as the mayor.

History: En. Sec. 47, Ch. 152, L. 1917;  
re-en. Sec. 5445, R. C. M. 1921.

**11-3247. (5446) Quorum of commissioners—recording votes and proceedings.** In municipalities having three commissioners, two commissioners shall constitute a quorum; and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. In municipalities having five commissioners, three commissioners shall constitute a quorum, and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 48, Ch. 152, L. 1917;  
re-en. Sec. 5446, R. C. M. 1921.

**11-3248. (5447) Compensation of commissioners and mayor.** The salary of each commissioner may be as follows: For each formal meeting of



record attended, cities or towns with less than twenty-five thousand inhabitants, twenty-five dollars (\$25); provided that no more than one (1) fee shall be paid for any one (1) day. For cities with more than twenty-five thousand inhabitants, the annual salary of each commissioner shall not exceed two thousand five hundred dollars (\$2,500). The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. Sec. 1, Ch. 289, L. 1969. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10,

**11-3249. (5448) Meetings of commission—unauthorized absence creates vacancy—meetings and minutes to be public—rules and order of business.** At ten o'clock a. m. on the first Monday after the first day of January, following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than five thousand inhabitants, they shall meet regularly at least once and not more than four times per month, and in municipalities having more than five thousand inhabitants, they shall meet not less than once every two weeks. Absence from five (5) consecutive regular meetings shall operate to vacate the seat of a member, unless such absence be authorized by the commission.

The commissioner acting as mayor, any two members of the commission or the city manager, may call special meetings of the commission upon at least twelve (12) hours written notice to each member of the commission, served personally on each member or left at his usual place of residence. All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

History: En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R. C. M. 1921; amd. Sec. 10, Ch. 31, L. 1923.

## CHAPTER 33

### COMMISSION-MANAGER FORM OF GOVERNMENT (continued)

Section 11-3330. Abandonment of commission-manager plan—proceedings.

**11-3330. (5514) Abandonment of commission-manager plan—proceedings.** Any municipality which shall have operated for more than two years under the provisions of this act, may abandon such organization hereunder, and accept the provisions of the general law of the state applicable to municipalities of its population.

Upon the petition of not less than twenty-five per cent of the electors of such municipality registered for the last preceding general election, a

special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under (name of this act) and become a (city or town) under the general law governing (cities or towns) of like population; or if formerly organized under special charter, shall resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of such officers, such municipality shall become a municipality under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such municipality, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, as provided for by the provisions of this act, in so far as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the people under the provisions of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of two years.

**History:** En. Sec. 117, Ch. 152, L. 1917;  
re-en. Sec. 5514, R. C. M. 1921.

## CHAPTER 34

### CITY AND COUNTY CONSOLIDATED GOVERNMENT

- Section 11-3401. Consolidated county and city government authorized.  
 11-3402. Petition—signatures required.  
 11-3403. Form of petition—certificate of county clerk—special election—notice.  
 11-3404. Form of ballot.  
 11-3405. Special election of commission—proclamation—nominations—conduct of election.  
 11-3417. Effective date of ordinances—emergencies—submission to electors of measures concerning franchises or special privileges.  
 11-3418. Recording and publishing of resolutions and ordinances.  
 11-3419. Initiative measures—petition.  
 11-3420. Action of commission on initiative petitions.  
 11-3421. Submission of initiative measure to electors.  
 11-3422. Time for submitting to electors—adoption on favorable vote.  
 11-3423. Effective date of initiative measure.  
 11-3424. Repealing ordinances may be initiated—publication, amending and repealing of initiative measures by commission.  
 11-3425. Referendum—petition.  
 11-3426. Reconsideration of measure by commission—reference to electors.  
 11-3427. Voting on initiative or referendum measures—ballots.  
 11-3428. Preliminary acts authorized prior to submission of ordinance to electors.  
 11-3429. Petitions for initiative, referendum or recall—signatures—affidavit.  
 11-3430. Petitions, assembling of papers comprising—clerk's certificate.  
 11-3431. Petitions—amendments—filing new petition not precluded by finding of insufficiency.

**11-3401. (5520.1) Consolidated county and city government authorized.**  
 The separate corporate existence and government of any county and of each



and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this act by proceeding as hereinafter provided.

**History:** En. Sec. 1, Ch. 121, L. 1923.

**11-3402. (5520.2) Petition—signatures required.** The question of the abandonment and termination of the separate corporate existence and government of a county and of each and every city and town therein and the consolidation and merging of the existence and government of such county and each and all of the cities and towns therein into one municipal corporation and government, under the provisions of this act, shall be submitted to the qualified electors of such county if a petition be filed in the office of the county clerk of such county, signed by at least twenty per centum (20%) of the electors of said county whose names appear on the official register of voters of the county on the date of the filing of such petition, requesting that such question be submitted to the qualified electors of the county.

**History:** En. Sec. 2, Ch. 121, L. 1923.

**11-3403. (5520.3) Form of petition—certificate of county clerk—special election—notice.** Such petition shall be substantially in the form and shall be signed, verified and filed in the manner prescribed in this act for initiative, referendum and recall petitions, and shall designate therein the name by which such consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein. If the county clerk shall find that such petition, or amended petition, so filed, is signed by the required number of qualified electors he shall so certify to the board of county commissioners of such county at their next regular meeting, and such board shall thereupon, and within ten days after receiving the clerk's certificate, order a special election to be held at which election such question shall be submitted to the qualified electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 23-105.

**History:** En. Sec. 3, Ch. 121, L. 1923.

**11-3404. (5520.4) Form of ballot.** At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used on general elections, and shall have printed thereon the following.

"Shall the corporate existence and government of the County of.....  
..... and of each and every city and town therein be consoli-

dated and merged into one municipal corporation and government under the provisions of Chapter (giving the number of this act), Acts of the Eighteenth Legislative Assembly of the State of Montana, to be known and designated as 'City and County of.....?' "

☐ YES.

☐ NO.

Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

**History:** En. Sec. 4, Ch. 121, L. 1923.

**11-3405. (5520.5) Special election of commission—proclamation—nominations—conduct of election.** If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within two weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled, which order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 23-105, provided, however, that if any general election is to be held in such county after three months but within six months from the date of the making of such order then such order shall require such special election to be held at the same time as such general election. No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be voted for at such special election, but such candidates shall be nominated directly by petition which shall be in substantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

**History:** En. Sec. 5, Ch. 121, L. 1923.

**11-3417. (5520.17) Effective date of ordinances—emergencies—submission to electors of measures concerning franchises or special privileges.** Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after thirty days from the date of their passage. Ordinances adopted by the electors shall take effect at the time fixed therein, or, if no time is specified, thirty days after the adoption thereof. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health or safety, in which the emergency claimed is set forth and defined in a preamble



thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution. No measure making or amending a grant, renewal or extension of a franchise or other special privilege shall ever be passed without first submitting the application therefor to the resident freeholders in the manner provided by sections 11-1207 and 11-1208.

**History:** En. Sec. 17, Ch. 121, L. 1923.

**11-3418. (5520.18) Recording and publishing of resolutions and ordinances.** Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within ten days after its final passage each ordinance or resolution shall be published at least once in such manner as the commission may by ordinance provide.

**History:** En. Sec. 18, Ch. 121, L. 1923.

**11-3419. (5520.19) Initiative measures—petition.** Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by ten per centum (10%) of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

**History:** En. Sec. 19, Ch. 121, L. 1923.

**11-3420. (5520.20) Action of commission on initiative petitions.** If an initiative petition, or amended petition be found sufficient by the clerk he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the ordinance to the commission, with its recommendations thereon, not later than sixty days after the date on which such ordinance was submitted to the commission by the clerk. Upon receiving the ordinance from the committee the commission shall proceed at once to consider it and shall take final action thereon within thirty days from the date of such committee report.

**History:** En. Sec. 20, Ch. 121, L. 1923.

**11-3421. (5520.21) Submission of initiative measure to electors.** If the commission fail to pass an ordinance proposed by initiative petition, or pass it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners re-

quire the submission of a proposed ordinance to a vote of the electors they shall certify that fact to the clerk and file in his office a certified copy of the ordinance, in the form in which it is to be submitted, within ten days after final action on such ordinance by the commission.

**History:** En. Sec. 21, Ch. 121, L. 1923.

**11-3422. (5520.22) Time for submitting to electors—adoption on favorable vote.** Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held within six months but more than ninety days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than ninety days after receipt of the clerk's certificate. If no municipal election be held within six months as aforesaid, and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such six months. If, when submitted to the electors, a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

**History:** En. Sec. 22, Ch. 121, L. 1923.

**11-3423. (5520.23) Effective date of initiative measure.** When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form, and the committee of the petitioners require that such proposed ordinance be submitted to a vote of the electors as hereinbefore provided, the ordinance as passed by the commission shall not take effect until after such vote, and, if the proposed ordinance so submitted, be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

**History:** En. Sec. 23, Ch. 121, L. 1923.

**11-3424. (5520.24) Repealing ordinances may be initiated—publication, amending and repealing of initiative measures by commission.** Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published, and may be amended or repealed by the commission, as in the case of other ordinances.

**History:** En. Sec. 24, Ch. 121, L. 1923.

**11-3425. (5520.25) Referendum — petition.** The electors shall have power to approve or reject at the polls any ordinance passed by the commission, except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change, or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors, shall be subject to the referendum in the



same manner as other ordinances. If, within thirty days after the final passage of an ordinance, a petition signed by ten per centum (10%) of the qualified electors whose names appear on the register of voters on the date when such petition is filed, shall be filed with the clerk requesting that the ordinance, or any specified part thereof, be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance, or part thereof, the repeal of which is sought.

**History:** En. Sec. 25, Ch. 121, L. 1923.

**11-3426. (5520.26) Reconsideration of measure by commission—reference to electors.** If a referendum petition, or amended petition, be found sufficient by the clerk he shall certify that fact to the commission at its next regular meeting and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors as hereinafter provided. Upon receipt of the clerk's certificate the commission shall proceed to reconsider the ordinance or part thereof and its final vote upon such reconsideration shall be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance, or part thereof, be not repealed it shall be submitted to the electors at the next municipal election held not less than ninety days after such final vote by the commission. The commission by vote of not less than two-thirds of its members may submit the ordinance, or part thereof, to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance, or part thereof, be not approved by a majority of those voting thereon it shall be deemed repealed.

**History:** En. Sec. 26, Ch. 121, L. 1923.

**11-3427. (5520.27) Voting on initiative or referendum measures—ballots.** Ordinances, or parts thereof, submitted to vote of the electors in accordance with the initiative and referendum provisions of this act shall be submitted by ballot title which shall be prepared in all cases by the director of law. The ballot title may be distinct from the legal title of any such proposed or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance or part thereof. The ballot used in voting upon any ordinance, or part thereof, shall have below the ballot title the two following propositions, one above the other, in the order indicated: "For the ordinance" and "Against the ordinance." Immediately at the left of each proposition there shall be a square in which by making a cross mark (X) the elector may vote for or against the ordinance or part thereof. Any number of ordinances, or parts thereof, may be voted upon at the same election and may be submitted on the same ballot, but the ballot used for voting thereon shall be for that purpose only.

**History:** En. Sec. 27, Ch. 121, L. 1923.

**11-3428. (5520.28) Preliminary acts authorized prior to submission of ordinance to electors.** In case a petition be filed requiring that an ordinance

passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement, may be taken prior to the election.

**History:** En. Sec. 28, Ch. 121, L. 1923.

**11-3429. (5520.29) Petitions for initiative, referendum or recall—signatures—affidavit.** The signatures to initiative, referendum or recall petitions need not all be appended to one paper, but to each separate petition paper there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five electors of the municipality, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to the petition paper shall be as follows:

State of Montana, city and county of.....,  
....., being duly sworn, deposes and  
says that he is the circulator of the foregoing paper and that the signatures  
appended thereto were made in his presence and are the genuine signatures  
of the persons whose names they purport to be.

Signed.....

Subscribed and sworn to before me this.....day of  
....., 19.....

.....  
Notary public for the state of Montana.

Residing at ....., Montana.

My commission expires .....

**History:** En. Sec. 29, Ch. 121, L. 1923.

**11-3430. (5520.30) Petitions, assembling of papers comprising—clerk's certificate.** All petition papers comprising an initiative, referendum or recall petition shall be assembled and filed with the clerk as one instrument. Within ten days after a petition is filed the clerk shall determine whether it is signed by a sufficient number of electors and shall attach thereto a certificate showing the result of his examination. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

**History:** En. Sec. 30, Ch. 121, L. 1923.

**11-3431. (5520.31) Petitions — amendments — filing new petition not precluded by finding of insufficiency.** An initiative, referendum or recall petition may be amended at any time within ten days after the making of a certificate of insufficiency by the clerk, by filing a supplementary petition



upon additional papers signed and filed as provided in case of an original petition. The clerk shall, within five days after such amendment is filed, make examination of the amended petition and, if his certificate shall show the petition still to be insufficient, he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

**History:** En. Sec. 31, Ch. 121, L. 1923.

## CHAPTER 35

## CITY AND COUNTY CONSOLIDATED GOVERNMENT (continued)

- Section 11-3530. Elections—officers to act.  
 11-3531. Municipal primary election—when held—nominees, majority vote elects—time for polls to be open—conduct of election.  
 11-3532. Nominating petitions.  
 11-3533. Form of nominating petition.  
 11-3534. Filing of petitions—notification of nominees—entry of names on ballot.  
 11-3535. Ballots—party designation forbidden—form.  
 11-3536. Ballot—order of names.  
 11-3537. Ballots—blank spaces.  
 11-3538. Notices—primary election—municipal election—publication.  
 11-3539. Ballots at municipal election—what names to appear.  
 11-3540. Removal of commissioners—recall petitions.  
 11-3541. Recall petitions—signatures—filing—amendment.  
 11-3542. Recall election—notice to officer whose removal sought—time for holding.  
 11-3543. Separate removals require separate petitions—nomination of successors.  
 11-3544. Recall elections—voting machines not used—form of ballots.  
 11-3545. Result of votes—removal—designation of successor.  
 11-3546. Resignation pending recall election, result of.  
 11-3547. Limitation on filing recall petitions.  
 11-3549. Political participation by appointees forbidden.  
 11-3550. Penalizing appointees for not participating in politics forbidden—appointees not to act as officers of political organization or circulate petitions.  
 11-3551. Penalty for violations.  
 11-3559. Resolution declaring creation of consolidated government—effective date of merger—legal status.

**11-3530. (5520.90) Elections—officers to act.** For any election held on the question of the adoption of this act, and for the first election of members of the commission thereunder, if adopted the county clerk and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county clerks and boards of county commissioners by the general laws of the state. After the adoption of this act by the electors of the county, and the election and qualification of a commission thereunder, the powers and duties of county clerks and boards of county commissioners under the general election laws of the state shall devolve upon the clerk and commission of the municipality and, except as otherwise provided in this act, the provisions of such laws shall continue to apply to all elections held within the municipality.

**History:** En. Sec. 89, Ch. 121, L. 1923.

**11-3531. (5520.91) Municipal primary election—when held—nominees, majority vote elects—time for polls to be open—conduct of election.** A municipal primary election for the choice of members of the commission shall be held on the last Tuesday in April in each year in which members of the commission are to be elected. All candidates for the commission receiving a majority of the votes cast at the municipal primary election shall be deemed and declared elected to the commission. If candidates equal to the number of members of the commission to be elected do not receive a majority of the votes cast at such primary election, a municipal primary election shall be held on the first Tuesday in June next following the election. At all municipal elections the polls shall be open from 8 a. m. to 6 p. m. The time,



manner and method of establishing election precincts and polling places and appointment of judges of election and the method of conducting election, registering voters therefor, counting the votes cast thereat, and canvassing the returns thereof, shall be as prescribed by the general election laws of the state.

**History:** En. Sec. 90, Ch. 121, L. 1923.

**11-3532. (5520.92) Nominating petitions.** Any elector of the municipality eligible to membership in the commission may be placed in nomination therefor by petition filed with the clerk and signed by at least two per centum (2%) of the qualified electors whose names appear upon the official register of voters of the municipality. The signatures to a nominating petition need not all be appended to one paper, but to each separate leaf of the petition there shall be attached an affidavit of the circulator thereof stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a petition shall sign his name in ink or indelible pencil and, after his name, shall designate his residence by street and number or other description sufficient to identify the place, and give the date when his signature was made. No elector shall sign petitions for more candidates for the commission than the number of places to be filled therein at the forthcoming primary election.

**History:** En. Sec. 91, Ch. 121, L. 1923.

**11-3533. (5520.93) Form of nominating petition.** The form of nominating petition papers shall be substantially as follows:

We, the undersigned electors of the city and county of \_\_\_\_\_, hereby nominate \_\_\_\_\_ whose residence is \_\_\_\_\_ for the office of commissioner, to be voted for at the primary election to be held on the last Tuesday of April, 19\_\_\_\_\_, and we individually certify that we are qualified to vote for candidates for the above office and that we have not signed nominating petitions for more than \_\_\_\_\_ candidates for the commission.

Residence (street and number) or description to identify place.

Name.	Date.
_____	_____
_____	_____
_____	_____

State of Montana, city and county of \_\_\_\_\_ ss.

\_\_\_\_\_, being duly sworn, deposes and says that he is the circulator of this petition paper; that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Notary public for the state of Montana, residing at \_\_\_\_\_, Montana. My commission expires \_\_\_\_\_, 19\_\_\_\_\_.

**History:** En. Sec. 92, Ch. 121, L. 1923.

**11-3534. (5520.94) Filing of petitions—notification of nominees—entry of names on ballot.** All separate leaves comprising a nominating petition shall be assembled and filed with the clerk as one instrument at least thirty days prior to the next succeeding last Tuesday in April. Within five days after the filing of the nomination petition the clerk shall notify the person named therein as a candidate whether such petition is signed by the required number of qualified electors. Any eligible person placed in nomination as hereinbefore provided shall have his name printed on the ballots and placed upon any voting machine used at the primary election, if within five days after such nomination, he shall have filed with the clerk a written acceptance of the nomination.

**History:** En. Sec. 93, Ch. 121, L. 1923.

**11-3535. (5520.95) Ballots — party designation forbidden — form.** No party mark or designation shall appear on the ballots, or in connection with the names of candidates on any voting machine, used in the election of members of the commission. Each elector may vote for as many candidates for the commission as there are places to be filled therein; but any ballot marked for more candidates than the number of places to be filled shall not be counted for any of the candidates for which marked. The ballots shall be in form substantially as follows:

**MUNICIPAL ELECTION**

City and county of .....

(Month and day of month), 19.....

**FOR COMMISSIONERS**

Do not vote for more than .....

.....  
 .....  
 .....

**History:** En. Sec. 94, Ch. 121, L. 1923.

**11-3536. (5520.96) Ballot—order of names.** At 2 o'clock p. m. on the tenth day before any election at which members of the commission are to be nominated and elected, the clerk shall publicly determine by lot the order in which the names of candidates for election to the commission shall be printed on the ballots, or appear on any voting machine, to be used at such election.

**History:** En. Sec. 95, Ch. 121, L. 1923.

**11-3537. (5520.97) Ballots—blank spaces.** As many blank spaces shall be left on the ballots below the printed names of candidates for the commission as there are places to be filled therein. In any such space an elector may write the name of any eligible person, and a vote cast for such person shall be counted as though for a candidate whose name is printed on the ballots.

**History:** En. Sec. 96, Ch. 121, L. 1923.

**11-3538. (5520.98) Notices — primary election — municipal election — publication.** On the tenth day prior to the municipal primary election the clerk shall cause notice thereof to be published in such daily newspaper or



newspapers, printed and published within and of general circulation in the municipality as the commission may have designated, and if there be no daily newspaper then in such weekly newspaper or newspapers as may be so designated. In case the commission fail to designate such newspaper or newspapers, the clerk shall cause the notice to be published in such newspaper or newspapers printed and published within and of general circulation in the municipality as he may select. Such published notice shall contain a list of the candidates for the commission nominated as hereinbefore provided, and state the time of holding the election. On the tenth day prior to a municipal election held on the first Tuesday in June the clerk, under like conditions, shall cause a similar notice to be published concerning that election. The commission may also provide for giving notice of such elections by other means.

**History:** En. Sec. 97, Ch. 121, L. 1923.

**11-3539. (5520.99) Ballots at municipal election—what names to appear.** At any municipal election held for the choice of members of the commission of the first Tuesday in June following a municipal primary election there shall be printed on the ballots and placed on the voting machines the names of the candidates receiving the highest number of votes at the municipal primary election, except the names of those elected to the commission thereat, and the number of names so printed on the ballots and placed on the voting machines shall be equal to double the number of places remaining to be filled in the commission. If, by reason of their having received the same number of votes, it cannot be determined which of two or more candidates shall have his name, or their names, printed on the ballots and placed on the voting machines, then, notwithstanding the foregoing provisions of this section the names of all such candidates receiving the same number of votes shall be printed on the ballots and placed on the voting machines. The candidates for the commission at an election held on the first Tuesday in June, equal in number to the places remaining to be filled in the commission, who receive the highest number of votes shall be declared elected. A tie between two or more candidates shall be decided by lot in the presence of such candidates and under the direction of the clerk.

**History:** En. Sec. 98, Ch. 121, L. 1923.

**11-3540. (5520.100) Removal of commissioners—recall petitions.** Any member of the commission may be removed from office by the electors of the municipality. The procedure for effecting such a removal shall be as follows:

Any elector of the municipality may make and file an affidavit with the clerk requesting that petition be issued demanding an election for the recall of any member of the commission. Any such affidavit shall state the name of the person whose removal from the commission is sought and the grounds alleged for such removal. Upon the filing of such an affidavit the clerk shall deliver to the elector making the affidavit copies of petition papers for demanding such an election, printed copies of which the clerk shall keep on file for distribution as herein provided. In issuing any such petition paper the clerk shall enter in a record to be kept in his office the

name of the elector to whom issued, the date of issuance, the number of papers issued, and shall certify on each paper the name of the elector and the date of issuance. No petition paper shall be accepted as part of a petition unless it bear such certification of the clerk and unless filed as hereinafter provided.

**History:** En. Sec. 99, Ch. 121, L. 1923.

**11-3541. (5520.101) Recall petitions — signatures — filing — amendment.** A petition for a recall election to be effective must be returned and filed with the clerk within thirty days after the filing of the affidavit as provided in last preceding section, and to be sufficient must be signed by at least twenty per centum (20%) of the qualified electors of the municipality whose names appear on the official register of voters of the municipality on the date when such petition is returned and filed with the clerk. If any such petition is insufficient as originally filed it may be amended as provided in this act.

**History:** En. Sec. 100, Ch. 121, L. 1923.

**11-3542. (5520.102) Recall election—notice to officer whose removal sought—time for holding.** If a petition for a recall election, or an amended petition, shall be certified by the clerk to be sufficient, he shall at once submit it to the commission with his certificate to that effect and shall notify the member of the commission whose removal is sought of such action. Unless the member whose removal is sought resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than ninety nor more than one hundred and twenty days after the petition has been presented to the commission and may be held at the same time as any other election held within such period; but, if no other election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

**History:** En. Sec. 101, Ch. 121, L. 1923.

**11-3543. (5520.103) Separate removals require separate petitions—nomination of successors.** The question of recalling any number of members of the commission may be submitted at the same election, but as to each member whose removal is sought a separate petition shall be filed and provision shall be made for an entirely separate printed ballot. Candidates to succeed any person whose removal is sought shall be placed in nomination by petition signed, filed and verified as provided for nominating petitions for a municipal primary election; except that each petition paper shall specify that the candidate named therein is a candidate to succeed a particular person whose removal is sought.

**History:** En. Sec. 102, Ch. 121, L. 1923.

**11-3544. (5520.104) Recall elections—voting machines not used—form of ballots.** Voting machines shall not be used in recall elections, and the printed ballots shall be in form substantially as follows:



## RECALL ELECTION

City and County of.....

(Month and day of month) 19.....

---

SHALL (name of person) BE REMOVED FROM THE COMMISSION  
BY RECALL?

---

FOR THE RECALL OF

(Name of Person.)

---

AGAINST THE RECALL OF

(Name of Person.)

---

CANDIDATE

To succeed (name of person) if recalled. Vote for but one.

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.....	.....
.....	.....
.....	.....

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**History:** En. Sec. 103, Ch. 121, L. 1923.

**11-3545. (5520.105) Result of votes—removal—designation of successor.** If a majority of the votes cast on the question of recalling a member of the commission as hereinbefore provided be against his recall he shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall of such member he shall, regardless of any defect in the recall petition, be deemed removed from office. When a member is removed from the commission by recall the candidate to succeed such member who receives the highest number of votes shall succeed the member so removed for the unexpired term.

**History:** En. Sec. 104, Ch. 121, L. 1923.

**11-3546. (5520.106) Resignation pending recall election, result of.** If a person in regard to whom a recall petition is submitted to the commission shall resign from office after notice thereof no election shall be held and some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term; but the member so resigning shall not be chosen by the commission to succeed himself.

**History:** En. Sec. 105, Ch. 121, L. 1925.

**11-3547. (5520.107) Limitation on filing recall petitions.** No recall petition shall be filed in respect to any member of the commission within three months after he takes office nor in case of a member subjected to a recall election and not removed thereby, until at last six months after that election.

**History:** En. Sec. 106, Ch. 121, L. 1923.

**11-3549. (5520.109) Political participation by appointees forbidden.** No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribu-

tion for any political party or purpose whatever. No person shall orally or by letter solicit, or be in any manner concerned in soliciting, any assessment, subscription or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment, or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present directly or indirectly, in person or otherwise, any political assessment, subscription or contribution to, or request its payment by any person in such service.

**History:** En. Sec. 108, Ch. 121, L. 1923.

**11-3550. (5520.110) Penalizing appointees for not participating in politics forbidden—appointees not to act as officers of political organization or circulate petitions.** No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so, for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization, or serve as a member of a committee of any such organization, or circulate or seek signatures for any petition provided for by primary or election laws.

**History:** En. Sec. 109, Ch. 121, L. 1923.

**11-3551. (5520.111) Penalty for violations.** Any person who, by himself or in cooperation with one or more persons, wilfully or corruptly violates any of the provisions of sections 11-3549 and 11-3550 of this act shall be guilty of misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment, and if he be an officer or employee of the municipality he shall immediately forfeit his office or employment.

**History:** En. Sec. 110, Ch. 121, L. 1923.

**11-3559. (5520.119) Resolution declaring creation of consolidated government—effective date of merger—legal status.** At the first meeting of the commission whose members are first elected under the provisions of this act, such commission shall adopt a resolution reciting the filing of the petition provided for in section 11-3402, the ordering and holding of a special election as requested in such petition, the result of such election, and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality, which resolution must be in duplicate, and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of such commission must be filed in the office of the clerk of the commission and the other copy thereof must be trans-



mitted to and filed in the office of the secretary of state. Immediately upon the adoption of such resolution by the commission the separate corporate existence of the county and of each and every city and town therein shall be deemed to be consolidated and merged into one municipal corporation under the name selected, designated and adopted as provided in this act, and such consolidated municipality shall thereupon be deemed to have succeeded to, and to possess and own all of the property and assets of every kind and description and shall, save as herein otherwise provided, become responsible for all of the obligations and liabilities of the county, cities and towns so consolidated and merged. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislative assembly, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

**History:** En. Sec. 118, Ch. 121, L. 1923.

## CHAPTER 36

### METROPOLITAN SANITARY DISTRICTS

(Repealed—Section 14, Chapter 185, Laws of 1957)

#### 11-3601 to 11-3611. Repealed.

##### Repeal

These sections (Secs. 1 to 11, Ch. 292, L. 1947), relating to metropolitan sanitary districts, were repealed by Sec. 14, Ch. 185, Laws 1957. For new provisions see 16-4401 to 16-4413.

The repealing clause also contained a savings provision. It read: "Chapter 292, Laws of 1947, is hereby repealed, provid-

ing however, that any metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

## CHAPTER 37

### OFF-STREET PARKING FACILITIES

Section 11-3703. Creation of parking commissions—revenue bonds.

**11-3703. Creation of parking commissions—revenue bonds.** A city may create, as provided for in this section, a public body corporate and politic to be known as the "parking commission" of the city. The commission of any city shall not transact any business or exercise any powers under this act unless and until the legislative body of the city shall by resolution declare at any time hereafter that there is need for a parking commission to function in such city. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by one hundred (100) residents of the city, asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

In any suit, action or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the

legislative body declaring the need for the commission to function. A city shall not transact any business or exercise any powers of this act unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this act.

Either or both such resolutions may be adopted by the legislative body of a city. If both such resolutions are adopted they shall clearly specify areas within the city less than the whole thereof, within which, or projects over which, the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified, but may be changed from time to time by action of both the legislative body and the commission, to such extent as may be consistent with obligations to bondholders assumed under this act.

The power to issue revenue bonds as provided in this act shall not be operative in any city until the legislative body, either at a general or a special election, shall submit to the electors, whose qualifications shall be the same as those required for voting at municipal elections in the city for elective officers thereof, the question as to whether the legislative body, or the commission, or both, shall be authorized to adopt the revenue bond method of financing projects provided for herein. Such question may be placed before the electors and notice thereof given in the same manner as provided by law for referring ordinances of the city to the electors. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this act shall govern and be controlling, any provision of law to the contrary notwithstanding.

History: En. Sec. 3, Ch. 223, L. 1951;  
amd. Sec. 2, Ch. 127, L. 1955.



## CHAPTER 39

## URBAN RENEWAL LAW

Section 11-3906. Preparation and approval of urban renewal projects and urban renewal plans.

**11-3906. Preparation and approval of urban renewal projects and urban renewal plans.** (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (e) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally

identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 11-3901, subsection (b).

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the taxpayers of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election and shall be approved by a majority of those taxpayers voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by



the municipality in accordance with this act. The yearly activities shall constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

History: En. Sec. 6, Ch. 195, L. 1959;  
amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2,  
Ch. 210, L. 1969.

## TITLE 16

### COUNTIES

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#### CHAPTER 3

##### REMOVAL OF COUNTY SEATS

- Section 16-301. Removal of county seat—petition.  
16-302. Submission to electors—who are taxpayers.  
16-303. Election, notice of, how held and conducted.  
16-304. Voter to vote for place he prefers.  
16-305. Publication of result.  
16-306. Place chosen to be county seat.  
16-307. Statement of result and notice transmitted.  
16-308. No second election to be held within four years.  
16-309. County seat may be removed from time to time.

**16-301. (4369) Removal of county seat—petition.** Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made. The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented to the board of county commissioners at least sixty days prior to any action thereon being taken by the board of county commissioners, and action on said petition by the board of county commissioners must be had at a regular meeting of said board of county commissioners. Such petition must be filed with the county clerk, and the county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk,

and that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon. No other or additional petition than the one originally filed shall be considered by the board of county commissioners, except that at any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition; provided, that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. amd. Sec. 1, p. 145, L. 1901; re-en. Sec. Sec. 4369, R. C. M. 1921. Cal. Pol. C. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 3976.

**16-302. (4370) Submission to electors—who are taxpayers.** If the petition is signed by sixty-five per cent of the taxpayers of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that the term “taxpayers” used in this section shall be deemed to mean “ad valorem taxpayers,” and that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the poll-books in the county clerk’s office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the names of sixty-five per cent of the tax-paying voters listed therein; and they shall make a similar comparison of the names signed to the petition with those appearing upon the listed assessment roll of the county for the purpose of ascertaining whether the petition bears the names of sixty-five per cent of the ad valorem taxpayers as listed in said assessment roll; and if such petition then shows that it has not been signed by sixty-five per cent of the voters of the county who are ad valorem taxpayers thereof, after deducting from the said original petition the names of all persons who may have signed such original petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; 1919; re-en. Sec. 4370, R. C. M. 1921. Cal. amd. Sec. 2, p. 146, L. 1901; re-en. Sec. Pol. C. Sec. 3977. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L.

**16-303. (4371) Election, notice of, how held and conducted.** Notice of such election, clearly stating the object, must be given, and the election must be held and conducted, and the returns made, in all respects in the



manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

History: En. Sec. 4159, Pol. C. 1895;  
re-en. Sec. 2853, Rev. C. 1907; re-en. Sec.  
4371, R. C. M. 1921. Cal. Pol. C. Sec. 3979.

**16-304. (4372) Voter to vote for place he prefers.** In voting on the question, each elector must vote for the place in the county which he prefers, by placing opposite the name of the place the mark X.

History: En. Sec. 4160, Pol. C. 1895;  
re-en. Sec. 2854, Rev. C. 1907; re-en. Sec.  
4372, R. C. M. 1921. Cal. Pol. C. Sec. 3980.

**16-305. (4373) Publication of result.** When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors of the county have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

History: En. Sec. 3, p. 146, L. 1901; Ch. 27, L. 1921; re-en. Sec. 4373, R. C. M.  
re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, 1921. Cal. Pol. C. Sec. 3981.

**16-306. (4374) Place chosen to be county seat.** In the notice provided for in the next preceding section, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: En. Sec. 4162, Pol. C. 1895;  
re-en. Sec. 2856, Rev. C. 1907; re-en. Sec.  
4374, R. C. M. 1921. Cal. Pol. C. Sec. 3982.

**16-307. (4375) Statement of result and notice transmitted.** Whenever any election has been held, as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by section 16-306 of this code, they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895;  
re-en. Sec. 2857, Rev. C. 1907; re-en. Sec.  
4375, R. C. M. 1921. Cal. Pol. C. Sec. 3983.

**16-308. (4376) No second election to be held within four years.** When an election has been held and a majority of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter.

History: En. Sec. 4164, Pol. C. 1895;  
re-en. Sec. 2858, Rev. C. 1907; re-en. Sec.  
4376, R. C. M. 1921. Cal. Pol. C. Sec. 3984.

**16-309. (4377) County seat may be removed from time to time.** When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter.

History: En. Sec. 4, Ch. 146, L. 1901;  
re-en. Sec. 2859, Rev. C. 1907; re-en. Sec.  
4377, R. C. M. 1921. Cal. Pol. C. Sec. 3985.

## CHAPTER 4

### LOCATION OF COUNTY SEATS

- Section 16-401. Meeting and organization of board of commissioners on creation of new county—county clerk.
- 16-402. Designation of temporary county seat—special election.
- 16-403. Proceedings after petition for county seat election.
- 16-404. Division of county into registration and polling precincts.
- 16-405. Registration of voters.
- 16-406. Judges of election—ballots, books and records.
- 16-407. Applicability of general election laws.
- 16-408. Form of ballot.
- 16-409. Canvass of returns—result of election.
- 16-410. Re-election in case of failure to select county seat.
- 16-411. Applicability of general laws to new counties and officers.
- 16-412. Submission of question of locating permanent county seat to voters—elections.

**16-401. (4378) Meeting and organization of board of commissioners on creation of new county—county clerk.** Whenever a county is created hereafter in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioners of such county by the act creating it, to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within fifteen days after the passage of the act creating the county, and then and there organize as a board of county commissioners by electing one of their number chairman.

The person appointed to the office of county clerk in the bill creating the county shall be notified in writing by the county commissioners, or some one of them, of the time and place of said meeting, and he must attend the meeting and act as the clerk thereof and keep a record of the proceedings. If no person is appointed to the office of county clerk by the act creating the county, the commissioners shall at such meeting select some person qualified to hold office of county clerk to act as clerk of of such meeting.

History: En. Sec. 1, Ch. 135, L. 1911;  
re-en. Sec. 4378, R. C. M. 1921.

**16-402. (4379) Designation of temporary county seat—special election.**  
(1) Immediately after the organization of the board of county commissioners, as provided in the preceding section, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as hereinafter in this act provided. The place so designated shall be the temporary county seat of said county until the



permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county, or at a special election as hereinafter provided.

(2) In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, then each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper and said slips be inclosed in envelopes of the same size, color, and texture, and shall be deposited in a box or other suitable receptacle, and the county clerk, in the presence of said commissioners, shall draw out one of the said slips. Thereupon the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

(3) At said first general election after the creation of the county, it shall be the duty of the board of county commissioners and county clerk to have separate official ballots printed and distributed for the use of the electors at said election; which ballots shall be in the form and contain the same matter as the ballots provided for in section 16-408 of this code, and the provisions of section 16-409 of this code shall apply to and govern the manner of voting and of canvassing said ballots, and the board of county commissioners shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of said section 16-409.

(4) Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred taxpayers, whose names appear upon the assessment-books containing the last assessment of the property situated in such new county, and whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

(5) The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the person signing said petition or petitions appear in the last assessment-books of his county, and also in the registration-books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

**History:** En. Sec. 2, Ch. 135, L. 1911;  
re-en. Sec. 4379, R. C. M. 1921.

**16-403. (4380) Proceedings after petition for county seat election.** Upon filing said petition or petitions, duly certified to as provided in the preceding section, with the county clerk of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board to be held within ten days after the filing of said petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of the preceding section, it shall at said meeting, by a resolution spread upon its minutes, call a special election of the qualified electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

Said election shall be held on Tuesday and not less than forty nor more than sixty days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least ten days before the election.

**History:** En. Sec. 3, Ch. 135, L. 1911;  
re-en. Sec. 4380, R. C. M. 1921.

**16-404. (4381) Division of county into registration and polling precincts.** At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution spread upon its minutes, divide the county into registration districts and establish polling precincts in the manner provided by law. It must also, at such meeting, make an order designating the house or place within each precinct where the election shall be held. It must also at the same session of the board appoint registry agents for the several registration districts established by it, who must possess the qualifications required by law for registry agents. The county clerk must furnish the said registry agents with books, blanks, and other stationery required for the proper performance of their duties.

**History:** En. Sec. 4, Ch. 135, L. 1911;  
re-en. Sec. 4381, R. C. M. 1921.

**NOTE.**—Sections 16-404 (4381) and 16-405 (4382) relating to registration of elec-

tors held impliedly repealed by Ch. 122, Laws of 1915, sections 23-501 to 23-534 (553 to 586). Opinions of Attorney General Vol. 8, Pg. 247.

**16-405. (4382) Registration of voters.** The period for the registration of electors shall be between the hours of nine a. m. and nine p. m. on all legal days from nine a. m. of the fourth Monday prior to the date of said election to nine p. m. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the age of twenty-one years, and will have been a resident of Montana one year and of the territory embraced within the boundaries of the new county for a period of one hundred and eighty days



on the day next preceding the day of such election, and also takes and subscribes to the oath provided in section 479, Revised Codes of Montana.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act insofar as the same do not conflict herewith.

**History:** En. Sec. 5, Ch. 135, L. 1911; was repealed by chapter 113, Laws of 1911.  
re-en. Sec. 4382, R. C. M. 1921. This section held impliedly repealed, see

NOTE.—Section 479, referred to above, note to sec. 16-404.

**16-406. (4383) Judges of election—ballots, books and records.** At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county who shall act as the judges at said election. It shall be the duty of the county clerk to have printed and distributed to the judges of election the necessary ballots, the form of which shall be as provided in sections 16-402, 16-408, and 16-410 of this code, and also supply the judges with the necessary books, records, stationery and ballot-boxes required to hold such election in the manner provided by law.

**History:** En. Sec. 6, Ch. 135, L. 1911;  
re-en. Sec. 4383, R. C. M. 1921.

**16-407. (4384) Applicability of general election laws.** The judges appointed for said special election must qualify as required by the general election law, and the polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state.

**History:** En. Sec. 7, Ch. 135, L. 1911;  
re-en. Sec. 4384, R. C. M. 1921.

**16-408. (4385) Form of ballot.** The form of the ballot used at such elections shall be as follows: There shall be a stub across the top of each ballot, and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall have a depth of not less than two inches. Upon the face of the stub there shall be printed in what is known as brevier capitals the following instructions:

“To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located.”

The ballot below the perforated line shall be in the following form:

“For the permanent county seat of.....county my choice is .....”; (here insert name of county)

Provided, that any person who, from any cause, is unable to write, may have one of the judges in the presence of another judge write his choice on the ballot.

**History:** En. Sec. 8, Ch. 135, L. 1911;  
re-en. Sec. 4385, R. C. M. 1921.

**16-409. (4386) Canvass of returns—result of election.** When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector, and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county. The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns, and upon such canvassing of returns the town or place found to have received a majority of all votes cast on such questions shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board of county commissioners by the county clerk, and from the date of the declaration of the results of the election the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within ten days after the declaration of the result of such election, all records and county offices of the county, if elsewhere located, must be moved to and remain at the place declared the permanent county seat.

**History:** En. Sec. 9, Ch. 135, L. 1911;  
re-en. Sec. 4386, R. C. M. 1921.

**16-410. (4387) Re-election in case of failure to select county seat.** If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat. At said next general election, the county clerk shall have separate ballots in the form provided for in section 16-408 of this code printed and distributed as provided by law containing the names of said candidates for the permanent county seat. On the stub of such ballots shall be printed the following instructions:

“To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for.”

The form of such ballots below the perforated line shall be as follows:

<input type="checkbox"/>	.....for the permanent county seat
<input type="checkbox"/>	.....for the permanent county seat

Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat, and the board of county commissioners must canvass the returns and declare the result, and the county seat must be located in accordance with the provisions of this act.

**History:** En. Sec. 10, Ch. 135, L. 1911;  
re-en. Sec. 4387, R. C. M. 1921.

**16-411. (4388) Applicability of general laws to new counties and officers.** All laws of general nature applicable to the several counties of the state of Montana and to the officers thereof, and to their powers and



duties, shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this act, or the act creating the county.

History: En. Sec. 11, Ch. 135, L. 1911;  
re-en. Sec. 4388, R. C. M. 1921.

**16-412. (4389) Submission of question of locating permanent county seat to voters—elections.** Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred taxpaying electors of such county, whose names appear upon the last assessment book, and also on the last registration-books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of taxpaying electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

History: En. Sec. 12, Ch. 135, L. 1911;  
re-en. Sec. 4389, R. C. M. 1921.

## CHAPTER 5

### CREATION OF NEW COUNTIES BY PETITION AND ELECTION

- Section 16-501. Creation of new counties—debts and assets prorated—minimum area and valuation.
- 16-502. Basis of taxation upon creation of new county—terms used in law defined.
- 16-503. Cities and towns eligible for county seat.
- 16-504. Petition for creation of new county—attached affidavits—notice and hearing.
- 16-505. Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.
- 16-506. Measures to be taken after election—officers—effect of adverse vote.
- 16-507. Officers of new county—judicial district.

- 16-509. Board of county commissioners to be elected.
- 16-517. Publication by posting of notice.
- 16-519. Misdemeanor and malfeasance in office.
- 16-520. Repealing and saving clause.

**16-501. (4390) Creation of new counties—debts and assets prorated—minimum area and valuation.** New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars (\$12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars (\$10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the court house situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty-eight per centum (58%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by section 16-502, 16-503 and 16-511.

**History:** The first new county act was Ch. 112, L. 1911. The first four sections of this act were amended and the rest re-enacted by Ch. 133, L. 1913; Sec. 7 of the act was also amended by Ch. 135, L. 1913. All these acts were repealed and a com-

plete new county law enacted by Ch. 139, L. 1915, which was repealed by Ch. 226, L. 1919. This section en. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R. C. M. 1921; amd. Sec. 1, Ch. 106, L. 1929.

**16-502. (4391) Basis of taxation upon creation of new county—terms used in law defined.** For the purposes of this act the assessed valuation of



all property, whether included within the boundaries of a proposed new county, or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana, to-wit: By taking that percentage of the true and full value of all taxable property in any county specified by section 84-302.

Whenever in this act the term "assessed valuation" or "valuation based on the last assessment roll" is used, said terms shall be construed as meaning taxable valuation determined as herein provided, not the full and true valuation of property.

History: En. Sec. 1, Ch. 16, Ex. L.  
1919; re-en. Sec. 4391, R. C. M. 1921.

**16-503. (4392) Cities and towns eligible for county seat.** No city, town, or village shall become the temporary or permanent county seat of any county organization under the provisions of sections 16-501 to 16-520 of this code, or created by an act of the legislative assembly, unless such city or town shall have been incorporated in the manner provided by law, or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder, and there be fifty qualified electors residing within the boundaries of such platted village, and the temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

History: En. Sec. 1, Ch. 16, Ex. L.  
1919; re-en. Sec. 4392, R. C. M. 1921.

**16-504. (4393) Petition for creation of new county—attached affidavits—notice and hearing.** (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty-eight per cent of the qualified electors of the proposed new county, whose names

appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty-eight per cent of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

(2) Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.

2. A statement that no line thereof passes within fifteen miles of the court house situated at the county seat of any county proposed to be divided, except as hereinafter in this act provided.

3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.

4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed, and a statement of the surveyed area in square miles which will be in the new county after formed.

5. The name of the proposed new county.

6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors and taxpayers residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty-eight per cent of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which



the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of.....county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said .....county and .....county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at ..... at.....Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than forty-two per cent of the votes cast at said election are "for the new county of..... (naming the proposed new county)," "No."

(3) At the time so fixed for said hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. No petition or protest or petition for the exclusion of territory shall be considered unless the same is filed at least one day before the time fixed for the hearing, and such petition for the exclusion of territory shall contain the names of not less than fifty per cent of the qualified electors who are resident property taxpayers of any territory to be excluded. All such territory being excluded must be in one block, and contain an area of not less than thirty-six square miles, and be totally within one county, and contiguous thereto, and the board of county commissioners may adjourn such hearing from time to time, but not for more than ten days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in said petition. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or considered which are not filed within five days after the filing of the petition for such exclusion of territory.

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county, and the boundaries so determined by said board of county commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least fifty-eight per cent of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty-eight per cent of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3. Whether any line of the proposed new county passes within fifteen miles of the court-house situate at the county seat of any county proposed to be divided, except as hereinbefore provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least four million dollars, inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. Whether the area of the proposed new county will contain at least one thousand square miles of surveyed land to form such new county.

7. The class to which said proposed new county after its creation will belong, and the name of said proposed new county, as stated in such petition.

8. Whether the area embraced within the proposed new county will be reasonably compact.

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors who are resident property taxpayers of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment-roll; provided, that no change or



changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

**History:** En. Sec. 2, Ch. 226, L. 1919;  
re-en. Sec. 4393, R. C. M. 1921.

**NOTE.**—Wording of this section changed to conform to amendment of section 16-501 by Sec. 1, Ch. 106, Laws 1929.

**16-505. (4394) Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.** (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the court house situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty-eight per cent of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty-eight per cent of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2) Said board of county commissioners shall also, if necessary for the purpose of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided, that the boundary lines of no such precinct shall extend beyond the boundary lines of the then existing county in which it is located, and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board.

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the

new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of election, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of..... (giving the name of the proposed new county)" "Yes," and "For the new county of..... (giving the name of the proposed new county)," "No," and each voter desiring to vote for the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "Yes," in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong, as determined by the board of county commissioners as herein otherwise provided.

(5) There shall also be printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot. At the special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be



designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(6) The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the board of county commissioners with which is filed the said petition for the formation and establishment of such new county, and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed new county all ballots, poll list, tally lists, registers for voters' signatures, ballot-boxes, and other election supplies and equipment necessary to conduct such election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for the creation of the county, and for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the board of county commissioners of the county from which the largest area is taken by the proposed county.

(7) The county clerk of each county from which territory is taken for the proposed new county shall, not less than five days before the date of such election, furnish to each board of election within said proposed new county, a copy of the official register for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

**History:** En. Sec. 3, Ch. 226, L. 1919;  
re-en. Sec. 4394, B. C. M. 1921.

**NOTE.**—Wording of this section changed  
to conform to section 16-501.

**16-506. (4395) Measures to be taken after election—officers—effect of adverse vote.** (1) If, upon the canvass of the votes cast at such election, it appears that fifty-eight per cent of the votes cast are "For the new county of.....," "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of..... county, and that the city or town receiving the highest number of votes cast at said election for

county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than forty-two per cent of the votes cast at said election are "For the new county of.....," "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919;  
re-en. Sec. 4395, R. C. M. 1921.

**16-507. (4396) Officers of new county—judicial district.** At the election provided for in section 16-505 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and



determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into townships, as hereinbefore in section 16-505 provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 16-505 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided. and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

**History:** En. Sec. 5, Ch. 226, L. 1919;  
re-en. Sec. 4396, R. C. M. 1921.

**16-509. (4396.2) Board of county commissioners to be elected.** At the special election held for the purpose of voting on the question of the creation of a new county, a board of county commissioners shall be elected, who shall hold office until the next general election.

**History:** En. Sec. 2, Ch. 106, L. 1925.

**16-517. (4404) Publication by posting of notice.** Whenever in this act publication of any notice is provided for, and no newspaper of general cir-

ulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notices in at least ten public places in such territories for the same length of time said notice was required to be published.

History: En. Sec. 13, Ch. 226, L. 1919;  
re-en. Sec. 4404, R. C. M. 1921.

**16-519. (4406) Misdemeanor and malfeasance in office.** Any member of the board of county commissioners, or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails or refuses to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction.

History: En. Sec. 15, Ch. 226, L. 1919;  
re-en. Sec. 4406, R. C. M. 1921.

**16-520. (4407) Repealing and saving clause.** All acts and parts of acts in conflict herewith are hereby repealed, with the exception: This act shall not apply in any cases whereby the election has been held under the act passed by the fifteenth legislative session for the creation of counties and a majority vote has been cast in favor thereof, but the provisions of this act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this act; and it is hereby made the duty of the board of county commissioners which may have ordered any election in pursuance of existing laws to immediately make an order annulling and setting aside all further proceedings in relation to such proposed new county, including an order to nullify and set aside any election order theretofore made; provided, if any order is made nullifying and setting aside any election as provided in this section, any bond which may have been given in pursuance with the provisions of law relating to the costs of election for the creation of any proposed new county shall be deemed void, and no liability shall be incurred thereunder.

History: En. Sec. 16, Ch. 226, L. 1919;  
re-en. Sec. 4407, R. C. M. 1921.

## CHAPTER 8

### GENERAL POWERS AND LIMITATIONS UPON COUNTIES

Section 16-807. Limit of indebtedness.

**16-807. (4447) Limit of indebtedness.** No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without



he approval of a majority of the electors thereof voting at an election to be provided by law.

History: En. Sec. 4196, Pol. C. 1895;  
re-en. Sec. 2876, Rev. C. 1907; re-en. Sec.  
447, R. C. M. 1921.

## CHAPTER 10

### GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1003. Elections, powers concerning.

**16-1003. (4465.2) Elections, powers concerning.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law;

To establish, abolish and change election precincts, and to appoint judges of election, canvass all election returns, declare the result, and issue certificates thereof.

History: En. Subd. 3, Sec. 1, Ch. 100,  
L. 1931.

## CHAPTER 11

### SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1156. Board to provide appliances for holding elections and allow expenses.  
16-1157. Issuance of certificates of election as board of canvassers.

**16-1156. (4515) Board to provide appliances for holding elections and allow expenses.** The board of county commissioners must provide all poll-lists, poll-books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

History: En. Sec. 4280, Pol. C. 1895;  
re-en. Sec. 2939, Rev. C. 1907; re-en. Sec.  
4515, R. C. M. 1921. Cal. Pol. C. Sec. 4064.

**16-1157. (4516) Issuance of certificates of election as board of canvassers.** Whenever, as canvassers, the board of county commissioners declares the result of any election held in the county, certificates must be by the clerk of the board issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to elections.

History: En. Sec. 4281, Pol. C. 1895;  
re-en. Sec. 2940, Rev. C. 1907; re-en. Sec.  
4516, R. C. M. 1921. Cal. Pol. C. Sec. 4065.

## CHAPTER 12

### COUNTY PRINTING COMMISSION

Section 16-1230. County commissioners to contract for county printing.

**16-1230. County commissioners to contract for county printing.** It is hereby made the duty of the county commissioners of the several counties

of the state of Montana to contract with one (1) newspaper, published at least once a week, and of general bona fide and paid circulation with second class mailing privileges, published within the county, and having been published continuously in such county at least twelve (12) months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, and all other printed forms required for the use of such counties at not more than the prices set by the county printing commission.

**History:** En. Sec. 6, Ch. 280, L. 1967.

## CHAPTER 19

### COUNTY BUDGET SYSTEM

Section 16-1907. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

**16-1907. (4613.6) Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations. (1)** In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency. Such resolution and notice shall be published once in the official newspaper of the county, and if there be none then in a newspaper of general circulation in the county.

(2) Upon the conclusion of such hearing, if the commissioners shall approve of such emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at such meeting, an order setting forth the facts constituting such emergency together with the amount of expenditure authorized by them therefor, which order, so entered, shall be lawful authorization for them to expend such amount, but no more, for such purpose, subject however, to the following limitations: No expenditures shall be made or liability incurred pursuant to said order until five (5) days, exclusive of the day of entry of said order, shall have elapsed, during which time any taxpayer or taxpayers of said county feeling aggrieved by said order may appeal therefrom to the district court for such county by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the county clerk and recorder of said county as the clerk of



the board of county commissioners. Said petition shall set forth in detail the objections of the petitioner or petitioners to said order, giving their reasons why the said emergency does not exist. The service and filing of such petition shall operate to suspend such emergency order and the authority to make any expenditure or incur any liability thereunder, until final determination of the matter by the court.

(3) Upon the filing of such petition the court shall immediately fix a time for hearing such petition which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency, such as is contemplated within the meaning and provisions of this act, exists or not, and whether the expenditure authorized by said order is excessive or not shall be final.

(4) The total of all emergency budgets, and appropriations made therein, in any one year, to be paid from the county poor fund shall not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy, as shown by the last completed assessment roll of the county.

(5) Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing; provided, that the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot or insurrection, shall not exceed the sum of two hundred thousand dollars (\$200,000.00) in counties of classifications 1, 2, 3 and 4, provided, however, that after July 1, 1963, such emergency expenditures shall not exceed twenty-five thousand dollars (\$25,000.00); fifteen thousand dollars (\$15,000.00) in counties of classifications 5 and 6, and seven thousand five hundred dollars (\$7,500.00) in counties of classification 7 unless the excess above said sum shall first have been authorized by a majority of the taxpaying freeholders of such county, who are registered electors therein, voting at a general or special election. The question of authorizing such excess expenditure shall be submitted in the following

form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of ..... County, Montana be authorized to make additional expenditures and incur additional liabilities in the amount of \$..... over and above the sum of ....., to meet an emergency caused by .....

☐ Yes

☐ No

Notice of such election shall be given by posting notice thereof at least fifteen (15) days before such election in three (3) public places in each voting precinct within the county and by publishing such notice for not less than ten (10) days before the date of such election.

(6) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures, and the county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose, and if, at any time, there shall not be sufficient money available in such fund or funds to pay such warrants then such warrants shall be registered, bear interest and be called in for payment in the manner provided by law for other county warrants.

(7) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year, and the county commissioners shall include in their tax levies a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same; provided, however, that no levy shall be made for any fund in excess of the levy authorized by law to be made therefor; and provided further, that the board of county commissioners may submit the question of funding such emergency warrants at any election, as provided by law, and if at any such election the issuing of such funding bonds be authorized it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

(8) All appropriations, other than appropriations for incompleting improvements in progress of construction, shall lapse at the end of the fiscal year; provided that the appropriation accounts shall remain open for a period of thirty (30) days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations except as hereinbefore provided, regarding incompleting improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

**History:** En. Sec. 6, Ch. 148, L. 1929; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963.

**Cross-Reference**

Temporary authority for emergency tax levy by county commissioners, sec. 84-3805 note.



## CHAPTER 20

## COUNTY FINANCE—BONDS AND WARRANTS

- Section 16-2021. Petition and election required for bonds issued for other purposes.  
16-2022. Form, contents and proof of petition.  
16-2023. Consideration of petition—calling election.  
16-2024. Notice of election—election hours—election officers.  
16-2025. Form of ballots and conduct of election.  
16-2026. Who are entitled to vote.  
16-2027. Percentage of electors required to authorize bond issue.  
16-2028. Canvass of election returns—resolution for bond issue.

**16-2021. (4630.7) Petition and election required for bonds issued for other purposes.** County bonds for any other purpose than those enumerated in section 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in section 16-2027; and no such bond election shall be called unless there has been presented to the board of county commissioners a petition, asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified electors of the county, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes.

**History:** En. Sec. 7, Ch. 188, L. 1931.

**16-2022. (4630.8) Form, contents and proof of petition.** Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk as hereinafter provided. The petition shall give the postoffice address and voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the county clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors whose names appear upon the last completed assessment roll for state and county taxes.

**History:** En. Sec. 8, Ch. 188, L. 1931.

**16-2023. (4630.9) Consideration of petition—calling election.** When such petition has been filed with the county clerk and he has found that it has a sufficient number of signers, qualified to sign the same, he shall place the same before the board of county commissioners at its first meeting held after he has attached his certificate thereto. The board shall thereupon carefully examine the petition and make such other investigation as it may deem necessary.

If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its filing and presentation, the purpose, or purposes, for which the bonds are proposed to be issued, and fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition, determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in section 16-2011, and making provision for having such question submitted to the qualified electors of the county at the next general election, or at a special election which the board may call for such purpose.

**History:** En. Sec. 9, Ch. 188, L. 1931.

**16-2024. (4630.10) Notice of election—election hours—election officers.** Whether such election is held at the general election, or at a special election, separate notice shall be given thereof. Such notice shall state the date when such election will be held, the hours between which the polls will be open, the amount of bonds proposed to be issued, the purpose of the issue, the term of years through which the bonds are to be paid, and such other information regarding the holding of the election and the bonds proposed to be issued as the board may deem proper. If bonds are to be issued for two (2) or more purposes, each purpose and the amount therefor must be separately stated. Such notice shall be posted in each voting precinct throughout the county in the same manner as notices for a general election are required to be posted. Such notice must also be published once each week for four (4) consecutive weeks preceding the election in the official newspaper of the county.

If the question of issuing bonds is submitted at a special election called for such purpose the board of county commissioners shall fix the hours through which the polls are to be kept open, which shall be not less than eight (8), and which must be stated in the notice of election, and may appoint a smaller number of election judges than is required for a general



election, but in no case shall there be less than three (3) judges in the precinct, and such judges shall act as their own clerks.

If the question of issuing bonds is submitted at a general election, the polls shall be kept open during the same hours as are fixed for such general election and the judges and clerks for such general election shall act as the judges and clerks for such bond election.

**History:** En. Sec. 10, Ch. 188, L. 1931.

**16-2025. (4630.11) Form of ballots and conduct of election.** The form of ballots shall be as prescribed by section 16-2306; but if bonds are sought to be issued for two (2) or more separate purposes, then separate ballots must be provided for each purpose. The election shall be conducted in the manner prescribed by said section 16-2306, and the general election laws of the state shall govern insofar as they are applicable; but if such question be submitted at a general election the votes thereon must be counted separately and separate returns must be made by the judges and clerks at such election.

**History:** En. Sec. 11, Ch. 188, L. 1931.

**16-2026. (4630.12) Who are entitled to vote.** In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

**History:** En. Sec. 12, Ch. 188, L. 1931;  
amd. Sec. 1, Ch. 138, L. 1939; amd. Sec.  
18, Ch. 64, L. 1959.

**16-2027. (4630.13) Percentage of electors required to authorize bond issue.** Whenever the question of issuing county bonds for any purpose is submitted to the qualified electors of a county, at either a general or special election, not less than forty per centum (40%) of the qualified electors entitled to vote on such question must vote thereon, otherwise such proposition shall be deemed to have been rejected; provided, however, that if forty per centum (40%), or more of such qualified electors do vote on such question, at such election, and a majority of such votes shall be cast in

favor of such proposition, then such proposition shall be deemed to have been approved and adopted.

History: En. Sec. 13, Ch. 188, L. 1931.

**16-2028. (4630.14) Canvass of election returns—resolution for bond issue.** If the bonding election be held at the same time as a general election, then the returns shall be canvassed at the same time as the returns from such general election; but if the bonding election is a special election, then the board of county commissioners shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more, of the qualified electors entitled to vote at such election voted on such question, and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, the optional provisions, if any; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two or more series or installments.

Provided, however, that if none of said bonds have been sold and issued within three years from the date of the bonding election, and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931;  
amd. Sec. 1, Ch. 210, L. 1961.

## CHAPTER 23

### VOTE NECESSARY ON PROPOSAL TO RAISE MONEY

- Section 16-2301. Commissioners not to borrow money except as herein provided.  
16-2302. Commissioners to determine amount necessary.  
16-2303. Notice of election to be given.  
16-2304. Ballots—what to contain.  
16-2305. When loan may be made.  
16-2306. Form of ballots—voting.

**16-2301. (4717) Commissioners not to borrow money except as herein provided.** The board of county commissioners must not borrow money for any of the purposes mentioned in this title, or for any single purpose to an amount exceeding ten thousand dollars, without the approval of a majority of the electors of the county, and without first having submitted the ques-



tion of a loan to a vote of such electors; provided, that it shall not be necessary to submit to the electors the question of borrowing money to refund outstanding bonds, or for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

**History:** En. Sec. 4270, Pol. C. 1895; 1, Ch. 92, L. 1919; re-en. Sec. 4717, R. C. re-en. Sec. 2933, Rev. C. 1907; amd. Sec. M. 1921.

**16-2302. (4718) Commissioners to determine amount necessary.** Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

**History:** En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R. C. M. 1921.

**16-2303. (4719) Notice of election to be given.** Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given, and the election held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

**History:** En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R. C. M. 1921.

**16-2304. (4720) Ballots—what to contain.** There must be written or printed on the ballots the words "For the loan" and "Against the loan," and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

**History:** En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R. C. M. 1921.

**16-2305. (4721) When loan may be made.** If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county.

**History:** En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R. C. M. 1921.

**16-2306. (4722) Form of ballots—voting.** Hereafter whenever, in due course of law, in the manner and form required by law and according to the provisions and requirements of law, any question or proposition of or relating to bonded indebtedness, or of issuing bonds or of refunding, increasing, or creating a bonded indebtedness is submitted, ordered submitted, or to be submitted to the electors of any county, at a general or other election, when, at the same time, candidates for national, state, or county office or offices are to be voted upon or for by the qualified electors of such county, such question or proposition relating to bonds or bonded indebtedness shall not be placed or printed upon the official ballots furnished electors at such election for the purpose of voting for candidates

for any office or offices, and containing the names of candidates for office or offices to be voted for at such election, but the county commissioners shall authorize, and the county clerk shall have printed and furnished to election judges and officials in each voting precinct of such county, separate ballots therefor, equal in number to the official ballots so furnished, and containing the names of such candidates for office. Said separate ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink, in one line or more, as required, the words "For" said bonding proposition (stating it and the terms thereof explicitly and at length), and thereunder the words "Against" said bonding proposition (stating it and the terms thereof explicitly and at length in like manner, as above); and there shall be before the word "For" and before the word "Against," each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in this manner:

<input type="checkbox"/>	For (stating propositions.)
<input type="checkbox"/>	Against (stating propositions.)

Such separate ballots shall be kept, stamped, given out, received, counted, returned, and disposed of by election judges in like manner as other official ballots herein referred to. Each qualified elector offering to vote and permitted to vote shall, at the time he is offered by the election judges an official ballot bearing the names of candidates for office, be handed one of the separate ballots above described, and he may then and there, in a booth as provided by law, and not otherwise, vote on such separate ballot for or against said proposition by placing a cross or X before the word "For" or the word "Against," in the vacant square provided therefor; and such separate ballot shall be returned to the election judges by the voter, with said other official ballot, if the voter chooses to vote for candidates for office and is entitled to do so. The election judges shall deposit said separate ballot on the bonding proposition, separate from the voter's other official ballot, in the ballot-box.

History: En. Sec. 1, p. 13, L. 1901;  
re-en. Sec. 2938, Rev. C. 1907; re-en. Sec.  
4722, R. C. M. 1921.

## CHAPTER 24

### COUNTY OFFICERS—QUALIFICATIONS—GENERAL PROVISIONS

- Section 16-2401. General qualifications for county office.  
 16-2402. Same for district and township offices.  
 16-2403. County officers enumerated.  
 16-2404. Township officers.  
 16-2406. County and other officers, when elected and term of office.  
 16-2407. Election and terms of county commissioners.  
 16-2408. District judges and justices of the peace—election and term of office.



**16-2401. (4723) General qualifications for county office.** No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

**History:** En. Sec. 4310, Pol. C. 1895;  
re-en. Sec. 2955, Rev. C. 1907; re-en. Sec.  
4723, R. C. M. 1921. Cal. Pol. C. Sec. 4101.

**16-2402. (4724) Same for district and township offices.** No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

**History:** En. Sec. 4311, Pol. C. 1895;  
re-en. Sec. 2956, Rev. C. 1907; re-en. Sec.  
4724, R. C. M. 1921. Cal. Pol. C. Sec. 4102.

**16-2403. (4725) County officers enumerated.** The officers of a county are:

- A treasurer;
- A county clerk;
- A clerk of the district court;
- A sheriff;
- A county auditor, except in the sixth, seventh, and eighth class counties;
- A county attorney;
- A surveyor;
- A coroner;
- A public administrator;
- An assessor;
- A county superintendent of common schools;
- A board of county commissioners.

**History:** En. Sec. 4312, Pol. C. 1895; Ch. 112, L. 1913; re-en. Sec. 4725, R. C. M.  
re-en. Sec. 2957, Rev. C. 1907; amd. Sec. 1, 1921. Cal. Pol. C. Sec. 4103.

**16-2404. (4726) Township officers.** The officers of townships are two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

**History:** En. Sec. 4313, Pol. C. 1895;  
re-en. Sec. 2958, Rev. C. 1907; re-en. Sec.  
4726, R. C. M. 1921. Cal. Pol. C. Sec. 4104.

**16-2406. (4728) County and other officers, when elected and term of office.** There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their

respective offices for the term of four (4) years, and until their successors are elected and qualified.

The county attorneys, county auditors, and all elective township officers, must be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

History: En. Sec. 4315, Pol. C. 1895; 4728, R. C. M. 1921; amd. Sec. 1, Ch. 131, re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. L. 1939. Cal. Pol. C. Sec. 4109.

**16-2407. (4729) Election and terms of county commissioners.** The election and terms of office of county commissioners are provided for in the constitution.

History: En. Sec. 4316, Pol. C. 1895; re-en. Sec. 2961, Rev. C. 1907; re-en. Sec. 4729, R. C. M. 1921.

**16-2408. (4730) District judges and justices of the peace—election and term of office.** The election and terms of office of district judges and justices of the peace are provided for in title 93 of this code.

History: En. Sec. 4317, Pol. C. 1895; re-en. Sec. 2962, Rev. C. 1907; re-en. Sec. 4730, R. C. M. 1921. Cal. Pol. C. Sec. 4110.

## CHAPTER 39

### COUNTY MANAGER FORM OF GOVERNMENT

- Section 16-3901. County manager plan of government may be adopted.  
 16-3902. Method of adoption.  
 16-3923. The recall of county commissioners.

**16-3901. (4954.1) County manager plan of government may be adopted.** Any county in the state is hereby authorized to adopt a county manager form of government as herein defined, and in accordance with the procedure herein specified.

History: En. Sec. 1, Ch. 109, L. 1931.



**16-3902. (4954.2) Method of adoption.** (a) Upon a petition filed with the board of county commissioners signed by not less than 20 per cent of the whole number of voters who voted at the last general election asking that a referendum be held on the question of adopting the county manager form of government, it shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety days nor less than sixty days from the filing of the petition, but not within thirty days of any general election. The question submitted shall be worded: "Shall the county manager form of government be adopted in.....county?"

(b) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four consecutive weeks.

(c) If a majority of the votes cast on the question at the election shall be in favor of the county manager form of government it shall go into effect at a date designated in the petition or resolution. Provided: That no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but that from and after the establishment of such form of government, his duties shall be such duties as are assigned to him by the county manager.

History: En. Sec. 2, Ch. 109, L. 1931;  
amd. Sec. 1, Ch. 56, L. 1933.

**16-3923. (4954.23) The recall of county commissioners.** (1) One or more county commissioners may be removed by the electors qualified to vote for a successor of such incumbent. A petition of fifty-one per cent of all qualified electors registered for the last general election, demanding the election of a successor to the person sought to be removed, shall be filed with the director of finance of the county, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature, his place of residence; one of the signers shall make oath before an officer, competent to administer oaths, that the statements therein are true, as he believes and that each signature to the paper appended is the genuine signature of the person it purports to be.

(2) On the filing of a sufficient petition, the director of finance shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of filing of such petition. The director of finance shall cause to be made publication of notice and all arrangements for holding of such election and the same shall be conducted and returned and the results thereof declared, in all respects and in the same manner as any other election. Nominations hereunder shall be made by filing with the director of finance, at least thirty days prior to such special election, a statement of candidacy, accompanied by a petition signed by electors entitled to vote at such special election, equal in number to at least ten per

cent of the entire number of persons registered to vote at the last preceding general election.

(3) The ballot for such special election shall be in substantially the following form:

“OFFICIAL BALLOT  
Special election for the balance of the unexpired term of  
..... for .....  
(Vote for one only)  
(Name of candidate)  
(Name of present incumbent)  
(Official ballot attest)  
Signature.....  
Director of finance.”

The successor of any officer so removed shall hold office during the unexpired term of his predecessor.

(4) Any person sought to be removed may be a candidate to succeed himself and unless he requests otherwise in writing, the director of finance shall place his name on the official ballot without nomination. In case of any such removal election, the candidate or candidates receiving the highest number of votes shall be declared elected. If the incumbent is not re-elected, he thereupon shall be deemed removed from the office, upon the qualification of his successor. If the incumbent receives the highest number of votes, or in case of a removal election for more than one commissioner, he or they receiving a sufficient number of votes so that his or their vote is the highest number for said office or offices of commissioner, he or they shall continue in office. The said method of removal shall be cumulative and additional to the methods herein provided by law.

History: En. Sec. 7, Ch. 56, L. 1933.

## CHAPTER 40

### ABANDONMENT OF COUNTIES

- Section 16-4001. Abandonment of counties—how.  
16-4002. Petition for abandonment of counties—procedure thereon.  
16-4003. County commissioners to order election—notice—publication.  
16-4004. Commissioners to determine sufficiency of petition—form of resolution.  
16-4005. Governor to call special election—proclamation.  
16-4006. County commissioners to proclaim election—question submitted.  
16-4007. Question to be submitted.  
16-4008. Commissioners to canvass returns—governor to proclaim result.  
16-4009. Result of election determines abandonment.

**16-4001. Abandonment of counties—how.** The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries attached to and made a part of some adjoining county in the manner provided by this act.

History: En. Sec. 1, Ch. 105, L. 1937.

**16-4002. Petition for abandonment of counties—procedure thereon.**  
(1) A petition may be filed with the county clerk of a county, asking that



the question of abandoning and abolishing the organization and corporate existence of such county and attaching its territory to and making the same a part of some adjoining county, be submitted to the qualified electors of such county at an election. Such petition shall state the name of the adjoining county to which the territory of such county, so to be abandoned and abolished, shall be attached and made a part; such petition shall be signed by not less than thirty-five per centum (35%) of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post office address and voting precinct of each person signing the same, and shall state the name and address of three persons to whom notice of the insufficiency of the petition shall be sent in the event that the petition shall not have the required number of signatures of qualified electors signed thereto.

(2) It shall be the duty of the county clerk, within thirty days after the filing of such petition to examine the same, to ascertain and determine from the registration records of the county whether such petition is signed by the required number of qualified electors. Such clerk may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining such petition and such board shall provide for their compensation. When such examination is completed said clerk shall forthwith attach to such petition his certificate, properly dated and signed, showing the result of his examination, and if said certificate shows that said petition is signed by the required number of qualified electors, said clerk shall immediately present said petition to the board of county commissioners, if such board be then in session, otherwise at its first regular meeting after the date of such certificate. No person, after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 2, Ch. 105, L. 1937.

**16-4003. County commissioners to order election—notice—publication.**

(1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the county clerk attached thereto, showing that said petition has been signed by not less than thirty-five per centum (35%) of the qualified electors of such county whose names appear upon the registration records of said county, as provided in section 16-4002, said board of county commissioners shall immediately upon presentation of such petition, make and enter an order in its minutes fixing a day for considering and taking final action on said petition, which shall be not less than thirty (30) nor more than thirty-five (35) days after the date when said order is made, and shall cause a notice to be published in the official newspaper of the county to the effect that such petition has been presented to such board asking for the abandonment and abolishment of the county and that said board will meet at the time specified in said order for considering and taking final action on said petition, at which time any and all registered electors of the county interested therein may appear and be heard thereon. Such notice shall be published once a week for two (2) successive weeks immediately following the making of such order.

(2) At any time prior to five (5) days before the date fixed for consideration and final action on such petition fifty per centum (50%) of the registered electors residing within a particular part or portion of such county, may file with the county clerk of such county a petition in writing signed by them praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county, which petition shall definitely, particularly and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished.

(3) Whenever any such petition is filed the county clerk shall immediately examine the same and determine from the registration records of the county whether such petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in said petition and the number thereof whose names appear on said petition, and shall deliver such petition with such certificate attached, to the board of county commissioners when such board meets to consider and take final action on such petition for abandonment, separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that the territory embraced within the boundaries described therein may be attached to and become parts of the same, or different adjoining counties, other than the county named and designated in the petition for abandonment, if said county is abandoned. No person after signing any such petition shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 3, Ch. 105, L. 1937.

**16-4004. Commissioners to determine sufficiency of petition—form of resolution.** On the day fixed by the board for consideration and final action on such petition for abandonment the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties, other than the county named in such petition for abandonment, and shall determine the sufficiency of each such petition filed, and shall enter its findings with regard thereto in its minutes, and said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes, and which shall be in substantially the following form:

Whereas, there has been filed with the clerk of (name) county, Montana, a petition asking that the organization and corporate existence of said county be abandoned and abolished and its territory attached to and made a part of an adjoining county, to wit, the county of (name) Montana;

And whereas, said petition has been presented to the board of county commissioners of (name) county, with a certificate of the clerk of said county attached thereto showing that said petition has been signed by not



less than thirty-five per centum (35%) of the registered electors of said county;

(If any petition for attaching any part or portion of the county, in case of abandonment to an adjoining county or counties, other than the county named in the petition for abandonment, and found to have been signed by the required number of registered electors, insert the following for each petition)

And whereas, there has been filed a petition signed by not less than fifty per centum (50%) of the registered electors residing within that part or portion of said county described as (give description as contained in petition) praying that the part or portion of said county within such boundaries be attached to and made a part of the county of (name of county given in petition) if said county be abandoned;

Now therefore be it resolved, that if said (name) county shall be abandoned and abolished the territory embraced within its boundaries shall be attached to and become part of the following. (If all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment.)

And be it further resolved, that the county clerk of (name) county, Montana, make copies of this resolution, each with a copy of said petition for abandonment, with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties, other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted) and certify to the same and affix the seal of the county thereto, and transmit one of said copies to the governor of the state of Montana, and one of said copies to the clerk of each county to which any part of said county is to be attached, if abandoned.

Said resolution must be signed by the members of the board of county commissioners and the county clerk must, within five (5) days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of the state of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached, if abandoned.

**History:** En. Sec. 4, Ch. 105, L. 1937.

**16-4005. Governor to call special election—proclamation.** Upon receipt of a certified copy of the resolution provided for in section 16-4004, the governor shall, within ten days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in said resolution was filed, and in each county designated in such resolution as a county to which any of the territory of such county, if abandoned and abolished, shall be attached and made a part, at which election there shall be submitted to the qualified electors of the county in which such petition was filed the question of whether or not such county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for such purpose in said petition, and at which elec-

tion there shall be submitted to the qualified electors of each county named and designated in such resolution as a county to which a part of the territory of the county, proposed to be abandoned and abolished, shall be attached and made a part, if such county shall be so abandoned and abolished, the question of whether or not such part of the territory of such county, if abandoned and abolished, described in such resolution, shall be attached to and become a part of such county. Such proclamation shall fix a day for holding such election in such counties, which shall be not less than ninety days nor more than one hundred and twenty days after the date of the date of the governor's proclamation calling the same; provided that if a general election will be held in said counties within one hundred and twenty days after the date of such proclamation, the governor, in such proclamation, shall direct that such question be submitted to the qualified electors of said counties at such general election. Such proclamation shall be filed in the office of the secretary of state and copies thereof shall be transmitted by the governor to the county clerk of each of the counties in which such election is to be held.

**History:** En. Sec. 5, Ch. 105, L. 1937.

**16-4006. County commissioners to proclaim election—question submitted.** The county clerk of each of such counties after receiving a copy of such election proclamation shall present the same to the board of county commissioners, if such board is then in session, and if not in session, then at the first meeting thereof held after such clerk has received the same, and the board of county commissioners of each of such counties shall issue such proclamations and give such notices of election as are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election and which proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and to be attached to and made a part of such county, if said county be abandoned, and the county clerk of each of such counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

**History:** En. Sec. 6, Ch. 105, L. 1937.

**16-4007. Question to be submitted.** At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ For the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

☐ Against the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

And the question to be submitted to the qualified electors of the counties, designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished, is to be attached and made a part, shall be as follows:



☐ For attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ Against attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

Said election shall be held, voted, counted and returns made and canvassed in the manner provided by the general election laws of this state.

History: En. Sec. 7, Ch. 105, L. 1937.

**16-4008. Commissioners to canvass returns—governor to proclaim result.** The board of county commissioners of each county, acting as a canvassing board, must within ten (10) days after the holding of such election canvass the returns of such election, and within five (5) days thereafter the clerk of each such county must make and enter in the records of said board a statement of the vote in such county and transmit to the secretary of state, by registered mail, an abstract thereof, which shall be marked "Election Returns." Within ten (10) days after receiving such abstracts from all counties in which such election was held, and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute and determine the vote, and the secretary of state, as secretary of such board must make and file in his office a statement thereof and transmit a copy thereof to the governor. Upon receipt of such copy the governor shall issue a proclamation declaring the result of such election and shall file a copy of such proclamation in the office of the secretary of state and transmit a copy of such proclamation to the county clerk of each of the counties in which such election was held, and each such county clerk shall file the same in his office and present the same to the board of county commissioners of his county, if such board is then in session, otherwise at the first meeting of the board after the same has been received by such clerk.

History: En. Sec. 8, Ch. 105, L. 1937.

**16-4009. Result of election determines abandonment.** If, at such election a majority of the votes cast in the county in which such petition was filed shall be cast in favor of the abandonment and abolishment of such county, and a majority of the votes cast in the county, designated in the petition for abandonment as the county to which the territory of the abandoned county shall be attached, shall be in favor thereof, then the organization and political and corporate existence of the county in which such petition for abandonment was filed shall cease and terminate and said county shall be abandoned and abolished and disincorporated and cease to exist and its territory shall be attached to and become a part of the counties designated in the resolution adopted under section 16-4004, and the term of office of each of the officers thereof, and of the members of the board of county commissioners thereof, and of its senator and representative in the legislative assembly shall cease and terminate at twelve (12:00) o'clock midnight on the thirtieth day of June immediately following; provided that if at any such election a majority of the votes cast in any adjoining county named in the resolution adopted under section 16-4004, other than the county

designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, shall be against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of such territory described in said resolution shall be attached and become a part of the county designated in such resolution for abandonment as the county to which the territory of the abandoned county shall attach.

History: En. Sec. 9, Ch. 105, L. 1937.

## CHAPTER 43

### PUBLIC HOSPITAL DISTRICTS

Section 16-4301. Purpose of act—allowable territory embraced within public hospital district.

16-4302. Petition to board of county commissioners.

16-4303. Hearing.

16-4304. Reference of creation of district at election.

16-4305. Resolution and order of board as respects election.

16-4306. Favorable vote—commissioners finally to organize district.

16-4307. Government of district—appointment, election and terms of trustees.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953;  
amd. Sec. 1, Ch. 257, L. 1969.

16-4302. Petition to board of county commissioners. Proceedings for creation of a hospital district shall be initiated by a petition, signed by not less than thirty per centum (30%) of the qualified electors of the proposed hospital district, who are taxpayers upon property within the proposed hospital district and whose names appear on the last completed assessment roll for state and county taxes. The petition may consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner. Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition, that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk, who shall within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach it to a certificate under



his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than thirty per cent (30%) of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last completed assessment roll for state and county taxes. The county clerk shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate. The board shall thereupon carefully examine the petition and, if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district. A notice of such hearing shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: En. Sec. 2, Ch. 155, L. 1953;  
amd. Sec. 2, Ch. 257, L. 1969.

**16-4303. Hearing.** At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, without additional published or posted notice, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953;  
amd. Sec. 3, Ch. 257, L. 1969.

**16-4304. Reference of creation of district at election.** The board of county commissioners, upon completion of the hearing hereinabove provided for, shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition.

Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953;  
amd. Sec. 4, Ch. 257, L. 1969.

**16-4305. Resolution and order of board as respects election.** The board must, in its resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the date for such election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that if a special election is held the polls shall be open from 8 a. m. to 6 p. m., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county. Only qualified, registered electors residing within the proposed hospital district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state and county taxes shall have the right to vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953;  
amd. Sec. 5, Ch. 257, L. 1969.

**16-4306. Favorable vote—commissioners finally to organize district.** In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified. After twenty (20) days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto, shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953;  
amd. Sec. 6, Ch. 257, L. 1969.

**16-4307. Government of district—appointment, election and terms of trustees.** Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the registered electors residing in the district. The trustees must be elected from among the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the crea-



tion of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1) two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there shall be elected a trustee to serve for a term of three (3) years and until his successor shall be elected and qualify and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953;  
amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7,  
Ch. 257, L. 1969.

## CHAPTER 45

### COUNTY WATER AND SEWER DISTRICTS

- Section 16-4501. Organization of county water and/or sewer districts authorized.  
16-4502. Organization of districts.  
16-4503. Petition—boundaries of district—publication.  
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16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.  
16-4506. Election of directors—term of office.  
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- 16-4522. Sixty per cent (60%) vote necessary.
- 16-4529. Initiative.
- 16-4530. Referendum.
- 16-4531. Adding to and consolidation of district.
- 16-4535. Elections may be combined.

**16-4501. Organization of county water and/or sewer districts authorized.** A county water and/or sewer district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

**History:** En. Sec. 1, Ch. 242, L. 1957; County of Yellowstone, 140 M 538, 374 P amd. Sec. 1, Ch. 263, L. 1967. 2d 328, 333.

**Constitutionality**

The County Water District Act (16-4501 to 16-4534) is not unconstitutional on the ground that there is an invalid delegation of power by the legislature because inadequate standards are provided in the act since the provisions of the act are sufficiently clear, definite, and certain to enable the county water district to know its rights and obligations. *Parker v.*

The title of the County Water District Act (16-4501 to 16-4534) is not defective because it provides only for the construction of waterworks since the provisions in the body of the act for water tax and bond tax are germane to that part of the title dealing with construction of waterworks and such taxes are necessary to accomplish the general objects of the bill. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

**16-4502. Organization of districts.** The people of any county or counties, or portion of a city or a county, or city and county, or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, may organize a county water and/or sewer district under the provisions of this act by proceeding as herein provided.

**History:** En. Sec. 2, Ch. 242, L. 1957; amd. Sec. 1, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967.

**16-4503. Petition—boundaries of district—publication.** A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed district is located, signed by the registered voters within the boundaries of the proposed district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed district. When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies and each of said petitions must be signed by at least ten per centum (10%) of the registered voters of the territory within said county to be included within such proposed district. Such petition shall set forth and describe the proposed boundaries of such district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition



shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

**History:** En. Sec. 3, Ch. 242, L. 1957;  
amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1,  
Ch. 263, L. 1967.

**16-4504. Time of consideration—final hearing.** With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of commissioners shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county and may adjourn such hearing from time to time, not exceeding four (4) weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries which be within the county as may be deemed advisable and shall define and establish such boundaries, but said board shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, to the board of the county in which his lands be in the discretion of said board, have such lands included within said proposed district.

**History:** En. Sec. 4, Ch. 242, L. 1957;  
amd. Sec. 3, Ch. 167, L. 1965.

**16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election.** Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be en-

tered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "..... county water and/or sewer district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize ..... county water and/or sewer district under (naming the chapter containing this act) of the acts of the ..... session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state, and is the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated. From and after the date of



such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957;  
amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1,  
Ch. 263, L. 1967.

**16-4506. Election of directors—term of office.** At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be a qualified freeholder and a resident of said district. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special district election.

History: En. Sec. 6, Ch. 242, L. 1957;  
amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1,  
Ch. 263, L. 1967.

**16-4507. Nomination of officers.** (1) The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

### PETITION OF NOMINATION

#### Individual Certificate

State of ..... }  
County of ..... } ss.

Prect. No. ....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ....., whose residence is at ..... for the office of ..... of the ..... district to be voted for at the district election to be held in the ..... district on the ..... day of ....., 19....; and I further certify that I am a qualified elector and freeholder residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. .... street, ....., and that my occupation is .....

(Signed) .....

State of Montana }  
County of ..... } ss.

....., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) .....

Subscribed and sworn to before me this ..... day of ..... 19....

.....  
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to ....., at ....., Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such



office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in each county in which such district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

#### GENERAL (OR SPECIAL) DISTRICT ELECTION

..... District,  
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.



(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said district.

(22) Informality not to invalidate. No informality in conducting district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act.

History: En. Sec. 7, Ch. 242, L. 1957;  
amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1,  
Ch. 263, L. 1967.

**16-4508. General law to govern.** The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections, except as in this act otherwise provided; provided, however, that where a corporation owns taxable real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning taxable real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any district election, including any district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: En. Sec. 8, Ch. 242, L. 1957; Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, 1967.

**16-4509. Officers subject to recall.** Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said

board of commissioners for a full term, is subject to recall by the voters of any district organized under the provisions of this act, in accordance with the recall provisions of sections 11-3220 to 11-3227, both inclusive, applicable to officers under the commissioner-manager plan.

History: En. Sec. 9, Ch. 242, L. 1957;  
amd. Sec. 1, Ch. 263, L. 1967.

**16-4513. Informality not to invalidate.** No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any district, and any proceeding wherein the validity of such incorporation is denied shall be commenced within three (3) months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

History: En. Sec. 13, Ch. 242, L. 1957;  
amd. Sec. 1, Ch. 263, L. 1967.

**16-4517. Bonded indebtedness.** Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957.

**16-4518. Election.** The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed, in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

History: En. Sec. 18, Ch. 242, L. 1957.

**16-4519. Notice.** Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the district, boundaries of voting precincts, which shall include therein only the lands to be benefited, as stated in such resolution, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct.

History: En. Sec. 19, Ch. 242, L. 1957;  
amd. Sec. 1, Ch. 263, L. 1967.

**16-4520. Publication.** Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly



newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning taxable real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

**History:** En. Sec. 20, Ch. 242, L. 1957; 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. L. 1967.

**16-4521. Canvass of returns.** The returns of such election shall be made to and the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

**History:** En. Sec. 21, Ch. 242, L. 1957.

**16-4522. Sixty per cent (60%) vote necessary.** If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

**History:** En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969.

**16-4529. Initiative.** Ordinances may be passed by the electors of any district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

**History:** En. Sec. 29, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967.

**16-4530. Referendum.** Ordinances may be disapproved and thereby vetoed by the electors of any such district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

**History:** En. Sec. 30, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967.

**16-4531. Adding to and consolidation of district.** Any portion of any county or any municipality, or both, may be added to any district organized under the provisions of this act, at any time, upon petition presented in the

manner therein provided for the organization of such district, which petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition, at a general or special election held as herein provided, within seventy (70) days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

Two or more districts organized under the provisions of this act may consolidate, at any time, upon petitions submitted to the board of directors of each such district. Such petitions shall be in the form required for petitions for the organization of districts. Each such petition shall be signed by not less than ten per cent (10%) of the registered voters of the territory included within said district. Said petitions may be granted by ordinance of the board of directors of each of said districts. Such ordinances shall be submitted for adoption or rejection to the vote of the electors in such districts at general or special elections held as herein provided within seventy (70) days after the adoption of such ordinances. If such ordinances are approved, the president and secretary of the boards of directors of each of said districts shall certify that fact to the secretary of state and to the county clerk of the county or counties in which such districts are located. Upon the receipt of said certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinances and the consolidation of said districts. A copy of such certificate shall be transmitted to and filed with the county clerk of each county in which such consolidated district is situated. From and after the date of such certificate, the said districts shall be deemed to be consolidated and shall consist of one district with all the rights, privileges and powers set forth in this act and necessarily incident thereto. The number and manner of selection and election of directors of the consolidated district shall be the same as the number and manner of selection and election of directors of newly organized districts.

**History:** En. Sec. 31, Ch. 242, L. 1957;  
amd. Sec. 1, Ch. 263, L. 1967.

**16-4535. Elections may be combined.** The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections



are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

**History:** En. 16-4535 by Sec. 1, Ch. 109, L. 1969.

**TITLE 19**  
**DEFINITIONS AND GENERAL PROVISIONS**

**CHAPTER 1**

**DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS—OTHER  
GENERAL PROVISIONS**

**Section 19-107. Legal holidays and business days defined.**

19-107. (10) **Legal holidays and business days defined.** The following are legal holidays in the state of Montana:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Lincoln's Birthday, February 12.
- (4) Washington's Birthday, the third Monday in February.
- (5) Memorial Day, the last Monday in May.
- (6) Independence Day, July 4.
- (7) Labor Day, the first Monday in September.
- (8) Columbus Day, the second Monday in October.
- (9) Veterans' Day, the fourth Monday in October.
- (10) Thanksgiving Day, the fourth Thursday in November.
- (11) Christmas Day, December 25.
- (12) State general election day.

If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Memorial Day, the last Monday in May.
- (4) Independence Day, July 4.
- (5) Labor Day, the first Monday in September.
- (6) Thanksgiving Day, the fourth Thursday in November.
- (7) Christmas Day, December 25.

Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is



held throughout the state of Montana and on Veterans' Day, the fourth Monday in October, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. Ch. 21, 1921; re-en. Sec. 10, R. C. M. 1921; 1969. Cal. Pol. C. Secs. 10-11.





## TITLE 23—ELECTIONS

### Chapter

1. Time of holding elections—proclamations, Repealed—Section 248, Chapter 368, Laws of 1969.
2. Publication of questions submitted to popular vote, Repealed—Section 248, Chapter 368, Laws of 1969.
3. Qualifications and privileges of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
4. Election precincts, Repealed—Section 248, Chapter 368, Laws of 1969.
5. Registration of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
6. Judges and clerks of elections, Repealed—Section 248, Chapter 368, Laws of 1969.
7. Election supplies, Repealed—Section 248, Chapter 368, Laws of 1969.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, Repealed—Section 248, Chapter 368, Laws of 1969.
9. Party nominations by direct vote—the direct primary, Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
10. Political parties, Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
11. Ballots, preparation and form, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
12. Conducting elections—the polls—voting and ballots, Repealed—Section 248, Chapter 368, Laws of 1969.
13. Voting by absent electors, Repealed—Section 248, Chapter 368, Laws of 1969.
14. Voting by absent electors in United States service, Repealed—Section 248, Chapter 368, Laws of 1969.
15. Registration of electors absent from county of their residence, Repealed—Section 248, Chapter 368, Laws of 1969.
16. Voting machines—conduct of election when used, Repealed—Section 248, Chapter 368, Laws of 1969.
17. Election returns, Repealed—Section 248, Chapter 368, Laws of 1969.
18. Canvass of election returns—results and certificates, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
19. Failure of elections—proceedings on tie vote, Repealed—Section 248, Chapter 368, Laws of 1969.
20. Nonpartisan nomination and election of judges of supreme court and district courts, Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969.
21. Presidential electors, how chosen—duties, Repealed—Section 248, Chapter 368, Laws of 1969.
22. Members of Congress—elections and vacancies, Repealed—Section 248, Chapter 368, Laws of 1969.
23. Recount of ballots—results, Repealed—Section 248, Chapter 368, Laws of 1969.
24. Conventions to ratify proposed amendments to constitution of the United States, Repealed—Section 248, Chapter 368, Laws of 1969.
25. Electronic voting systems, Repealed—Section 248, Chapter 368, Laws 1969.
26. Definitions and general provisions, 23-2601 to 23-2606.
27. Qualifications and privileges of electors, 23-2701 to 23-2705.
28. Publication of questions submitted to popular vote, 23-2801, 23-2802.
29. Proclamations and publications, 23-2901 to 23-2904.
30. Registration of electors, 23-3001 to 23-3029.
31. Election precincts, 23-3101 to 23-3103.
32. Judges and clerks of elections, 23-3201 to 23-3207.
33. Primary elections and nominations by certificate, 23-3301 to 23-3321.
34. Political parties, committeemen and committees, 23-3401 to 23-3407.
35. Election supplies and ballots, 23-3501 to 23-3517.
36. Conduct of elections—the polls—voting and ballots, 23-3601 to 23-3618.
37. Absentee voting and registration, 23-3701 to 23-3723.
38. Voting machines, 23-3801 to 23-3822.
39. Electronic voting systems, 23-3901 to 23-3907.
40. Canvass of votes—returns and certificates, 23-4001 to 23-4019.
41. Recounts, 23-4101 to 23-4122.
42. Contests of bond elections, 23-4201, 23-4202.

- 43. Presidential electors, 23-4301 to 23-4307.
- 44. Members of Congress—elections and vacancies, 23-4401 to 23-4404.
- 45. Nonpartisan nomination and election of judges, 23-4501 to 23-4511.
- 46. Conventions to ratify amendments to constitution of the United States, 23-4601 to 23-4611.

## CHAPTER 1

### TIME OF HOLDING ELECTIONS—PROCLAMATIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

#### 23-101 to 23-106. (531 to 536) **Repealed.**

##### Repeal

Sections 23-101 to 23-106 (Secs. 1150, 1151, 1160 to 1163, Pol. C. 1895), relating

to the time of holding elections and election proclamations, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 2

### PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

#### 23-201, 23-202. (537.1, 538) **Repealed.**

##### Repeal

Sections 23-201 and 23-202 (Sec. 1, Ch. 130, L. 1919; Sec. 1, Ch. 62, L. 1927; Sec. 1, Ch. 104, L. 1945), relating to publication of proposed constitutional amend-

ments and questions to be submitted to the people of the county or municipality, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 3

### QUALIFICATIONS AND PRIVILEGES OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

#### 23-301 to 23-311. (539 to 544) **Repealed.**

##### Repeal

Sections 23-301 to 23-311 (Secs. 1180, 1181, 1183 to 1185, 1188, Pol. C. 1895; Sec. 1, Ch. 44, L. 1941; Secs. 1 to 4, Ch. 28, L. 1945; Sec. 1, Ch. 92, L. 1949; Sec.

1, Ch. 64, L. 1959), relating to the requirement for elections by ballot, qualifications of electors, privileges of electors, and the definition of "taxpayers," were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 4

### ELECTION PRECINCTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

#### 23-401 to 23-407. (545 to 551) **Repealed.**

##### Repeal

Sections 23-401 to 23-407 (Secs. 1243, 1244, Pol. C. 1895; Secs. 2 to 6, Ch. 113, L. 1911; Secs. 2 to 6, Ch. 74, L. 1913; Secs. 2 to 6, Ch. 122, L. 1915; Sec. 1, Ch.

25, L. 1929), relating to election precincts, ward boundaries, and designation of places for holding elections, were repealed by Sec. 248, Ch. 368, Laws 1969.



## CHAPTER 5

## REGISTRATION OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-501, 23-501.1, 23-502 to 23-534. (553 to 562, 566 to 586) Repealed.****Repeal**

Sections 23-501, 23-501.1, 23-502 to 23-534 (Secs. 1, 7, 12, 17 to 24, 26, 29, 30, 32, 35 to 39, Ch. 113, L. 1911; Secs. 1, 7, 12, 15, 17 to 24, 26, 29, 30, 32, 35 to 40, Ch. 74, L. 1913; Secs. 1, 7 to 36, Ch. 122, L. 1915; Sec. 1, Ch. 38, L. 1917; Sec. 1, Ch. 29, L. 1919; Sec. 1, Ch. 58, L. 1919; Secs. 1 to 4, Ch. 97, L. 1919; Sec. 1, Ch. 235, L. 1921; Secs. 1, 2, Ch. 61, L. 1933; Sec. 1, Ch. 25, L. 1935; Sec. 1, Ch.

71, L. 1935; Sec. 1, Ch. 147, L. 1937; Secs. 1 to 6, Ch. 172, L. 1937; Sec. 1, Ch. 51, L. 1941; Sec. 1, Ch. 144, L. 1941; Secs. 1, 2, Ch. 177, L. 1943; Sec. 1, Ch. 167, L. 1945; Sec. 1, Ch. 83, L. 1953; Secs. 1, 2, Ch. 80, L. 1955; Secs. 1, 2, Ch. 18, L. 1959; Secs. 2 to 4, Ch. 64, L. 1959; Secs. 1 to 5, Ch. 98, L. 1965; Secs. 3, 4, Ch. 156, L. 1965; Secs. 1, 2, Ch. 139, L. 1967), relating to registration of electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 6

## JUDGES AND CLERKS OF ELECTIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612. (587 to 597) Repealed.****Repeal**

Sections 23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612 (Secs. 6, 7, p. 461, Cod. Stat. 1871; Secs. 1173, 1260 to 1269, Pol. C. 1895; Sec. 1, Ch. 101, L. 1917; Secs. 1, 2, Ch. 43, L. 1923; Sec. 1, Ch. 61, L. 1937; Sec. 1, Ch. 85, L. 1941; Secs. 1, 2, Ch. 40, L. 1943; Sec. 1, Ch.

49, L. 1945; Sec. 2, Ch. 167, L. 1945; Sec. 1, Ch. 117, L. 1947; Sec. 1, Ch. 12, L. 1951; Sec. 1, Ch. 14, L. 1957; Sec. 1, Ch. 210, L. 1957; Secs. 1, 2, Ch. 99, L. 1961; Sec. 1, Ch. 46, L. 1963), relating to judges and clerks of elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 7

## ELECTION SUPPLIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-701 to 23-713. (598, 600 to 611) Repealed.****Repeal**

Sections 23-701 to 23-713 (Sec. 18, p. 463, Cod. Stat. 1871; Sec. 20, p. 140, L. 1889; Secs. 1174, 1270 to 1273, 1300, 1302, 1303, 1356, Pol. C. 1895; Sec. 1, Ch. 88, L. 1907; Secs. 1 to 4, Ch. 12, L. 1915;

Sec. 5, Ch. 64, L. 1959), relating to poll-books, ballots, ballot boxes, printed instructions to electors, return forms, and other election supplies, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 8

## NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-801 to 23-820. (612 to 618.1, 619 to 630) Repealed.****Repeal**

Sections 23-801 to 23-820 (Secs. 1310 to 1317, 1319, 1320, 1322, 1330 to 1336,

Pol. C. 1895; Secs. 2 to 9, 11, 12, 19, pp. 135 to 138, 140, L. 1889; Secs. 1 to 3, pp. 115, 116, L. 1901; Sec. 1, Ch. 15, L. 1925; Sec. 1,

Ch. 58, L. 1925; Sec. 1, Ch. 64, L. 1925; Sec. 1, Ch. 28, L. 1933; Sec. 1, Ch. 104, L. 1943; Sec. 1, Ch. 105, L. 1943; Sec. 1, Ch. 26, L. 1945; Sec. 1, Ch. 259, L. 1947; Sec. 1, Ch. 160, L. 1949; Secs. 5, 6, Ch.

156, L. 1965; Sec. 1, Ch. 86, L. 1967; Sec. 3, Ch. 194, L. 1967), relating to nominations for special elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 9

### PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

(Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

**23-901 to 23-936.** (631 to 641, 644 to 652, 654 to 663, 665 to 670) **Repealed.**

#### Repeal

Sections 23-901 to 23-936 (Secs. 1 to 10, 13 to 21, 23 to 29, 31 to 38, Initiative Measure Nov. 1912; Secs. 1, 3, Ch. 88, L. 1921; Sec. 1, Ch. 1, Ex. L. 1921; Secs. 1, 2, Ch. 133, L. 1923; Secs. 1, 2, Ch. 12, L. 1925; Sec. 1, Ch. 118, L. 1925; Sec. 1, Ch. 159, L. 1925; Sec. 1, Ch. 3, L. 1927; Sec. 1, Ch. 7, L. 1927; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 98, L. 1927; Sec. 1, Ch. 125, L. 1927; Sec. 1, Ch. 34, L. 1929; Sec. 1, Ch. 67, L. 1929; Sec. 1, Ch. 6, L. 1933; Sec. 1, Ch. 62, L. 1933; Sec. 1, Ch. 181, L. 1937; Sec. 1, Ch. 84, L. 1939;

Sec. 1, Ch. 27, L. 1945; Sec. 1, Ch. 34, L. 1945; Sec. 3, Ch. 167, L. 1945; Sec. 1, Ch. 75, L. 1949; Sec. 1, Ch. 64, L. 1951; Secs. 1, 2, Ch. 6, L. 1953; Sec. 1, Ch. 8, L. 1953; Sec. 12, Ch. 214, L. 1953; Sec. 1, Ch. 19, L. 1955; Sec. 2, Ch. 207, L. 1955; Secs. 1 to 3, Ch. 266, L. 1955; Sec. 6, Ch. 64, L. 1959; Sec. 1, Ch. 219, L. 1959; Secs. 1, 2, Ch. 274, L. 1959; Sec. 1, Ch. 38, L. 1961; Secs. 2, 7, Ch. 156, L. 1965; Sec. 1, Ch. 151, L. 1967; Secs. 4, 5, Ch. 194, L. 1967), relating to primary elections, were repealed by Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 10

### POLITICAL PARTIES

(Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

**23-1001 to 23-1009.** (673.1 to 673.8) **Repealed.**

#### Repeal

Sections 23-1001 to 23-1009 (Secs. 1 to 8, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951; Sec. 1, Ch. 55, L. 1953; Secs. 13 to 16, Ch. 214, L. 1953; Secs. 4 to 7, Ch.

266, L. 1955; Sec. 3, Ch. 274, L. 1959; Secs. 1, 8, Ch. 156, L. 1965), relating to political parties, were repealed by Sec. 8, Ch. 266, Laws 1955; Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 11

### BALLOTS, PREPARATION AND FORM

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

**23-1101 to 23-1117.** (677 to 681, 683 to 687) **Repealed.**

#### Repeal

Sections 23-1101 to 23-1107 (Secs. 1, 17, pp. 135, 139, L. 1889; Secs. 1350 to 1355, Pol. C. 1895; Sec. 1354, p. 117, L. 1901; Secs. 2, 3, Ch. 88, L. 1907; Sec. 1, Ch. 16, L. 1925; Sec. 1, Ch. 203, L. 1937; Secs. 1, 2, Subds. A to F, Ch. 81, L. 1939; Sec. 1, Ch. 170, L. 1939; Sec. 1, Subds. A to

F, Ch. 141, L. 1947; Sec. 1, Subds. A to F, Ch. 79, L. 1949; Secs. 1 to 3, Ch. 72, L. 1953; Sec. 9, Ch. 156, L. 1965; Secs. 6, 7, Ch. 194, L. 1967), relating to form, printing and distribution of ballots, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.



## CHAPTER 12

## CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1201 to 23-1228. (688 to 714) Repealed.****Repeal**

Sections 23-1201 to 23-1228 (Sec. 11, p. 462, Cod. Stat. 1871; Secs. 22 to 27, pp. 141, 142, L. 1889; Secs. 1290 to 1292, 1358, 1360 to 1379, Pol. C. 1895; Secs. 1357 to 1359, 1361, 1364, pp. 118 to 120, L. 1901; Secs. 4, 5, Ch. 88, L. 1907; Sec. 26, Ch. 113, L. 1911; Sec. 26, Ch. 74, L. 1913; Sec. 26, Ch. 122, L. 1915; Sec. 1, Ch. 3, L. 1935; Sec. 1, Ch. 2, L. 1937;

Sec. 1, Ch. 111, L. 1937; Sec. 1, Ch. 207, L. 1955; Sec. 1, Ch. 32, L. 1959; Secs. 7, 8, Ch. 64, L. 1959; Sec. 1, Ch. 77, L. 1961), relating to voting time allowance, time of and proclamations on opening and closing of polls, furnishing and arrangement of polling places, methods and manner of voting, and challenges, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 13

## VOTING BY ABSENT ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321. (715 to 735) Repealed.****Repeal**

Sections 23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321 (Secs. 1 to 20, Ch. 110, L. 1915; Secs. 1 to 21, Ch. 155, L. 1917; Secs. 1 to 3, Ch. 151, L. 1923; Sec. 1, Ch. 32, L. 1941; Secs. 1 to 17, Ch. 234, L. 1943; Sec. 1, Ch. 60, L. 1953; Secs. 1, 2, Ch. 104, L. 1953; Sec. 1, Ch. 152, L.

1955; Secs. 3 to 5, Ch. 18, L. 1959; Secs. 9 to 11, Ch. 64, L. 1959; Secs. 1 to 3, Ch. 216, L. 1959; Secs. 1 to 3, Ch. 108, L. 1963; Secs. 1, 2, Ch. 124, L. 1963), relating to voting by absent or physically incapacitated electors were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 14

## VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1401 to 23-1406. Repealed.****Repeal**

Sections 23-1401 to 23-1406 (Secs. 1 to 6, Ch. 99, L. 1943; Secs. 6 to 10, Ch.

18, L. 1959), relating to voting by absent electors in United States service, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM  
COUNTY OF THEIR RESIDENCE

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1501 to 23-1503. Repealed.****Repeal**

Sections 23-1501 to 23-1503 (Secs. 1 to 3, Ch. 190, L. 1943), relating to registra-

tion of electors absent from county of residence, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 16

## VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618. (757 to 773) Repealed.****Repeal**

Sections 23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618 (Secs. 1 to 17, Ch. 168, L. 1907; Sec. 1, Ch. 6, L. 1909; Secs. 1 to 3, Ch. 99, L. 1909; Secs. 1 to 4, Ch. 246, L. 1921; Sec. 1, Ch. 31, L. 1935; Secs. 1 to 4, Ch. 19, L. 1943; Sec. 1, Ch. 26, L.

1947; Secs. 1, 2, Ch. 20, L. 1959; Sec. 16, Ch. 42, L. 1963; Sec. 1, Ch. 57, L. 1963; Sec. 10, Ch. 156, L. 1965), relating to examinations and specifications of voting readiness and the conduct of election when used, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 17

## ELECTION RETURNS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1701 to 23-1715. (774 to 782, 784 to 789) Repealed.****Repeal**

Sections 23-1701 to 23-1715 (Secs. 22 to 25, p. 380, Bannack Stat.; Sec. 30, p. 143, L. 1889; Secs. 1400 to 1408, 1410 to 1415, Pol. C. 1895; Secs. 6 to 10, Ch. 88, L. 1907; Sec. 1, Ch. 112, L. 1937; Sec. 1, Ch. 65, L. 1943; Secs. 1 to 3, Ch. 23,

L. 1945; Secs. 12 to 16, Ch. 64, L. 1959; Sec. 17, Ch. 42, L. 1963), relating to canvass of votes by judges of elections and the disposition and custody of returns were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 18

## CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

**23-1801 to 23-1819. (790 to 808) Repealed.****Repeal**

Sections 23-1801 to 23-1819 (Secs. 2 to 15, 17, 18, pp. 299 to 305, L. 1891; Secs. 1170, 1430 to 1444, 1448 to 1450, Pol. C. 1895; Sec. 1, Ch. 84, L. 1909; Sec. 1, Ch. 55, L. 1949; Sec. 1, Ch. 50, L. 1959; Sec. 1, Ch. 87, L. 1959; Sec. 16, Ch. 97, L. 1961; Sec. 18, Ch. 42, L. 1963;

Secs. 8, 9, Ch. 194, L. 1967), relating to the county and state canvass of returns, the issuance of certificates and commissions, and the duty of the secretary of state to print the election laws, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 19

## FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-1901 to 23-1904. (809 to 812) Repealed.****Repeal**

Sections 23-1901 to 23-1904 (Sec. 16, p. 305, L. 1891; Secs. 1171, 1445 to 1447, Pol. C. 1895; Sec. 10, Ch. 194, L. 1967),

relating to tie votes for representatives in Congress, state officers, and judicial officers, were repealed by Sec. 248, Ch. 368, Laws 1969.



## CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF  
SUPREME COURT AND DISTRICT COURTS(Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368,  
Laws of 1969)**23-2001 to 23-2014. (812.1 to 812.11, 812.13 to 812.15) Repealed.****Repeal**

Sections 23-2001 to 23-2014 (Sees. 1 to 11, 13 to 15, Ch. 182, L. 1935; Sees. 2 to 4, Ch. 229, L. 1961), relating to nonpar-

tisan nomination and election of district court and supreme court judges, were repealed by Sec. 3, Ch. 20, Laws 1959; Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 21

## PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-2101 to 23-2111. (813 to 823) Repealed.****Repeal**

Sections 23-2101 to 23-2111 (Sees. 1 to 5, 7, pp. 173, 174, L. 1891; Sees. 1460 to 1470, Pol. C. 1895; Sec. 1, Ch. 4, L.

1933; Sec. 1, Ch. 15, L. 1933; Sec. 1, Ch. 33, L. 1935), relating to election and duties of presidential electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 22

## MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-2201 to 23-2206. (824 to 828) Repealed.****Repeal**

Sections 23-2201 to 23-2206 (Sees. 2, 3, p. 306, L. 1891; Sees. 1480, 1481, 1490 to 1492, Pol. C. 1895; Sees. 1, 2, Ch. 126,

L. 1915; Sec. 1, Ch. 146, L. 1965), relating to elections and vacancies in office of members of Congress, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 23

## RECOUNT OF BALLOTS—RESULTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-2301 to 23-2323. (828.1 to 828.7, 829) Repealed.****Repeal**

Sections 23-2301 to 23-2323 (Sees. 1 to 7, Ch. 27, L. 1935; Sees. 1 to 15, Ch.

42, L. 1963), relating to recounts of ballots, were repealed by Sec. 248, Ch. 368, Laws 1969.

## CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO  
CONSTITUTION OF THE UNITED STATES

(Repealed—Section 248, Chapter 368, Laws of 1969)

**23-2401 to 23-2411. (829.1 to 829.11) Repealed.****Repeal**

Sections 23-2401 to 23-2411 (Sees. 1 to 11, Ch. 188, L. 1933; Sees. 11, 12, Ch. 194, L. 1967), relating to conventions for ra-

tification of proposed amendments to the constitution of the United States, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2501 to 23-2507. Repealed.

<b>Repeal</b>	220, L. 1967) relating to the use of elec-
Sections 23-2501 to 23-2507 (Sees. 1, 2,	tronic voting systems, were repealed by
4 to 8, Ch. 20, L. 1965; Sees. 1, 2, Ch.	See. 248, Ch. 368, Laws 1969.

CHAPTER 26

DEFINITIONS AND GENERAL PROVISIONS

Section  
23-2601. Definitions.  
23-2602. Election to be by ballot.  
23-2603. Determination of candidate elected.  
23-2604. General election, when to be held.  
23-2605. Time of opening and closing of polls.  
23-2606. Penalty for violation of act.

**23-2601. Definitions.** As used in this act, unless the context clearly indicates otherwise:

(1) "Election" means a general, special, primary nominating, municipal election, or an election in a school district.

(2) "General election" means an election held for the election of officers throughout the state at times specified by law.

(3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.

(4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.

(5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

(6) "Party" means any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor.

(7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.

(8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.

(9) "Commissioners" means the board of county commissioners.

(10) "City" means any incorporated city or town.

(11) "Council" means any municipal council or commission.

**History:** En. Sec. 1, Ch. 368, L. 1969.

**Title of Act**

**Compiler's Note**

Chapter 368, Laws 1969 provided: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 23, Revised Codes of Montana, 1947."

An act for the codification and general revision of the laws relating to the election laws of the state of Montana; repealing sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through



23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-

1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 2206, 23-2301 through 23-2323, 23-2401 through 23-2411, 23-2501 through 23-2507, R. C. M. 1947.

**Cross-References**

Election offenses and corrupt practices, sec. 94-1401 et seq.

**DECISIONS UNDER FORMER LAW**

**"General Election"**

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

**"Special Election"**

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

**"Vacancy"**

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath 116 M 283, 292, 149 P 2d 913.

**23-2602. Elections to be by ballot.** All elections shall be by ballot.

History: En. Sec. 2, Ch. 368, L. 1969.

**23-2603. Determination of candidate elected.** The person receiving the highest number of votes for any office at an election is elected to that office.

History: En. Sec. 3, Ch. 368, L. 1969.

**23-2604. General election, when to be held.** A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

History: En. Sec. 4, Ch. 368, L. 1969.

**Cross-References**

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt Practices Act, secs. 94-1427 to 94-1474.

Election law violations, sec. 94-1401 et seq.

Initiative and referendum, sec. 37-101 et seq.

**23-2605. Time of opening and closing of polls.** (1) Except as provided in subsection (2) of this section:

(a) The polls must be opened at 8 a. m. on the morning of election day, and must be kept open continuously until 8 p. m. of that day;

(b) In precincts having less than one hundred (100) registered electors, the polls must be opened at 1 p. m. and closed at 8 p. m. of that day;

(c) Whenever all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p. m. However, the poll hours shall be as specified in subsection (1) of this section if the

election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election.

**History:** En. Sec. 5, Ch. 368, L. 1969.

**Cross-References**

Airport bonds, sec. 1-804.  
 Beer, local option elections, sec. 4-350 et seq.  
 Cities and towns, bond elections, secs. 11-2301 to 11-2330.  
 County bonds and warrants, secs. 16-2001 to 16-2050.

Local option elections, state Liquor Control Act, sec. 4-142 et seq.

Retail liquor licenses, local option election, secs. 4-431 to 4-437.

School bonds, secs. 75-3901 to 75-3944, 75-4112, 75-4113, 75-4115 to 75-4118, 75-4601 to 75-4606.

School taxation, secs. 75-3801 to 75-3805.

**23-2606. Penalty for violation of act.** Anyone who violates any provision of this act for which no other penalty is specified is guilty of a misdemeanor.

**History:** En. Sec. 247, Ch. 368, L. 1969.

**Cross-References**

Bribery at elections, penalty, sec. 94-1423.

Disclosing contents of ballot after marking, penalty, sec. 94-1414.

Electioneering by election officials, penalty, 94-1413.

False nomination certificate, penalty, sec. 94-1412.

## CHAPTER 27

### QUALIFICATIONS AND PRIVILEGES OF ELECTORS

**Section**

- 23-2701. Qualifications of voter.  
 23-2702. Qualifications of electors at elections on incurring state indebtedness.  
 23-2703. Elector who is registered in one county and listed on assessment roll of another county entitled to vote on state debt or tax levy—receipt—certificate—registrar's duties.  
 23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax.  
 23-2705. Privilege from arrest.

**23-2701. Qualifications of voter.** (1) Except as provided in section 23-2702, every person, if registered as required by law, is entitled to vote at all general and special elections for all officers which are elective, and upon all questions submitted to the vote of the people if he has the following qualifications:

- (a) He must be twenty-one (21) years of age;  
 (b) He must have resided in the state one (1) year and in the county thirty (30) days immediately preceding the election at which he offers to vote;

- (c) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote unless he has been pardoned.

(3) No person adjudicated insane has the right to vote unless he has been restored to capacity as provided by law.

**History:** En. Sec. 6, Ch. 368, L. 1969.

**Voting for Deceased Candidate**

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention

of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election



with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom,

under section 2, article IX of the constitution, a voter may cast his ballot. State ex rel. Wolff v. Guerink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

**23-2702. Qualifications of electors at elections on incurring state indebtedness.** If an election is held on the question of incurring a state debt, issuing bonds or debentures by the state other than refunding bonds or debentures, or the levy of a state tax for any purpose, persons must meet the requirements of section 23-2701 to vote, be a taxpayer on property in the state, and be listed on the last completed assessment roll of a county for state, county, and school district taxes.

History: En. Sec. 7, Ch. 368, L. 1969.

**23-2703. Elector who is registered in one county and listed on assessment roll of another county entitled to vote on state debt or tax levy—receipt—certificate—registrar's duties.** (1) If an elector is registered in a county where his name does not appear on the last completed assessment roll but his name does appear on the last completed assessment roll of another county, he is entitled to vote on a state debt or tax levy in the precinct in which he is registered if he presents to the registrar of the county in which he is registered before close of registration:

(a) A receipt from the treasurer of the county in which he appears on the last assessment roll showing payment of the taxes, or,

(b) A certificate from the treasurer of that county certifying that he is assessed with property, but that the taxes have not yet been paid.

(2) The certificate must be dated, numbered, name the elector, describe the property assessed, show the amount of taxes, and be signed by the county treasurer. The treasurer must keep a duplicate on file.

(3) Whenever a certificate or receipt from the county treasurer is presented, the registrar shall:

(a) Enter the elector's name in the pollbook of electors entitled to vote on the question;

(b) Enter in the pollbook the date and number of the tax receipt or certificate and the county in which issued.

(4) An elector meeting these qualifications is entitled to a ballot.

History: En. Sec. 8, Ch. 368, L. 1969.

**23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax.** (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes, is submitted at an election other than a general biennial election, the registrar of each county shall publish in the official county newspaper, a notice signed by him, stating that registration will close at noon on the fortieth (40th) day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published ten (10) days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of section 37-107, R. C. M. 1947 apply to the printing and distribution of copies of the proposed law.

**History:** En. Sec. 9, Ch. 368, L. 1969.

**Objection Waived**

The objection that a measure creates a state debt, levy, or liability, and that

therefore it should have been placed upon a separate ballot, is waived if not raised before the election. *State ex rel. Graham v. Board of Examiners*, 125 M 419, 239 P 2d 283, 290.

**23-2705. Privilege from arrest.** Electors are privileged from arrest during their attendance at elections and in going to and from voting places except in cases of treason, felony, or breach of the peace.

**History:** En. Sec. 10, Ch. 368, L. 1969.

**Cross-Reference**

Persons exempt from arrest, sec. 95-616.

## CHAPTER 28

### PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

**Section**

23-2801. Advertisement of questions to be submitted.

23-2802. Publication and printing of amendments to constitution.

**23-2801. Advertisement of questions to be submitted.** Questions to be submitted to the people of the county or city must be advertised by publication in at least one (1) newspaper within the county or city once a week for two (2) successive weeks. One (1) of the publications must be upon the last day the newspaper is issued before the election.

**History:** En. Sec. 11, Ch. 368, L. 1969.

**23-2802. Publication and printing of amendments to constitution.** If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall:

(1) Have the proposed amendment or amendments published in full once a week in one (1) newspaper in each county (if such there be) for four (4) weeks prior to the next general biennial election;

(2) Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The printed pamphlets shall be distributed as provided in section 37-107, R. C. M. 1947.

**History:** En. Sec. 12, Ch. 368, L. 1969.

and constitutional measures to be prepared by attorney general, sec. 37-104.1.

**Cross-Reference**

Explanation of initiative, referendum

### DECISIONS UNDER FORMER LAW

**Referendums**

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect section requiring publication of proposed constitutional amendments, indicated its intent to dispense with publication prior

to general election of legislative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. *Nordquist v. Ford*, 112 M 278, 283, 114 P 2d 1071.



CHAPTER 29

PROCLAMATIONS AND PUBLICATIONS

Section

- 23-2901. Election proclamation by the governor—contents.
- 23-2902. Publication and posting by county commissioners.
- 23-2903. Election proclamation by county commissioners.
- 23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.

**23-2901. Election proclamation by the governor—contents.** Sixty (60) days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

- (1) A statement of the time of the election and the offices to be filled;
- (2) An offer of rewards stating: "There is a reward of one hundred dollars (\$100) for the arrest and conviction of any person violating any of the provisions of sections 94-1401 through 94-1424, R. C. M. 1947. Rewards will be paid until the total amount expended reaches the sum of five thousand dollars (\$5,000).

**History:** En. Sec. 13, Ch. 368, L. 1969.

**Office Not Mentioned**

The governor issued his proclamation giving notice of a general election and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor, the relator claimed that three judges should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judgeships, the petition was dismissed. State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403.

**Sufficiency of Notice**

A statement in the proclamation of the

governor giving notice of a general election, that among other officers there was to be elected "also a district judge, in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

**23-2902. Publication and posting by county commissioners.** When a proclamation prescribed by section 23-2901 is received, the commissioners shall have a copy published in a newspaper published in the county if a newspaper is published therein, otherwise in a newspaper of general circulation therein, and shall post a copy ten (10) days or more before the election at each polling place.

**History:** En. Sec. 14, Ch. 368, L. 1969.

**23-2903. Election proclamation by county commissioners.** When a special election is ordered by the commissioners, they must issue an election proclamation containing the statement contained in 23-2901 (1). The statement must be published and posted in the same manner as a proclamation issued by the governor.

**History:** En. Sec. 15, Ch. 368, L. 1969.

**Notice Not Proclamation**

The notice of election does not take the place of the election proclamation. *Evers v. Hudson*, 36 M 135, 154, 92 P 462.

**Public Improvements**

Prior section had no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions

on the subject, found in that part of the codes relating to county government. *State ex rel. Rowe v. Kehoe*, 49 M 582, 592, 144 P 162.

**Vacancies**

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty, to call and provide for the holding of special elections to fill them. *State ex rel. Rowe v. Kehoe*, 49 M 582, 592, 144 P 162.

**23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.** The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each registrar. The registrar shall furnish each election precinct in his county with two (2) copies.

**History:** En. Sec. 16, Ch. 368, L. 1969.

## CHAPTER 30

### REGISTRATION OF ELECTORS

**Section**

- 23-3001. Highway patrol to submit new-voter lists to major political parties.
- 23-3002. County clerk as county registrar.
- 23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.
- 23-3004. Registry book and card index.
- 23-3005. Hours of registration—registration cards.
- 23-3006. Method of registering—absent electors in the United States service—felony provisions.
- 23-3007. Registration of infirm elector at his residence.
- 23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.
- 23-3009. Transferring registration to another precinct.
- 23-3010. Procedure for transferring registry.
- 23-3011. Inquiry as to previous registration—procedure.
- 23-3012. Lists of registered electors—precinct register—indication of taxpayer electors.
- 23-3013. Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service.
- 23-3014. Cancellation of registry for other reasons—reregistration.
- 23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties.
- 23-3016. Close of registration—procedure.
- 23-3017. Registration while registry closed preceding election.
- 23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.
- 23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.
- 23-3020. Erroneous omission of name from precinct register—Certificate.
- 23-3021. Registration by naturalized citizen.
- 23-3022. Residence, rules for determining.
- 23-3023. Printing of list of electors shown on precinct registers.
- 23-3024. Preparation of precinct register.
- 23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor.
- 23-3026. Commissioners to provide registrar with sufficient help.
- 23-3027. Charges to city or school district—warrant—when no precinct registers required.
- 23-3028. Copies of precinct registers available to any person upon written request—charge.
- 23-3029. Violations of act, penalty for.



**23-3001. Highway patrol to submit new-voter lists to major political parties.** No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, a list prepared from its driver license registration files, showing names and addresses of all persons who have reached voting age since the last general election or who will reach voting age before the date of the general election. No official of the Montana highway patrol shall be responsible for any honest error or omission in preparing the lists.

**History:** En. Sec. 17, Ch. 368, L. 1969.

**23-3002. County clerk as county registrar.** (1) Each county clerk and recorder is ex officio county registrar. He shall:

(a) Serve without extra pay or compensation;  
(b) Have custody of registration books, cards, and other records provided for by this act.

(2) The official register of electors is an official record of the county clerk and recorder.

**History:** En. Sec. 21, Ch. 368, L. 1969.

**23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.** (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint two (2) deputy registrars who are not notaries public, one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. A deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county.

(3) Not less than three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar.

**History:** En. Sec. 22, Ch. 368, L. 1969.

**23-3004. Registry book and card index.** The registrars shall keep an official register in a manner which each registrar deems the most efficient. A card index shall be kept by the registrar and shall at all times be in the custody of the registrar. The form and information recorded in the registry book and on the registry cards shall be designated by the secretary of state.

**History:** En. Sec. 23, Ch. 368, L. 1969.

**23-3005. Hours of registration — registration cards.** (1) The registrar's office shall be open for voter registration from 8 a. m. until 5 p. m. on all regular working days except legal holidays as defined by section 19-

107, R. C. M. 1947, except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt.

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct.

History: En. Sec. 24, Ch. 368, L. 1969.

**23-3006. Method of registering—absent electors in the United States service—felony provisions.** (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and by:

(a) Answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) Signing and verifying or affirming the affidavit or affidavits on the back of the card.

(2) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) Mailing the registry card filled out and signed under oath to the registrar, or

(b) Mailing the federal post card application filled out and signed under oath to the registrar.

(3) A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not less than one (1) nor more than three (3) years, if:

(a) He falsely personates another and causes the person so personated to be registered; or,

(b) Falsely represents his name or other information required by registration to any registrar or deputy registrar and causes his name to be registered; or,

(c) Causes any name to be placed upon the registry lists other than in the manner provided by this act.

History: En. Sec. 25, Ch. 368, L. 1969.

**23-3007. Registration of infirm elector at his residence.** (1) If an elector is unable to appear before the registrar or a deputy registrar because of physical infirmity, he may send written notice to the registrar or to a deputy registrar asking that his registration be made at his residence.

(2) No person is entitled to receive reimbursement for expenses incurred in complying with this section.

History: En. Sec. 26, Ch. 368, L. 1969.

**23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.** (1) A person who is



not eligible to register because of residence requirements but who will be eligible on or before election day, may register with the registrar if he answers the questions of the registrar and it appears that he will become qualified to vote by election day.

(2) A person shall not be permitted to register until he attains United States citizenship.

**History:** En. Sec. 27, Ch. 368, L. 1969.

**23-3009. Transferring registration to another precinct.** If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a deputy registrar of the new precinct, and the deputy registrar shall not receive compensation for this service, or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state.

**History:** En. Sec. 28, Ch. 368, L. 1969.

**23-3010. Procedure for transferring registry.** (1) When a request to transfer registry is received, the registrar shall compare the elector's signature on the request with his signature on the registry card and may question the elector on any information shown on the registry card.

(2) If the registrar is satisfied, he shall endorse on the registry card the date of the transfer and the precinct to which transferred.

(3) The registrar shall file the registry card in the register of the precinct of the elector's residence, or in the register of the precinct of transfer, and transfer the elector's name to the proper precinct in the register.

(4) Where the elector changes his place of registration as provided in section 23-3009 (1), the registrar shall file the new card in the register of the precinct of the elector's present residence and transfer the elector's name to the proper precinct in the register. The old registration card shall be marked "canceled" and placed in the "canceled file."

**History:** En. Sec. 29, Ch. 368, L. 1969.

**23-3011. Inquiry as to previous registration—procedure.** (1) The registrar shall question each person registering to ascertain whether he has previously registered in this state. If the person has previously registered, the registrar shall enter his name in a separate file which is indexed by counties. Cards for this purpose shall be in the form prescribed by the secretary of state.

(2) Not more than three (3) days after closing the registration books, the registrar shall forward the cards to the registrar where the applicant previously voted by registered or certified mail. The delivery receipt shall be kept on file with other election records.

(3) Upon receiving notice to cancel the registration of an elector, the registrar shall immediately draw red lines through the elector's name in the register and on the registration card.

**History:** En. Sec. 30, Ch. 368, L. 1969.

**23-3012. Lists of registered electors—precinct register—indication of taxpayer electors.** (1) Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls.

(2) The registrar shall stamp “taxpayer” beside the name of an elector who is a taxpayer to show he is qualified to vote in an election for the incurring of a state debt, issuance of bonds or debentures by the state, or the levying of a state tax. No other evidence is necessary to show that the elector is a taxpayer.

**History:** En. Sec. 31, Ch. 368, L. 1969.

**23-3013. Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service.** (1) Except as provided in subsection (3) of this section, immediately after every general biennial election, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who failed to vote, mark each card “canceled,” and place canceled cards for the entire county in alphabetical order in the “canceled file”;

(c) Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records.

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector in the United States service may be canceled upon failure to vote in the previous two (2) general elections.

**History:** En. Sec. 32, Ch. 368, L. 1969.

**23-3014. Cancellation of registry for other reasons—reregistration.**

(1) The registrar shall cancel any registration card:

(a) At the written request of the person registered;

(b) When a certificate of the death of any elector is filed;

(c) Within forty-five (45) days prior to the closing of registration three (3) qualified registered electors residing within the precinct may challenge an elector by filing affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;

(d) When the insanity of the elector is legally established;

(e) If a certified copy of a final judgment of conviction of any elector of a felony is filed;

(f) If a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within thirty (30) days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on



the registration card. If a person proves to the registrar that he is qualified, he may reregister.

**History:** En. Sec. 33, Ch. 368, L. 1969.

**23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties.** (1) An elector may challenge the qualifications of another elector any time not later than twenty (20) days prior to an election. The challenge must:

- (a) Be filed with the registrar and be signed by the elector;
- (b) Be verified by the affidavit of the elector that the elector designated is not entitled to vote;
- (c) State the grounds of the challenge, objection, and disqualification;
- (d) Notify the elector within five (5) days by registered United States mail that his qualifications as an elector have been challenged.

(2) The registrar shall:

- (a) File the affidavit of challenge in his office;
- (b) Deliver a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;

(c) Write opposite the name of any person whose qualifications are challenged the words, "to be challenged."

(3) An elector's right to vote may also be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) Test the qualifications of the elector challenged under oath if he applies to vote;

(b) Compare the answers of the elector with the entries in the precinct register books;

(c) Not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers, or the elector is disqualified for any cause under the law, or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one (1) or more elector of the county to be examined under oath as to the qualifications of the challenged elector, and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

**History:** En. Sec. 34, Ch. 368, L. 1969.

**Date for Holding Election**

Under prior section, a period of not less

than sixty days was required to lapse between time an election was called and time it was held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

**23-3016. Close of registration—procedure.** (1) The registrar shall:

- (a) Close all registration for forty (40) days before any election;
- (b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county;

(c) Twenty (20) days before the closing, publish notice in a newspaper of general circulation in the county specifying the day registration will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

(2) The notice shall state that electors may register for the ensuing election by appearing before the registrar or before any deputy registrar as provided by law.

History: En. Sec. 35, Ch. 368, L. 1969.

**23-3017. Registration while registry closed preceding election.** During the time when the registry is closed preceding any election, a person may register and the registrar shall keep his registry card in a separate file until the official register is again open. At that time, all cards in the temporary file shall be placed in their proper position in the official register.

History: En. Sec. 36, Ch. 368, L. 1969.

**23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.**

(1) A person shall not vote at an election mentioned in this act unless his name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe, or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he shall not be allowed to vote until he has proved his identity by the oath of two (2) reputable electors of the precinct in which he is registered.

(3) The election judges in each precinct at every general or special election in a precinct register certified to them by the registrar shall:

- (a) Mark a cross (X) upon the line opposite the name of the elector;
- (b) Require the elector to sign his name upon one of the precinct registers;

(c) Require an elector, who is not able to sign his name, to produce two (2) electors who shall make an affidavit before the election judges in a form prescribed by the secretary of state. One of the election judges shall write on the affidavit the elector's name, note his inability to sign, and the names of the electors making affidavits. The affidavits shall be returned to the registrar with the other election records.

History: En. Sec. 37, Ch. 368, L. 1969.

**Failure To Sign**

Failure of the election judges of a precinct to require the electors to sign the registry books before voting at a pri-

mary election was the fault of the judges and not of the electors, and therefore their votes were legal and properly counted. *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060.

**23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.** In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for



cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969.

**23-3020. Erroneous omission of name from precinct register—certificate.**

(1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the registrar a certificate of the error stating the precinct in which he is entitled to vote and present the certificate to the election judges which will entitle him to vote.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

History: En. Sec. 39, Ch. 368, L. 1969.

**23-3021. Registration by naturalized citizen.** When a naturalized citizen applies for registration, he must produce a certificate of naturalization or a certified copy upon which the registrar must enter the date and county where presented. The registrar must also enter the applicant's name.

History: En. Sec. 40, Ch. 368, L. 1969.

**23-3022. Residence, rules for determining.** For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while employed in the service of the United States or of this state, while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a

place other than where his family resided with the intention of remaining, is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election.

**History:** En. Sec. 41, Ch. 368, L. 1969.

#### **Acts and Intent of Voter**

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the res gestae, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 544, 165 P 599.

#### **Inapplicable to Licensing of Automobiles**

Section prescribing the conditions determining the right to vote with respect to residence of the voter had no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. *Valley County v. Thomas*, 109 M 345, 386, 97 P 2d 345.

#### **Presumption**

Predecessor to subdivision (8) was held to be in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

**23-3023. Printing of list of electors shown on precinct registers.** (1) The registrar shall have a list printed of all registered electors shown on the precinct registers of the county, city, or first class school district ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) Ten (10) days or more before any election, a copy of the list of registered voters shall be posted in each precinct. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed or posted.

(5) The list of registered voters prepared for a primary election may be posted and used for the general election only if a supplemental list giving the names of electors who have registered after the first list was prepared is printed and posted.

(6) The expense of printing this list shall be paid by the county, city, or school district, in which the election is to be held.

**History:** En. Sec. 42, Ch. 368, L. 1969.

**23-3024. Preparation of precinct register.** After the closing of the official register and before the election, the registrar shall:

(1) Prepare a "precinct register" for each precinct for use by clerks and election judges;

(2) List the names of electors in alphabetical divisions;



(3) Show all information from the registry card of each elector, except the oath of the elector;

(4) Deliver a certified copy of the precinct register to the election judges prior to the opening of the polls;

(5) Combine into one (1) precinct register the names of all electors in the several precincts where the precincts in city elections, or elections in school districts of the first class, include more than one (1) county precinct.

(6) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing, and the precinct register or registers shall not be prepared.

History: En. Sec. 43, Ch. 368, L. 1969.

**23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor.** A person whose vote has been rejected who offers to vote at the same election at any other polling place is guilty of a misdemeanor.

History: En. Sec. 44, Ch. 368, L. 1969

**23-3026. Commissioners to provide registrar with sufficient help.** The commissioners shall provide the registrar with sufficient help for the duties imposed by this act. The cost of stationery, printing, publishing and posting are a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969.

**23-3027. Charges to city or school district—warrant—when no precinct registers required.** (1) For each name entered on a precinct register prepared for a city or first class school district, the registrar shall charge the city or school district three cents (\$.03). He shall also charge the actual expense incurred in printing and posting the lists of electors, publishing notice, and other expenses incurred on account of the city or school district.

(2) The council or board of school trustees shall order a warrant drawn for the expenses specified in subsection (1) of this section within thirty (30) days after notification of the charges.

(3) If no general city election is required, the registrar shall not prepare precinct registers.

(4) If there are only as many candidates nominated as there are vacancies on a first class school district board of trustees, the registrar shall not prepare precinct registers.

(5) Within two (2) days after nominations are legally closed, the city clerk or clerk of a first class school district shall notify the registrar when no precinct registers are required.

History: En. Sec. 46, Ch. 368, L. 1969.

**23-3028. Copies of precinct registers available to any person upon written request—charge.** Upon written request, the registrar shall furnish

any person a copy of the official precinct registers. Upon delivery, the registrar shall collect a charge of five cents (\$.05) for each name entered in the official register.

History: En. Sec. 47, Ch. 368, L. 1969.

**23-3029. Violations of act, penalty for.** (1) Any person or any officer of a county, city, or school district required to perform duties under this act who willfully or knowingly fails to do so shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1000), or be imprisoned in the county jail for not less than three (3) months nor more than one (1) year. If an officer is involved, the judge of the district court shall also remove him from office.

(2) Any person who makes false answers; violates or attempts to violate any of the provisions of this act; mutilates, secretes, destroys, or alters election records except as provided by law; or knowingly encourages another to violate the act; or any public officer or other person upon whom any duty is imposed by this act who willfully neglects that duty or willfully performs the duty in a way which hinders the purposes of this act is guilty of a felony. Upon conviction he shall be imprisoned for not less than one (1) year nor more than fourteen (14) years. If a public officer, he shall also forfeit his office and never be qualified to hold public office again[,] either elective or appointive.

History: En. Sec. 48, Ch. 368, L. 1969.

## CHAPTER 31

### ELECTION PRECINCTS

#### Section

- 23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.  
 23-3102. Ward boundaries, certification of changes—map.  
 23-3103. Designation of polling place.

**23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.** (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held.

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the



commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all preeincts and school districts within the county.

(4) The boundaries of election preeincts must conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts only.

(5) A ward or school district may be divided into two (2) or more preeincts, and a preeinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, preeincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.

**History:** En. Sec. 18, Ch. 368, L. 1969.

**23-3102. Ward boundaries, certification of changes—map.** Not more than ten (10) days after ward boundaries have been changed, the city council must certify any changes or alteration in the ward boundaries to the registrar and deliver to him a map showing boundaries of the wards, the streets, avenues and alleys by name and the wards by numbers.

**History:** En. Sec. 19, Ch. 368, L. 1969.

**23-3103. Designation of polling place.** The commissioners shall make an order designating the place within each preeinct where the election will be held at the session at which election judges are appointed. Copies of the order must be posted immediately in three (3) public places in the preeinct.

**History:** En. Sec. 20, Ch. 368, L. 1969.

#### Changing Designation

Where a board of county canvassers refused to canvass election returns from a preeinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act, nothing was shown affirmatively by pleadings or

otherwise that the judges of election at the preeinct had not pursued this section giving them authority to change the place of election upon two days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. State ex rel. Moore v. Patch, 65 M 218, 225, 211 P 202.

## CHAPTER 32

### JUDGES AND CLERKS OF ELECTIONS

#### Section

- 23-3201. Appointment of election judges—second board of election judges—duties.
- 23-3202. Manner of choosing election judges—vacancies—candidates and their relatives ineligible—exceptions.
- 23-3203. Judges to choose clerks and to serve until others appointed.
- 23-3204. Registrar to notify judges of their appointment and of impending general elections—judges to post notices of election.
- 23-3205. Oath of judges and clerks—may administer oaths.
- 23-3206. Instruction of judges.
- 23-3207. Compensation of judges and clerks.

**23-3201. Appointment of election judges—second board of election judges—duties.** (1) At their regular meeting next preceding a general primary election, the commissioners shall appoint five (5) election judges for each precinct having two hundred (200) or more electors and three (3) election judges for each precinct having less than two hundred (200) electors. Judges for new precincts shall be appointed based upon the estimated number of electors.

(2) If a precinct has three hundred fifty (350) or more electors, the commissioners may appoint a second board of five (5) election judges who shall have the same qualifications as the first board. The second board shall:

(a) Meet at their respective polling places as ordered;

(b) Count and tabulate ballots as soon as the first board has completed their duties in regard to the voting.

(3) If counting and tabulating the ballots is not completed by 8 a. m. on the day following the election, the first board shall reconvene and relieve the second board until 8 p. m. when the second board shall again reconvene and relieve the first board until the ballots are counted and tabulated.

(4) The election judges constituting the boards shall number the ballots and count the tally upon the tally sheets and indicate upon the tally sheets the work of each board. The board completing the count shall certify the returns as required by law.

History: En. Sec. 49, Ch. 368, L. 1969.

**23-3202. Manner of choosing election judges — vacancies — candidates and their relatives ineligible—exceptions.** (1) The election judges shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or more before the commissioners meeting which precedes the next primary election.

(2) The list of each party must contain twice the number of election judges to be appointed and not more than a majority may be appointed from one (1) political party for each precinct.

(3) The commissioners may appoint election judges in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman.

History: En. Sec. 50, Ch. 368, L. 1969.

**23-3203. Judges to choose clerks and to serve until others appointed.** (1) The election judges may appoint two (2) persons having the same qualifications as themselves to act as clerks of the election who serve at the pleasure of the judges.



(2) The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

(3) The commissioners shall fill vacancies which occur in the office of election judge.

**History:** En. Sec. 51, Ch. 368, L. 1969.

**23-3204. Registrar to notify judges of their appointment and of impending general elections—judges to post notices of election.** (1) The registrar must notify the election judges in writing of their appointment.

(2) Twenty (20) days or more before any general election, the registrar shall mail two (2) notices of the election to the election judges. The notices shall be in the form prescribed by the secretary of state.

(3) Ten (10) days or more prior to the election, the election judges shall post one (1) notice at the place where the election will be held and the other in one (1) of the most public places in the precinct.

**History:** En. Sec. 52, Ch. 368, L. 1969.

**23-3205. Oath of judges and clerks—may administer oaths.** (1) Before votes are cast, the election judges and clerks must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other and to the clerks.

(2) Any election judge or a clerk may administer and certify oaths required during an election.

**History:** En. Sec. 53, Ch. 368, L. 1969.

**23-3206. Instruction of judges.** (1) Before each election, all election judges who do not possess a certificate of instruction shall be instructed by a person named by the commissioners in the powers, duties, and liabilities of election judges.

(2) The instructor shall call meetings as necessary.

(a) The election judge shall attend each meeting and receive at least two (2) hours of instruction.

(b) Each election judge shall receive compensation fixed by the commissioners at the prevailing federal minimum wage for instruction to be paid at the same time and in the same manner as for services on election day.

(3) Each judge shall receive a certificate of completion from the instructor upon completion of the course. Each certificate is valid for a period of two (2) years.

(4) No person shall serve as election judge without a valid certificate. However, this does not apply to persons filling vacancies in emergencies.

(5) Notice of place and time of instruction must be given to the county chairmen of the two (2) major political parties by the commissioners.

**History:** En. Sec. 54, Ch. 368, L. 1969.

**23-3207. Compensation of judges and clerks.** The compensation of election judges and clerks shall be fixed by the commissioners at the pre-

vailing federal minimum wage and be paid from county funds. The commissioners shall audit the accounts.

History: En. Sec. 55, Ch. 368, L. 1969.

## CHAPTER 33

### PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

#### Section

- 23-3301. Date of primary election—candidates to be selected.
- 23-3302. Primaries in cities over certain size—procedure.
- 23-3303. Notices of election.
- 23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot.
- 23-3305. Deadline for filing nominating declarations—persons with whom filed.
- 23-3306. Register of candidates—public record—disposition of pollbooks, tally sheets, ballots, etc.
- 23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk.
- 23-3308. Ballots, how arranged and voted.
- 23-3309. Official and sample ballots—preparation and number.
- 23-3310. Election clerks' and judges' duties upon closing of polls.
- 23-3311. Tally sheets—keeping and announcing the tally—statement.
- 23-3312. Duties of election clerks and judges after canvassing votes—seal.
- 23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates.
- 23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie.
- 23-3315. Error in ballot or other wrongful or neglectful act.
- 23-3316. Contest—notice—hearing—how tried and decided—certificate.
- 23-3317. Penalty for violation of act—officials—candidates.
- 23-3318. Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability.
- 23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate.
- 23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate.
- 23-3321. Declining nomination—vacancies before and after primary.

**23-3301. Date of primary election—candidates to be selected.** The primary election shall be held on the first Tuesday in June preceeding any general election to select candidates for:

- (1) United States senators and representatives in Congress;
- (2) Other elective state, district, and county officers;
- (3) Delegates to any constitutional convention who will be chosen at the ensuing general election;
- (4) County central committeemen and committeewomen by the political parties.

History: En. Sec. 56, Ch. 368, L. 1969.

**23-3302. Primaries in cities over certain size—procedure.** In cities having a population of three thousand five hundred (3,500) or more as shown by the most recent federal or state census:

- (1) The nomination of candidates by primary election for city offices shall be subject to the provisions of this chapter;
- (2) Political parties shall file declarations of nominations for city offices with the city clerk;



(3) The duties of the city clerk are the same as the registrar in conducting the primary elections, and the city clerk shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;

(4) On the fourteenth day preceding a city election, the cities shall hold primary elections;

(5) If no declarations are filed forty (40) days or more before the primary election, no primary election shall be held and the city clerk shall certify to the registrar thirty-five (35) days or more before the date of the primary election that no petitions have been filed;

(6) The council shall;

(a) establish city voting precincts and wards,

(b) appoint city judges and clerks of elections and other officers necessary for the election.

(c) perform other necessary duties in the same manner prescribed for city elections.

**History:** En. Sec. 57, Ch. 368, L. 1969.

**23-3303. Notices of election.** (1) Twenty (20) days before any primary election, the registrar shall prepare printed notices of the election and mail two (2) notices to each judge of election.

(2) Each judge and clerk shall immediately post the notices in public places in their precinct.

(3) Notices shall be in the form, and contain information, as prescribed by the secretary of state.

**History:** En. Sec. 58, Ch. 368, L. 1969.

**23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot.** (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk.

(2) The candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars (\$1,000) or less per annum, ten dollars (\$10), except candidates for the legislative assembly or lieutenant governor must pay fifteen dollars (\$15);

(b) For offices having a salary of more than one thousand dollars (\$1,000) per annum, one per cent (1%) of the total annual salary;

(c) For the offices of county commissioner;

- (i) in counties of the first class, forty dollars (\$40),
- (ii) in counties of the second class, thirty-five dollars (\$35),
- (iii) in counties of the third class, thirty dollars (\$30),
- (iv) in counties of the fourth class, twenty-five dollars (\$25),
- (v) in counties of other classes, ten dollars (\$10),

(d) For offices in which compensation is paid in fees, five dollars (\$5);

(e) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:

(a) Files with the secretary of state, registrar, or city clerk, at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination;

(b) Pays the required filing fee,

(c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.

(7) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination.

History: En. Sec. 59, Ch. 368, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### Time for Filing Acceptance by Write-in Candidate

Under prior statute requiring write-in candidate to file within ten days after "election," the term "election" meant the day of election and not the day on which the canvass of the ballots was completed,

hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election official ballot. State ex rel. Wulf v. McGrath, 111 M 96, 97, 106 P 2d 183.

**23-3305. Deadline for filing nominating declarations—persons with whom filed.** Nominating declarations shall be filed not later than 5 p.m. forty (40) days before the date of the primary election. Declarations for nomination to an office filled by election throughout the state, as judge of a district court, to an office filled by election in more than one (1) county, or as a member of the legislative assembly shall be filed with the secretary of state. Declarations for nomination to an office filled by election in one (1) county, or district or city shall be filed with the registrar or city clerk.

History: En. Sec. 60, Ch. 368, L. 1969.

**23-3306. Register of candidates—public record—disposition of poll-books, tally sheets, ballots, etc.** (1) The secretary of state, registrar, and city clerk shall keep a "Register of Candidates for Nomination at the Primary Nominating Election." The entries in the register shall contain on separate pages for each political party showing:



(a) The title of the office sought, and the name and residence of each candidate;

(b) The name of his political party;

(c) The date of receiving the declaration for nomination signed by the candidate;

(d) Other information as may aid in arranging the official ballot.

(2) Immediately after the canvass of votes of the primary election, the officer shall enter in the register the date of entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

(3) When filed, the registers, declarations of nominations, letters and notices, and other documents required by law are public records and open to inspection under proper regulation. Certified copies shall be available upon payment of the fee.

(4) The registrar shall keep all pollbooks, tally sheets, ballots, ballot stubs, and other documents for one (1) year, and then he shall destroy them.

History: En. Sec. 61, Ch. 368, L. 1969.

**23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk.** (1) Not more than forty (40) days and not less than thirty-two (32) days before the date of the primary election, the secretary of state shall:

(a) Arrange all names and information concerning candidates contained in the valid nominating declarations;

(b) Certify the arrangement under state seal, file it in his office, and transmit a duplicate by registered mail to each registrar;

(c) Post a duplicate in a conspicuous place in his office until after the primary election.

(2) Not more than thirty (30) days, and not less than twenty (20) days before the date of the primary election, the registrar or city clerk shall:

(a) Arrange, as required by law, the names and other information concerning the candidates and parties named in the valid nominating declarations which have been certified to him or filed with him;

(b) Certify the arrangement, file it in his office, and post a duplicate in a conspicuous place in his office until after the primary;

(c) Have colored sample ballots and the official ballots printed as required by law.

History: En. Sec. 62, Ch. 368, L. 1969.

**23-3308. Ballots, how arranged and voted.** (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. When two (2)

or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical;

(c) If an elector writes the name of a person upon a ballot, and the person's name appears as a candidate upon another ballot, the ballot shall count for the person only as a candidate of the party upon whose ticket his name is written;

(d) If a person is nominated upon more than one (1) ticket, not later than ten (10) days after the election he shall file written notification with the secretary of state, registrar, or city clerk the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed;

(e) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name shall not be printed upon any ballot with party designation;

(f) This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate shall have his name printed on more than one (1) ticket.

(3) Ballots shall be printed on white paper in the form of the Australian ballot and the candidates of each party shall be printed on a separate ticket.

(4) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen;

(a) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box;

(b) Immediately after the recount period, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

**History:** En. Sec. 63, Ch. 368, L. 1969.

**23-3309. Official and sample ballots—preparation and number.** (1) Ballots equal to the number of voters entitled to vote in the primary shall be printed and furnished to each election precinct.

(2) If a political party desires sample ballots its political committee may order them from the registrar or city clerk and pay the costs of printing. The registrar or city clerk shall order delivery in writing of the sample ballots and no sample ballots shall be printed without an order from the registrar or city clerk.



(3) Sample ballots shall be duplicates of the official ballot, but shall not be printed on white paper, shall not have the same margins, and shall not have perforated stubs.

History: En. Sec. 64, Ch. 368, L. 1969.

**23-3310. Election clerks' and judges' duties upon closing of polls.** Immediately after the polls are closed at a primary election, the election clerks and judges shall open the ballot boxes and:

(1) Count the ballots cast by each political party and fasten the ballots cast for each political party into separate files,

(2) Take the tally sheets provided by the registrar and count the ballots for each political party,

(3) Certify the number of votes cast for each candidate for each office,

(4) Place the counted ballots in the box.

History: En. Sec. 65, Ch. 368, L. 1969.

**23-3311. Tally sheets—keeping and announcing the tally—statement.**

(1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

(2) Tally sheets shall show:

(a) The number and name of each person voted for;

(b) Office for nomination to which each person was voted for;

(c) Total number of votes cast for each candidate for nomination.

(3) The election clerks and judges shall audibly announce the tally or count, and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.

(4) The election clerks shall in ink:

(a) Keep tally upon the prescribed tally sheet of each political party;

(b) Total the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";

(c) Prepare the certificate required by subsection (3) of this section;

(d) Immediately upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him;

(e) If the chairman and judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.

(5) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immediately post it in a conspicuous place outside of the polls. The statement shall remain posted for ten (10) days.

History: En. Sec. 66, Ch. 368, L. 1969.

**23-3312. Duties of election clerks and judges after canvassing votes—seal.** (1) Immediately after canvassing votes, the election clerks and judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

(a) Enclose the tally sheets in separate envelopes and securely seal them;

(b) Enclose the precinct registers in separate envelopes and securely seal them;

(c) Enclose all ballots fastened together and in separate envelopes and securely seal them;

(d) Specify in ink the contents, and address each package to the registrar of the county in which the election precinct is situated;

(e) Mark the sealed ballot packages on the outside showing what numbers are contained, but once sealed they are not to be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two (2) ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or the canvassers making the abstracts of the votes shall not break the seal, nor shall anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election.

**History:** En. Sec. 67, Ch. 368, L. 1969.

**23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates.** (1) At 8 a.m. in the third day after the close of any primary election, or at 8 a.m. on a day sooner if all the returns are in, the registrar, taking two (2) assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for governor, lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, United States senators, United States representatives, judges of the district court, and members of the legislative assembly, shall be on one (1) sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by section 23-3314.

(3) Abstracts of votes for county and precinct offices shall be placed on separate sheets for each political party, and the registrar shall certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one (1) party, the registrar shall notify the affected persons to come to his office at a time set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nominations.



(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office.

History: En. Sec. 68, Ch. 368, L. 1969.

**23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie.** (1) The registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state.

(2) The secretary of state shall, in the presence of the governor and the state treasurer, proceed not later than fifteen (15) days after the date of the primary election to canvass the votes given for nomination for governor, United States senator, United States representative, lieutenant governor, attorney general, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county.

(3) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party.

(4) When a tie exists between two (2) or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied, to attend in person or by attorney, at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person.

History: En. Sec. 69, Ch. 368, L. 1969.

**23-3315. Error in ballot or other wrongful or neglectful act.** (1) Whenever it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) That an error or omission has occurred, or is about to occur, in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) That any error has been, or is about to be, committed in the printing of the ballots;

(c) That the name of any person or any other matter has been, or is about to be, wrongfully placed upon the ballots;

(d) That any wrongful act has been performed by any judge or clerk of the primary election, registrar, canvassing board or member, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons has occurred or is about to occur; the court

shall require by order the officer or person charged with the act or neglect to perform his duties required by law or show cause why the order should not issue.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by this act shall, without derogation of any other right or remedy, be entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided.

History: En. Sec. 70, Ch. 368, L. 1969.

**23-3316. Contest—notice—hearing—how tried and decided—certificate.**

(1) Five (5) days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, township, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice three (3) days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969. Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

**Cross-Reference**

Application of Montana Rules of Civil

**23-3317. Penalty for violation of act—officials—candidates.** (1) If an election clerk or judge of a primary election, or other officer or persons on whom a duty is enjoined, willfully neglects that duty or commits any corrupt act in the discharge of his duty, he is guilty of a violation of this act. Upon conviction, he shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, imprisoned in the county jail for not less than three (3) months nor more than one (1) year, or fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(2) If a candidate for nomination is guilty of any act which is wrongful or unlawful, or acts at the primary which would be sufficient to cause his removal from office if committed at the regular general election, he shall, upon conviction, be removed from office in the same manner



as though the act had been committed at a regular general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act at the election at which he was elected to his office.

History: En. Sec. 77, Ch. 368, L. 1969.

**23-3318. Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability.** Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

(a) The name of a candidate for the office to be filled;

(b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding election.

(5) The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

History: En. Sec. 78, Ch. 368, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### Error in Certificate

Under the law governing conventions and primary meetings, an error in the party name on the certificate of nomination rendered it void. *State ex rel. Scharnikow v. Hogan*, 24 M 397, 401, 62 P 683.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient. *State ex rel. Galen v. Hays*, 31 M 227, 231, 78 P 301.

##### Party Candidate

It is by means of the certificate of nomination that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or or-

ganization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 M 502, 510, 511, 46 P 370.

**Time of Filing**

Prior law requiring certificates of nomination to be filed with the secretary of

state not more than sixty nor less than thirty days before election was mandatory and a certificate of original nominations made at a party convention could not be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

**23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate.** (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for one (1) year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five (45) days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him.

(3) Each election board shall transmit to the secretary of state a statement of the number of votes cast for a person as the candidate for the independent body by which he was nominated.

**History:** En. Sec. 79, Ch. 368, L. 1969.

**23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate.** (1) Every political party which received three per cent (3%) or more of the total vote cast for governor at the next preceding general election in the county, district, or state for which nominations are proposed to be made, shall nominate its candidate for public office in the county, district or state under this act.

(2) Every political party, and its regularly nominated candidates, members and officers, has the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(3) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

(4) The names of candidates for public office nominated under this act shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for public office in the same manner as the names of the candidates nominated by other methods are required to be printed on the official ballots.

(5) Any political party that did not receive three per cent (3%) or more of the total vote cast for governor, as provided in subsection (1) of this section, and any new political party about to be formed, may make nominations for public office as provided in section 23-3318.

**History:** En. Sec. 80, Ch. 368, L. 1969.

**Presidential Electors Are Candidates for Public Office**

Candidates for presidential electors were candidates for public office, within the



meaning of prior section. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

#### Use of Term "Independent"

Assuming (but not deciding) that an existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from

employing that term in designating the character of his candidacy for the same office, and section prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361, 230 P 366.

### 23-3321. Declining nomination—vacancies before and after primary.

(1) Twenty (20) days or more before the election, a person nominated for public office may decline the nomination by a writing sent to the office with whom his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in a multicounty district, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county by the county central committees of the affected political party.

(b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

**History:** En. Sec. 82, Ch. 368, L. 1969.

#### Cross-Reference

Inducement to accept or decline nomination, sec. 94-1456.

#### Defective Proceedings

An election will not be declared void by reason of nonprejudicial defects in the manner in which nomination was declined where question was raised after election. Stackpole v. Hallahan, 16 M 40, 51, 40 P 80.

#### Write-in Candidates

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county cen-

tral committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

## DECISIONS UNDER FORMER LAW

**Death after Election**

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election where the officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

tion, and has authorized its committee to fill any vacancy that may occur, the filling of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Secharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

**Time for Filling Vacancies**

When a convention has made a nomina-

## CHAPTER 34

## POLITICAL PARTIES, COMMITTEEMEN AND COMMITTEES

## Section

- 23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.
- 23-3402. Committeemen as party representative—county and city central committees—term—vacancy.
- 23-3403. Committees' powers—state central committee to appoint county central committee where none exists.
- 23-3404. Committees to fill vacancies among nominees under certain circumstances.
- 23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.
- 23-3406. Powers of parties.
- 23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.

**23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.** (1) Each political party shall elect at each primary election one (1) man and one (1) woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

**History:** En. Sec. 72, Ch. 368, L. 1969.

**23-3402. Committeemen as party representative—county and city central committees—term—vacancy.** (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and



have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of two (2) years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

**History:** En. Sec. 73, Ch. 368, L. 1969.

**23-3403. Committees' powers—state central committee to appoint county central committee where none exists.** (1) The county and city central committee may:

(a) Make rules for the government of its political party in each county, not inconsistent with any of the provisions of this act nor the rules of its state political party;

(b) Elect two (2) county members of the state central committee, one (1) shall be a man and one (1) shall be a woman; elect the members of the congressional committee; and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

**History:** En. Sec. 74, Ch. 368, L. 1969.

**23-3404. Committees to fill vacancies among nominees under certain circumstances.** County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

**History:** En. Sec. 75, Ch. 368, L. 1969.

#### **Write-in Candidate**

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election

day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

### **DECISIONS UNDER FORMER LAW**

#### **Death after Election**

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election, where the

officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

**23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.** (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman or first vice-chairman shall be a woman. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman and the appointed proxy are absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969.

**23-3406. Powers of parties.** (1) Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own offices;
- (c) Call conventions and provide for the number and qualification of delegates;
- (d) Adopt platforms;
- (e) Provide for selection of delegates to national conventions;
- (f) Provide for the nomination of presidential electors;
- (g) Provide for the selection of national committeemen and women;
- (h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;
- (i) Perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

**23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.** (1) Except as provided in subsection (2) of this section, expenses of county and state conventions shall be paid by the political parties.

(2) Elected delegates and alternates attending state conventions to nominate presidential electors shall be paid eight cents (\$.08) per mile for travel to and from the convention paid from the county general fund.

History: En. Sec. 83, Ch. 368, L. 1969.



## CHAPTER 35

## ELECTION SUPPLIES AND BALLOTS

## Section

- 23-3501. Items to be furnished by commissioners.
- 23-3502. City clerk to act in city elections.
- 23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.
- 23-3504. Forms for election returns.
- 23-3505. Completion and posting of forms.
- 23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective.
- 23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.
- 23-3508. Printing and distribution of ballots at public expense—uniformity.
- 23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.
- 23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix.
- 23-3511. Arrangement of names—rotation on ballot.
- 23-3512. Columns and material to be printed on ballot.
- 23-3513. Order of placement.
- 23-3514. Blank space and margin.
- 23-3515. Stub, size and contents.
- 23-3516. Number of ballots to be provided for each precinct.
- 23-3517. Short-term and long-term elections for same office—order of offices on ballot.

**23-3501. Items to be furnished by commissioners.** The commissioners shall:

- (1) Furnish pollbooks to each election precinct in a form prescribed by the secretary of state;
- (2) Furnish printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns;
- (3) Furnish for each polling precinct a ballot box or canvas pouch with a lock and key for the ballots and detached stubs.

**History:** En. Sec. 84, Ch. 368, L. 1969.

**Cross-Reference**

County commissioners to furnish pollbooks, sec. 16-1156.

**23-3502. City clerk to act in city elections.** In city elections, the city clerk shall perform all duties prescribed for registrars in this chapter.

**History:** En. Sec. 85, Ch. 368, L. 1969.

**23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.** Before the opening of the polls, the registrars or city clerks shall:

- (1) Deliver the election ballots to the judges of election in each polling place;
- (2) Deliver a rubber stamp which contains the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and the name and official designation of the clerk who furnished the ballots.

**History:** En. Sec. 86, Ch. 368, L. 1969.

**23-3504. Forms for election returns.** In sending out election supplies to each precinct, the registrars shall send six (6) or more printed forms with a return envelope to the election judges to be used in sending election returns for public information. The forms shall be in ballot form and have printed on them the names of each candidate and each proposition.

**History:** En. Sec. 87, Ch. 368, L. 1969.

**Transmitting Forms**

Forms on which judges of election must summarize the result of the vote are not

a part of the election returns and are not required to be transmitted to the clerk in sealed packages. *Dubie v. Batani*, 97 M 468, 478, 37 P 2d 662.

**23-3505. Completion and posting of forms.** (1) Immediately after all the ballots are voted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the blanks furnished by the registrars in the preceding section.

(2) The election judges shall immediately post one of the blanks at the polling place, and send a copy by mail to the registrar.

**History:** En. Sec. 88, Ch. 368, L. 1969.

**23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective.** Except as otherwise provided in this act:

(1) The registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and associate justices of the supreme court, and judges of the district courts;

(2) An elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark it as provided in section 23-3606. When the ballot is marked in this manner it must be counted the same as though the name is printed upon the ballot and marked by the voter;

(3) Ballots other than those printed by the registrars may not be cast or counted in any election.

**History:** En. Sec. 89, Ch. 368, L. 1969.

**Cross-References**

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Separate ballot for bonds and levies, sec. 37-107.

**Use of Uniform Ballot Required**

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

**23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.** (1) When the secretary of state has certified to the registrar any question to be submitted to a vote of the people, the registrar must print the ballot in a form which will enable the electors to vote upon the question presented as provided by law.

(2) The registrar must prepare the necessary ballots whenever any question is to be submitted to the electors of any locality, or of the state generally. However, for questions submitted to the electors of a city alone, the city clerk shall prepare the necessary ballot.

**History:** En. Sec. 90, Ch. 368, L. 1969.



**23-3508. Printing and distribution of ballots at public expense—uniformity.** (1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.

(2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

(3) The expense of printing and delivering ballots in city elections is a charge upon the city in which the election is held.

(4) All official ballots must be uniform in size and printing. This involves:

(a) Uniformity in the type of ink used, which must be black, size of paper, type of white paper and arrangement of the paper, and the names of candidates printed upon the ballots shall be in type of the same size and character;

(b) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot;

(c) The ballots must contain the name of every candidate whose nomination is certified under law for a special office and no other names except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided in section 23-4301.

**History:** En. Sec. 91, Ch. 368, L. 1969.

**23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.** (1) Candidates' names shall be printed in one place on the ballot with the name of the party or political organization, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates for chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designation."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, no party designation shall be placed opposite his name.

**History:** En. Sec. 92, Ch. 368, L. 1969.

**23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix.** (1) If a vacancy occurs after the printing of the ballots but before election, and a person is nominated to fill the vacancy, the officer whose duty it is to have the ballots printed must print pasters containing the name of the new nominee and mail them to the election judges by registered letter.

(2) The election judges shall affix the pasters over the substituted name in the proper place on each ballot before it is given to the elector.

**History:** En. Sec. 93, Ch. 368, L. 1969.

**23-3511. Arrangement of names—rotation on ballot.** (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the appropriate title of the respective offices.

(2) The candidates of the two (2) major parties shall appear on the ballot before and above candidates of minor parties and independent candidates.

(3) The parties whose candidates for governor, except independent candidates, received the highest number of votes at the next preceding four (4) general elections shall constitute the two (2) major political parties.

(4) If there is a tie in the number of first or second place votes, the determination shall be made by going back to enough preceding elections to break the tie and no further.

(5) All other candidates shall be designated as either independent candidates or as belonging to minor parties.

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot forms into sets to provide a substantial rotation of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

(e) Candidates of the two (2) major parties shall be rotated so they appear on the ballot before and above any candidates of the minor parties or independent candidates.

**History.** En. Sec. 94, Ch. 368, L. 1969.

**23-3512. Columns and material to be printed on ballot.** (1) Each ballot shall contain three (3) categories with at least one (1) column for each category.

(2) At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the legislative assembly, and the list shall progressively continue to the top of the second column.

(3) Next shall be the words "COUNTY AND TOWNSHIP," in large boldface type and beneath the heading all candidates for county and township offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in boldface type, and listed there-



under shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three (3) categories as nearly as possible.

**History:** En. Sec. 95, Ch. 368, L. 1969.

**23-3513. Order of placement.** (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL," shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line, shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) Governor;
- (e) Lieutenant governor;
- (f) Secretary of state;
- (g) Attorney general;
- (h) State treasurer;
- (i) State auditor;
- (j) Railroad and public service commissioners;
- (k) State superintendent of public instruction;
- (l) Clerk of the supreme court;
- (m) Chief justice of the supreme court;
- (n) Associate justices of the supreme court;
- (o) District court judges;
- (p) State senators, members of the house of representatives.

If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(2) In the column designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed:

- (a) Clerk of the district court;
- (b) County commissioner;
- (c) County clerk and recorder;
- (d) Sheriff;
- (e) County attorney;
- (f) County auditor;
- (g) Other offices in the order designated by the registrar.

(3) In the third column constitutional amendments shall be followed by referendum and initiative measures.

**History:** En. Sec. 96, Ch. 368, L. 1969.

**23-3514. Blank space and margin.** (1) Below the names of candidates for each office there must be enough blank spaces to contain as many written names of candidates as there are persons to be elected.

(2) There must be a margin on each side of at least one-half ( $\frac{1}{2}$ ) inch in width, and a reasonable space between the names, so that the voter may clearly indicate the candidate for whom he wishes to cast his ballot.

History: En. Sec. 97, Ch. 368, L. 1969.

**23-3515. Stub, size and contents.** (1) The ballot shall be printed on the same leaf with a stub, and separated by a perforated stub.

(2) The stub shall extend the entire width of the ballot, and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the names of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote, and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment, or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the back of the stub shall be printed or stamped by the registrar or other officer, the consecutive number of the ballot, beginning with number one (1) and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969.

**23-3516. Number of ballots to be provided for each precinct.** (1) The registrar must provide each election precinct with sufficient ballots for the electors registered plus sufficient copies to cover destroyed ballots.

(2) The registrar shall keep a record in his office, showing the exact number of ballots that are delivered to the election judges of each precinct.

(3) In city elections the city clerk shall provide necessary ballots.

History: En. Sec. 99, Ch. 368, L. 1969.

**23-3517. Short-term and long-term elections for same office—order of offices on ballot.** (1) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

(2) Above each group of candidates for each office shall be printed the words designating the particular office in boldface capital letters and directly underneath the words, "VOTE FOR," followed by the number to be elected to such office.

(3) The ballot shall be in a form prescribed by the secretary of state.

History: En. Sec. 100, Ch. 368, L. 1969.



## CHAPTER 36

## CONDUCT OF ELECTIONS—THE POLLS—VOTING AND BALLOTS

## Section

- 23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots.
- 23-3602. Proclamation prior to opening and closing polls.
- 23-3603. Delivery of official ballots to elector.
- 23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time.
- 23-3605. Prohibited conduct.
- 23-3606. Method of voting.
- 23-3607. No person except election judge to put ballot or other object in a ballot box—penalty.
- 23-3608. Putting ballot in box.
- 23-3609. Judges may aid disabled elector.
- 23-3610. Marking precinct register book before elector votes—procedure.
- 23-3611. Grounds of challenge.
- 23-3612. Proceedings on challenger for want of identity, having voted before, and conviction of felony.
- 23-3613. Challenges, how determined.
- 23-3614. If a person refuses to be sworn, vote to be rejected.
- 23-3615. Trial of challenges.
- 23-3616. Proceedings upon determination of challenges.
- 23-3617. List of challenges to be kept.
- 23-3618. Poll watchers—announcement of voter's name.

**23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots.** (1) The registrar shall print on cards instructions to electors on how to vote.

(2) He shall furnish six (6) cards to the election judges in each precinct and one (1) additional card for each fifty (50) registered electors or fractional part of fifty (50) at the same time ballots are furnished.

(3) The election judges shall post at least one (1) card in each compartment provided for the preparation of ballots, and not less than three (3) of the cards elsewhere about the polling place.

(4) The cards shall contain instructions in bold large type:

- (a) On how to obtain ballots for voting;
- (b) On how to prepare ballots for deposit in the ballot box;
- (c) On how to obtain a new ballot in place of one spoiled by accident;
- (d) A copy of sections 94-1407, 94-1411, 94-1412, 94-1413, 94-1414, and 94-1415, R. C. M. 1947.

(5) Official ballots provided for in chapter 35 of this act shall be posted in each booth or compartment and in three (3) conspicuous places about the polling place.

**History:** En. Sec. 101, Ch. 368, L. 1969.      ence to "chapter 35" for a reference to "chapter 6" in subsection (5).

**Compiler's Notes**

The compiler has substituted the refer-

**23-3602. Proclamation prior to opening and closing polls.** Before the polls are opened or closed that fact must be proclaimed at the place of election.

**History:** En. Sec. 102, Ch. 368, L. 1969.

**23-3603. Delivery of official ballots to elector.** (1) The election judges must designate two (2) of their number to deliver ballots to electors.

(2) Before delivery, the election judges shall stamp the words "official ballot" on the back and near the top of the ballot. They shall also stamp other words required by section 23-3503.

(3) The election clerks shall enter on the poll lists the name of the elector and the number of the stub attached to the ballot given him.

(4) Each elector shall receive one (1) ballot from the election judges.

**History:** En. Sec. 103, Ch. 368, L. 1969.

**Stamping of Official Ballot**

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, al-

though in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

**23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time.** (1) All officers who designate polling places shall:

(a) Provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) Furnish the booths adequately to enable the elector to prepare his ballot;

(c) Furnish at least one (1) booth for every fifty (50) electors registered in the precinct.

(2) No more than one (1) person may occupy a booth at one (1) time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

**History:** En. Sec. 104, Ch. 368, L. 1969.

**23-3605. Prohibited conduct.** (1) An election officer shall not do any electioneering on election day.

(2) A person shall not do any electioneering on election day, within any polling place, in any building in which an election is being held, or within two hundred (200) feet of the building where the polling place is located.

(3) A person shall not obstruct the entries to a polling place.

(4) An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place.

(5) A person shall not remove a ballot from the polling place before the closing of the polls.

(6) A person shall not show the contents of his ballot to any other person after it is marked.

(7) A person shall not solicit the elector to show the contents of his ballot; nor shall any person, except the election judge, receive from any elector a ballot prepared for voting.



(8) An elector shall not receive a ballot from any other person than one of the election judges, nor shall any person other than an election judge deliver a ballot to an elector.

(9) An elector shall not vote any ballot except one received from the election judges.

(10) An elector shall not place any mark upon his ballot by which it may be identified as the one voted by him.

(11) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to the election judges.

**History:** En. Sec. 105, Ch. 368, L. 1969.

Electioneering by election officials, penalty, 94-1413.

**Cross-References**

Disclosing contents of ballot after marking, penalty, 94-1414.

Solicitation of votes on election day, sec. 94-1453.

**23-3606. Method of voting.** (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment, or other question to be submitted to the vote of the people, he shall mark an "X" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote, and vote for that person by marking an "X" before the name.

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen, and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote, and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot, and remove the stub in sight of the elector depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

**History:** En. Sec. 106, Ch. 368, L. 1969.

voter is not to be disfranchised by the errors or wrongful acts of election officers. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

**Deposit of Ballot**

Act of voting is not completed until the ballot is deposited in the ballot box. *Goodell v. Judith Basin County*, 70 M 222, 233, 224 P 1110.

**Error by Election Officer**

A ballot properly marked, but from which the stub has not been detached by the ballot judge, should be counted; a

**Marking of Ballot**

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were

drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, nor any, compliance with the provisions of predecessor section. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Where the crossmark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of prior section relative to placing the mark before the name. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within

the square, a defect in the mark is not sufficient to vitiate the ballot. *Carwile v. Jones*, 38 M 590, 595, 101 P 153, explained in 109 M 390, 393, 396, 96 P 2d 922.

Statutory provision that a ballot should be marked by an "X" in the square is directory and not mandatory, and in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X" should have been counted for contestant, there being nothing to indicate an attempt to mark the ballot for identification purposes. *Peterson v. Billings*, 109 M 390, 395, 96 P 2d 922.

#### Voting an Affirmative Act

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

**23-3607. No person except election judge to put ballot or other object in a ballot box—penalty.** No person, except an election judge shall put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box. A person violating this section is guilty of a misdemeanor. An election judge who knowingly permits a violation of this act is guilty of a felony.

History: En. Sec. 107, Ch. 368, L. 1969.

**23-3608. Putting ballot in box.** If the name of an elector appears in the official register of the precinct, or if the person offering to vote produces a proper registry certificate and his vote is not rejected upon a challenge, the election judge must immediately and publicly in the presence of all the judges, place the ballot in the ballot box without opening or examining it.

History: En. Sec. 108, Ch. 368, L. 1969.

**23-3609. Judges may aid disabled elector.** (1) The election judges shall aid an elector, who because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The elector shall be assisted by two (2) judges who represent different parties. The disabled elector may request that a qualified elector he designates also aid him in voting. The election judges must certify on the official



register opposite the disabled elector's name that the ballot was marked with their assistance and the name of any other elector designated. Neither the judges nor a person who aided the elector may reveal information regarding the ballot.

(3) The election judges shall require the declaration of disability by the elector under oath. They are authorized to administer the oath.

(4) No elector, other than the one who is unable to vote, may divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

(5) Instead of assistance, as provided in subsection (2) of this section, the elector may request the assistance of any qualified elector whom he designates to the judges to aid him in the marking of his ballot, and the judges must certify on the official register opposite the name of such disabled elector that it was so marked with their assistance.

**History:** En. Sec. 109, Ch. 368, L. 1969.

#### **Evidence**

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by law, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. *Lane v. Bailey*, 29 M 548, 560, 75 P 191.

#### **Need Not Certify Reason for Assistance**

A ballot bearing the endorsement:

"Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

**23-3610. Marking precinct register book before elector votes—procedure.** (1) The election judges at every general or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two (2) electors who shall make an affidavit before the election judges, or one (1) of them, in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges, and returned to the registrar with the returns of the election. One (1) of the judges shall write the elector's name, note the fact of his inability to sign, and the names of the two (2) electors.

(5) If the elector fails or refuses to sign his name, and if unable to write fails to procure two (2) electors who will take the oath required, he shall not be allowed to vote.

(6) Immediately after the canvass of the returns, the election judges shall deliver to the registrar the official register, sealed, with the election returns and pollbook which have been used for the election.

(7) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook.

History: En. Sec. 110, Ch. 368, L. 1969.

**23-3611. Grounds of challenge.** A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) That he is not the person whose name appears on the register or checklist;

(2) That he has been adjudicated insane or is confined to a state institution;

(3) That he has voted before that day;

(4) That he has been convicted of a felony and has not been pardoned.

History: En. Sec. 111, Ch. 368, L. 1969.

**Cross-References**

Challenges at nominating elections, sec. 94-1446.

**23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony.** (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before that day, the judges shall administer this oath: "You do swear (or affirm) that you have not before voted this day."

(3) If the challenge is on the ground that the person has been convicted of a felony, the judges shall administer the following oath: "You do swear (or affirm) that you have not been convicted of a felony."

History: En. Sec. 112, Ch. 368, L. 1969.

**23-3613. Challenges, how determined.** (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered, unless the conviction is proved by producing an authenticated copy of the record, or by oral testimony of two (2) witnesses.

(a) If a person convicted of a felony states he was pardoned, he must exhibit his pardon or certified copy to the election judges.

(b) If the pardon is found sufficient, the election judges shall administer this oath: "You do swear (or affirm) that you have not been convicted of any felony other than that for which a pardon is now exhibited."

(e) After taking the oath, the person must be allowed to vote if otherwise qualified, unless a conviction of some other felony is proved.

History: En. Sec. 113, Ch. 368, L. 1969.

**23-3614. If a person refuses to be sworn, vote to be rejected.** If a person challenged refuses to take the oath tendered, or refuses to be sworn



and to answer the questions touching the matter of residence, he shall not be allowed to vote.

History: En. Sec. 114, Ch. 368, L. 1969.

**23-3615. Trial of challenges.** Challenges for causes other than those specified in this chapter must be tried and determined by the election judges at the time of the challenge.

History: En. Sec. 115, Ch. 368, L. 1969.

**23-3616. Proceedings upon determination of challenges.** If the challenge is determined against the person offering to vote, the ballot shall, without examination, be destroyed by the election judges in the presence of the person offering the challenge. If determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 116, Ch. 368, L. 1969.

**23-3617. List of challenges to be kept.** The election judges shall require each election clerk to keep a list showing:

- (1) The names of all persons challenged;
- (2) The grounds of each challenge;
- (3) The determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969.

**23-3618. Poll watchers—announcement of voter's name.** The election judges shall permit one (1) poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with election procedures. At the time that each elector signs his name, one (1) of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote-counting procedures of the judges and all entries of the results of the elections.

History: En. Sec. 118, Ch. 368, L. 1969.

## CHAPTER 37

### ABSENTEE VOTING AND REGISTRATION

#### Section

- 23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
- 23-3702. Forms and rules for absentee voting in school district elections.
- 23-3703. Application of absentee or physically incapacitated person for ballot.
- 23-3704. Form of application—affidavit—manner.
- 23-3705. Transmission of application to county clerk—delivery of ballot.
- 23-3706. Mailing ballot to elector—affidavit—electors in the United States service.
- 23-3707. Marking and swearing to ballot by elector.
- 23-3708. Disposition of marked ballot upon receipt by registrar or clerk.
- 23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count.
- 23-3710. Registrar or clerk to keep record of ballots and issue certificate.
- 23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots.
- 23-3712. Voting before election day by prospective absentee or physically incapacitated elector.

- 23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.
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- 23-3717. False swearing perjury—official misconduct a misdemeanor.
- 23-3718. "Elector in the United States service" defined.
- 23-3719. Registration of absent electors in United States service.
- 23-3720. Oath for elector in United States service.
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- 23-3723. Registration card mailed upon application.

**23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.** A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in sections 23-3701 through 23-3723.

**History:** En. Sec. 119, Ch. 368, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### Constitutionality

Prior Absent Voters Law was valid enactment and did not violate section 2, article IX of the state constitution, which provides that an elector "shall have re-

sided in the state one year immediately preceding this election at which he offers to vote." *Goodell v. Judith Basin County*, 70 M 222, 227, 224 P 1110.

**23-3702. Forms and rules for absentee voting in school district elections.** The state superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for school district elections and may make necessary rules to carry out the purpose of this chapter as it pertains to school districts.

**History:** En. Sec. 120, Ch. 368, L. 1969.

**23-3703. Application of absentee or physically incapacitated person for ballot.** During a period beginning forty-five (45) days before the day of an election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot.

**History:** En. Sec. 121, Ch. 368, L. 1969.

**23-3704. Form of application — affidavit — manner.** (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application and swear to it before an officer authorized to administer oaths. The application is not complete without this affidavit.

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any



written request signed by the applicant, addressed to the registrar of the applicant's residence.

**History:** En. Sec. 122, Ch. 368, L. 1969.

**23-3705. Transmission of application to county clerk—delivery of ballot.**

(1) The elector shall forward the application by mail or deliver it in person to the registrar.

(2) The registrar shall compare the signature on the application with the applicant's signature on the registration card. If convinced the person making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

**History:** En. Sec. 123, Ch. 368, L. 1969.

**23-3706. Mailing ballot to elector—affidavit—electors in the United States service.** (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed affidavit in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter ( $\frac{1}{4}$ ) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter ( $\frac{1}{4}$ ) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red.

(4) The return address shall be self-addressed to the registrar or city clerk.

(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service.

**History:** En. Sec. 124, Ch. 368, L. 1969.

**Improper Delivery**

Absent voter's ballot delivered by county clerk not to electors personally or by mail, but to one engaged in procuring

electors to apply therefor and request that such ballots be delivered to such person, were void and could not be voted at ensuing election. State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 895.

**23-3707. Marking and swearing to ballot by elector.** (1) The elector shall complete the affidavit before an officer authorized by law at the place of execution to administer oaths.

(2) The elector shall mark each ballot in the presence of the officer only, in a manner so the officer cannot see the vote.

(3) The ballot shall be folded by the elector to conceal the vote in the presence of the officer and the elector shall, in the officer's presence, place it in the envelope and seal it.

(4) The officer shall sign at the end of the certificate and affidavit.

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district.

History: En. Sec. 125, Ch. 368, L. 1969.

**23-3708. Disposition of marked ballot upon receipt by registrar or clerk.**

(1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application and seal it.

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him.

History: En. Sec. 126, Ch. 368, L. 1969.

**23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count.** (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the registrar or clerk shall deliver the larger envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges, the registrar or clerk shall immediately deliver the larger envelopes by mail postage prepaid to the judges.

(3) If absentee ballots are received by the registrar or clerk for which application was not received prior to 12 noon on the day preceding an election, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected." Absentee ballots so endorsed shall be delivered to the election judges of the precinct and shall be rejected.

(4) If an elector votes absentee ballot and dies between the time of balloting and election day, his ballot will not count.

History: En. Sec. 127, Ch. 368, L. 1969.

**23-3710. Registrar or clerk to keep record of ballots and issue certificate.** (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number one (1) and following consecutively, according to the number of applications for absentee ballots.

(2) The registrar, city clerk, or school district clerk shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The registrar, city clerk, or school district clerk shall deliver to the election judges to whom the ballots are delivered a certificate stating the number of absentee ballots delivered as well as those marked before him, and the names of the voters to whom such ballots are delivered, or by whom they have been marked if marked before him.

History: En. Sec. 128, Ch. 368, L. 1969.

**23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots.** (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the



number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the names of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot.

(3) Any absentee ballots which have been rejected shall be placed with the voter's application and the absent or physically incapacitated voter's envelope furnished by the registrar or city clerk.

(a) This envelope shall be sealed and endorsed by the words, "rejected absentee ballots," numbered ....., and shall put on it the number of the absentee ballots given according to the registrar's or city clerk's certificates.

(b) There shall be a separate enclosing envelope for the absentee ballots rejected, and the envelopes shall be placed in an envelope together with other ballots, and shall not be opened without a court order.

**History:** En. Sec. 129, Ch. 368, L. 1969.

**23-3712. Voting before election day by prospective absentee or physically incapacitated elector.** (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk, or school district clerk, or some officer authorized to administer oaths and having the official seal.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk, or school district clerk, he shall deal with it in the same manner as if it had come by mail.

**History:** En. Sec. 130, Ch. 368, L. 1969.

**23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.** (1) While the polls are open on election day, the election judges shall first open the outer envelope only, and compare the signature of the voter on the application and on the affidavit.

(2) If the election judges find that the signatures correspond, that the affidavit is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding it or permitting it to be examined, ascertain whether the stub is still attached and whether the number corresponds to the number in the certificate of the registrar or city clerk.

(3) If so, they shall endorse it the same way that other ballots are endorsed, detach the stub, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affidavit is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector."

(5) The absentee ballot envelope, when it has been voted or rejected, shall be deposited in the ballot box containing the general or party ballots, and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached, or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for .....,," filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are) ....."

(8) The election judges shall designate the rejected ballot as "general ballot," if it is a ballot for candidates that are rejected.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. .... in the certificate on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots.

**History:** En. Sec. 131, Ch. 368, L. 1969.

#### **Voting Accomplished**

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and de-

posited in the ballot box before the closing of the polls on election day, and this is equally true for absent voters. *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

**23-3714. Elector whose absentee ballot has been rejected as defective may vote in person.** If the envelope containing the absentee ballot has been marked "rejected as defective" and deposited in the ballot box, the elector appearing has the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are used, he shall vote by machine as other voters.

**History:** En. Sec. 132, Ch. 368, L. 1969.

**23-3715. Opening of envelopes after deposit.** If an envelope containing an absentee ballot has been deposited unopened in the ballot box, the envelope shall be opened without a court order and the ballot cast.

**History:** En. Sec. 133, Ch. 368, L. 1969.

**23-3716. Voting machines—canvass of votes.** (1) In precincts where voting machines are used, the registrar, city clerk, or clerk of a school district shall print and provide ballots in official form for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes required for precincts in which printed ballots are used.



(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

(3) In making the official canvass, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

**History:** En. Sec. 134, Ch. 368, L. 1969.

**23-3717. False swearing perjury—official misconduct a misdemeanor.**

(1) If a person willfully swears falsely to any affidavit he is guilty of perjury.

(2) If the registrar, clerk, or any election officer:

(a) Refuses or neglects to perform any duties prescribed by this act,

(b) Makes false statements in his certificate regarding affidavits,

(c) Looks at any marks made by the voter upon the ballot,

(d) Allows any person other than the voter to be present at the marking of such ballot,

(e) Sees any marks made by the voter on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned in the county jail for not more than six (6) months, or both.

**History:** En. Sec. 135, Ch. 368, L. 1969.

**23-3718. "Elector in the United States service" defined.** "Elector in the United States service" means:

(1) A member of the armed forces in the active service, and his spouse and dependents;

(2) A civilian employee of the United States in all categories serving outside the territorial limits of the several states of the United States or in the District of Columbia and his spouse and dependents when residing or accompanying him;

(3) A member of a religious group or welfare agency assisting members of the armed forces of the United States who are officially attached to and serving the armed forces, and his spouse and dependents.

**History:** En. Sec. 136, Ch. 368, L. 1969.

**23-3719. Registration of absent electors in United States service.** (1)

An elector in United States service who is absent from the state is entitled to register by mailing to the registrar a federal post card application filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

**History:** En. Sec. 137, Ch. 368, L. 1969.

**23-3720. Oath for elector in United States service.** (1) Any oath required for electors in the United States service to register, request a ballot, or vote, may be administered and attested, within or without the United States, by any commissioned officer in active service, or any civilian official empowered by state or federal law to administer oaths.

(2) No official seal is required to be affixed to the oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969.

**23-3721. Classification of federal post card application.** (1) Upon receipt by the registrar of a federal post card application properly filled out and signed under oath, the registrar shall classify the application according to the precinct in which the elector resides and arrange the cards in each precinct in alphabetical order.

(2) The registrar shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by the elector.

(3) If an elector in the United States service has not already requested an absentee ballot, the registrar shall, immediately upon entry in the official registry of the name of the elector send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk.

History: En. Sec. 139, Ch. 368, L. 1969.

**23-3722. Method of registration of voter absent from county.** (1) An elector who is unable to make personal application for registration by reason of being absent from the county, may register to vote prior to the close of registration before any election, by appearing, executing and verifying under oath, before a notary public or other officer empowered to administer oaths, at any place within the United States, a registration card as provided in sections 23-3701 through 23-3723.

(2) He must return the card in sufficient time to reach the registrar before the close of registration.

(3) The elector's name may not be entered in the official register until at least two (2) registered electors of the county in which the elector desiring to be registered has his place of residence as stated in his application for registration, appear before the registrar and make affidavits in writing, stating that they are personally acquainted with the applicant, are familiar with and know his signature, and have seen him write and that the signature subscribed to the application or [for] registration is the signature of the elector.

History: En. Sec. 140, Ch. 368, L. 1969.

**23-3723. Registration card mailed upon application.** (1) The registrar of the county of the elector's legal residence shall furnish to any elector applying, whether application be made by mail, telegram or telephone, a registration card.

(2) The card shall be sent postage prepaid by the registrar to the address furnished by the elector at the time of making his application.

History: En. Sec. 141, Ch. 368, L. 1969.



## CHAPTER 38

## VOTING MACHINES

Section	
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**23-3801. Voting machines—secretary of state.** (1) Before any voting machine can be used, the secretary of state shall:

(a) Examine the machine to determine if it complies with the requirements of sections 23-3801 through 23-3822.

(b) Within thirty (30) days after examining a machine, file a report in his office on each machine examined;

(c) Within five (5) days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state sixty (60) days or more prior to the election.

(3) The secretary of state may employ qualified mechanics who are electors to assist him in duties required by this chapter and compensate them.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund.

**History:** En. Sec. 142, Ch. 368, L. 1969.

## DECISIONS UNDER FORMER LAW

**Constitutionality**

Prior voting machine law was not invalid as in contravention of section 1, article IX of the constitution of Montana which provided that all elections shall be "by ballot"; the term "ballot" be-

ing employed not to designate a piece of paper, but a method to ensure, so far as possible, the secrecy and integrity of the popular vote. State ex rel. Fenner v. Keating, 53 M 371, 377, 163 P 1156.

**23-3802. Specifications of machines required.** (1) A machine or machine system may not be approved unless:

- (a) An elector can vote in seerecy as he is entitled to vote by law;
- (b) An elector is prevented from voting for any candidate or upon any question more than once and is also prevented from voting for any person or on any proposition, if he is not entitled to vote;
- (c) An elector can vote a split ticket if he desires;
- (d) Every vote cast is registered and recorded.

(2) The candidates for president and vice-president shall appear on the machine ballot. Presidential electors shall not appear on the machine.

(3) The machine or machine system must be constructed so that it cannot be tampered with for a fraudulent purpose and must also be constructed so that during the progress of the voting no person can see or know the number of votes registered for any candidate or on any proposition.

**History:** En. Sec. 143, Ch. 368, L. 1969.

**Tampering with Machine**

Act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to

cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 M 371, 381, 163 P 1156.

**23-3803. Providing voting machines — payment.** (1) Commissioners and councils may provide approved voting machines as practicable.

(2) Not later than September 10, prior to a general election, the commissioners or council of a city may unite two (2) or more precincts to use a voting machine. Notice of the consolidation shall be given as provided by law for the change of election districts.

(3) Funds for voting machines may be provided by interest-bearing bonds, certificates of indebtedness, or other obligations. The term of the bonds, certificates, or other obligations may not exceed ten (10) years and they shall not be issued or sold at less than par.

**History:** En. Sec. 144, Ch. 368, L. 1969.

**23-3804. Preparation of machines for use.** (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

- (a) Set, adjust, and put the machines in order;
- (b) Deliver the machines to the precincts together with necessary furniture and appliances;
- (c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least one (1) row shall separate the rows assigned to the two (2) major political parties. This row shall be used for the nonpartisan judicial ballot.



(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the two (2) major parties shall be rotated between the first two (2) horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first two (2) horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged.

**History:** En. Sec. 145, Ch. 368, L. 1969.

**23-3805. Write-in ballots.** (1) If a voting machine allows registry or recording of votes for candidates whose names are not on the official ballot, these ballots are write-in ballots.

(2) A person whose name appears on a ballot shall not receive votes for the same office on a device for casting a write-in ballot.

**History:** En. Sec. 146, Ch. 368, L. 1969.

**23-3806. Placement of machines—time voter to remain in booth—election board make-up.** (1) The exterior of the voting machines and every part of the polling place shall be in plain view of the election judges.

(a) The machines shall be placed so that other persons on the premises cannot see how the voter casts his vote.

(b) The election judges shall not permit any person to remain in any position that would permit him or them to see how the voter votes or has voted.

(c) A voter shall not remain within the voting machine booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

(2) The election board of a precinct in which a voting machine is used consists of three (3) election judges and any special board of election judges appointed to count absentee ballots. If more than one (1) machine is used, one (1) additional election judge shall be appointed for each additional machine.

**History:** En. Sec. 147, Ch. 368, L. 1969.

**23-3807. Registrar to instruct election judges.** (1) Before each election, the registrar shall instruct all election judges in the use of the machine and their duties. He shall give to each election judge that has re-

ceived instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge shall not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the custodian. However, this shall not prevent an emergency appointment of an election judge.

**History:** En. Sec. 148, Ch. 368, L. 1969.

**23-3808. Publication of information concerning machines.** Not more than ten (10) nor less than three (3) days before an election at which voting machines are used, the registrar or city clerk shall publish in a newspaper of general circulation in the county:

(1) A diagram showing the voting machine with official ballot labels;

(2) A statement of the locations where voting machines are on public exhibition;

(3) Illustrated instructions on how to vote.

**History:** En. Sec. 149, Ch. 368, L. 1969.

**23-3809. Voting machine to be exhibited.** A voting machine shall be on exhibition in the office of the registrar or city clerk where voting machines are used. The registrar or city clerk shall demonstrate the voting machine to any inquiring voter.

**History:** En. Sec. 150, Ch. 368, L. 1969.

**23-3810. Furnishing samples and supplies.** (1) Not later than forty (40) days before an election, the secretary of state shall prepare samples of the printed matter and supplies named in this section and furnish one of each to the election officials where machines are used. The samples shall meet the requirements of the election and the construction of the machine used.

(2) The registrar or city clerk shall provide supplies for each machine including:

(a) Written instructions for the election judges on testing and preparing the machines;

(b) A certificate for the election judges to certify that they have tested and prepared the machine;

(c) A certificate for the person preparing the machine to certify that the machine has been examined and is properly prepared for the election;

(d) A certificate for party representatives to verify that they have witnessed the testing and preparation of the machines;

(e) A certificate for the deliverer of the machine to certify that he has delivered the machines to the polling places in good order;



(f) A card stating the penalty for tampering with or injuring a voting machine;

(g) Two (2) seals for sealing the voting machine;

(h) One (1) envelope with a detachable delivery receipt in which the keys to the voting machine can be sealed and delivered to the election officials having printed on it the designation and location of the election district, the number of the machine, the number on the protective counter after the machine has been prepared for the election, and the number of the seal;

(i) One (1) envelope in which keys to the voting machine can be returned after the election;

(j) Two (2) statements of canvass for election officers to report the canvass of votes and other necessary information relating to the election;

(k) Three (3) complete sets of ballot labels in a form prescribed by the secretary of state and two (2) diagrams of the face of the machine with the ballot labels on the machine, each having proper voter instructions;

(l) Six (6) instructions to election judges and six (6) notices of the instruction meeting;

(m) Six (6) certificates that election judges have attended the instruction meeting, received instruction, and are qualified to conduct the machine election.

History: En. Sec. 151, Ch. 368, L. 1969.

**23-3811. Registry lists—provision for number of each ballot.** If voting machines are used, the registry lists shall contain a column to enter the number of each ballot as indicated by the number on the machine counter. Books or blanks for making poll lists shall not be provided.

History: En. Sec. 152, Ch. 368, L. 1969.

**23-3812. Assistance to illiterate, blind or physically disabled voters.** [(1)] A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in section 23-3609.

(2) A person who deceives an elector voting under this section shall be punished as provided in section 94-1407, R. C. M. 1947.

History: En. Sec. 153, Ch. 368, L. 1969.      **Compiler's Notes**

The compiler has inserted the bracketed subsection designation "(1)."

**23-3813. Counting the votes.** When the polls close, the election judges shall immediately lock the machine or remove the recording device and open the registering or recording compartments in the presence of any person desiring to attend. They shall ascertain the number of votes cast for each candidate, canvass, record, announce, and return the votes as provided by law.

History: En. Sec. 154, Ch. 368, L. 1969.

**23-3814. Procedure after count is ascertained.** (1) After the count is ascertained, the election judges shall place the machine in full view of

the public for one (1) hour so that any person may view the number of votes cast.

(2) Immediately after the hour has passed, the election judges shall seal and lock the machine. Unless used in a city primary election or ordered opened earlier by a court or the county recount board, the machine shall remain sealed and locked for twenty (20) days.

(3) If a machine has been used in a city primary election, it shall remain locked and sealed for at least five (5) days, unless opened by court order.

History: En. Sec. 155, Ch. 368, L. 1969.

**23-3815. Disposition of write-in ballots and tally sheets.** (1) The election judges shall return write-in ballots in a sealed package endorsed "write-in ballots." The election judges shall indicate the precinct and county and file the package with the registrar or city clerk. Each package shall be preserved for six (6) months after the election and may be opened only upon order of a court or the county recount board. At the end of six (6) months, the package shall be destroyed by the registrar or city clerk unless a court orders otherwise.

(2) Tally sheets taken from the machine, if any, shall be returned in the same manner.

History: En. Sec. 156, Ch. 368, L. 1969.

**23-3816. Return sheets—contents.** Officers who furnish tally sheets shall also furnish return blanks and certificates to the election officers. The return sheets shall:

(1) Have each candidate's name designated by the same reference character that the name bears on the ballot labels and counters and allow for writing in a vote for the candidate in figures, words, or both;

(2) Provide for the return of the vote on questions;

(3) Have a blank for indicating the precinct, ward, number and make of machine used, and other necessary information;

(4) Have a certificate to be executed before the polls open by the election judges stating that all counters except the protective counter, if any, and except as otherwise noted, stood at "000" at the beginning of the election, that all counters were examined before the election, that ballot labels were correctly placed on the machine and corresponded to the sample ballot, and other statements as the particular machine may require;

(5) Have a second certificate stating the manner of closing the polls and verifying the returns; that the returns are correct; giving the indication of the public counter, poll list, and protective counter, if any. The certificate shall specify the procedure of canvassing the vote and locking the machine and shall be signed by the election officials. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 157, Ch. 368, L. 1969.

**23-3817. Experimental use of machines.** Officials authorized to adopt voting machines, may provide for the experimental use at an election of



a machine, approved by the secretary of state, in one (1) or more precincts without a formal adoption or purchase of the machine. The use at an election is valid for all purposes as if the machine had been formally adopted.

History: En. Sec. 158, Ch. 368, L. 1969.

**23-3818. Machine breakdowns—electors may vote by paper ballot upon request.** (1) If a machine becomes unworkable or unfit for use, voting shall proceed on another available machine or as in cases where machines are not used. The registrar shall furnish each voting place with a supply of ballots and other supplies to be used in case of emergency.

(2) Where voting machines are used, an elector may request to vote by paper ballot instead of using the voting machines. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969.

**23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout.** In precincts where voting machines are used and the machines do not allow proper lockout, separate paper ballots shall be issued for money issues which do not involve the question of incurring of a state indebtedness, issuance of state bonds or debentures other than for refunding, or the levy of a tax for state purposes.

History: En. Sec. 160, Ch. 368, L. 1969.

**23-3820. Penalty for tampering with or injuring machines.** Any person who tampers, disarranges, defaces, injures, or impairs a voting machine in any way, or who mutilates, injures, or destroys any ballot or any appliance used in connection with a voting machine shall be imprisoned in the state prison for a period of not more than ten (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 161, Ch. 368, L. 1969.

**23-3821. Penalty for fraudulent returns or certificates.** A person who purposely causes the vote on a machine to be incorrectly taken down as to the candidate or proposition voted on; who knowingly causes a false statement, certificate, or return of any kind to be signed or who knowingly consents to such things being done, shall be imprisoned in the state prison not more than (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 162, Ch. 368, L. 1969.

**23-3822. Applicability of election laws in general where not in conflict with this chapter.** All laws applicable to elections where voting is not done by machine, and all penalties prescribed for violations of those laws, apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of sections 23-3801 through 23-3821.

History: En. Sec. 163, Ch. 368, L. 1969.

## CHAPTER 39

## ELECTRONIC VOTING SYSTEMS

## Section

23-3901. Purpose of act.

23-3902. Definitions.

23-3903. Use of electronic voting systems—paper ballots may be used upon request.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.

23-3905. Procedure upon closing polls.

23-3906. Rules and regulations—specifications for devices and equipment.

23-3907. Applicability of election laws in general where not in conflict with this chapter.

**23-3901. Purpose of act.** The purpose of sections 23-3902 through 23-3907 is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

**History:** En. Sec. 164, Ch. 368, L. 1969.

**23-3902. Definitions.** As used in sections 23-3903 through 23-3907, unless otherwise specified:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(2) "Ballot card" means a ballot which is voted by the process of punching.

(3) "Ballot labels" means the cards, paper, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(4) "Ballot" may include ballot cards, ballot labels and paper ballots.

(5) "Counting location" means a location selected by the registrar or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(6) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(7) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

**History:** En. Sec. 165, Ch. 368, L. 1969.

**23-3903. Use of electronic voting systems—paper ballots may be used upon request.** (1) Electronic voting systems may be used in elections, after approval as provided by law, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be



set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(2) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(3) So far as applicable, the procedure provided for voting paper ballots shall apply.

(4) The governing body of any county or city may, after approval as provided by law, adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

(5) In precincts where an electronic voting system is used, an elector may request a paper ballot to cast his vote and the election judges shall supply the elector with the paper ballot when so requested. These ballots will be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 166, Ch. 368, L. 1969.

**23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.** (1) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems and the booths shall be arranged in the same manner as provided for use with paper ballots.

(2) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(3) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any

voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(4) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(5) The registrar or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(6) Within five (5) days prior to the election day, the registrar or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city, or town using such equipment if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 167, Ch. 368, L. 1969.

**23-3905. Procedure upon closing polls.** (1) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The inspectors or other appropriate



precinct election officials shall compare the write-in votes with the votes cast on the ballot card and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and it shall be returned to the counting location in an envelope marked "defective ballots" and such invalid votes shall not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered forthwith by the election judges to the counting location or other designated place, together with the unused, void and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot, ballot container or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

**History:** En. Sec. 168, Ch. 368, L. 1969.

**23-3906. Rules and regulations—specifications for devices and equipment.** (a) The secretary of state, state auditor and president of the Montana county clerk and recorders association shall constitute a board of election devices, which shall promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one (1) party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one (1) punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

(5) No electronic voting system presently in use by any county, city or town in Montana shall be disapproved for use in such county, city or town by the board, except upon application by the governing body of said county, city or town.

History: En. Sec. 169, Ch. 368, L. 1969.

**23-3907. Applicability of election laws in general where not in conflict with this chapter.** All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of sections 23-3901 through 23-3906.

History: En. Sec. 170, Ch. 368, L. 1969.

## CHAPTER 40

### CANVASS OF VOTES—RETURNS AND CERTIFICATES

#### Section

- 23-4001. Votes to be publicly canvassed upon closing of polls.
- 23-4002. Method of canvass.
- 23-4003. Counting ballots—pollbooks.
- 23-4004. Marking rejected ballots.
- 23-4005. Signing and certifying pollbooks.
- 23-4006. Items to be sent to registrar by election judges—manner of sending.
- 23-4007. Disposition of items by registrar.
- 23-4008. Disposition of items in event of contest.
- 23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board.
- 23-4010. Canvassing returns, time of—messenger—certification that polls were not open.
- 23-4011. Canvass to be public—nonessentials to be disregarded in counting returns.
- 23-4012. Statement of the result to be entered of record.
- 23-4013. Declaration of persons elected—certifying tie.
- 23-4014. Certificates issued by the clerk.
- 23-4015. State returns, how made and transmitted.
- 23-4016. State canvassers, composition and meeting of board.
- 23-4017. Messenger may be sent for returns.
- 23-4018. Governor to issue commissions.
- 23-4019. Defect in form of returns to be disregarded.

**23-4001. Votes to be publicly canvassed upon closing polls.** When the polls are closed, the election judges shall immediately canvass the votes. The canvass shall be public and continue without adjournment until completed and the result is publicly declared.

History: En. Sec. 171, Ch. 368, L. 1969.

**23-4002. Method of canvass.** (1) The canvass shall begin by a comparison of the pollbooks and the correction of any mistakes until they agree.

(2) The election judges shall take ballots unopened out of the box to determine whether each ballot is single.

(3) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbooks.



(4) A ballot which is not endorsed by the official stamp is void and shall not be counted. A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(5) If two (2) or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks and if a majority believe that the ballots folded together were voted by one (1) elector, they must be rejected; otherwise they must be counted.

(6) If the ballots exceed the number of names on the pollbooks they shall be placed in the box, and one (1) of the election judges shall publicly draw from the box and destroy unopened ballots equal to the excess. The election judges shall record in the pollbooks the number of ballots destroyed.

**History:** En. Sec. 172, Ch. 368, L. 1969.

#### **Determining Elector's Intention**

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under prior section, and should not have been counted in an election contest. *Carwile v. Jones*, 38 M 590, 598, 101 P 153.

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. *Peterson v. Billings*, 109 M 390, 392, 96 P 2d 922.

Under prior section, and the rule that election laws must be liberally construed,

a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and one showing the intersection of the cross squarely on the line of the square was properly so counted for him. *Peterson v. Billings*, 109 M 390, 393, 96 P 2d 922.

#### **Official Stamp on Ballot Stub**

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. *Harrington v. Crichton*, 53 M 388, 396, 164 P 537.

#### **School Elections**

The validity of contested school elections is determined by the laws of general elections, including canvassing statute. *Woolsey v. Carney*, 141 M 476, 378 P 2d 658.

**23-4003. Counting ballots—pollbooks.** (1) When the ballots and poll lists agree, the election judges shall count and determine the votes cast for each person.

(2) In counting, the ballots shall be opened singly by one (1) of the election judges and the contents read aloud to the other judges.

(3) As the ballots are read, each clerk must write on a tally sheet the name of every person voted for and the office, and keep tallies of the number of votes for each person.

(4) The tally sheets shall be compared and their correctness ascertained, and the clerks, under the supervision of the election judges, shall immediately write in the pollbooks:

- (a) The names of all persons who received votes;
- (b) The offices for which they received votes;
- (c) Total votes received by each person as shown by the tally sheets.
- (5) A ballot or vote rejected by the election judges shall not be included in the count.

History: En. Sec. 173, Ch. 368, L. 1969.

**23-4004. Marking rejected ballots.** A ballot rejected for illegality shall be marked by the election judges, by writing across the face "Rejected on the ground of ....., " filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969.

**23-4005. Signing and certifying pollbooks.** Immediately after the votes are counted and the ballots sealed up, the pollbooks shall be signed and certified to by the election judges and clerks in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969.

**23-4006. Items to be sent to registrar by election judges—manner of sending.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely sealed and directed to the registrar:

- (a) The precinct registers,
- (b) The lists of persons challenged,
- (c) Both of the pollbooks,
- (d) Both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all ballots voted including those not counted or allowed, and all detached stubs from ballots voted. This envelope shall be endorsed on the outside "ballots voted."

(4) Each election judge shall write his name across the seal of each of the envelopes or packages. The ballot box shall be returned to the registrar.

(5) The envelopes or packages required by this section shall be delivered to one (1) of the election judges chosen by lot, unless otherwise agreed upon, before they adjourn. The judge shall deliver them to the registrar in person or by registered mail no later than 10 a. m. on the day following the election.

History: En. Sec. 176, Ch. 368, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### One Copy To Be Returned

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and

one copy of the pollbook. State ex rel. Lynch v. Batani, 103 M 353, 361, 62 P 2d 565.



**23-4007. Disposition of items by registrar.** (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest begun in a court or no recount, he shall burn the envelopes without opening them or examining their contents.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners.

**History:** En. Sec. 177, Ch. 368, L. 1969.

**23-4008. Disposition of items in event of contest.** If there is a contest within twelve (12) months, the registrar shall keep the envelopes or packages unopened until the contest is finally determined and then destroy them. If the court has custody of the envelopes or packages as evidence, they are in the custody of the court and the registrar shall not destroy them.

**History:** En. Sec. 178, Ch. 368, L. 1969.

**23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board.** (1) The commissioners are ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the commissioners within three (3) days after each election, at 8 a. m. to canvass the returns.

(2) If one (1) or more of the commissioners cannot attend the meeting, his place shall be filled by one (1) or more county officers in this order: treasurer, assessor, sheriff, so that the board of county canvassers membership equals membership on the board of commissioners.

(3) The registrar is clerk of the board of county canvassers.

**History:** En. Sec. 179, Ch. 368, L. 1969.

#### **Change in Membership of Board**

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the

particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 29, 31 P 879.

**23-4010. Canvassing returns, time of — messenger — certification that polls were not open.** (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received or until there have been seven (7) postponements.

(3) If the returns from an election precinct have not been received by the registrar within seven (7) days after an election, he shall immediately send a messenger to the election judges. The messenger must obtain the returns from the judges and return them to the registrar.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the registrar. The registrar shall enter the certification in the minutes and in the statement required by section 23-4012.

**History:** En. Sec. 180, Ch. 368, L. 1969.

**23-4011. Canvass to be public—nonessentials to be disregarded in counting returns.** (1) The canvass shall be public. It shall proceed by opening the returns and determining the vote for each person and each proposition from each precinct and a declaration of the results.

(2) The returns shall not be rejected if they do not show who administered the oath to the election judges or clerks, failure to complete all the certificates in the pollbooks, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

**History:** En. Sec. 181, Ch. 368, L. 1969.

#### **Rejection of Returns**

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person upon the ground that the nomination was invalid. *Pigott v. Board of Canvassers of Cascade County*, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 30, 31 P 879. See also *State ex rel. Breen v. Toole*, 32 M 4, 10, 79 P 403; *Poe v. Sheridan County*, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

Returns in the pollbook being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

It is the duty of the board of canvassers to procure the check lists and surrendered lists before rejecting the vote of a precinct as returned by the pollbooks alone. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

**23-4012. Statement of the result to be entered of record.** As soon as the results are declared, the clerk of the board shall enter on the records:

- (1) Votes cast in the county;
- (2) Names of the persons voted for and the propositions voted upon;
- (3) Office for which each person was voted for;
- (4) Votes by precinct for each person and for and against each proposition;



(5) Votes by county for each person, and for and against each proposition.

History: En. Sec. 182, Ch. 368, L. 1969.

**23-4013. Declaration of persons elected — certifying tie.** (1) The board shall declare elected the persons having the highest number of votes given for each office to be filled in a single county or subdivision of a county.

(2) If a recount shows that two (2) or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor.

History: En. Sec. 183, Ch. 368, L. 1969.

**Deceased Candidate Receives Majority**

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candi-

date whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

**23-4014. Certificates issued by the clerk.** (1) The clerk shall immediately deliver to each person elected a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within thirty (30) days after notice of election or appointment and that failure to file the bond vacates the office.

(3) This certificate shall not be issued to persons elected district judge.

History: En. Sec. 184, Ch. 368, L. 1969.

**Cross-Reference**

County clerk to issue certificate of election, sec. 16-1157.

**23-4015. State returns, how made and transmitted.** (1) After a general or special election, the clerk shall make an abstract of the vote for members of the legislative assembly, for officers elected in the state at large, and for judicial officers other than justices of the peace.

(2) The clerk shall seal the abstract, endorse it "Election Returns," and immediately send it to the secretary of state by registered mail.

History: En. Sec. 185, Ch. 368, L. 1969.

**23-4016. State canvassers, composition and meeting of board.** Within twenty (20) days after the election, or sooner if the returns are all received, the state auditor, state treasurer, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state, who is secretary of the board, shall make out and file in his office a statement of the canvass and transmit a copy to the governor.

History: En. Sec. 186, Ch. 368, L. 1969.

**23-4017. Messenger may be sent for returns.** If the returns from all counties have not been received five (5) days before the meeting of the board of state canvassers, the secretary of state shall immediately send a messenger to the registrar of each delinquent county. The registrar shall furnish the messenger with a certified copy of the statement required by section 23-4012.

**History:** En. Sec. 187, Ch. 368, L. 1969.

**23-4018. Governor to issue commissions.** Upon receipt of the statement required by section 23-4016, the governor shall issue commissions to the persons elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

**History:** En. Sec. 188, Ch. 386, L. 1969.

**23-4019. Defect in form of returns to be disregarded.** No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

**History:** En. Sec. 189, Ch. 368, L. 1969.

## CHAPTER 41

### RECOUNTS

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**23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court.** (1) Within five (5) days after the canvass of election returns, an unsuccessful candidate for any public office at a general, special, or city election may apply to the district court of the county where the election was held for an order directing the canvassing body to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within five (5) days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant were not correctly counted, he shall order the board of county canvassers to assemble within five (5) days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

**History:** En. Sec. 190, Ch. 368, L. 1969.

#### **Cross-References**

Application of Montana Rules of Civil Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

Salaries withheld pending contests, secs. 59-508, 59-509.

#### **Application Timely**

Where the board was compelled by writ of mandate to reconvene by the supreme court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. *State ex rel. Riley v. District Court*, 103 M 576, 586, 64 P 2d 115.

#### **Candidate for District Judge**

Any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. *State ex rel. Riley v. District Court*, 103 M 576, 580, 64 P 2d 115.

#### **Candidates for Legislature**

Recount statutes apply to candidates for the state senate and house of representatives. *State ex rel. Ainsworth v. District Court*, 107 M 370, 372, 86 P 2d 5.

Courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by recount statutes, the election certificate does not ensure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. *State ex rel. Ainsworth v. District Court*, 107 M 370, 376, 86 P 2d 5.

#### **Function and Jurisdiction of Court**

District court committed error in dismissing the application for a recount on the ground that applicant, convicted of a felony in federal court, lost his citizenship. *State ex rel. Stone v. District Court*, 103 M 515, 519, 63 P 2d 147.

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. *State ex rel. Riley v. District Court*, 103 M 576, 587, 64 P 2d 115. (But see *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403, below.)

A recount of ballots is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." *State ex rel. Peterson v. District Court*, 107 M 482, 486, 86 P 2d 403.

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly by directions or suggestions to district courts. (If *State ex rel. Riley v. District Court*, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403.

The law relating to proceedings for election recounts specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. *State ex rel. Peterson v. District Court*, 107 M 482, 485, 86 P 2d 403.

#### Grounds Sufficient

Where application for writ of supervisory control set forth that the votes were not correctly counted, such ground was sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. *State ex rel. Thomas v. District Court*, 116 M 510, 511, 154 P 2d 980.

#### Purpose of Act

The sole purpose of the recount statutes is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not ensure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of section 9, article V of the constitution. *State ex rel. Ains-*

worth v. District Court, 107 M 370, 372, 86 P 2d 5.

#### Recount Proceeding Not Election Contest

A proceeding to obtain a recount of votes is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either or both remedies are available. *State ex rel. Peterson v. District Court*, 107 M 482, 484, 86 P 2d 403.

#### Successive Recounts

Where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. *State ex rel. Peterson v. District Court*, 107 M 482, 485, 86 P 2d 403.

#### Wrongful Canvass

Recount statutes do not afford a legal remedy for an alleged wrongful canvass by a county canvassing board, and therefore does not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. *State ex rel. Lynch v. Batani*, 103 M 353, 358, 62 P 2d 565.

### DECISIONS UNDER FORMER LAW

#### Constitutionality

Former chapter on recounts was held constitutional as to sufficiency of title as

to due process of law. *State ex rel. Riley v. District Court*, 103 M 576, 584, 586, 64 P 2d 115.

**23-4102. Recount limited to precincts and offices specified in order.** The board of canvassers shall recount votes only in those precincts and for those offices specified in the court order.

History: En. Sec. 191, Ch. 368, L. 1969.

**23-4103. Conditions under which recount to be made.** A recount shall be made under any of the following conditions.

(1) If a candidate other than for the office of district judge is defeated by a margin not exceeding one-fourth of one per cent ( $\frac{1}{4}$  of 1%) of the total votes cast or by a margin not exceeding ten (10) votes, whichever is greater, he may within five (5) days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate is defeated for the office of district judge or an office voted on in more than one (1) county by a margin not exceeding



one-fourth of one per cent ( $\frac{1}{4}$  of 1%) of the total votes cast for all candidates for the same position, he may within five (5) days after the official canvass file a petition with the secretary of state as set forth in subsection (1) of this section. The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by registered mail and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding one-fourth of one per cent ( $\frac{1}{4}$  of 1%) of the total votes cast for and against the question, a petition as set forth in subsection (1) of this section may be filed with the secretary of state. This petition shall:

(a) Be signed by not less than one hundred (100) electors of the state representing at least five (5) counties of the state and be filed within five (5) days after the official canvass;

(b) The secretary of state shall immediately notify each registrar by registered mail of the filing of the petition and a recount shall be conducted in all precincts in each county.

(4) If there is a tie vote, the board making the canvass shall certify the vote to the registrar if the election took place only in one (1) county and to the secretary of state for other elections. The registrar or secretary of state shall proceed as if a petition for recount had been filed under this act. If a tie exists after the recount, the tie shall be resolved as provided by law.

**History:** En. Sec. 192, Ch. 368, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### **Clerk of District Court**

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized to fill by appointment. *State ex rel. Jones v. Foster*, 39 M 583, 592, 104 P 860. See also *State ex rel. Paterson v. Lentz*, 50 M 322, 336, 146 P 932.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial

officers, whose terms end at the expiration of a definitely fixed period, the words "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. *State ex rel. Jones v. Foster*, 39 M 583, 586, 104 P 860.

##### **County School Superintendent**

Former chapter governing proceedings on tie vote did not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it related to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it was invalid. *State ex rel. Chenoweth v. Acton*, 31 M 37, 40, 77 P 299. See *State ex rel. Jones v. Foster*, 39 M 583, 591, 104 P 860.

**23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from.** If it appears from a verified application that the election judges or clerks failed to comply with the provision of

section 23-4003, that is sufficient cause for believing that the election judges and clerks did not correctly ascertain the number of votes cast for the applicant.

**History:** En. Sec. 193, Ch. 368, L. 1969.

**23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time.** (1) If the judge of the district court of the county in which the election is held is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time, but shall retain jurisdiction until the cause is finally determined and the final count is made by the board of county canvassers.

**History:** En. Sec. 194, Ch. 368, L. 1969.

**Jurisdiction Retained**

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and re-

canvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e., until the court is advised thereof. *State ex rel. Riley v. District Court*, 103 M 576, 587, 588, 64 P 2d 115.

**23-4106. Limitation of recount to certain precincts.** (1) If the application asks for a recount in more than one (1) precinct, but there are not sufficient grounds for a recount in all precincts, the court shall order a recount only in the precincts for which sufficient grounds are stated and shown.

**History:** En. Sec. 195, Ch. 368, L. 1969.

**Compiler's Notes**

As enacted, this section contained no subsection (2).

**23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials.** (1) The court in its order shall determine the probable expense of making the recount and the applicant or applicants asking for the recount shall deposit with the board the amount determined in cash.

(2) If the recount shows that the applicant or applicants have been elected to the office, the deposit of each applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost the difference shall be refunded to the applicant.

(4) Members of the canvassing board and their clerks shall be compensated for their time spent in canvassing.

**History:** En. Sec. 196, Ch. 368, L. 1969.

**23-4108. Procedure when more than one application for recount made.** If more than one (1) candidate makes application for a recount, the court may consider the applications together. The court may make separate or



joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969.

**23-4109. Manner of recounting ballots.** The board of canvassers in recounting the ballots shall count the votes cast, at the same time, in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The registrar shall produce, unopened, unless it is necessary for the registrar to open the package or envelope to secure election materials which have been sealed in the wrong envelope or package, the sealed package or envelope received from the election judges of the precinct, or precincts, in which a recount is ordered containing all ballots voted in the precinct or precincts;

(2) A member of the board of county canvassers shall open the sealed package or envelope in the presence of the other members, the registrar, and the applicant or applicants seeking the recount;

(3) A member of the board shall then remove the ballots from the package or envelope in the presence of the applicant or applicants seeking the recount and the candidate or candidates who receive the highest number of votes by the first canvass;

(4) One (1) of the members of the board, in the presence and view of the candidates and one (1) other board member, shall read each ballot aloud. As the ballots are read, two (2) clerks shall write the votes cast for each person in each precinct at full length, on previously prepared tally sheets showing the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct;

(5) At the completion of the recount, the tally sheets shall be compared, their correctness ascertained, and the total number of votes cast for each candidate determined;

(6) If the recount shows the votes for any applicant are more or less than the number shown upon the official returns, the clerk of the board of canvassers shall correct the original returns to state the number of votes ascertained by the recount;

(7) The board of canvassers shall direct the clerk to enter the result of the election as determined by the recount on the board records and the clerk shall make out and deliver a certificate of election which conforms to the result of the recount.

History: En. Sec. 198, Ch. 368, L. 1969.

**23-4110. Service of copy of application on candidate originally found to be elected—hearing.** The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969.

**23-4111. Sealing recounted ballots.** When the recount in a precinct has been finished, the ballots shall again be sealed in the same package

or envelope in the presence of the registrar and the members of the board of canvassers and shall be delivered to the registrar for custody.

**History:** En. Sec. 200, Ch. 368, L. 1969.

**23-4112. Certificates of election, effect of recount on.** If the recount shows that the person who received the certificate of election according to section 23-4014 did not receive the highest number of votes, the registrar shall issue a new certificate to the person receiving the highest number pursuant to the recount and the first certificate is void. The person receiving the second certificate shall be elected to the office.

**History:** En. Sec. 201, Ch. 368, L. 1969.

**23-4113. Determining total vote cast for all candidates for an office.** When an elector may vote for two (2) or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

**History:** En. Sec. 202, Ch. 368, L. 1969.

**23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk.** (1) The county recount board shall always consist of three (3) acting members.

(2) The county recount board is the board of county commissioners.

(3) If one (1) or more of the commissioners cannot attend when the board meets, his place shall be filled by a county officer in the following order of appointment: the treasurer, the assessor, the sheriff, the clerk of court.

(4) If a member of the recount board was a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The registrar is clerk of the recount board, and the board may hire additional clerks as needed.

**History:** En. Sec. 203, Ch. 368, L. 1969.

**23-4115. Meeting of board when recount requested.** (1) Immediately upon receiving an application for a recount or notice from the secretary of state that an application has been filed with him, the registrar shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the commissioners without undue delay but not later than five (5) days after receiving notice from the registrar.

**History:** En. Sec. 204, Ch. 368, L. 1969.

**23-4116. Persons entitled to appear at recount—opening and recount of ballots.** (1) Each candidate involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(2) If the recount is upon a referred or submitted question, one (1) qualified elector favoring each side of the question may be present and represent his side.



(3) The registrar shall produce, unopened, the sealed package or envelope received from the election judges in each election precinct in the county.

(4) The recount shall proceed as provided in section 23-4109 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969.

**23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.**

(1) Immediately after the recount the county recount board shall certify the result.

(2) At least two (2) members of the board shall sign the certificate and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for an office, nomination, position, or question voted upon in more than one (1) county or for judge of the district court, the certificate shall be made in duplicate. One (1) copy shall be transmitted immediately to the secretary of state by registered mail.

(5) If the recount relates to an office, nomination, position, or question voted upon in only one (1) county, or part of a single county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(a) If the corrected abstract shows no change in the result, no further action shall be taken.

(b) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated.

History: En. Sec. 206, Ch. 368, L. 1969.

**23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination.**

(1) When the secretary of state receives certificates from all county recount boards, he shall file them, and fix a time and place as soon as possible for reconvening the state board of canvassers, and shall notify the members.

(2) The state board of canvassers shall recanvass the official returns on the office, nomination, position or question, as corrected by the certificates and make a new and corrected abstract of the votes cast.

(a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969.

**23-4119. Tie vote after recount.** If the recount shows a tie vote and it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-4120 and 23-4121.

History: En. Sec. 208, Ch. 368, L. 1969.

**23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator.** (1) If there is a tie vote for United States representative, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

(2) If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislative assembly the secretary of state shall send a certified statement to the governor showing the vote cast for each person, and the governor shall appoint an eligible person to hold office.

History: En. Sec. 209, Ch. 368, L. 1969.

**23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.** (1) If there is a tie vote for governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, shall elect a person to fill the office by joint ballot of the two (2) houses.

(2) If there is a tie vote for clerk of the district court, county attorney, any county officer except county commissioner, or for a township officer, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the legislative assembly showing the votes cast for the two (2) or more persons having an equal and the highest number of votes.

History: En. Sec. 210, Ch. 368, L. 1969.

**23-4122. Expenses of recount.** The expense of the recount is a county charge. Expenses of the secretary of state and state board of canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969.



## CHAPTER 42

## CONTESTS OF BOND ELECTIONS

## Section

23-4201. Grounds for challenge.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.

**23-4201. Grounds for challenge.** (1) Any elector qualified to vote in a bond election of a county, city, or of any political subdivision of either may contest a bond election, for any of the following causes:

(a) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(b) That any official charged with a duty under this act, failed to perform that duty;

(c) That in conducting the election, any official charged with a duty under this act, violated any of the provisions of this act relating to bond elections.

(2) Within five (5) days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

**History:** En. Sec. 212, Ch. 368, L. 1969.

**23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.** (1) Within five (5) days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order, and shall serve the citation immediately upon the defendant either:

(a) Personally, or

(b) If the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within ten (10) days after submission thereof, the court shall file its findings of fact and conclusions of law, and immediately shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

**History:** En. Sec. 213, Ch. 368, L. 1969.

## CHAPTER 43

## PRESIDENTIAL ELECTORS

## Section

- 23-4301. Election of electors, when chosen and number.
- 23-4302. Nomination of electors—ballot—votes.
- 23-4303. Returns—lists of electors elected.
- 23-4304. Meeting and voting of electors.
- 23-4305. Lists of persons voted for.
- 23-4306. Compensation of electors.
- 23-4307. Vacancy, how filled.

**23-4301. Election of electors, when chosen and number.** On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors for president and vice-president of the United States as are allocated to this state.

**History:** En. Sec. 214, Ch. 368, L. 1969.

**23-4302. Nomination of electors — ballot — votes.** (1) Each political party shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates at the time and in the manner and number provided by law.

(2) The secretary of state shall certify to the registrars the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice-president shall not be printed upon the ballot.

(4) The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

**History:** En. Sec. 215, Ch. 368, L. 1969.

**Nomination for Public Office**

The nomination for presidential elec-

tors is a nomination for public office. State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366.

**23-4303. Returns—lists of electors elected.** (1) The votes for candidates for president and vice-president shall be given, received, returned and canvassed as the votes are given, returned, and canvassed for candidates for Congress.

(2) The secretary of state shall prepare three (3) lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

**History:** En. Sec. 216, Ch. 368, L. 1969.

**23-4304. Meeting and voting of electors.** (1) The electors shall meet in Helena at 2 p. m. on the first Monday after the second Wednesday in December following their election.



(2) The electors shall vote by separate ballots for one (1) person for president and one (1) for vice-president of the United States.

**History:** En. Sec. 217, Ch. 368, L. 1969.

**Extension of Time Unconstitutional**

Since, under prior section and the federal act (U.S.C., Tit. 3, sec. 5, enacted pursuant to section 1, article II of the federal constitution), the presidential electors must meet on the first Monday after the second Wednesday in December follow-

ing their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. *Maddox v. Board of State Canvassers*, 116 M 217, 224, 149 P 2d 112.

**23-4305. Lists of persons voted for.** (1) The electors shall make lists of the persons voted for as president and vice-president, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by laws of the United States.

**History:** En. Sec. 218, Ch. 368, L. 1969.

**Compiler's Notes**

As enacted, this section contained no subsection (2).

**23-4306. Compensation of electors.** Electors shall receive the same pay and mileage allowed members of the legislative assembly. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

**History:** En. Sec. 219, Ch. 368, L. 1969.

**23-4307. Vacancy, how filled.** If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

**History:** En. Sec. 220, Ch. 368, L. 1969.

## CHAPTER 44

### MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

**Section**

- 23-4401. Election of United States senators and representatives—for full term and to fill vacancies.
- 23-4402. Writs of election to fill vacancy.
- 23-4403. Certificates issued by governor.
- 23-4404. Residence required for election or appointment to Congress.

**23-4401. Election of United States senators and representatives—for full term and to fill vacancies.** (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) If a vacancy occurs for senator, or United States representative, an election to fill the vacancy shall be held at the next general election. If an election is invalid or not held at that time, the election shall be at the second succeeding general election.

(3) Nominations and elections shall be as provided by law for governor.

**History:** En. Sec. 221, Ch. 368, L. 1969.

**23-4402. Writs of election to fill vacancy.** If a vacancy occurs in the office of United States senator or representative, the governor shall issue a writ of election to fill the vacancy. The governor may make a temporary appointment to fill the vacancy until the election.

**History:** En. Sec. 222, Ch. 368, L. 1969.

**23-4403. Certificates issued by governor.** Upon receipt of the statement required by section 23-4016, the governor shall send a certificate of election to each person elected.

**History:** En. Sec. 223, Ch. 368, L. 1969.

**23-4404. Residence required for election or appointment to Congress.** A person who has not resided in this state at least one (1) year prior to his election or appointment is not eligible for the office of United States senator or representative.

**History:** En. Sec. 224, Ch. 368, L. 1969.

## CHAPTER 45

### NONPARTISAN NOMINATION AND ELECTION OF JUDGES

#### Section

- 23-4501. Judicial offices as separate and independent offices for election purposes.
- 23-4502. Nominations.
- 23-4503. Declarations for nomination—contents—fee.
- 23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.
- 23-4505. Primary ballots—preparation and distribution.
- 23-4506. Judicial primary ballots.
- 23-4507. Separate counting and canvassing of judicial ballots—application of general laws.
- 23-4508. Nominations—placing names on ballots.
- 23-4509. Tie vote, how decided.
- 23-4510. Vacancies among nominees after nomination and before general election, how filled.
- 23-4511. Unlawful for political party to endorse judicial candidate.

**23-4501. Judicial offices as separate and independent offices for election purposes.** (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before a primary nominating election.

(2) Each judicial office in a district which has more than one (1) district judge is a separate and independent office for election purposes.

**History:** En. Sec. 225, Ch. 368, L. 1969.

#### **Purpose and Construction of Act**

Purpose of prior act was to eliminate, so far as possible, the selection of judges from partisan politics. The word "candi-

date" as used in act was not to receive a different construction from that as used in the general primary law. The act was to be construed in pari materia with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

**23-4502. Nominations.** Candidates for the supreme court or district court shall be nominated according to primary election laws so far as they are consistent with the provisions of this chapter.

**History:** En. Sec. 226, Ch. 368, L. 1969.



**23-4503. Declarations for nomination — contents — fee.** (1) Judicial candidates shall file declarations for nomination as required by the primary election laws in a form specified by the secretary of state.

(2) Declarations for nomination as associate justice of the supreme court shall designate the number of the office. A person can make only one (1) designation.

(3) Candidates for nomination as district judge in a district having more than one (1) judge shall specify the number of the office. His candidacy is limited to the number specified.

(4) Declarations shall not indicate political affiliation. The candidate shall not state in his declaration any principles or measures he advocates nor any slogans.

(5) Each person filing a declaration shall remit the fee prescribed by law for the position he seeks. Declarations for justice of the supreme court and district court judge shall be filed with the secretary of state.

**History:** En. Sec. 227, Ch. 368, L. 1969.

**23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.** (1) On receipt of a declaration, the secretary of state shall make entries in the "Register of Candidates for Nomination" on a page different from entries made for district candidates of political parties.

(2) The secretary of state shall separately arrange, certify, and file the names of judicial candidates, and certify to each registrar the names to be placed on the primary ballot at the same time, and in the same way, that other candidates are certified.

(3) The certificates shall show the names of candidates and number of the judicial office for each. The list shall be separate from lists of candidates appearing under political headings.

**History:** En. Sec. 228, Ch. 368, L. 1969.

**23-4505. Primary ballots — preparation and distribution.** (1) The registrars shall arrange, prepare, and distribute primary ballots for judicial offices designated "Judicial Primary Ballots." They shall be arranged as other primary ballots and be without political designation.

(2) The number of judicial primary ballots and sample ballots furnished shall be the same as other primary ballots.

**History:** En. Sec. 229, Ch. 368, L. 1969.

#### DECISIONS UNDER FORMER LAW

##### Write-in Candidate

The prior Nonpartisan Judiciary Act did not restrict electors to the privilege of voting only for candidates whose names appeared on the primary judicial ballot,

but, though the act was silent as to their right to write in the name of a qualified person to judicial office, they could do so. *State ex rel. McHale v. Ayers*, 111 M 1, 3, 105 P 2d 686.

**23-4506. Judicial primary ballots.** (1) The "Judicial Primary Ballot" shall be furnished to electors in the same manner as other primary ballots.

(2) The number of the judicial primary ballot shall correspond to the number of the elector's regular ballot.

(3) Different terms of office for the same position shall be considered separate offices.

History: En. Sec. 230, Ch. 368, L. 1969.

**23-4507. Separate counting and canvassing of judicial ballots—application of general laws.** (1) After closing the polls, the election officers shall separately count and canvass judicial ballots, and record and certify them, showing the number of votes cast for each person.

(2) Judicial ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs and unused ballots. Returns shall be made as provided by law.

History: En. Sec. 231, Ch. 368, L. 1699.

**23-4508. Nominations—placing names on ballots.** (1) Candidates for nomination equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected then all candidates, are nominees for the office.

(2) Candidates who received the highest vote in the primary shall have their names printed on the official ballot for the general election.

(3) No candidate shall have his name on the judicial ballot for the general election unless he was a successful candidate at the primary election.

History: En. Sec. 232, Ch. 368, L. 1969.

**23-4509. Tie vote, how decided.** (1) In case of a tie vote, the candidates shall appear and cast lots before the secretary of state on the fifth day after the vote is officially canvassed.

(2) If a candidate fails to appear in person or by proxy in writing before 12 noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be printed on the official ballot.

History: En. Sec. 233, Ch. 368, L. 1969.

**23-4510. Vacancies among nominees after nomination and before general election, how filled.** (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If after the primary and before the general election there is no person able or entitled to the office or there are not enough candidates to fill the offices, the governor shall certify to the secretary of state the names of persons qualified for the office equal to twice the number to be elected. The names of those persons nominated by the governor shall be printed on the official ballot.



(3) Nominations made by the governor are not filed too late if filed within ten (10) days after the vacancy occurs. If the ballots have already been printed, stickers may be used to place the names on the ballot.

History: En. Sec. 234, Ch. 368, L. 1969.

**23-4511. Unlawful for political party to endorse judicial candidate.** A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

History: En. Sec. 235, Ch. 368, L. 1969.

## CHAPTER 46

### CONVENTIONS TO RATIFY AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

#### Section

- 23-4601. Convention for ratification of amendments to United States constitution.
- 23-4602. Delegates to constitutional convention.
- 23-4603. Nomination of delegates.
- 23-4604. Determination of election results.
- 23-4605. Ballot form.
- 23-4606. Time for convention of delegates.
- 23-4607. Quorum—officers—procedure—qualifications.
- 23-4608. Compensation of delegates and officers.
- 23-4609. Certificate of result—transmission to secretary of state of United States.
- 23-4610. Qualifications of petitioners and electors.
- 23-4611. Federal acts to supersede state provisions concerning amendments.

**23-4601. Convention for ratification of amendments to United States constitution.** If Congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969.

**23-4602. Delegates to constitutional convention.** (1) The number of convention delegates shall be equal to the number of members in the legislative assembly. Each district shall have delegates equal to the number of members it is entitled to in the legislative assembly.

(2) Delegates shall be elected at the next primary or general election after Congress has proposed the amendment, or at a special election called by the governor.

(3) Except as otherwise provided in sections 23-4601 through 23-4611, the election shall be in accordance with the laws for the election of members of the legislative assembly.

History: En. Sec. 237, Ch. 368, L. 1969.

**23-4603. Nomination of delegates.** (1) Nominations for the office of delegate shall be by petition signed by not less than one hundred (100) voters of the district.

(2) Nominations shall be without political designation but shall be as “in favor of” or “opposed to” ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than thirty (30) days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969.

**23-4604. Determination of election results.** The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, and the total votes cast for all candidates "in favor of" ratification and the votes cast for each candidate "opposed to" and the total votes cast for all candidates "opposed to" ratification shall be ascertained;

(2) Candidates receiving the highest number of votes equal to the number of delegates to be elected from the side receiving the greater number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969.

**23-4605. Ballot form.** The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969.

**23-4606. Time for convention of delegates.** Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a. m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969.

**23-4607. Quorum—officers—procedure—qualifications.** A majority of the total number of delegates constitutes a quorum. The convention may choose a president, secretary, and other necessary officers; make rules governing the procedure of the convention; and shall judge the qualifications and election of its members.

History: En. Sec. 242, Ch. 368, L. 1969.

**23-4608. Compensation of delegates and officers.** Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 243, Ch. 368, L. 1969.

**23-4609. Certificate of result—transmission to secretary of state of United States.** When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States.

History: En. Sec. 244, Ch. 368, L. 1969.

**23-4610. Qualifications of petitioners and electors.** Persons entitled to petition for nomination and vote at the election are determined by laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969.



**23-4611. Federal acts to supersede state provisions concerning amendments.** If Congress prescribes how the convention shall be constituted and held by resolution or statute, sections 23-4601 through 23-4610 are inoperative and the convention shall be constituted and held as Congress directs. All state officers are directed to take action to constitute the convention as authorized by Congress and act as if acting under state statute.

**History:** En. Sec. 246, Ch. 368, L. 1969.

**Repealing Clause**

Section 248 of Ch. 368, Laws 1969 read "Sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through 23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through

23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R. C. M. 1947 are repealed."





**TITLE 32**  
**HIGHWAYS, BRIDGES AND FERRIES**

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**CHAPTER 29**

**BOARD OF COUNTY COMMISSIONERS  
RESPONSIBILITY FOR BRIDGES AND FERRIES**

Section 32-2903. Election to determine question of construction—bonds—special levy.

**32-2903. Election to determine question of construction—bonds—special levy.** (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 32-3604 of this code.

**History: En. Sec. 5-203, Ch. 197, L. 1965.**

**CHAPTER 36**

**COUNTY TAX LEVIES FOR ROAD AND  
BRIDGE CONSTRUCTION**

Section 32-3605. Additional tax levy for road and bridge construction.

**32-3605. Additional tax levy for road and bridge construction.** (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of ..... mills upon the taxable property in the county of ....., state of Montana, for the purpose of constructing public highways and bridges?"

- ☐ Yes  
☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

TITLE 37  
INITIATIVE AND REFERENDUM

CHAPTER 1

INITIATIVE AND REFERENDUM

- Section 37-101. Form of petition for referendum.  
37-102. Form of petition for initiative.  
37-103. County clerk to verify signatures.  
37-104. Notice to governor and proclamation.  
37-104.1. Attorney general's summary of referred or initiative measures—Statement by secretary of state for referendum measures—Placement on ballot.  
37-105. Certification and numbering of measures—constitutional amendments.  
37-106. Manner of voting—ballot.  
37-107. Printing and distribution of measures.  
37-108. Canvass of votes.  
37-109. Who may petition—false signature—penalties.  
37-110. Referred bills not effective until approved.

**37-101. (99) Form of petition for referendum.** The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Montana:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, is punishable by a fine not exceeding five hundred dollars (\$500.00), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for Referendum.

To the Honorable \_\_\_\_\_, Secretary of State of the state of Montana:

We, the undersigned citizens and legal voters of the state of Montana, respectfully order that Senate (House) Bill Number \_\_\_\_\_, entitled (title of act), passed by the \_\_\_\_\_ legislative assembly of the state of Montana, at the regular (special) session of said legislative assembly, shall be referred to the people of the state for their approval or rejection, at the regular, general, or special election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and each for himself says: I have personally signed this petition; I am a legal voter of the state of Montana; and my residence, postoffice address, and voting precinct are correctly written after my name.  
Name \_\_\_\_\_ Residence \_\_\_\_\_  
Postoffice address \_\_\_\_\_



If in city, street and number .....

Voting precinct .....

(Here follow numbered lines for signatures.)

**History:** En. Sec. 1, Ch. 62, L. 1907; **Cross-Reference**  
 Sec. 106, Rev. C. 1907; re-en. Sec. 99, Constitutional provisions, Art. V, Sec. 1.  
 R. C. M. 1921.

**37-102. (100) Form of petition for initiative.** The following shall be substantially the form of petition for any law of the state of Montana proposed by the initiative:

**Warning.**

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, is punishable by a fine not exceeding five hundred dollars (\$500.00), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

**Petition for Initiative.**

To the Honorable ....., Secretary of State of the State of Montana:

We, the undersigned legal voters of the state of Montana, respectfully demand that the following proposed law shall be submitted to the legal electors of the state of Montana, for their approval or rejection, at the regular, general, or special election to be held on the ..... day of ....., 19...., and each for himself says:

I have personally signed this petition, and my residence, postoffice address, and voting precinct are correctly written after my name.

Name ..... Residence .....

Postoffice address .....

If in city, street and number .....

Voting precinct .....

(Numbered lines for names on each sheet.)

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but such petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions may be filed in sections in like manner.

**History:** En. Sec. 2, Ch. 62, L. 1907;  
 Sec. 107, Rev. C. 1907; re-en. Sec. 100, R.  
 C. M. 1921.

**37-103. (101) County clerk to verify signatures.** The county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of said petition contain-

ing such signatures his certificate to the secretary of state, substantially as follows:

State of Montana, }  
County of ..... } ss.  
To the Honorable ....., Secretary of State  
for Montana:

I, ....., county clerk of the county of  
....., hereby certify that I have compared the  
signatures on (number of sheets) of the referendum (initiative) petition,  
attached hereto, with the signatures of said electors as they appear on the  
registration books and blanks in my office; and I believe that the signa-  
tures of (names of signers), numbering (number of genuine signatures),  
are genuine. As to the remainder of the signatures thereon, I believe that  
they are not genuine, for the reason that .....;  
and I further certify that ..... the following names  
(.....) do not appear on the registration books and blanks  
in my office.

Signed : .....

....., County Clerk.  
(Seal of Office) By .....  
Deputy .....

Every such certificate shall be prima facie evidence of the facts stated therein, and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only such signatures on such petitions as shall be so certified by said county clerks to be genuine; provided, that the secretary of state may consider and count such of the remaining signatures as may be proved to be genuine, and that the parties so signing were legally qualified to sign such petitions, and the official certificate of a notary public of the county in which the signer resides shall be required as to the fact for each of such last-named signatures; and the secretary of state shall further compare and verify the official signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificate shall be substantially in the following form:

State of Montana, }  
County of ..... } ss.

I, ....., a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are legal voters of the state of Montana, and of the county and precincts written after their several names in the annexed petition, and that their residence and postoffice address is correctly stated therein, to-wit: (Names of such electors.)



In Testimony Whereof, I have hereunto set my hand and official seal  
this ..... day of ....., 19.....

Notary Public, in and for ..... County,  
State of Montana.

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures, or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall forward the same to the secretary of state, with his certificate attached thereto, as above provided. The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

History: En. Sec. 3, Ch. 62, L. 1907;  
Sec. 108, Rev. C. 1907; re-en. Sec. 101,  
R. C. M. 1921.

**37-104. (102) Notice to governor and proclamation.** Immediately upon the filing of any such petition for the referendum or the initiative with the secretary of state, signed by the number of voters and filed within the time required by the constitution, he shall notify the governor in writing of the filing of such petition, and the governor shall forthwith issue his proclamation, announcing that such petition has been filed, with a brief statement of its tenor and effect. Said proclamation shall be published four times for four consecutive weeks in one daily or weekly paper in each county of the state of Montana.

History: En. Sec. 4, Ch. 62, L. 1907;  
re-en. Sec. 109, Rev. C. 1907; re-en Sec.  
102, R. C. M. 1921.

**37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot.** The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 [23-3506] of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the legislative assembly and that it was signed by the governor. The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure, the statement of the secretary of state for referen-

dum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

**History:** En. Sec. 1, Ch. 22, L. 1963;  
amd. Sec. 1, Ch. 21, L. 1969.

**Compiler's Notes**

Section 23-1102, referred to in the first part of this section was repealed by Sec. 248, Ch. 368, Laws 1969. For new law, see sec. 23-3506.

**37-105. (103) Certification and numbering of measures—constitutional amendments.** The secretary of state, at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office, shall also furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures. All measures shall be numbered with consecutive numbers beginning with the number immediately following that on the last measure filed in the office of the secretary of state. The affirmative and negative of each measure shall bear the same number, and no two measures shall be numbered alike. It shall be the duty of the several county clerks to print said titles and numbers on the official ballot prescribed by section 23-1102, in the numerical order in which the measures have been certified to them by the secretary of state. Measures proposed by the initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "proposed petition for initiative."

All constitutional amendments submitted to the qualified electors of the state shall likewise be placed upon the official ballot prescribed by said section 23-1102 and no such amendment shall hereafter be submitted on a separate ballot. Nothing herein contained shall be deemed to change the existing laws of the state regulating in other respects the manner of submitting such proposed amendments.

**History:** En. Sec. 5, Ch. 62, L. 1907; Ch. 66, L. 1913; re-en. Sec. 103, R. C. M re-en. Sec. 110, Rev. C. 1907; amd. Sec. 1, 1921; amd. Sec. 1, Ch. 52, L. 1927.

**37-106. (104) Manner of voting—ballot.** The manner of voting on measures submitted to the people shall be by marking the ballot with a cross in or on the diagram opposite and to the left of the proposition for which the voter desires to vote. The form of ballot to be used on measures submitted to the people shall be submitted to and determined by the



attorney general of the state of Montana. The following is a sample ballot representing negative vote:

☐

For Initiative Measure No. 6  
Relating to Duties of Sheriffs.

☒

Against Said Measure No. 6.

☐

For Referendum Measure No. 7  
Relating to Purchase of Insane Asylum.

☒

Against Said Measure No. 7.

History: En. Sec. 6, Ch. 62, L. 1907; 66, L. 1913; re-en. Sec. 104, R. C. M. 1921; Sec. 111, Rev. C. 1907; amd. Sec. 2, Ch. amd. Sec. 1, Ch. 18, L. 1937.

**37-107. (105) Printing and distribution of measures.** The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people and make requisition on the state purchasing agent for the printing and delivery to him of all proposed constitutional amendments, initiative and referendum measures to be submitted to a vote of the people.

The state purchasing agent, shall, not later than the first Monday of the third month next before any general or special election, at which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. It shall be the duty of the state purchasing agent to call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people. Any measure proposed to be submitted to the people and which concerns the creation of any state levy, debt or liability, including the issuance of state bonds or debentures other than refunding bonds or debentures, shall be submitted to the eligible voters as defined by section 23-303, upon a separate official ballot and no such measure shall be submitted on a general ballot. All other measures proposed to be submitted to the people including constitutional amendments and initiative and referendum measures which do not concern the creation of any state levy, debt or liability, may be submitted on the general ballot as provided by section 23-1105.

The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when such proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each of the several counties in that form.

When the proposed measure constitutes more than six pages, said measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure, hereafter, to be submitted to the people of the state, as provided for in this section shall be bound. The quality of the paper to

be used for the proposed measure shall be left to the discretion of the state purchasing agent. The number of said proposed measures to be printed shall be five per cent (5%) more than the number of registered voters, as shown by the registration lists of the several counties of the state at the last preceding general election.

The secretary of state shall distribute to each county clerk before the second Monday in the third month next preceding such regular general election, a sufficient number of said pamphlets to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the state at least one copy of the same within thirty (30) days from the date of his receipt of the same from the secretary of state. The mailing of said pamphlets to electors shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service.

**History:** En. Sec. 7, Ch. 62, L. 1907; 1927; amd. Sec. 2, Ch. 104, L. 1945; amd. Sec. 112, Rev. C. 1907; re-en. Sec. 105, Sec. 1, Ch. 67, L. 1947. R. C. M. 1921; amd. Sec. 1, Ch. 137, L.

**37-108. (106) Canvass of votes.** The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided by sections 23-1812 and 23-1813 for abstracts of votes for state officers. It shall be the duty of the state board of canvassers to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, which shall be published in two daily newspapers printed at the capital, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in full force and effect as the law of the state of Montana from the date of said proclamation, designating such measures by their titles.

**History:** En. Sec. 8, Ch. 62, L. 1907; Sec. 113, Rev. C. 1907; re-en. Sec. 106, R. C. M. 1921.

**37-109. (107) Who may petition—false signature—penalties.** Every person who is a qualified elector of the state of Montana may sign a petition for the referendum or for the initiative. Any person signing any name other than his own to such petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, or any officer or any person wilfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment



in the penitentiary not exceeding two years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had.

History: En. Sec. 9, Ch. 62, L. 1907;  
Sec. 114, Rev. C. 1907; re-en. Sec. 107, R.  
C. M. 1921.

**37-110. (108) Referred bills not effective until approved.** A bill passed by the legislative assembly and referred to popular vote at the next general election, or at a special election, shall not be in effect until it is approved at such general or special election by a majority of those voting for and against it.

History: En. Sec. 10, Ch. 62, L. 1907;  
Sec. 115, Rev. C. 1907; re-en. Sec. 108, R.  
C. M. 1921.





**TITLE 43**  
**LEGISLATURE AND ENACTMENT OF LAWS**

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**CHAPTER 1**

**SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS**

Section 43-106.1. Number of senators—senatorial districts and apportionment.

43-106.2. Number of representatives—representative districts and apportionment.

43-107. Congressional districts.

**43-106.1. Number of senators—senatorial districts and apportionment.**

The senate of the legislative assembly shall consist of fifty-five (55) members. The senatorial districts and the number of senators elected from each district are as follows :

Senatorial District Number	Number of Senators	District Consists of County or Counties
1	1	Carter, Fallon, Wibaux, Prairie
2	1	Dawson
3	1	Richland and McCone
4	1	Roosevelt
5	2	Valley, Daniels, Sheridan
6	1	Rosebud, Treasure, Garfield, Petroleum
7	1	Custer
8	1	Big Horn, Powder River
9	6	Yellowstone
10	1	Phillips, Blaine
11	1	Fergus
12	1	Musselshell, Golden Valley, Wheatland, Sweet Grass
13	1	Carbon, Stillwater
14	1	Park
15	2	Gallatin
16	1	Jefferson, Broadwater, Meagher
17	1	Chouteau, Judith Basin
18	6	Cascade
19	2	Hill, Liberty
20	2	Toole, Pondera, Teton
21	2	Lewis and Clark
22	2	Deer Lodge, Powell, Granite

Senatorial District Number	Number of Senators	District Consists of County or Counties
23	4	Silver Bow
24	1	Beaverhead, Madison
25	1	Ravalli
26	4	Missoula
27	1	Sanders, Mineral
28	1	Lake
29	1	Glacier
30	3	Flathead
31	1	Lincoln

History: En. Sec. 1, Ch. 194, L. 1967.

**43-106.2. Number of representatives—representative districts and apportionment.** The house of representatives of the legislative assembly shall consist of one hundred and four (104) members. The representative districts and the number of representatives elected from each district are as follows:

Representative District Number	Number of Representatives	District Consists of County or Counties
1	2	Carter, Fallon, Wibaux and Prairie
2	2	Dawson
3	2	Richland and McCone
4	2	Roosevelt
5A	1	Sheridan
5B	3	Valley, Daniels
6	2	Rosebud, Treasure, Garfield and Petroleum
7	2	Custer
8	2	Big Horn and Powder River
9	12	Yellowstone
10A	1	Phillips
10B	1	Blaine
11	2	Fergus
12A	1	Musselshell and Golden Valley
12B	1	Wheatland and Sweet Grass
13	2	Carbon and Stillwater
14	2	Park
15	4	Gallatin
16	2	Jefferson, Broadwater and Meagher
17	2	Chouteau and Judith Basin
18	11	Cascade
19	3	Hill and Liberty
20A	1	Toole
20B	1	Pondera
20C	1	Teton



Representative District Number	Number of Representatives	District Consists of County or Counties
21	4	Lewis and Clark
22A	1	Powell
22B	3	Deer Lodge and Granite
23	7	Silver Bow
24A	1	Beaverhead
24B	1	Madison
25	2	Ravalli
26	7	Missoula
27	2	Sanders and Mineral
28	2	Lake
29	2	Glacier
30	5	Flathead
31	2	Lincoln

**History:** En. Sec. 2, Ch. 194, L. 1967.

**43-107. (48) Congressional districts.** The counties of Beaverhead, Broadwater, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow, Glacier, Toole, Liberty, Pondera, Teton, Meagher, and Park shall constitute the first congressional district of the state. The counties of Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, Wheatland, Wibaux and Yellowstone shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

**History:** Ap. p. Sec. 120, Pol. C. 1895; 1921; amd. Sec. 1, Ch. 113, L. 1945; amd. re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Sec. 1, Ch. 124, L. 1967. Ch. 44, L. 1917; re-en. Sec. 48, R. O. M.

## CHAPTER 2

### THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section 43-201. Composition of legislative assembly.

43-202. Term of office.

43-206.1. Rosters prepared from election records.

43-207. Senate, organization of.

43-208. House of representatives, organization of.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.

43-216. Alternate method of selection—failure of one candidate to receive majority vote.

43-217. "Vacancy" defined.

43-218. Pre-session caucus—house appropriations and senate finance and claims committee member—per diem and expenses.

**43-201. (51) Composition of legislative assembly.** The legislative assembly consists of senators and representatives elected from the several senatorial and representative districts of the state in the number specified by law.

**History:** En. Sec. 150, Pol. C. 1895; Ch. 5, L. 1921; re-en. Sec. 51, R. C. M. re-en. Sec. 50, Rev. C. 1907; amd. Sec. 1, 1921.

**43-202. (52) Term of office.** The term of office of a senator is four years, and of a representative two years; and the term of service thereof shall begin on the first Monday of January next succeeding his election, and if a senator or representative be elected to fill a vacancy, his term of service shall begin on the next day after his election.

**History:** Ap. p. Sec. 151, Pol. C. 1895; Ch. 17, L. 1909; re-en. Sec. 52, R. C. M. re-en. Sec. 51, Rev. C. 1907; amd. Sec. 1, 1921. Cal. Pol. C. Sec. 226.

**43-206.1. Rosters prepared from election records.** The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

**History:** En. Sec. 1, Ch. 18, L. 1969.

**43-207. (57) Senate, organization of.** At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election, and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

**History:** En. H. B. No. 69, p. 103, L. 1891; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1969. Cal. Pol. C. Sec. 238.

**43-208. (58) House of representatives, organization of.** At the time specified in section 43-207, the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts; and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

**History:** En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1969. Cal. Pol. C. Sec. 239.



**43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.** When a vacancy occurs, in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the board of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting.

**History:** En. Sec. 1, Ch. 179, L. 1967.

**43-216. Alternate method of selection—failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board.

**History:** En. Sec. 2, Ch. 179, L. 1967.

**43-217. "Vacancy" defined.** For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

**History:** En. Sec. 3, Ch. 179, L. 1967.

**43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses.** As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislative assembly are elected, the majority and minority parties of each house of the legislative assembly shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees, except senators elected at the general election held in 1968, shall receive twenty dollars (\$20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties. Per diem and expenses shall be paid by the state controller from the appropriation for operation of the preceding legislative assembly.

**History:** En. Sec. 2, Ch. 274, L. 1969.





## **TITLE 44**

### **LIBRARIES**

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#### **CHAPTER 2**

##### **COUNTY AND REGIONAL FREE LIBRARIES**

Section 44-213. Participation of other governmental units.

44-219. Establishing public library—resolution—petition—election.

**44-213. Participation of other governmental units.** When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

**History:** En. Sec. 2, Ch. 132, L. 1939;  
amd. Sec. 1, Ch. 249, L. 1963.

**44-219. Establishing public library—resolution—petition—election.** A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) Upon a petition being filed with the governing body and signed by not less than five per centum (5%) of the resident taxpayers of any city or county requesting an election the governing body shall submit to a vote of the qualified electors thereof, at the next general election, the question of whether a free public library shall be established. If such a petition is submitted for a city or town, the petition must be signed by resident taxpayers of said city or town. If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city or town located in said county which may already have established a free public library for such city or town.

If such petition specifically asks that a special election be called, and such petition is signed by thirty-five per centum (35%) of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

If at such election, a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library, or to contract with any city or county for library service to be rendered to the inhabitants of such city, town or county.

**History:** En. Sec. 2, Ch. 260, L. 1967;  
amd. Sec. 1, Ch. 263, L. 1969.



**TITLE 62**  
**PARKS AND PUBLIC RECREATION**

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**CHAPTER 2**

**CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS,  
PARKS AND RECREATIONAL FACILITIES**

Section 62-201. Public parks and grounds, civic and youth centers—additional indebtedness of municipalities to provide.

**62-201. (5159) Public parks and grounds, civic and youth centers—additional indebtedness of municipalities to provide.** A city or town council, or commission, in addition to the power it now has under the law, has and is hereby granted and given the further power:

(1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the purpose of purchasing and improving lands for public parks and grounds; and/or for procuring by purchase, or construction, or otherwise, swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof, and furnishing and equipping the same; and

(2) To purchase, build, furnish and equip the same; provided that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not at any time exceed three (3) per centum of the value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness; and provided, further, that no money must be borrowed on bonds issued for the purchase of lands and improving same for any such purpose, until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at such election in the city or town affected thereby, and a majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 55, L. 1909; 1, Ch. 114, L. 1923; amd. Sec. 1, Ch. 71, L. re-en. Sec. 5159, R. C. M. 1921; amd. Sec. 1945; amd. Sec. 1, Ch. 64, L. 1947.

**TITLE 75**  
**SCHOOLS**

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**CHAPTER 13**

**THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION**

Section 75-1301. Election, qualification, oath.

**75-1301. (931) Election, qualification, oath.** There shall be chosen by the qualified electors of the state, at the time and place of voting for

members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade, issued in some state, and recognized by the state board of education, or is a graduate of some university, college, or normal school recognized by the state board of education as of equal rank with a unit of the university of Montana. He shall hold his office at the seat of government for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties, he shall take the oath of a civil officer.

History: En. Sec. 1700, Pol. C. 1895; 200, Ch. 76, L. 1913; re-en. Sec. 931, R. C. re-en. Sec. 805, Rev. C. 1907; amd. Sec. M. 1921; amd. Sec. 33, Ch. 177, L. 1965.

## CHAPTER 15

### COUNTY SUPERINTENDENT OF SCHOOLS

- Section 75-1501. County superintendent of schools—eligible without regard to sex.  
 75-1502. Qualifications for county superintendent of schools.  
 75-1503. Election of superintendent.  
 75-1504. Term of office.

**75-1501. (950) County superintendent of schools—eligible without regard to sex.** All persons otherwise qualified shall be eligible to the office of county superintendent of common schools without regard to sex.

History: Ap. p. Sec. 8, p. 621, Cod. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. amd. Sec. 1, p. 53, L. 1883; re-en. Sec. Sec. 950, R. C. M. 1921.

**75-1502. (950.1) Qualifications for county superintendent of schools.** No person shall be eligible to the office of county superintendent of schools in any county of Montana, who, in addition to the qualifications required by the constitution of the state of Montana, is not the holder of a state certificate offered by the state of Montana, granted by endorsement upon graduation from a standard normal school, or college, or university; or who is not the holder of a certificate offered by the state of Montana, designated as a state certificate granted by examination in accordance with the rules and regulations as prescribed by the state board of educational examiners; and who has not had at least three years successful experience as a teacher, principal or superintendent of public schools. The above qualifications shall not prohibit the re-election of present incumbents.

History: En. Sec. 1, Ch. 118, L. 1929.

**75-1503. (951) Election of superintendent.** A county superintendent of schools shall be elected in each organized county in this state at the general election preceding the expiration of the term of office of the present incumbent, and every four years thereafter.

History: This section originally a part of Sec. 950. Ap. p. Sec. 8, p. 621, Cod. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; Sec. 951, R. C. M. 1921; amd. Sec. 1, Ch. amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 10, L. 1945.



**75-1504. (952) Term of office.** The county superintendent shall take office on the first Monday in January next succeeding his election and hold for four years, and until his successor is elected and qualified.

**History:** This section originally a part of Sec. 950. Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. Sec. 952, R. C. M. 1921; amd. Sec. 2, Ch. 10, L. 1945.

## CHAPTER 16

## SCHOOL TRUSTEES

Section	75-1601.	<b>Qualifications of.</b>
	75-1602.	Number of.
	75-1603.	Elections.
	75-1604.	Elections in districts of second and third class—nominations.
	75-1605.	Conduct of election.
	75-1606.	Election in districts of first class—nominations and conduct of elections.
	75-1607.	Board of trustees to call election.
	75-1608.	Same—notice of.
	75-1609.	Hours of election.
	75-1610.	Judges.
	75-1611.	Ballots and method of voting.
	75-1612.	Poll and tally-list, certificate of judges and canvass of votes.
	75-1613.	Term of office—vacancy—oath of trustees.
	75-1614.	Vacancy in school board.
	75-1615.	Trustees—how removed.
	75-1616.	Vacancy in office of clerk.
	75-1617.	Rearrangement of terms to prevent the election of a majority of the trustees.
	75-1618.	Qualifications of electors.
	75-1619.	Challenges—oath of voters.
	75-1620.	Expenses of election.
	75-1631.	Call of special election.
	75-1632.	Duties of trustees.

**75-1601. (985) Qualifications of.** Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to the office of school trustee in such district.

**History:** En. Sec. 500, Ch. 76, L. 1913;  
re-en. Sec. 985, R. C. M. 1921.

**75-1602. (986) Number of.** In districts of the first class, the number of trustees shall be seven, in districts of the second class the number of trustees shall be five, and in districts of the third class the number of trustees shall be three.

**History:** Ap. p. Sec. 1770, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1911; amd. Sec. 501, amd. Sec. 1, p. 136, L. 1897; amd. Sec. 1, Ch. 76, L. 1913; re-en. Sec. 986, R. C. M. Ch. 69, L. 1907; Sec. 850, Rev. C. 1907; 1921.

**75-1603. (987) Elections.** An annual election of school trustees shall be held in each school district in the state on the first Saturday in April of each year at the district schoolhouse, if there be one, and if there be none, at a place designated by the board of trustees. In districts of the third class having more than one schoolhouse where school is held, one trustee must be elected from persons residing where such outside schools are located.

**History:** Ap. p. Sec. 1880, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 243, L. 1891; amd. Sec. 1770, Pol. C. 1895; amd. Sec. 1, p. 136, L. 1897; amd. Sec. 1, p. 57, L. 1899; amd. Sec. 1, Ch. 69, L. 1907; Sec. 850, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1911; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 7, Ch. 81, L. 1917; re-en. Sec. 987, R. C. M. 1921.

**NOTE.**—The last sentence of this section relating to election of school trustees, held in violation of the Constitution, Section 13, Article IX and Section 10, Article XI. Opinions of Attorney General, Vol. 7, p. 96. Similar holding in Opinion No. 112, Vol. 15.



**75-1604. (988) Elections in districts of second and third class—nominations.** In districts of the second and third class, the names of all candidates for membership on the school board must be received and filed by the clerk and posted at each polling place at least twenty days next preceding the election. Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.

History: En. Sec. 502, Ch. 76, L. 1913;  
re-en. Sec. 988, R. C. M. 1921; amd. Sec.  
1, Ch. 46, L. 1965.

**75-1605. (989) Conduct of election.** In districts of the second and third classes, the election of school trustees shall be held and conducted under the supervision of the board of school trustees. The clerk of the school district must, not less than fifteen days before the election required under this act, post notices in three public places in said district, and in incorporated cities in each ward, which notices must specify the time and place of election, and the hours during which the polls will be open. The trustees must appoint by an order entered in their records three qualified electors of said district, to act as judges at such election, and the clerk of the district shall notify them by mail of their appointment. If the judges named are not present at the time for opening the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk. The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting, and the polls shall be open for such length of time as the board of trustees may order; provided, that such polls must be open from two p. m. to six p. m.

History: En. Sec. 502, Ch. 76, L. 1913;  
re-en. Sec. 989, R. C. M. 1921.

**75-1606. (990) Election in districts of first class—nominations and conduct of elections.** In districts of the first class, no person shall be voted for or elected as trustee unless he has been nominated therefor at a bonafide public meeting, held in the district not more than sixty (60) days nor less than forty (40) days before the day of election, and at which at least twenty (20) qualified electors were present, and a chairman and secretary were elected, and a certificate of such nomination, setting forth the place where the meeting was held, giving the names of the candidates in full, and if there are different terms to be filled, the term for which such candidate was nominated, duly certified by the chairman and secretary of such meeting, shall be filed with the district clerk within ten (10) days after such public meeting. The nomination and election of any person shall be void, unless he was nominated at a meeting as above provided at which at least twenty (20) qualified electors were present, and his nomination certified and filed as aforesaid, and the board of trustees acting as a canvassing board shall not count any votes cast for any person, unless he has been so nominated and a certificate thereof filed as herein required. In the event there be held only one (1) such public meeting, and only one (1) candidate be nominated

for each term to be filled then and in that event no election need be held and the clerk of such district shall certify such facts to the board of trustees of the district, acting as a board of canvassers who shall thereupon certify the election of such persons to the county superintendent of schools.

**History:** En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 990, R. C. M. 1921; amd. Sec. 1, Ch. 205, L. 1943; amd. Sec. 1, Ch. 130, L. 1945.

**NOTE.**—This section, as it existed in 1914, held in violation of Section 10, Arti-

cle XI and Section 11, Article IX and Section 5, Article III of the Constitution, as depriving electors of the right to express free choice of school trustees. Opinions of Attorney General Vol. 5, p. 477.

**75-1607. (991) Board of trustees to call election.** The board of trustees shall, at least thirty days before the annual election of school trustees, by an order entered upon the minutes of their meeting, designate and establish a suitable number of polling places and create an equal number of election precincts to correspond, and define the boundaries thereof.

**History:** En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 991, R. C. M. 1921.

**75-1608. (992) Same—notice of.** The district clerk shall, at least fifteen days before the election in districts of the first class, give notice of the election to be held in all such districts, by posting a notice thereof in three public places in the district, and in incorporated cities and towns in each ward, which notices must specify the time and place of election, the number of trustees, and the terms for which they are to be elected, and the hours during which the polls will be open. Whenever, in the judgment of the board of trustees, the best interest of the district will be served by the publication of such notices of election in some newspaper in the county, they may, by an order entered on the minutes of their meeting, direct the district clerk to publish the notice of election required to be given in districts of the first class, in some newspaper in the county.

**History:** En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 992, R. C. M. 1921.

**75-1609. (993) Hours of election.** In districts of the first class the polls must be opened at twelve o'clock (12:00) noon and kept open until eight o'clock (8:00) p. m.

**History:** En. Sec. 6, p. 138, L. 1897; 502, Ch. 76, L. 1913; re-en. Sec. 993, R. C. re-en. Sec. 855, Rev. C. 1907; amd. Sec. M. 1921; amd. Sec. 1, Ch. 135, L. 1947.

**75-1610. (994) Judges.** The board of district trustees shall, at least ten days before the day of the annual election of trustees in any district of the first class, appoint three qualified electors of the district for each polling place established to act as judges of election, and the district clerk shall notify such persons by mail of their appointment. Such judges shall designate one of their number to act as clerk of such election. If the judges appointed, or any of them, are not present at the time for the opening of the polls, the electors present may appoint judges, who must be qualified electors, to act in the place of those who are absent.

**History:** En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 994, R. C. M. 1921.



**75-1611. (995) Ballots and method of voting.** In districts of the first class, the ballot shall show the name or names of the candidates and the length of time for which they are to be elected. These ballots shall be as near as possible in the following form:

For School Trustees:

For three (3) year term.

Vote for Three:

John Abner

William Brown

Adam Smith

For one (1) year term.

George Davis

**History:** En. Sec. 9, p. 139, L. 1897; 502, Ch. 76, L. 1913; re-en. Sec. 995, R. C. re-en. Sec. 858, Rev. C. 1907; amd. Sec. M. 1921.

**75-1612. (996) Poll and tally-list, certificate of judges and canvass of votes.** At every election held under this act, a poll-list shall be kept by the judges and clerk at each polling-place, and immediately after the close of the polls the judges shall count the ballots, and if there be more ballots than votes cast the judges must draw by lot from the ballots, without seeing them, sufficient number of ballots to make the ballots remaining correspond with the number of votes cast. The clerk shall write down in alphabetical order in a poll-book provided for that purpose the name of every person voting at the time he deposits his ballot. There shall also be provided a tally-list for each polling-place; after the ballots have been counted and made to agree with the poll-list the judges shall proceed to count them. The clerk shall enter in the tally-list the name of every person voted for as trustee, and the term, and tally opposite his name the number of votes cast for him, and at the end thereof set down in a column provided for that purpose the whole number of votes he received. The judges and clerk shall sign a certificate to said tally-list, setting forth the whole number of votes cast for each person or trustee, designating the term, and they shall verify the same as being correct, to the best of their knowledge, before an officer authorized to administer oaths. No informality in such certificate shall vitiate the election, if the number of votes received for each person can reasonably be ascertained from said tally-list. Said books and tally-lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district to issue a certificate of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools. School trustees are hereby authorized to administer oaths to judges of election.

**History:** Ap. p. Sec. 1780, Pol. C. 1895; 860, Rev. C. 1907; amd. Sec. 502, Ch. 76, amd. Sec. 11, p. 142, L. 1897; amd. Sec. L. 1913; re-en. Sec. 996, R. C. M. 1921.

**75-1613. (997) Term of office—vacancy—oath of trustees.** Trustees elected shall take office immediately after qualifying, and shall hold office for the term of three years except as elsewhere expressly provided herein, and until their successors are elected or appointed and qualified.

The clerk of the district shall, at the time of issuing certificate of election to a person elected as trustee, deliver to such person a blank oath of office. Every trustee shall file his oath of office with the county superintendent of schools within fifteen days of the receipt of the certificate of election and blank oath of office from the clerk. Any trustee failing to qualify as herein provided shall forfeit all rights to his office, and the county superintendent of schools shall appoint to fill the vacancy caused thereby.

**History:** Ap. p. Sec. 1782, Pol. C. 1895; L. 1913; amd. Sec. 11, Ch. 196, L. 1919; amd. Sec. 13, p. 143, L. 1897; Secs. 862 and re-en. Sec. 997, R. C. M. 1921. 1019, Rev. C. 1907; amd. Sec. 502, Ch. 76,

**75-1614. (998) Vacancy in school board.** A vacancy in the office shall be filled by appointment by the county superintendent of schools; except that in districts of the first and second class, such appointment shall be made by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a school trustee for the unexpired term. When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause, the fact of such vacancy shall be immediately certified by the clerk of the school district, to the county superintendent, or to the remaining members of the board in districts of first or second class, and the county superintendent, or the remaining members of the board in districts of first or second class, shall immediately appoint in writing, some competent person, who shall qualify and serve until the next annual school election. The county superintendent or the board shall at the time notify the clerk of the school district of every such appointment; provided, that absence from the school district for sixty consecutive days, or failure to attend three consecutive meetings of the board of trustees without good excuse, shall constitute a vacancy in the office of trustee.

**History:** Ap. p. Sec. 1782, Pol. C. 1895; Ch. 76, L. 1913; amd. Sec. 11, Ch. 196, L. amd. Sec. 13, p. 143, L. 1897; Secs. 862 1919; re-en. Sec. 998, R. C. M. 1921; amd. and 1019, Rev. C. 1907; amd. Sec. 502, Sec. 1, Ch. 275, L. 1967.

**75-1615. (999) Trustees—how removed.** Any school trustee may be removed from office by a court of competent jurisdiction by law for removal of elective civil officers; provided, however, that upon charges being preferred and good cause shown, the board of county commissioners may suspend a trustee until such time as such charges can be heard in the court having jurisdiction thereof.

**History:** En. Sec. 1982, Pol. C. 1895; 502, Ch. 76, L. 1913; re-en. Sec. 999, R. C. re-en. Sec. 1021, Rev. C. 1907; re-en. Sec. M. 1921.

**75-1616. (1000) Vacancy in office of clerk.** Should the office of the clerk of the school district become vacant, the board of school trustees shall immediately fill such vacancy by appointment, and the chairman of the



board of school trustees shall immediately notify the county superintendent of such appointment.

History: En. Sec. 1981, Pol. C. 1895; 502, Ch. 76, L. 1913; re-en. Sec. 1000, re-en. Sec. 1020, Rev. C. 1907; re-en. Sec. R. C. M. 1921.

**75-1617. (1001) Rearrangement of terms to prevent the election of a majority of the trustees.** When at any annual school election the terms of a majority of the trustees regularly expire in districts of the first class, three trustees, in districts of the second class, two trustees, in districts of the third class, one trustee, shall be elected for three years, and the remaining trustee or trustees whose terms expire shall hold over for one or two years as may be necessary to prevent the terms of a majority of the board of trustees expiring in any one year; provided, that it shall be determined by lot what trustee shall hold over, and for what term.

History: En. Sec. 502, Ch. 76, L. 1913;  
re-en. Sec. 1001, R. C. M. 1921.

**75-1618. (1002) Qualifications of electors.** Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, and who is a registered voter, may vote thereat.

History: En. Sec. 1777, Pol. C. 1895; amd. Sec. 1, Ch. 83, L. 1939; amd. Sec. 1, amd. Sec. 8, p. 138, L. 1897; re-en. Sec. Ch. 65, L. 1941; amd. Sec. 1, Ch. 143, L. 857, Rev. C. 1907; amd. Sec. 502, Ch. 76, 1965.  
L. 1913; re-en. Sec. 1002, R. C. M. 1921;

**75-1619. (1003) Challenges—oath of voters.** Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation in substance as follows:

You do solemnly swear (or affirm), that you are a citizen of the United States; that you are twenty-one years of age; and that you have resided in the State one year, and in this school district thirty days next preceding his election, and that you have not voted this day, so help you God.

If he takes this oath or affirmation, his vote must be received; otherwise rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

History: Ap. p. Sec. 1779, Pol. C. 1895; L. 1913; re-en. Sec. 1003, R. C. M. 1921; amd. Sec. 10, p. 141, L. 1897; re-en. Sec. amd. Sec. 2, Ch. 83, L. 1939; amd. Sec. 2, 859, Rev. C. 1907; amd. Sec. 502, Ch. 76, Ch. 65, L. 1941.

**75-1620. (1004) Expenses of election.** All the expenses necessarily incurred in the matter of holding any and all elections for school trustees, extra levies, bonds, school sites, disposal of property, or any other election provided by law in any school district, high school building district, or county high school, shall be paid out of the general school funds of the district, or in the case of a high school building district, out of the high school general funds; or in the case of county high schools, out of the county high school general fund. In its discretion, the board of trustees

may pay judges of any such election at a rate not to exceed one dollar (\$1) per hour of service in connection with any such election.

History: Ap. p. Sec. 14, p. 145, L. 1897; 502, Ch. 76, L. 1913; re-en. Sec. 1004, R. C. re-en. Sec. 866, Rev. C. 1907; amd. Sec. M. 1921; amd. Sec. 1, Ch. 104, L. 1963.

**75-1631. (1014) Call of special election.** The board of trustees shall have power to call a special election for the purpose of bonding the district for the erection and furnishing buildings and purchase of school sites, and for permission to sell school property; provided, that in districts of the first and second classes boards of trustees shall have power to change or select school sites.

History: En. Sec. 507, Ch. 76, L. 1913; re-en. Sec. 1014, R. C. M. 1921.

**75-1632. (1015) Duties of trustees.** Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1 to 7. \* \* \*

8. To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; to build, purchase or otherwise acquire schoolhouses, school dormitories and other buildings necessary in the operation of schools of the district, and to sell and dispose of the same; provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three (3) notices in three (3) public places in the district at least ten (10) days prior to such election, which notices shall specify the time, place, and purpose of such election. Provided, further, that this subdivision shall not be so construed as to prevent the board of trustees from purchasing one (1) or more options for a school site.

9 to 24. \* \* \*

History: Enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1,

Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955; amd. Sec. 1, Ch. 168, L. 1959; amd. Sec. 1, Ch. 105, L. 1961; amd. Sec. 1, Ch. 76, L. 1963; amd. Sec. 1, Ch. 175, L. 1963.

## CHAPTER 17

### BUDGET SYSTEM

Section 75-1723. Fixing tax levy.

**75-1723. (1019.19) Fixing tax levy.** The county superintendent of schools, as clerk of the school budget board, shall, when the board of



county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the maximum budgets set forth in section 75-1713.1, R.C.M. 1947.

To finance the approved nonoperating budget of any school district in which no elementary school will be operated, the county commissioners shall fix and levy a tax for such school district in such number of mills as will produce the amount shown by the approved budget to be raised by tax levy, after deducting from the total amount to be financed the following:

(1) any net nonoperating fund cash balance; provided, that whenever a nonoperating district did not have a nonoperating fund the preceding year, the net cash balances in all of the regular funds of the district shall be combined to form a single balance which shall be called the nonoperating fund cash balance; provided, further, that any district which operated at least one (1) school in the year immediately preceding the budget year may retain separately any cash balance previously designated as its general fund cash reserve, if in the judgment of the trustees of such district the retention of such general fund cash reserve is essential to the operation of a school anticipated for the year following the budget year, and any such retained cash reserve shall not be deducted from the total amount required for the nonoperating budget;

(2) the amount of any transportation reimbursement anticipated from the county;

(3) the amount of any transportation reimbursement anticipated from the state public school equalization fund; and

(4) any miscellaneous revenues available to the district. The remainder of the nonoperating budget amount, after deduction of the above revenues, shall be financed by a tax levied on the taxable valuation of the property of the school district.

History: En. Sec. 19, Ch. 146, L. 1931; L. 1953; amd. Sec. 1, Ch. 247, L. 1961; amd. Sec. 10, Ch. 199, L. 1949; amd. Sec. amd. Sec. 2, Ch. 182, L. 1963; amd. Sec. 2, Ch. 208, L. 1951; amd. Sec. 1, Ch. 247, 2, Ch. 267, L. 1963.

## CHAPTER 18

## SCHOOL DISTRICTS

**Section 75-1802. Classifications of districts—number of trustees.**

**75-1813. Consolidated districts—procedure in event of consolidation—annexation—bonded debts.**

**75-1813.1. Consolidated districts in two or more counties.**

**75-1818. Dissolution of joint school districts.**

**75-1802. (1021) Classifications of districts—number of trustees.** All districts having a population of eight thousand (8000) or more shall be districts of the first class. All districts having a population of one thousand (1000) or more, and less than eight thousand (8000) shall be districts of the second class, and all districts having a population of less than one thousand (1000) shall be districts of the third class. In districts of the first class the number of trustees shall be seven (7); in districts of the second class the number of trustees shall be five (5), and in districts of the third class the number of trustees shall be three (3).

Whenever the population of any school district shall increase beyond or decrease below the number required as specified above for a certain class of school district, the county superintendent of schools shall declare such school district to be changed to the proper class. The county superintendent may compute the population by multiplying by three the number of school census children in the district. No school district shall be changed in classification more than once in any five (5) year period. The county superintendent of schools shall take the necessary steps to provide that at the next school election to elect the proper number of school trustees as designated above and to fill all vacancies due to any change of classification. Provided however that the provisions of this act shall not affect the terms of trustees heretofore elected.

**History:** En. Sec. 401, Ch. 76, L. 1913;  
re-en. Sec. 1021, R. C. M. 1921; amd. Sec.  
1, Ch. 85, L. 1943; amd. Sec. 1, Ch. 203,  
L. 1963.

**75-1813. (1034) Consolidated districts—procedure in event of consolidation—annexation—bonded debts.** Any two or more school districts lying in one county may be consolidated, either by the formation of a district by consolidation, or by the annexation of one or more districts to an existing district, as hereinafter provided. When school districts plan to proceed under the provisions of this section, they must, jointly, establish whether such consolidation proposal shall be made with or without assumption of bonded indebtedness. Dependent upon such joint decision, one of the two following options shall be used:

A. Option A—When two or more school districts lying in one county wish to consolidate and assume each other's bonded indebtedness, or when one or more school districts in one county wish to annex their territory to an existing district and assume its bonded indebtedness, option A shall be used.



B. Option B—When two or more school districts wish to consolidate and not assume each other's bonded indebtedness, or when one or more school districts in one county wish to annex their territory to an existing district and not assume its bonded indebtedness, option B shall be used.

#### OPTION A

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the county superintendent of schools having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause notice of election to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and published in a newspaper published in the county and having general circulation in the school districts, giving the time and place or places specified in each notice to vote on the question of consolidation with assumption of bonded indebtedness.

Consolidation of any two (2) or more school districts lying in one county may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendent of schools, and shall in each such district seeking consolidation be signed by not fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendent shall within not less than twenty (20), nor more than thirty (30) days, cause notice to be given as provided in the next preceding paragraph.

The votes at such election shall be by ballot, which shall read "For consolidation with assumption of bonded indebtedness" or "Against consolidation with assumption of bonded indebtedness." At such election those qualified electors whose names appear upon the last preceding completed assessment roll shall be furnished ballots printed upon white paper and all other qualified electors shall be furnished ballots printed upon paper distinctly yellow in color. Separate ballot boxes shall be used for the receipt of voted ballots so that the white ballots will be segregated from the yellow ballots. The judge or judges at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendent of the county in which the district lies.

If both the majority of the total votes cast in each district holding such election be for consolidation, and the majority of the votes cast by those qualified electors whose names appear upon the last preceding completed assessment roll in each district holding such election be for consolidation, provided that at least a percentage of such electors in each district, equal to the percentage required in section 75-3914, R. C. M. 1947, for approval of a bond issue, have voted, it carries, and the superintendent, within ten (10) days thereafter, shall make a proper order to give effect to such vote, and shall thereafter transmit a copy

thereof to the county clerk and recorder and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the number of such district, and the county superintendent shall appoint trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors.

At the regular election succeeding there shall be elected by the regularly qualified electors the number of trustees required to replace those whose terms are expiring. The election of trustees and terms shall be the same as for other districts under the general school laws.

When, in the interest of reducing cost of operation or improving the school service for pupils, a board of trustees of a third class district seeking to annex its territory to a third class district or districts maintaining a high school, a second class district or districts, or a first class district or districts or any combination thereof; a board of trustees of a third class district maintaining a high school seeking to annex its territory to a second class district or districts or a first class district or districts or any combination thereof; or the board of trustees of a second class district seeking to annex its territory to a first class district or districts, shall by majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property of such district to any district or districts as herein provided. As the board resolution or petition requests, the county superintendent shall, upon an approving vote of the trustees of the district or districts with which the annexation is sought, authorize an election in the petitioning district on such annexation within not less than twenty (20) nor more than thirty (30) days. Notice of such election shall be given in the same manner and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district that is authorized herein for district consolidation.

The ballot shall in this case be "For annexation with assumption of bonded indebtedness" and "Against annexation with assumption of bonded indebtedness." Should the action of the boards of trustees approving the plan of annexation be approved by majority vote of electors of the district or districts seeking election on the issue and by majority vote of the electors of the district or districts seeking election on the issue whose names appear upon the last completed assessment roll, provided that at least a percentage of such electors in each district, equal to the percentage required in section 75-3914, R. C. M. 1947, for approval of a bond issue, have voted, then the consolidation sought shall be effected by order of the county superintendent of schools within ten (10) days after such election. In the event of a disapproving vote by majority of votes cast by all the electors or by the electors whose names appear on the last preceding completed assessment roll or if the percentage of the electors whose names appear upon the last preceding completed assessment roll and who vote in either of such voting districts is less than the percentage required in section 75-3914 for approval of a bond issue, the proposed annexation shall fail.



In case of annexation of any district to any existing district or districts, as herein provided, the proper officers of the annexed districts, within ten (10) days from the receipt of a copy of the annexation order, shall turn over to the proper officers of the district or districts to which it is annexed, all records, funds, and effects of such annexed district. When a district is proportionately annexed, as provided herein, section 75-1808, Revised Codes of Montana, 1947, controls. In case of the formation of a district by consolidation the proper officers of the discontinued district or districts in like manner, within ten (10) days after the organization of the district by consolidation, shall turn over the records, funds, and effects of such old district to the proper officers of the district created by consolidation.

In case of creation of a district by annexation, the title to schoolhouses and sites of the petitioning district shall vest in the receiving district or districts in which the schoolhouses and sites are located. The officers of the receiving district or districts shall continue to hold office until the end of the terms for which they were duly elected and their successors shall be regularly elected as provided by law.

School districts created by consolidation or annexation shall be governed by the general school laws of the state.

Bonded indebtedness of any district resulting from merger by consolidation or annexation shall become the indebtedness and obligation of the consolidated district and be paid by levies imposed upon property therein, provided that when a third class district is proportionately annexed to any number of first or second class districts, as herein provided, the bonded indebtedness, if any, of such third class district shall become the bonded indebtedness of such first or second class districts in the same proportions as the taxable valuation of each annexed portion bears to the total taxable valuation of such third class district.

#### OPTION B

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the county superintendent of schools having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause notice of election to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and published in a newspaper published in the county and having general circulation in the school districts, giving the time and place or places specified in each notice to vote on the question of consolidation without assumption of bonded indebtedness.

Consolidation of any two (2) or more school districts lying in one county may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county

superintendent of schools, and shall in each such district seeking consolidation be signed by not fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendent shall within not less than twenty (20), nor more than thirty (30) days, cause notice to be given as provided in the next preceding paragraph.

The votes at such election shall be by ballot, which shall read "For consolidation without assumption of bonded indebtedness" or "Against consolidation without assumption of bonded indebtedness." The judge or judges at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendent of the county in which the district lies.

If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendent, within ten (10) days thereafter, shall make a proper order to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the number of such district, and the county superintendent shall appoint trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors.

At the regular election succeeding there shall be elected by the regularly qualified electors the number of trustees required to replace those whose terms are expiring. The election of trustees and terms shall be the same as for other districts under the general school laws.

When, in the interest of reducing costs of operation or improving the school service for pupils, a board of trustees of a third class district seeking to annex its territory to a third class district or districts maintaining a high school, a second class district or districts, or a first class district or districts or any combination thereof; a board of trustees of a third class district maintaining a high school seeking to annex its territory to a second class district or districts or a first class district or districts or any combination thereof; or the board of trustees of a second class district seeking to annex its territory to a first class district or districts, shall by majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property of such district to any district or districts as herein provided. As the board resolution or petition requests, the county superintendent shall, upon an approving vote of the trustees of the district or districts with which the annexation is sought, authorize an election in the petitioning district on such annexation within not less than twenty (20) nor more than thirty (30) days. Notice of such election shall be given in the same manner and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district that is authorized herein for district consolidation.

The ballot shall in this case be "For annexation without assumption of bonded indebtedness" and "Against annexation without assumption of



bonded indebtedness." Should the action of the boards of trustees approving the plan of annexation be approved by majority vote of electors of the district seeking annexation then the annexation sought shall be effected by order of the county superintendent of schools within ten (10) days after such election. In the event of a disapproving vote by majority of votes cast the proposed annexation shall fail.

In case of annexation of any district to any existing district or districts, as herein provided, the proper officers of the annexed districts, within ten (10) days from the receipt of a copy of the annexation order, shall turn over to the proper officers of the district or districts to which it is annexed, all records, funds, and effects of such annexed district. When a district is proportionately annexed, as provided herein, section 75-1808, R. C. M. 1947, controls. In case of the formation of a district by consolidation the proper officers of the discontinued district or districts in like manner, within ten (10) days after the organization of the district by consolidation, shall turn over the records, funds, and effects of such old district to the proper officers of the district created by consolidation.

In case of creation of a district by annexation, the title to schoolhouses and sites of the petitioning district shall vest in the receiving district or districts in which the schoolhouses and sites are located. The officers of the receiving district or districts shall continue to hold office until the end of the terms for which they were duly elected and their successors shall be regularly elected as provided by law.

School districts created by consolidation or annexation shall be governed by the general school laws of the state.

Bonded indebtedness of any district resulting from merger by consolidation, or annexation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 407, Ch. 76, L. 1913; re-en. Sec. 1034, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1943; amd. Sec. 1, Ch. 32, L. 1951; amd. Sec. 1, Ch. 23, L. 1953; amd. Sec. 1, Ch. 205, L. 1965; amd. Sec. 2, Ch. 271, L. 1967; amd. Sec. 1, Ch. 364, L. 1969. Cal. Pol. C. Sec. 1577.

**75-1813.1. Consolidated districts in two or more counties.** (1) Any two or more school districts that are adjacent and contiguous lying in two (2) or more counties may be consolidated, either by the formation of a new district or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the superintendents of each county affected having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall

cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and in one (1) or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts that are adjacent and contiguous lying in two (2) or more counties may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendents of schools of each county affected, and shall in each such district seeking consolidation be signed by no fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendents shall within not less than twenty (20) nor more than thirty (30) days, cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one (1) or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

(2) The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation." The presiding officer at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendents of the counties affected in which the district lies.

(3) If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendents of each county affected, within ten (10) days thereafter, shall in concurrent action make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder of each county affected and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and county superintendents of the counties affected in concurrent action shall appoint three (3) trustees to serve until the first Saturday in April succeeding.

(4) At the regular election succeeding there shall be elected by the regularly qualified electors three (3) trustees, one (1) of whom shall serve for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. The election of trustees and terms shall be the same as for other districts under the general school laws.

(5) Consolidated school districts shall be governed by the general school laws of the state.

(6) Bonded indebtedness of any district merged by consolidation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 1, Ch. 141, L. 1965.

**75-1818. (1037.1) Dissolution of joint school districts.** A joint school district may be dissolved in the following manner:



Whenever the majority of the qualified electors residing in that portion of a joint district situated in one county presents a petition to the county superintendent of schools of the same county praying for a dissolution of the district and setting forth briefly the reason therefor, such county superintendent shall immediately give notice thereof to all other county superintendents of counties contributing territory to the joint district, and shall within twenty (20) days from the date of the receipt of such petition call an election and fix a date for the holding of same, and shall notify the clerk of the district to post three notices in the territory of each county composing the district. Notices must be posted in the most conspicuous places in the territory and must be posted at least fifteen days preceding the election. Such notices must specify the purpose and the date and hour when the polls will be opened and the place at which the election will be held. Separate elections must be held in each portion of the district lying in different counties on the same date and hour and be conducted in the same manner as general school elections. Each county superintendent of schools must appoint three judges of election for the territory in his or her county and the result of the election must be certified by the judges to their respective county superintendents. The county superintendents shall meet within five days after the election and determine the total vote cast throughout the district. If a majority of all votes cast in the district are for dissolution, the district must be dissolved; or in the event that two-thirds ( $\frac{2}{3}$ ) of the votes cast in the territory of any county favor dissolution the district may be dissolved as to such territory; provided both superintendents of the counties affected are agreed that such dissolution will not entail an undue hardship to either part of such joint district, and that there is no good and sufficient reason why such dissolution should not be made. In case of the failure of a two-thirds ( $\frac{2}{3}$ ) majority in any portion of the district, as herein provided, or a failure of the majority of the entire district to vote for dissolution, the district shall not be dissolved and no election thereon can be held within three (3) years thereafter. If dissolution carries it shall take effect at the end of the current school year.

**History:** En. Sec. 1, Ch. 115, L. 1927.

## CHAPTER 31

### SCHOOLHOUSE SITES AND CONSTRUCTION

- Section 75-3109. Agreements authorized for joint interstate school facilities.  
75-3110. Form of agreement—approval by superintendent of public instruction required.  
75-3111. Election on interstate agreement—form of ballot.

**75-3109. Agreement authorized for joint interstate school facilities.** The board of trustees of any school district with boundaries adjoining another state may enter into an agreement and contract with a school district in such adjoining state to provide for the joint erection, operation and maintenance of school facilities for both districts upon such terms and

conditions as may be mutually agreed upon between such districts in accordance with the provisions of this act.

**History:** En. Sec. 1, Ch. 240, L. 1965.

**75-3110. Form of agreement—approval by superintendent of public instruction required.** An agreement proposed for adoption by a school board under this act shall be in the form and contain such terms as may be prescribed by the superintendent of public instruction and no agreement shall be submitted to a vote of the people under this act unless it has first been approved in writing by the superintendent of public instruction.

**History:** En. Sec. 2, Ch. 240, L. 1965.

**75-3111. Election on interstate agreement—form of ballot.** An approved agreement shall be submitted to the electorate of the school district at a special election called for that purpose or at a regular election for school trustees. The question on the ballot at said election shall be in substantially the following form.

“Shall the proposed agreement between this school district and school district number ..... of ..... county, state of ....., be executed?”

No agreement made pursuant to this act shall be valid until it has been approved by the electors of the district in the manner herein provided.

**History:** En. Sec. 3, Ch. 240, L. 1965.

## CHAPTER 34

### TRANSPORTATION OF PUPILS

Section 75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses.

**75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses.** The board of trustees shall have the power to purchase, or rent and provide for the upkeep, care, operation, maintenance, insurance, for two-way radios and for school buses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed five (5) years; and provided further, that each district owning a school bus or buses may levy a sufficient number of mills to create a reserve of not to exceed twenty per cent (20%) per year of the original cost of the bus or buses for which the reserve is created; said fund to be kept separate and apart from all other funds, and to be used only for the purchase of the bus or buses needed to replace the bus or buses and two-way radios for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose. Provided, however, that school district trustees may authorize as standard equipment, the installation of two-way radios in a school bus



or buses operating in school districts where weather and road conditions may constitute a hazard to the safety of the school pupil passengers. The two-way radios may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county, with their permission and the permission of the federal communications commission wherein said school bus or buses operate, or any frequency assigned for such operation by the commission.

History: En. Sec. 3, Ch. 152, L. 1941; Ch. 52, L. 1955; amd. Sec. 1, Ch. 202, L. amd. Sec. 1, Ch. 163, L. 1951; amd. Sec. 1, 1957; amd. Sec. 1, Ch. 74, L. 1965.

## CHAPTER 37

### FINANCE

Section 75-3717. Building and furnishing fund.  
75-3719. Transfer of funds—election.

**75-3717. (1208) Building and furnishing fund.** The county treasurers of the several counties of this state shall transfer all moneys so paid into said treasury as provided for in the preceding section or that may now be in such treasury, derived from said source, to the school fund of the school district in which said town is situated, which shall be paid out on the order of the school trustees of such district as provided for in section 75-3718; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing schoolhouses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this chapter.

History: En. Sec. 1945, 5th Div. Comp. 2007, Ch. 76, L. 1913; re-en. Sec. 1208, Stat. 1887; re-en. Sec. 1946, Pol. C. 1895; R. C. M. 1921.  
re-en. Sec. 1000, Rev. C. 1907; amd. Sec.

**75-3719. (1210) Transfer of funds—election.** Said fund may be used for general school purposes, if a majority of the qualified electors of such district shall so elect, upon such question being duly submitted to them at any regular or special election therefor.

History: Ap. p. Sec. 1947, 5th Div. Sec. 2009, Ch. 76, L. 1913; re-en. Sec. 1210, Comp. Stat. 1887; re-en. Sec. 1948, Pol. C. R. C. M. 1921.  
1895; re-en. Sec. 1002, Rev. C. 1907; amd.

## CHAPTER 38

### EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3801. District school taxes—election.  
75-3802. Notice of election.  
75-3803. Purposes of levy to be submitted—use of funds.  
75-3804. Form and marking of ballot—conduct of election.  
75-3805. Challenging voters—oath of elector—false swearing.  
75-3806. Building reserve fund—election.

**75-3801. (1219) District school taxes—election.** (1) Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum

budgets as specified in section 75-1713.1, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the maximum budgets hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-4518.1 for the purpose of maintaining the high schools of said district or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll in the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).



History: En. Sec. 1, Ch. 93, L. 1917; amd. Sec. 1, Ch. 210, L. 1951; amd. Sec. re-en. Sec. 1219, R. C. M. 1921; amd. Sec. 2, Ch. 247, L. 1953; amd. Sec. 12, Ch. 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, 267, L. 1963; amd. Sec. 1, Ch. 140, L. L. 1935; amd. Sec. 12, Ch. 199, L. 1949; 1967; amd. Sec. 1, Ch. 168, L. 1969.

**75-3802. (1220) Notice of election.** Where the question of making such additional levy is so submitted, notice thereof shall be given by posting the same at each schoolhouse in said district, at least ten days before such election, or by publication thereof for a like period before such election in each newspaper published in said district, or by both such notice and publication.

History: En. Sec. 2, Ch. 93, L. 1917;  
re-en. Sec. 1220, R. C. M. 1921.

**75-3803. (1221) Purposes of levy to be submitted—use of funds.** In submitting such question there shall be specified the amount to be raised by such additional tax levy and the approximate number of mills required to raise such amount and the purpose for which the same is to be expended and if authorized the money raised by such additional tax levy shall be used for that specified purpose only; provided, that if any balance remains on hand after the purpose for which said levy was made has been accomplished, said balance may, by the vote of the trustees of said district, be transferred to any other fund of such district.

History: En. Sec. 3, Ch. 93, L. 1917;  
re-en. Sec. 1221, R. C. M. 1921; amd. Sec. 2, Ch. 144, L. 1935.

**75-3804. (1222) Form and marking of ballot—conduct of election.** The ballot furnished electors at said election shall have printed thereon the following: "Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy) for the purpose of (insert the purpose for which the additional tax levy is made)?"

- ☐ For an additional levy to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills.
- ☐ Against an additional tax levy to raise the sum of (state amount to be raised by additional tax levy), and being approximately (give number) mills.

The voters shall mark the ballots in the same manner as ballots are marked under the election laws of this state. The election shall be held, votes canvassed and returns made as in other school elections. If the majority voting on the question are in favor of such additional levy, the board of trustees of said school district shall so certify to the board of county commissioners of the county in which said school district is situated the amount authorized by such election to be raised by such additional levy and such board of county commissioners shall make such additional levy in such number of mills as will raise such amount in the same manner that the levy for special taxes in said district is made.

History: En. Sec. 4, Ch. 93, L. 1917; 3, Ch. 144, L. 1935; amd. Sec. 1, Ch. 281, re-en. Sec. 1222, R. C. M. 1921; amd. Sec. L. 1959.

**75-3805. (1223) Challenging voters—oath of elector—false swearing.** Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation, in substance as follows:

“You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in this State one year and in this school district thirty days next preceding this election; that you are a taxpayer on the last assessment roll from this school district; and that you have not voted this day. So help you God.”

Said oath shall be reduced to writing and signed by the person challenged and sworn to before one of the judges of election. Said oath or affirmation shall be returned with the ballots cast at such election. If the voter takes oath or affirmation, his vote must be received; otherwise, it will be rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

**History:** En. Sec. 5, Ch. 93, L. 1917; 2, Ch. 120, L. 1925; amd. Sec. 1, Ch. 31, re-en. Sec. 1223, R. C. M. 1921; amd. Sec. L. 1941.

**75-3806. Building reserve fund—election.** (1) The board of trustees of any school district may, whenever a majority thereof so decide, submit to the electors of the district the question whether the board shall be authorized to create a building reserve fund of a certain amount, to be raised within a specified number of years, for the purpose of the erection, equipping or enlargement of school buildings, teacherages, garages, or other buildings needed for school purposes. The reserve fund shall not exceed five (5) per cent of the value of the taxable property in the district. If created, the fund shall be held by the county treasurer and by him credited to the school district creating same, to be used for the purposes specified in this section and not for any other purpose. Whenever the county has under its control any moneys credited to the fund from taxation or from the sale of bonds by a school district for a building reserve fund for which there is no immediate demand, which in the judgment of the governing body of the school district it would be advantageous to invest in any interest-bearing deposits in a state or national bank insured by the F.D.I.C., or obligations of the United States of America, either short-term or long-term, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the school district or to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(2) The election shall be held in the manner prescribed for election on the issuance of school bonds, except that the ballots must contain the words “building reserve fund, yes” and “building reserve fund, no.” If the majority of the votes at the election are “building reserve fund, yes,” the



clerk of the district shall immediately notify the board of county commissioners and the county treasurer, and the board of county commissioners shall thereafter levy annually the tax necessary to raise the funds for the number of years specified. The funds shall be kept in the custody of the county treasurer until sufficient funds have been raised to commence the building contemplated by the school district.

(3) At any time after the raising of a building reserve fund has been commenced by any school district, the board of school trustees may submit to the electors of the district, as provided by law, the question whether the board shall be authorized to issue bonds of the district for the balance of the building reserve fund. If both reserve funds and bond funds are needed for the purposes authorized herein, the reserve funds must be used prior to using funds for the issuance and sale of bonds. If the bonds are authorized, the annual building reserve fund levy shall be discontinued by the board of county commissioners when the levy is commenced for payment of the bonds.

**History:** En. Sec. 1, Ch. 85, L. 1967;  
amd. Sec. 3, Ch. 268, L. 1969.

## CHAPTER 39

### BONDS

- Section 75-3908.** Petition and election required for bond issues for other purposes.  
**75-3909.** Form, contents and proof of petition.  
**75-3910.** Meeting of board of trustees to consider petition and calling of election—notice of election—form.  
**75-3911.** Preparation of ballots—form.  
**75-3912.** Who entitled to vote—list of electors and precinct registers.  
**75-3913.** Conduct of election—voting by absent electors.  
**75-3914.** Percentage of electors required to authorize bond issue.  
**75-3915.** Meeting of board of trustees to canvass election returns—resolution for bond issue.  
**75-3916.** Form of notice of sale of bonds.  
**75-3937.** Signers required on petition for bond elections in school districts, cities and towns and counties.  
**75-3938.** Qualification of voters.

**75-3908. (1224.8) Petition and election required for bond issues for other purposes.** School district bonds for any other purpose than those stated in sections 75-3906 and 75-3907, shall not be issued unless authorized at a duly called election at which the question of issuing such bonds was submitted to the electors of the school district; and no such election shall be called unless proceedings have been commenced by resolution upon the part of the board of trustees of the school district of its own motion and without any petition being filed therefor or unless there has been presented to the board of trustees a petition asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified registered electors residing within the school district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes.

**History:** En. Sec. 8, Ch. 147, L. 1927;  
amd. Sec. 1, Ch. 54, L. 1967.

**75-3909. (1224.9) Form, contents and proof of petition.** The petition for the calling of an election to vote upon the question of issuing school district bonds shall plainly state the purpose of the proposed bond issue and shall estimate the amount of bonds necessary to be issued for such purpose or purposes. When the bonds sought to be issued are for two or more purposes, the amount to be issued for each single purpose shall be separately estimated in the petition. It may be in the form of one single petition or consist of more than one petition, all being identical in form and fastened together, after being circulated and signed, so as to form one petition before being delivered to the county clerk as hereinafter provided. The school district clerk or any one or more qualified electors of the school district may circulate the petition or petitions, and the clerk or each elector circulating such petition shall subscribe or attach to each of the petitions, circulated by him, an affidavit to the effect that the signatures are genuine and that the signers knew the contents thereof at the time of signing the same. The completed petition, before being presented to the board of school trustees, shall be delivered to the county clerk and recorder of the county in which the school district is situated, who shall examine the same and shall endorse thereon or attach thereto his certificate, which certificate shall set forth:

(a) The total number of persons who are registered electors and taxpayers upon property within the school district whose names appear on the last completed assessment roll for state, county and school district taxes.

(b) Which and how many of the persons whose names are subscribed to the petition are possessed of all of these qualifications.

(c) Whether such qualified signers constitute more or less than twenty per centum (20%) of such registered electors and taxpayers within the district.

The county clerk and recorder shall promptly deliver or transmit such petition, with his certificate endorsed thereon or attached thereto, to the clerk of the board of school trustees of such district.

**History:** En. Sec. 9, Ch. 147, L. 1927.

**75-3910. (1224.10) Meeting of board of trustees to consider petition and calling of election—notice of election—form.** Upon such petition being received by the clerk of the school district, a meeting of the board of trustees shall be called to consider the same. The board of trustees shall be the judges of the sufficiency of the petition and the findings of such board shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. If it is found that the petition is in proper form and bears the requisite number of signatures, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its presentation, fix the exact amount of bonds proposed to be issued, which may be more or less than the amount estimated in the petition, determine the number of years through which the bonds are to be paid, fix the date of election, which shall not be less than twenty (20) days, nor



more than thirty (30) days after the date of the passage and adoption of such resolution, appoint three electors of the district who are qualified to vote at such election to act as judges of election, at each voting place and direct the clerk to give notice of such election. The notice of election shall designate one or more school houses in said school district as voting places and be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION.

“Notice is hereby given by the undersigned clerk of School District No. \_\_\_\_\_ of \_\_\_\_\_ County, State of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19\_\_\_\_, an election of the registered qualified electors of School District No. \_\_\_\_\_ of \_\_\_\_\_ County, State of Montana, who are **tax-**payers therein and whose names appear on the last completed assessment roll for state, county and school district taxes prior to the holding of such election, will be held on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19\_\_\_\_, at \_\_\_\_\_ for the purpose of voting upon the question of whether or not the board of school trustees shall be authorized to issue and sell bonds of said school district in the amount of \_\_\_\_\_ dollars, (\$\_\_\_\_), bearing interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, for the purpose of \_\_\_\_\_ (here state purpose) \_\_\_\_\_. The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period of \_\_\_\_\_ (state number) years.

The polls will be open from \_\_\_\_\_ o'clock \_\_\_\_m. and until \_\_\_\_\_ o'clock \_\_\_\_m. of the said day.

Dated and posted this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19\_\_\_\_.

\_\_\_\_\_  
Clerk of School District No. \_\_\_\_\_  
of \_\_\_\_\_ County, State of Montana.”

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

The school district clerk shall, not less than fifteen (15) days before the day specified for such election, post notice of such election in not less than three (3) public places within the district, and in incorporated cities and towns at least one (1) notice must be posted at each voting place designated for such election.

In school districts of the first class the board of trustees must also cause the notice to be published once a week for two (2) successive weeks in some newspaper of general circulation in the district, if one be published therein, in addition to such posting.

History: En. Sec. 10, Ch. 147, L. 1927;  
amd. Sec. 4, Ch. 178, L. 1939.

**75-3911. (1224.11) Preparation of ballots—form.** The school district clerk shall cause ballots to be prepared for all such bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT  
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO."

Shall the board of trustees be authorized to issue and sell bonds of this school district in the amount of ..... dollars (\$.....) bearing interest at a rate not exceeding six per centum (6%) per annum, payable, semi-annually, during a period not exceeding ..... years, for the purpose of ..... (here state the purpose the same way as in the notice of election).

☐ BONDS—YES.

☐ BONDS—NO.

History: En. Sec. 11, Ch. 147, L. 1927;  
amd. Sec. 5, Ch. 178, L. 1939.

**75-3912. (1224.12) Who entitled to vote—list of electors and precinct registers.** In all school district bond elections hereafter held only qualified registered electors residing within the district who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote, provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another school district. Upon the adoption of the resolution calling for the election, the clerk of the school district shall notify the county clerk of the date on which the election is to be held, and qualified persons shall be allowed to register for such election up till noon of the fifteenth (15) day prior to the date thereof. At that time the registration books shall be closed for such election, but it shall not be necessary to give any notice of such closing of the registration books.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such district who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the school district clerk who shall deliver the same to the judge prior to the opening of the polls. In school districts of the first class it shall be the duty of the school district clerk to post



such lists in five (5) public and conspicuous places within the district at least ten (10) days prior to the date of election. It shall not be necessary to post such lists in districts of the second and third class. A charge of five cents per name for the use and benefit of the county shall be made by the county clerk for preparing such list and precinct registers.

**History:** En. Sec. 12, Ch. 147, L. 1927;  
amd. Sec. 19, Ch. 64, L. 1959; amd. Sec.  
1, Ch. 127, L. 1959.

**75-3913. (1224.13) Conduct of election—voting by absent electors.** The bond election shall be conducted in the manner prescribed for the election of school trustees and return shall be made and canvassed in a similar manner. Any qualified elector entitled to vote at any school bond election who is absent from the county or who is physically incapacitated from attending the polling place at such election may vote thereat by complying with the provisions of Chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended, except that the application of an absentee or physically incapacitated person for ballot may be made at any time within fifteen (15) days next preceding such bond election.

The school district clerk whose duty it is to cause the ballots to be prepared for the bond election shall furnish the county clerk with a supply of ballots prior to the fifteenth day next preceding the election for the use of the county clerk in furnishing ballots to applicants for absent voters' ballots.

The county clerk shall deliver to the judges of election at the opening of the polls all absent voters' ballots that he shall have received up to that time from absent or physically incapacitated electors. The procedure set out in Chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended, shall apply to the voting by absent electors with respect to school bond elections.

**History:** En. Sec. 13, Ch. 147, L. 1927;  
amd. Sec. 1, Ch. 203, L. 1955.

**75-3914. (1224.14) Percentage of electors required to authorize bond issue.** Whenever the question of issuing bonds for any purpose is submitted to the qualified electors of a school district at either a general or special school election if forty (40) per centum of the qualified electors entitled to vote on such question at such election vote thereon and a majority of such votes shall be cast in favor of such proposition then said proposition shall be deemed to have been approved and adopted; provided, moreover, that if less than forty (40) per centum, but more than thirty (30) per centum of such qualified electors vote on such question at such election and sixty (60) per centum or more of such votes shall be cast in favor of such proposition, then such proposition shall be deemed to have been approved and adopted, otherwise such question shall be deemed to have been rejected.

**History:** En. Sec. 14, Ch. 147, L. 1927;  
amd. Sec. 1, Ch. 40, L. 1935; amd. Sec. 1,  
Ch. 7, L. 1937; amd. Sec. 1, Ch. 103, L.  
1969.

**75-3915. (1224.15) Meeting of board of trustees to canvass election returns—resolution for bond issue.** If such election shall authorize the issuance of such bonds, the board of trustees shall within sixty (60) days from the date of such election pass and adopt a resolution providing for the issue of the bonds; provided that such bonds may be issued in one or more series or installments as the board may in such resolution direct. This resolution shall recite the amount of bonds to be issued, the maximum rate of interest, the purpose of the issue, the date they shall bear, and the period of time through which they shall be paid, and providing the manner of execution of same. It shall provide for giving preference to amortization bonds, but shall fix the denomination of serial bonds in case it shall be found necessary to issue bonds in that form, and shall direct the clerk to give notice of the sale of the bonds.

**History:** En. Sec. 15, Ch. 147, L. 1927.

**75-3916. (1224.16) Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose, and shall be substantially in the following form:

“NOTICE OF SALE OF SCHOOL DISTRICT BONDS.

Notice is hereby given by the board of trustees of School District No. .... of ..... County, State of Montana, that the said board of trustees will on the ..... day of ....., 19....., at the hour of ..... o'clock .....m. at ....., in the said school district, sell to the highest and best bidder for cash, either amortization or serial bonds of the said school district in the total amount of ..... dollars, (\$.....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said school board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the said board of trustees may determine upon at the time of sale, both principal and interest to be payable in semi-annual installments during a period of ..... years from the date of issue.

If serial bonds are issued and sold they will be in the amount of ..... dollars, (\$.....) each, except the first bond which will be in the amount of ..... dollars, (\$.....) the sum of ..... dollars (\$.....) of the said serial bonds will become payable on the ..... day of ....., 19....., and the sum of ..... dollars, (\$.....) will become payable on the same day each year thereafter until all of such bonds are paid.

The said bonds, whether amortization or serial bonds, will bear date of ....., 19....., and will bear interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, on the ..... day of ..... (month) ..... and .....



(month) ..... in each year, and will be redeemable in full.  
(Here insert optional provisions, if any, to be recited on the bonds.)

The said bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board of trustees reserves the right to reject any and all bids and to sell the said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by a certified check in the sum of ..... dollars, (\$.....) payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the said bonds.

All bids should be addressed to the undersigned clerk.

.....  
Chairman, School District No.....  
of ..... County.  
Address: .....

ATTEST:

.....  
Clerk, School District No. ....  
of ..... County.  
Address: ....."

**History:** En. Sec. 16, Ch. 147, L. 1927;  
amd. Sec. 6, Ch. 178, L. 1939.

**75-3937. (1252) Signers required on petition for bond elections in school districts, cities and towns and counties.** No election for the issuance of bonds of any school district, or of any town, or city, or county shall be called except upon presentation of a petition therefor to the board of school trustees, or to the town or city council, or to the board of county commissioners, as the case may be, signed by at least twenty per cent of the qualified registered electors who are taxpayers upon property within said school district, town, city or county, and whose names appear on the assessment-roll for the year next preceding such election, praying for the calling of said election; provided that the board of county commissioners, board of school trustees, town or city council, as the case may be, shall determine as to the sufficiency of such petition, and the findings of such governing body shall be conclusive against the municipality in favor of any innocent holder of the bonds issued under and by virtue of authority conferred by election provided by this act.

**History:** En. Sec. 1, Ch. 104, L. 1921;  
re-en. Sec. 1252, R. C. M. 1921.

**75-3938. (1253) Qualification of voters.** In all elections hereafter held for the issuance of bonds of any school district, town or city, only qualified registered electors who are taxpayers upon property therein, and whose names appear on the assessment-roll for the year next preceding such election, shall be entitled to vote thereat; provided, however, that no

such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another school district, town or city.

**History:** En. Sec. 2, Ch. 104, L. 1921; Sec. 1253, R. O. M. 1921; amd. Sec. 1, Ch. amd. Sec. 1, Ch. 17, Ex. L. 1921; re-en. 79, L. 1959.

## CHAPTER 41

### HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT— JOINT SCHOOL SYSTEMS

- Section 75-4103. Board of trustees of county high schools.  
 75-4112. Bond issues, submission to electors of question.  
 75-4113. Duty of board of county commissioners.  
 75-4116. County bond issue for county and district high schools.  
 75-4120. Authority to abolish or to unify.  
 75-4120.1. Procedure for unification of county high school.  
 75-4120.2. Appointment and terms of additional trustees after unification—  
       county as high school district.  
 75-4120.3. Adoption of budget after unification.  
 75-4121. Petition to abolish county high school to be filed.  
 75-4122. Commissioners to submit question.  
 75-4123. Publication of notice and preparation of pollbooks.  
 75-4124. Further notice required—manner of holding election—ballots.  
 75-4125. Action by board of county commissioners when election favors  
       abolishing county high school.  
 75-4126. When election favors retaining high school.  
 75-4147. Junior high schools—authority to establish in district having no ac-  
       credited high school.  
 75-4148. Petition—resolution of board—approval of superintendent of public  
       instruction.  
 75-4149. Submission of question.  
 75-4150. Application and submission of question when bonds are to be issued.  
 75-4151. Election.  
 75-4152. Duty of board if establishment of junior high school be approved.  
 75-4153. Issuance of bonds.

**75-4103. (1262.3) Board of trustees of county high schools.** Every county high school shall be under the general supervision and control of a board of trustees consisting of seven members, one of whom shall be the county superintendent of schools of the county wherein such county high school is located, and six of whom shall be appointed by the board of county commissioners of the said county. Provided, however, whenever the county commissioners receive a petition signed by fifteen per cent of the qualified electors in the county high school district requesting the election, the county commissioners of the county shall within not less than thirty days nor more than sixty days thereafter, submit to the electors in the county high school district the following question:

- Shall the board of trustees of the county  
 high school district be elected?  
☐ For the election of trustees.  
☐ Against the election of trustees.

If a majority of all of the votes cast be in favor of electing a board of trustees, then the provisions of sections 75-4104 and 75-4105 of the Re-



vised Codes of Montana, 1947, shall no longer be applicable, but the following sections shall apply :

Four of the trustees to be elected shall come from the elementary school district in which the county high school is located, and the county commissioners and the county superintendent of schools shall immediately district the remaining portion of the county high school district into three trustee districts, and each district shall be entitled to one member on the county high school board.

The election of seven school trustees of the county high school shall be held on the first Saturday in April of every year to fill the expired terms of trustees, and the term of office of trustees after the first election of the county high school board shall be for three years. However, at the first election, four of the trustees elected shall be residents of the elementary school district where the high school is situated and three of the trustees elected shall be residents of the respective trustee districts set up by the board of county commissioners and the county superintendent of schools.

At the first election the four trustees elected from the elementary school district where the high school is located shall cast lots to determine which two shall hold office for one year, which one for two years and which one for three years. The three trustees elected from the trustee districts set up by the board of county commissioners and the county superintendent of schools shall cast lots to determine which one shall hold office for one year, which one for two years and which one for three years.

The procedures for calling and holding elections, and for the assumption of office, for first class school districts, set forth in R. C. M. 1947, section 75-1607 through 75-1613, shall govern the elections provided for in this act, the words "clerk of the district and county superintendent of schools" being synonymous with "the county clerk and recorder" when the former is used in the sections referred to, and the words "board of trustees" being synonymous with the words "county commissioners," if a majority of all the votes cast be in favor of electing a board of trustees of the county high school. Upon the election and qualification for office as hereinbefore set forth of all seven of the elected trustees, the county superintendent of schools shall no longer be a member of the board of trustees.

Any twenty-five electors qualified to vote in the election, shall file with the county clerk and recorder of the county, the nominations of as many persons as are to be elected to the county high school board at the elections herein provided for, at least twenty days preceding the election. The county clerk and recorder shall cause the names to be printed on a ballot not inconsistent with the provisions of the law relating to the election of other candidates.

Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the elementary school district or the trustee district as designated above, next preceding the election, shall be eligible for the office of school trustee and entitled to vote thereat.

Absence from the school district or trustee district for sixty consecutive days, or failure to attend three consecutive meetings of the board of

trustees without good cause, shall constitute a vacancy in the office of trustee. When a vacancy occurs in the county high school board from any cause whatever, the fact shall be immediately certified by the secretary of the high school board to the board of trustees of the high school who shall immediately appoint, in writing, a qualified person, resident of the school or trustee district where the vacancy occurs and who shall serve until the next election as stated herein. At the next election, a new trustee shall be elected to fill the unexpired portion of the vacated term, from the district in which the vacancy occurs.

**History:** En. Sec. 3, Ch. 148, L. 1931;  
amd. Sec. 1, Ch. 278, L. 1959.

**75-4112. (1262.12) Bond issues, submission to electors of question.** If in any county maintaining a county high school in which no district high school is maintained not less than twenty per centum (20%) of the registered voters who on the last completed assessment roll of the county were assessed in their own names on real or personal property in the county shall present to the board of trustees of the county high school a petition asking that there be submitted the question whether bonds of the county shall be issued for the purchase or erection of a high school building or buildings and/or for the repairing, remodeling, or enlarging thereof, and/or for the purchase of equipment thereof, and/or for the purchase, erection and/or equipment of a high school dormitory or dormitories, or gymnasium, and/or for the purchase of a suitable site or sites for such buildings, or any of them, and/or to retire or refund any outstanding bonds issued for any of the purposes foregoing, and if such petition shall specify therein the amount of the bonds to be issued, and if the board of trustees of the county high school shall upon the presentation to it of the said petition, approve the same, and the issuance of bonds of the county to the amount therein mentioned and for the purpose or purposes therein specified, the secretary of the said board shall forthwith in the name of the board of trustees request the board of county commissioners of the county to submit without delay to the registered voters of such county the question whether bonds of the county shall be issued and sold to the amount and for the purpose or purposes in the petition set forth.

**History:** En. Sec. 12, Ch. 148, L. 1931.

**75-4113. (1262.13) Duty of board of county commissioners.** Immediately upon the receipt of any such request it shall be the duty of the board of county commissioners to submit such question to the registered and qualified electors of the county in the manner otherwise provided by law for the submission of the question of the issuance of other county bonds. If a majority of the registered and qualified electors of the county, voting upon the question so submitted, shall approve such issue, then the board of county commissioners shall forthwith issue and market the bonds authorized as in the case of other county bonds.

**History:** En. Sec. 13, Ch. 148, L. 1931.



**75-4116. (1262.15) County bond issue for county and district high schools.** In any county where a county high school and also one (1) or more accredited district high schools are maintained bonds of the county may likewise be issued in accordance with the provisions of this chapter and for any of the purposes aforesaid, the proceeds of such issue to be divided among the county high school and accredited district high school, or schools of the county. The question submitted to the electors of the county shall definitely state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among the accredited district high school, or schools; and in all such cases the amount allotted to the county high school and the amount to be apportioned among the accredited district high school or schools shall be computed upon the basis of the taxable valuation of the county high school district, and of all the accredited district high school districts of the county during the year preceding the submission of the question of the bond issue; provided, that in counties which have not been divided into high school districts, the distribution shall be computed upon the basis of the taxable valuation of the common school district in which the county high school is located, and the taxable valuation of all the common school districts maintaining district high schools in the county during the year preceding the submission of the question of the bond issue provided, further, that moneys apportioned to any high school district or common school district under this act, exclusive of the county high school, shall not be expended until the purpose for such expenditure has been approved by a vote of the people of the district at an election conducted in the same manner as the election to vote on extra taxes for school purposes.

**History:** En. Sec. 15, Ch. 148, L. 1931;  
amd. Sec. 1, Ch. 233, L. 1955.

**75-4120. (1262.19) Authority to abolish or to unify.** Any county in which a county high school has been established may abolish such county high school or unify it with and make it a part of the public school system of the school district in which it is located and dispose of all property belonging thereto in the manner provided in this chapter.

**History:** En. Sec. 19, Ch. 148, L. 1931;  
amd. Sec. 1, Ch. 261, L. 1963.

**75-4120.1. Procedure for unification of county high school.** A county high school may be unified with and made a part of the school district in which the county high school is located in the following manner: If the board of trustees of the county high school and the board of trustees of the school district in which the county high school is located shall each pass a resolution requesting unification and an election thereon and shall each file copies of the respective resolutions with the county superintendent of schools, or if a petition signed by ten per cent (10%) of the qualified electors of the high school district where the county high school is located, or of the county if it is not divided into high school districts, is filed with the county superintendent requesting that an election on the question of unification be held, the county superintendent within not less than twenty

(20) nor more than thirty (30) days shall cause notice of election to be given by posting and publication. The question shall be submitted to the qualified electors of the high school district where the county high school is located or to the qualified electors of the county if it is not divided into high school districts. The notice shall be posted in three (3) public places in each school district of the high school district, or of the county if it is not divided into high school districts, and at least one (1) voting place shall be provided in each such school district. The notice shall also be published once in a newspaper published in the county and having general circulation therein. The notice shall specify the voting places, the time when the polls shall be open and that the question to be submitted is FOR or AGAINST unification.

If a majority of the votes cast at such election shall be FOR unification the county superintendent shall make an order that unification shall be effective the following July 1.

If a majority of the votes cast at such election shall be AGAINST unification the county superintendent shall so declare.

Persons qualified to vote for school trustees shall be eligible to vote at the election provided for herein and as far as applicable the statutes relating to the election of school trustees shall govern such election.

**History:** En. Sec. 1, Ch. 37, L. 1965.

**75-4120.2. Appointment and terms of additional trustees after unification—county as high school district.** If unification is accomplished, immediately after the effective date the county superintendent of schools in those counties which have been divided into high school districts shall appoint additional board of trustee members in the manner provided by section 75-4601, R. C. M. 1947, if the majority of the school districts lying within the high school district so request. If the county has not been divided into high school districts, the county shall immediately upon unification, become a high school district in its entirety in the same manner as if action had been taken under section 75-4602, R. C. M. 1947. Members appointed by the county superintendent of schools shall hold office until the next annual school election when there shall be elected a trustee to replace each appointed member.

**History:** En. Sec. 2, Ch. 37, L. 1965.

**75-4120.3. Adoption of budget after unification.** If unification is accomplished, the board of trustees of the district which was unified with the county high school shall adopt a high school budget for the next fiscal year on the fourth Monday in June preceding the effective date of unification.

**History:** En. Sec. 3, Ch. 37, L. 1965.

**75-4121. (1262.20) Petition to abolish county high school to be filed.** Between the first day of July and the first day of September in any year in which a general election is held in the state of Montana twenty per centum (20%) or more, of the qualified registered electors of any county



maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school be abolished.

History: En. Sec. 20, Ch. 148, L. 1931;  
amd. Sec. 2, Ch. 261, L. 1963; amd. Sec.  
4, Ch. 37, L. 1965.

**75-4122. (1262.21) Commissioners to submit question.** At the first regular monthly meeting of the board of county commissioners of the county immediately following such filing the petition shall be called to the attention of the board by the county clerk; and the board shall immediately direct the submission to the registered voters of the county at the ensuing general election for that year of the question whether the county high school of the county should be abolished.

History: En. Sec. 21, Ch. 148, L. 1931;  
amd. Sec. 3, Ch. 261, L. 1963; amd. Sec.  
5, Ch. 37, L. 1965.

**75-4123. (1262.22) Publication of notice and preparation of pollbooks.** The county clerk of the county shall publish a notice of the filing and purpose of the said petition, which notice shall contain the question of abolishing the county high school. The notice shall also state that the said question will be submitted at the ensuing general election. The notice shall be published at least once a week for four successive weeks in some newspaper of general circulation published in the county, and, if there be none, in such newspaper as the board of county commissioners may designate, the first publication of such notice to be made between September 1 and September 15 of the said year. The county clerk of said county shall prepare suitable pollbooks containing the names of all registered electors at the expense of the county.

History: En. Sec. 22, Ch. 148, L. 1931;  
amd. Sec. 4, Ch. 261, L. 1963; amd. Sec.  
6, Ch. 37, L. 1965.

**75-4124. (1262.23) Further notice required—manner of holding election—ballots.** Further notice of the submission of the question shall be given, and such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election, subject, however, to the following special requirements:

The votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form.

Abolishment of county high school.

- ☐ For the abolishment of the county high school.
- ☐ Against the abolishment of the county high school.

An elector may vote for the question submitted to him for consideration by placing an "X" in the square immediately before the words "For

the abolishment of the county high school"; and a ballot so marked and cast shall be counted in favor of abolishing the county high school. An elector may vote against the question submitted to him for consideration by placing an "X" in the square immediately preceding the words "Against the abolishment of the county high school"; and a ballot so marked and cast shall be counted against abolishing the county high school.

History: En. Sec. 23, Ch. 148, L. 1931;  
amd. Sec. 5, Ch. 261, L. 1963; amd. Sec.  
7, Ch. 37, L. 1965.

**75-4125. (1262.24) Action by board of county commissioners when election favors abolishing county high school.** If a majority of all votes cast at such general election upon the question of the abolishment of the county high school shall be in favor of abolishing the same the board of county commissioners of the county at its first regular meeting in December following the election shall make and enter at large upon its minutes an abstract of the votes so cast and a resolution that in accordance therewith on and after July 1st of the year immediately following the county high school of the county shall be, and is thereby abolished.

History: En. Sec. 24, Ch. 148, L. 1931;  
amd. Sec. 6, Ch. 261, L. 1963; amd. Sec.  
8, Ch. 37, L. 1965.

**75-4126. (1262.25) When election favors retaining high school.** But if a majority of all votes cast at such election shall be against the abolishment of the county high school a similar abstract of the votes shall in like manner be entered by the board of county commissioners at large upon their minutes at its December meeting aforesaid; and no further submission of the question of abolishing the county high school shall be had in that county for at least two (2) years thereafter, provided that if an election against the abolishment of the county high school has been had within any county within two years prior to the enactment of this statute, that the question shall not again be resubmitted for at least two (2) years after the date that this act becomes effective.

History: En. Sec. 25, Ch. 148, L. 1931;  
amd. Sec. 7, Ch. 261, L. 1963; amd. Sec.  
9, Ch. 37, L. 1965.

**75-4147. (1262.45) Junior high schools—authority to establish in district having no accredited high school.** The board of trustees of any school district where no accredited high school is already established and maintained may establish one or more junior high schools in the district at any time in accordance with the sections immediately following and provide therefor quarters, buildings, building sites, equipment and a teaching force.

History: En. Sec. 45, Ch. 148, L. 1931.

**75-4148. (1262.46) Petition—resolution of board—approval of superintendent of public instruction.** Whenever the board of trustees of any school district which has no accredited high school, already established, shall receive a petition in writing from twenty per centum (20%), or



more, of the registered voters of the district requesting that a junior high school or junior high schools be established, or shall itself resolve by resolution spread upon the minutes of the board that the establishment of a junior high school or junior high schools is in the best interests of the district, an application shall forthwith be made by the said board of trustees to the superintendent of public instruction, setting forth therein such facts and information as it may require and requesting its approval of the establishment of the junior high school or junior high schools in question.

**History:** En. Sec. 46, Ch. 148, L. 1931.

**75-4149. (1262.47) Submission of question.** If the establishment of a junior high school or junior high schools is approved by the superintendent of public instruction, the board of trustees of the school district shall immediately submit to the registered voters of the district the question whether a junior high school, or if the establishment of more than one such junior high school be contemplated, whether junior high schools shall be established in such district.

**History:** En. Sec. 47, Ch. 148, L. 1931.

**75-4150. (1262.48) Application and submission of question when bonds are to be issued.** If it is necessary for the district to issue bonds to provide quarters, buildings, building sites, and/or equipment for the proposed junior high school or junior high schools the application for the approval of the superintendent of public instruction, shall set forth the facts pertinent to such issue and the amount of bonds required for the purposes mentioned, or any of them. And in any such case if the establishment of the junior high school or junior high schools be approved by the superintendent of public instruction the question submitted by the board of trustees to the registered voters of the district shall be whether a junior high school, or, if the establishment of more than one junior high school be contemplated, whether junior high schools shall be established in the district and bonds in a specified amount issued to provide quarters, buildings, building sites and equipment, or for any one or more such purposes.

**History:** En. Sec. 48, Ch. 148, L. 1931.

**75-4151. (1262.49) Election.** The qualified electors of the district shall be entitled to vote upon any question submitted to them in accordance with this chapter at an election called, noticed, held, canvassed and returned in the manner provided by law for the submission in such district of the question of a bond issue for the purpose of building, enlarging, altering or acquiring by purchase a school house, of furnishing and equipping the same, and of purchasing the necessary lands therefor.

**History:** En. Sec. 49, Ch. 148, L. 1931.

**75-4152. (1262.50) Duty of board if establishment of junior high school be approved.** If a majority of the votes cast at any such election be in favor of the establishment of a junior high school or junior high schools the

board of trustees of the district shall immediately establish and open the school or schools so authorized.

**History:** En. Sec. 50, Ch. 148, L. 1931.

**75-4153. (1262.51) Issuance of bonds.** If the issuance of bonds as specified in any question submitted be approved the board of trustees shall thereafter issue and market the bonds of the district within the limits of the amount specified in the question and in the same manner and pursuant to the provisions and limitations of law otherwise applicable in the case of the issuance of district bonds for the purpose of building, enlarging, repairing or acquiring by purchase a school house, in the said district, or furnishing and equipping the same, and of purchasing the necessary lands therefor.

**History:** En. Sec. 51, Ch. 148, L. 1931.

## CHAPTER 42

### HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

**Section 75-4201.** Junior high schools—how established where district high school is already established.

**75-4202.** Establishment in districts where county high school is located.

**75-4231.** General powers and duties of boards of trustees.

**75-4201. (1262.52) Junior high schools—how established where district high school is already established.** The board of trustees of any school district wherein an accredited high school is already established may, by resolution and in compliance with the rules and regulations of the superintendent of public instruction reorganize the school system of the district to provide for a junior high school or junior high schools as a part of such system, without submitting the question to the qualified electors of the district. But nothing herein contained shall be construed to authorize any such board of trustees to issue bonds of the district or to incur indebtedness or to proceed in the establishment of a junior high school or junior high schools other than in accordance with its general powers elsewhere defined.

**History:** En. Sec. 52, Ch. 148, L. 1931.

**75-4202. (1262.53) Establishment in districts where county high school is located.** A junior high school or junior high schools may be established by the school district in which any county high school is located in the manner provided in section 75-4201, provided that the board of trustees of the county high school already located in the district shall by resolution consent thereto. A junior high school, or junior high schools, may also, in like manner, be established by the county high school, provided that the board of trustees of the school district, in which the county high school is located, shall by resolution consent thereto. In no event, however, shall a junior high school be established unless the question has been submitted to



the qualified electors of the district involved, and a majority of the electors vote in favor thereof.

History: En. Sec. 53, Ch. 148, L. 1931; amd. Sec. 1, Ch. 89, L. 1949; amd. Sec. 1, Ch. 262, L. 1965.

**75-4231. (1262.83) General powers and duties of boards of trustees.**

The board of trustees of every county high school and of every school district maintaining a district high school shall have the power, and it shall be its duty:

1. \* \* \*

2. (a) At its discretion as restricted by law to purchase, or otherwise acquire, real estate to be used as a site or sites for a high school, high school dormitories, high school gymnasiums, and other high school buildings, or for any proper high school purposes, and to sell and to dispose of the same; at its discretion as restricted by law to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, and other buildings necessary for the high school, and to sell, move and dispose of the same; at its discretion as restricted by law to lease or contract with the board of trustees of any school district, or with any person, for suitable buildings or quarters to be used for any high school purposes or as a high school dormitory or gymnasium, and for such term not exceeding three (3) years as the board may deem for the best interests of the high school; at its discretion as restricted by law to purchase, or otherwise acquire, all necessary and appropriate equipment and supplies for the conduct, operation and administration of the high school, including high school dormitories and gymnasiums; at its discretion as restricted by law to make all contracts and to do all things necessary to carry out or execute all or any of the powers herein specified and conferred upon the board; provided, all boards of trustees of county high schools, or districts maintaining high schools, shall be prohibited from letting any contracts for building, furnishing, repairing or other work for the benefit of the school, or purchasing supplies for said school, where the amount involved is one thousand two hundred fifty dollars (\$1,250.00) or more, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided further, that the board of trustees shall have the right to reject any or all bids; provided that these provisions shall not apply in case of extreme emergencies.

(b) But the board shall exercise no power whatsoever conferred upon it by this subdivision 2 whereby obligations are assumed or an indebtedness created in excess of the funds on hand, belonging to the high school, and not otherwise appropriated, or available to the board from the collection of taxes actually levied for the current year, or from the sale of bonds already authorized; and the power of the board to purchase, or otherwise acquire, or to sell, or dispose of, a site or sites for a high school, high

school dormitories, high school gymnasiums, or other high school buildings, or for any proper high school purpose, or to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, or other buildings necessary for the high school or to sell, move or dispose of the same, shall be exercised only at the direction of a majority of the qualified electors of the county in the case of a county high school, or of the district in the case of a district high school, voting at an election to be called by the board, and otherwise noticed, conducted, canvassed and returned in the same manner as the annual election of school trustees in school districts of the first class.

(c) Provided, however, that where a site or sites for a high school, high school dormitories, high school gymnasiums or other high school buildings or for any other proper high school purposes is contiguous to a site upon which there exists a high school building erected and in use for high school purposes, the board may purchase or otherwise acquire such contiguous site or sites without calling for a vote of the qualified electors of the county, in the case of a county high school, or the district, in the case of a district high school, and upon the making of such a purchase of, or otherwise acquiring, such site or sites, the board may enter into a contract or obligation providing for the purchase of said site or sites by deferred payments and may incur indebtedness for the whole or any part of said purchase price and shall not be restricted in the terms of said contract or the amount of said purchase price except that the amount of the indebtedness incurred shall not exceed ten thousand dollars (\$10,000.00) as to principal and interest; provided further, however, that before making any such purchase the board shall duly pass a resolution declaring such lands to be purchased necessary for school purposes of said district, and provide for the purchase thereof; provided further, that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution.

(d) If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for fifteen (15) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the purchase of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony



as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final.

3 to 15. \* \* \*

History: En. Sec. 83, Ch. 148, L. 1931; Ch. 106, L. 1951; amd. Sec. 1, Ch. 43, L. amd. Sec. 1, Ch. 207, L. 1939; amd. Sec. 2, 1955.

## CHAPTER 44

### COMMUNITY COLLEGE DISTRICTS

- Section 75-4413. Property and population requirements for district—corporate powers—exemption from school district law.
- 75-4414. Supervision by state board of education.
- 75-4415. Boundaries of district—additional to other districts.
- 75-4416. Petition for organization of district—election—order establishing district.
- 75-4417. Election of trustees—districts from which elected—terms of office.
- 75-4418. Notice of organization election—conduct of election.
- 75-4419. Trustees' oath of office—officers of board—quorum—vacancies—seal.
- 75-4420. Trustee elections after organization.
- 75-4421. Meetings of board—notice—mileage allowance for trustees.
- 75-4422. Trustees not to have pecuniary interest in district contracts—advertising for bids.
- 75-4423. Courses of instruction provided—tuition fees.
- 75-4424. Employment of personnel—retirement of employees and trustees.
- 75-4425. Participation in foundation program and equalization fund—budgeting—special tax levy.
- 75-4426. Building construction and repairs—acquisition of land—tax levy—federal and state aid.
- 75-4427. Acceptance of donations.
- 75-4428. Disposition of surplus property—contracts for co-operation with school districts.
- 75-4429. Junior colleges authorized to continue—conversion to community college.
- 75-4430. Annexation of school districts to junior college or community college district—election.

**75-4413. Property and population requirements for district—corporate powers—exemption from school district law.** The voters in any area of the state may form a community college district where the area to be formed into such district has an assessed valuation of not less than thirty million dollars (\$30,000,000) and has a total of not less than seven hundred (700) pupils regularly enrolled in public and private high schools. The district may consist of a county, two or more contiguous counties, or contiguous parts of two or more counties in this state. When such a district is organized, it shall be a body corporate and a subdivision of the state of Montana and shall be known as "The Community College District of \_\_\_\_\_, Montana" and, in that name, may sue and be sued, levy and collect taxes within the limitations of this act, and possess the same corporate powers as common school and high school districts in this state, except as herein otherwise provided. Sections 75-1801 to 75-1834, Revised Codes of Montana, 1947, as amended, shall not apply to community college districts organized under the provisions of this act except as provided herein.

History: En. Sec. 1, Ch. 274, L. 1965.

**75-4414. Supervision by state board of education.** (1) Junior college departments or districts formed prior to the effective date of this act and those community college districts formed under the provisions of this act

shall be under the supervision of the state board of education.

(2) It shall be the duty of the state board of education to:

(a) Establish the role of the two-year college in the state;

(b) Set up a survey form to be used for local surveys of need and potential for two-year colleges and provide supervision in the conducting of surveys;

(c) Supervise the community college districts formed under the provisions of this act and the junior colleges now in existence and formed prior to the effective date of this act;

(d) Formulate and put into effect, uniform policies as to budgeting, record keeping and student accounting;

(e) Establish uniform minimum entrance requirements and uniform curricular offerings for all community and junior colleges;

(f) Make a continuing study of the junior and community college education in the state; and

(g) Be responsible for the accreditation of each junior college and community college under its supervision. Accreditation shall be conducted annually or as often as deemed advisable and made in a manner consistent with the rules and regulations established and applied uniformly to all junior and community college districts in the state. Standards for accreditation of junior and community colleges shall be formulated with due consideration given to curriculum offerings and entrance requirements of the Montana university system.

**History:** En. Sec. 2, Ch. 274, L. 1965.

**75-4415. Boundaries of district—additional to other districts.** The boundaries of any community college district organized under this act shall coincide with the then-existing boundaries of the contiguous common school districts proposed to be included, and such community college district shall be in addition to any other school districts existing in any portion of such area.

**History:** En. Sec. 3, Ch. 274, L. 1965.

**75-4416. Petition for organization of district—election—order establishing district.** Whenever there is presented to the state board of education a petition, signed by not less than twenty per centum (20%) of the qualified registered electors residing within each county or part of county within a proposed community college district area, praying that a community college district be organized for the purpose of offering community college (13th and 14th year) courses, the state board of education shall order an election held within the proposed district of the qualified electors therein to vote on the proposal and to elect trustees, at the next following annual school election. At such election, the proposition shall be in substantially the following form:

#### PROPOSITION

Shall there be organized within the area comprising the School Districts of ....., State of Montana, a community college district for the



offering of 13th and 14th year courses, to be known as the Community College District of ....., Montana, under the provisions of Chapter (giving the number of this act [274]), Laws of 1965, as prayed in the petition filed with the State Board of Education at Helena, Montana, on the ..... day of ....., 19....?

☐ For organization

☐ Against organization

The election shall be conducted in the manner provided for the election of trustees in a common school district of the second or third class. Within fifteen (15) days after such election, the results shall be transmitted by those receiving the same under law in each component district to the state board of education, by certificates attesting to the total number of votes cast within each such district on said proposition, the votes cast for and against said proposition and the votes cast for each candidate for trustee, together with the tally sheets attested to by the judges and clerks of election at each polling place within each such district. The proposal to organize the community college district, to carry, must receive a majority of the total number of votes cast thereon and the state superintendent of public instruction, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county or part of a county within the proposed district and shall certify the results to the state board of education. Should the state superintendent of public instruction certificate show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county or part of a county within the proposed district, the state board of education shall make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of county clerk and recorder in each county in which a portion of such new district is situated. If the proposition carries in some county or counties and/or parts of counties but not in all portions of area sought to be included within the district, the board shall determine whether the area in which the proposition carried by a majority vote meets the requirements of section 75-4413, and if so shall establish the boundaries. If the proposition carries, the board shall also determine which candidates have been elected trustees under section 75-4417. Should the proposition to organize the district fail to receive a majority of the votes cast thereon above provided, no tabulation shall be made to determine the candidates elected trustees.

**History:** En. Sec. 4, Ch. 274, L. 1965.

**75-4417. Election of trustees—districts from which elected—terms of office.** In the organization election seven (7) trustees shall be elected at large, except, that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total school census of the proposed district, as determined by the last school census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder of the pro-

posed college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the total school census of the proposed district then four (4) trustees shall be elected at large from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed college district. If the trustees are elected at large throughout the entire proposed district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each.

**History:** En. Sec. 5, Ch. 274, L. 1965.

**75-4418. Notice of organization election—conduct of election.** Notice of the organization election shall be given by the state board of education by publication in at least one (1) newspaper of general circulation in each county including any portion of the proposed community college district, once a week for three (3) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of election. The election shall be conducted in the same manner, at the same polling places and by the same election officials who are conducting elections on that day in each component school district.

**History:** En. Sec. 6, Ch. 274, L. 1965.

**75-4419. Trustees' oath of office—officers of board—quorum—vacancies—seal.** Newly elected members of the board of trustees shall be qualified by taking the oath of office prescribed by article XIX, section 1, of the constitution of Montana. The board shall be organized by the election of a president and vice-president and a secretary, said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college is situated. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the whole board shall vote therefor. Any vacancy occurring in the board shall be filled by appointment by the remaining members of the board, and the persons appointed shall hold office until the next election held by such community college



district when a trustee shall be elected for the unexpired term. The board shall keep a common seal with which to attest its official acts.

**History:** En. Sec. 7, Ch. 274, L. 1965.

**75-4420. Trustee elections after organization.** After organization, the qualified voters of the community college district shall vote for trustees on the first Saturday in April, and such elections shall be held in the same manner and with elections being held in the component common school districts within the boundaries of such community college district. All costs incident to such community college trustee elections shall be borne by the community college district. Notice of all such elections shall be given by the board of trustees by publication in at least one (1) newspaper of general circulation within each county, at least once a week for two (2) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of election. Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the district from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that district. All candidates for the office of trustee shall file their declarations or [of] candidacy with the secretary of the board of trustees at least thirty (30) days prior to the date of election. If voting machines are not used in a common school district or districts which are within such community college district, then the board of trustees shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be held at the same time, in the same places and shall be conducted by the same officials for elections being held in such common school districts. The community college district shall reimburse to the common school district one-half ( $\frac{1}{2}$ ) of the costs of the common school district of the compensation actually paid by said common school district to the judges of such elections. The judges of election in each component school district, shall certify to the board of trustees of the community college district the total number of votes cast for each candidate and the votes cast on all questions submitted within fifteen (15) days after any election. Within forty-eight (48) hours thereafter, at least a majority of the then qualified members of the board of trustees of such community college district shall jointly tabulate the results so received, shall declare and certify the candidates receiving the greatest number of votes for terms of seven (7) years each and until their successor shall have been elected and qualified and shall declare and certify the results of the votes cast on any question presented at such election. "Qualified voters," under the provisions of this act, shall mean those voters qualified to vote in the school election of the component common school district.

**History:** En. Sec. 8, Ch. 274, L. 1965.

**75-4421. Meetings of board—notice—mileage allowance for trustees.** The board of trustees shall hold monthly meetings within the community college district on the third Tuesday of each month or such other day of the month the board might set and may hold special meetings at any time and place which it may direct. The president and secretary of the board may also

call special meetings of said board at any time and place, if in their judgment necessity requires it. The secretary of the board shall notify the members of all regular and special meetings. The members of the board shall receive ten cents (10¢) per mile for distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

History: En. Sec. 9, Ch. 274, L. 1965.

**75-4422. Trustees not to have pecuniary interest in district contracts—advertising for bids.** It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the college, or to receive or to accept any compensation or reward for services rendered as trustee, except as herein provided. No board of trustees shall let any contract (except if the amount involved is less than two thousand dollars (\$2,000)[]) for building, furnishing, repairing or other work or supplies for the benefit of the district, without first advertising in a newspaper published in each county wherein the area of the district lies for at least two (2) weeks, call for bids to perform such work or furnish such supplies. In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of trustees shall have the right to reject any and all bids.

History: En. Sec. 10, Ch. 274, L. 1965.

**75-4423. Courses of instruction provided—tuition fees.** A community college district organized under this act shall provide instruction, classes, school or schools for student residents within the community college district, in academic, occupational and adult education, subject to the approval of the state board of education. The board of trustees of such district may in their discretion determine the per capita cost of such courses, file the same with the state board of education and upon approval thereof by the state board of education, shall require of all nondistrict residents who are accepted as pupils, a tuition fee in such sum as may be necessary for maintenance of such course or courses. A different tuition may be established as between nondistrict residents residing within the state of Montana and those residing outside the state of Montana. In addition thereto, such board of trustees may charge resident students such amounts as it deems necessary to maintain such courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En Sec. 11, Ch. 274, L. 1965;  
amd. Sec. 1, Ch. 229, L. 1969.

**75-4424. Employment of personnel — retirement of employees and trustees.** The board of trustees shall appoint the employees of the com-



munity college, define and assign their powers and duties and fix their compensation.

The board of trustees and teachers of a community college district shall be subject to and receive the benefits of chapter 27 of Title 75 of the Revised Codes of Montana, as amended, and hereafter amended.

History: En. Sec. 12, Ch. 274, L. 1965.

**75-4425. Participation in foundation program and equalization fund—budgeting—special tax levy.** A community college under this act shall be considered a free public school for budgeting and financial purposes under chapter 36, Title 75 of the Revised Codes of Montana, 1947, as amended, and as hereafter amended. The term “average number belonging” for community colleges shall be determined by dividing the total number of eligible credits taken by eligible students by thirty (30). Eligible students for average number belonging calculation purposes shall be: (1) students who are under twenty-one (21) years of age for one-half or more of the quarter; (2) students who are not concurrently enrolled in an elementary or high school; (3) students enrolled in the summer quarter of the community college. Eligible credits for average number belonging calculation purposes shall be: (1) credits taken by an eligible student; (2) credits taken in courses of instruction approved by the state board of education. Eligible credits for average number belonging calculation purposes shall not include: (1) credits taken in adult education courses; (2) credits dropped by the eligible student before the midpoint in the quarter; (3) credits taken in resident extension courses of the Montana university system.

The moneys coming into the state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the community college in accordance with the schedules provided for high schools under chapter 36, Title 75 of the Revised Codes of Montana, 1947, as amended and as hereafter amended.

The community college district shall be subject to the budgeting laws of a joint high school district or a joint common school district maintaining a high school, in so far as they are applicable, provided, however, the budget of a community college district shall be complete and separate.

Whenever the board of trustees of a community college district shall deem it necessary to raise money for college purposes in addition to its revenues from county and state apportionments, they may proceed in so far as applicable under sections 75-4609 and 75-4610 of the Revised Codes of Montana, 1947, as amended. A community college under this act shall be considered a school district for the purposes of section 75-1633, R. C. M. 1947.

History: En. Sec. 13, Ch. 274, L. 1965;  
amd. Sec. 1, Ch. 325, L. 1969.

**75-4426. Building construction and repairs—acquisition of land—tax levy—federal and state aid.** The board of trustees of any community college district is hereby vested with the power and authority to build, en-

large, alter, repair or acquire by purchase school buildings and dormitories; furnishing and equipping the same, and purchasing the necessary lands therefor and the board of trustees of any community college district is hereby authorized to levy an additional tax not exceeding ten (10) mills on the dollar of the taxable value of all taxable property within the district for these purposes; provided they shall first be authorized to do so by an election held of the qualified electors of the district who are taxpayers upon property within the community college district, called, noticed and conducted in so far as applicable by sections 75-4609 and 75-4610 of the Revised Codes of Montana, 1947, as amended. The board of trustees of any community college district is further vested with the power and authority to borrow moneys from the United States or any of its agencies for the purpose of this section. The board of trustees of any community college district is hereby authorized to accept funds from the United States or the state of Montana, their instrumentalities or any of their agencies in aid of any one or more of such purposes or in maintaining and operating the college.

**History:** En. Sec. 14, Ch. 274, L. 1965;  
amd. Sec. 1, Ch. 235, L. 1969.

**75-4427. Acceptance of donations.** All community college districts and its boards of trustees thereof on behalf of such districts are hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the dower, or will of testator, or without any conditions imposed.

**History:** En. Sec. 15, Ch. 274, L. 1965.

**75-4428. Disposition of surplus property—contracts for co-operation with school districts.** Whenever there is within any school district any school property that is not required for the use of the school district and such property could be used for purposes of offering education beyond grade twelve or vocational and adult education by community college district, the boards of trustees of any school district is hereby authorized to lease or sell and convey the same to such community college district by negotiation. Any school district within or without the community college district is authorized to contract with a community college district to provide adult education courses for such school district and to exchange teachers.

**History:** En. Sec. 16, Ch. 274, L. 1965.

**75-4429. Junior colleges authorized to continue—conversion to community college.** All junior colleges established prior to the effective date of this act shall be under the supervision of the state board of education and shall conform to the scholastic standards established by the board, but no such district may be dissolved except as now provided by law and in no instance because it does not meet the standards for organization established by section 75-4413. The governing board of any such institution may, by resolution and by transmitting a copy of such resolution to the state superintendent of public instruction, establish a community college



district under this act, and name the same without compliance with sections 75-4413 and 75-4416.

If such governing board establishes a community college district it shall act as the board of trustees of the community college district until the next general school election held on the first Saturday in April as provided in section 75-4420 herein when all community college district trustees shall be elected as provided in section 75-4417 except that it will not in any way be considered an organization election.

**History:** En. Sec. 17, Ch. 274, L. 1965.

**75-4430. Annexation of school districts to junior college or community college district—election.** Whenever the junior or community college district board of trustees shall so resolve or whenever ten per cent (10%) of the qualified electors of the common school district or districts situate within one (1) county sought to be annexed indicate by a petition, filed with the secretary of the board of trustees of such junior college or community college district, requesting the annexation of a common school district or districts situate within one (1) county to the said district, the board of trustees shall call an election on such annexation within not less than twenty-five (25) days nor more than sixty (60) days from the passage of such resolution or the filing of said petition as the case may be. Notice of such election shall be given in the same manner as an election held to organize a community college district under this act. The election shall be conducted in the same manner, and those eligible to vote shall be the same as an election to organize junior college districts under this act. The board of trustees shall establish such polling places as it may deem fit within the area sought to be annexed.

The question on the ballot shall be as follows:

“Shall school districts ..... be annexed to and become a part of the community college district of ....., Montana?

☐ For Annexation

☐ Against Annexation”

The proposal to annex to carry, must receive a majority of the total votes cast thereon. The judges of the election shall within five (5) days after said election transmit the pollbooks, ballots and tally lists to the board of trustees of said community college district who shall canvass the vote and declare the results of the election and shall cause, if the annexation question carried, a certified copy of their canvassing resolution to be filed in the office of the county clerk and recorder of the county containing area to be annexed and upon such filing the area to be annexed shall then become a part of the community college district.

**History:** En. Sec. 18, Ch. 274, L. 1965.

## CHAPTER 45

## HIGH SCHOOL BUDGET ACT

## Section 75-4516.1. Levy of taxes.

**75-4516.1. Levy of taxes.** (1) Basic high school levy. It shall be the duty of the county commissioners of each county in the state to levy an annual basic special tax for high schools of fifteen (15) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes and which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a basic levy of less than fifteen (15) mills should be sufficient to meet the total of the approved budgets of all school districts and county high schools within the county, then such lesser basic levy shall be made.

No county levying less than the adjusted basic high school levy shall receive any apportionment of state equalization aid.

(2) Additional high school levy. The county commissioners shall, if necessary, levy an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts and county high schools within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district and county high school within the county after apportionment of the basic special tax for high schools as provided in section 75-3618 and the state equalization aid as provided in section 75-3619.

(3) Permissive high school levy. If the revenues for the operation and maintenance of any high school, including the amount apportionable from said basic special tax for high schools and the amount, if any, produced by said additional high school tax, shall be less than the foundation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, be used to raise funds in excess of the maximum budgets as specified in section 75-4518.1 when considered with all other sources of revenues, unless approved by a vote of the taxpaying electors.



**History:** En. Sec. 15, Ch. 199, L. 1949; L. 1961; amd. Sec. 14, Ch. 267, L. 1963; amd. Sec. 4, Ch. 208, L. 1951; amd. Sec. 1, amd. Sec. 6, Ch. 198, L. 1965; amd. Sec. 5, Ch. 202, L. 1953; amd. Sec. 1, Ch. 246, Ch. 3, Ex. L. 1969.

## CHAPTER 46

### HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings—temporary relocation of schoolhouse.

**75-4602. Commission may divide county into high school districts.**

**75-4607. Alteration of boundaries—redivision—limitation.**

**75-4609. Special tax levy—election.**

**75-4610. Notice and conduct of election.**

**75-4611. Approval of tax—other special levies not submitted.**

**75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings—temporary relocation of schoolhouse.** In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request, such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class. The additional board members in school districts of the third class shall not exceed two (2) except when two thirds ( $\frac{2}{3}$ ) or more of the high school enrollment in the high school district resides in the common school districts not maintaining the high school and such common school districts also contain at least two-thirds ( $\frac{2}{3}$ ) of the taxable valuation of the high school district when three (3) additional trustees shall be elected from the common school districts not maintaining the high school and one (1) additional trustee shall be elected at large in the high school district.

(a) Following the determination of the number of additional board members to be elected, excluding the trustee at large, the county superintendent of schools shall district the territory of the high school district, excluding the common school district wherein the high school is located, into a number of trustee nominating districts equal to the number of addi-

tional board members to be elected, and each trustee nominating district so established shall be entitled to one (1) member on the board of trustees of the high school.

The additional trustee to be elected at large shall be placed in a trustee nominating district encompassing the entire high school district including the common school district wherein the high school district is located. Such trustee at large nominating district shall not preclude the creation of other additional trustee nominating districts as herein provided.

The election of the additional trustees shall be held on the first Saturday in April of every year to fill the expired terms of such additional trustees, and the term of office of such additional trustees after the first election of such trustees shall be for three (3) years. The term of office of the trustee at large shall be three (3) years.

The additional trustees so elected shall be residents of the respective trustee nominating districts established by the county superintendent of schools, and shall meet the general qualifications for school district trustees provided by section 75-1601, Revised Codes of Montana, 1947.

At the first election the additional trustees elected from the trustee nominating districts established by the county superintendent of schools, if there be more than one (1), shall cast lots to determine the length of time each shall hold office. If there is one (1) additional trustee, he shall hold office for three (3) years. If there are two (2) additional trustees, one (1) shall hold office for three (3) years and one (1) for two (2) years. If there are three (3) additional trustees, one (1) shall hold office for three (3) years, one (1) for two (2) years and one (1) for one (1) year. If there are four (4) additional trustees, two (2) shall hold office for three (3) years, one (1) for two (2) years and one (1) for one (1) year.

The procedure for calling and holding elections, and for the assumption of office, for the school district wherein the high school is located shall govern the election of the additional trustees herein provided for.

At least twenty (20) days preceding the election, any ten (10) electors of a trustee nominating district established as provided for in this act, who are qualified to vote in the election for such additional trustee, shall file with the district clerk of the school district wherein the high school is located the nomination of any qualified person to be a candidate for such trustee from such nominating district. Ballots for the election of such additional trustees shall be prepared in the same form and manner as ballots are prepared for other trustees, providing that such ballots for additional trustees shall show clearly the trustee nominating district from which each nominee is a candidate.

Any qualified elector of a nominating district, excluding the district where the high school is located, may vote for the additional trustees so nominated, at the time and place of the annual election of school trustees in the common school district in which he is entitled to vote, provided that each elector may vote only for such additional trustee from the trustee nominating district in which he is a qualified elector.

A vacancy in the office of additional trustee shall be filled by appointment by the county superintendent of schools; provided, that such ap-



pointment shall be subject to confirmation by a majority of the remaining members of the high school district board including the additional members. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a trustee from the same nominating district for the unexpired term.

(b) The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifying and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts. Said additional elected members shall be entitled to vote on the selection of the district superintendent of schools.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for is hereby authorized to undertake a program of public works in the construction, improvement or repair of buildings, furnishing and equipping the same and purchasing the necessary land therefor, for the use of any or all high schools in such high school district, and to accept funds from the United States, its instrumentalities or any of its agencies in aid of any one or more of such purposes. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor, such proceedings may also be commenced on petition of thirty per cent (30%) of the qualified electors of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter shall, within sixty (60) days take steps to present the matter asked for in the petition to a vote of the people of the high school district.

(c) When the board of trustees of a high school district, who have qualified for their positions as such board of trustees under the provisions herein provided, shall find it necessary to temporarily move the site of the schoolhouse to another common school district within the high school district due to the destruction of the school building by fire, flood, storm, riot, insurrection or other act of God, such board of trustees shall continue to hold office for one (1) year after such schoolhouse relocation unless the schoolhouse is moved back to the common school district where it was originally located.

History: En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 166, L. 1965; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957; amd. Sec. 1, Ch. 167, L. 1959; amd. Sec. 1, Ch. 222, L. 1963; amd. Sec. 1, Ch. 214, L. 1965; amd. Sec. 1, Ch. 311, L. 1967.

**75-4602. Commission may divide county into high school districts.** In all counties having a high school, or high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the entire county into and establish one (1) or more high school districts for the purpose of this act, after hearing; provided, that each high school district so formed must have one (1) or more operating, accredited high schools within its boundaries; provided, further, that both parts of a joint district maintaining a high school may be considered as

maintaining an operating high school, and as such each part of the joint district may, together with one (1) or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a high school district. Provided, that, such resulting high school district in the county where the joint district high school is not located, shall be responsible for its share of the joint district high school budgets as is arrived at by following the procedure outlined in section 6 [75-4534] of this act, and shall also be considered as a single high school district with the high school district of the joint district, wherein the high school is located for purposes of bonding as provided in sections 75-4601 to 75-4605, Revised Codes of Montana, 1947, as amended by chapter 188, Laws of 1951, and also for purposes of selecting additional trustees as provided for in section 75-4601, Revised Codes of Montana, 1947, as amended by chapter 188, Laws of 1951. That the commission shall fix the time, date and place, and at such time, date and place hold a public hearing of the requested division of the county into high school districts, at which hearing any interested person may appear and be heard concerning the requested division. Written notice of such hearing shall be mailed by the county superintendent of schools to the chairman of each and every board of trustees of each and every school district in the county, and the chairman of the board of trustees of the county high school, stating the time, date and place of such public hearing, and shall be mailed not less than two (2) weeks preceding the date fixed for such hearing. The certificate of the county superintendent of schools filed with the commission reciting that said notices were mailed shall be conclusive.

The boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

If any high school district shall cease to have within its borders an operating, accredited high school, then it shall be the duty of the county superintendent of schools to consolidate and annex the common school districts comprising said high school district to one or more operating high school districts within a period of six (6) months after one (1) year of being declared non-operating or non-accredited; provided, that before said county superintendent of schools may declare such a consolidation and annexation, he shall give the board of trustees of each of the common school districts within said high school district proposed to be consolidated and annexed twenty (20) days' notice of his intention so to do.

In creating such districts the commission shall give primary consideration to the factor of convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up of contiguous and adjacent common school districts but the commission must take into consideration the existence or non-existence of obstacles of travel, such as mountains and rivers and existence or non-existence of highways and distances to high school. No common school districts shall be divided for the purpose of this act but must be made a part of a high school district in its entirety, unless such division is approved and authorized by the voters of the common school district involved, at a special election held



for that purpose and such division shall be on the basis of equal area, or as near thereto as practicable in relation to the geographical features of such district, provided that the entire portion of a joint school district within the county shall be included within a high school district, provided further that in the event twenty per cent (20%) of the voters of a common school district be dissatisfied with the proposed action of said commission in dividing into and establishing high school districts, or in the proposed action of the county superintendent in consolidating and annexing a common school district theretofore constituting a part of a high school district to an existing high school district, and shall within thirty (30) days after the giving of the notice heretofore required, file their written protest with said county superintendent, then said common school district or districts shall be by said county superintendent, or by said commission as the case may be, directed to hold a special election for the purpose of determining which high school district said district shall be annexed to or into which high school district said district shall be divided as hereinbefore provided, and the said superintendent or commission, as the case may be, shall be governed by the result of said election.

**History:** En. Sec. 2, Ch. 275, L. 1947; 1, Ch. 237, L. 1953; amd. Sec. 1, Ch. 236, amd. Sec. 2, Ch. 188, L. 1951; amd. Sec. L. 1955; amd. Sec. 9, Ch. 151, L. 1961.

**75-4607. Alteration of boundaries — redivision — limitation.** In any county which has been divided into high school building districts, at the request of any high school board of trustees, the commission, provided for in section 75-4602, may, in accord with the procedure provided in said section, alter the boundaries of said districts or redivide the county into a different number of high school districts, provided that such alteration or redivision may not be done within one (1) year from the original division or the last alteration of boundaries and last redivision.

**History:** En. Sec. 1, Ch. 130, L. 1949;  
amd. Sec. 1, Ch. 120, L. 1953; amd. Sec.  
1, Ch. 140, L. 1965.

**75-4609. Special tax levy — election.** Whenever the board of trustees of the local school district within which the high school is situated shall deem it necessary to raise money for high school purposes in addition to its revenues from county and state apportionments, a meeting of the board of trustees of the high school district shall be called and held to consider the calling of an election to vote upon the question of approving a special levy for high school purposes. If a majority of the board of trustees, as provided in section 75-4601, Revised Codes of Montana, 1947, as amended by section 1, chapter 167, Session Laws of Montana, 1959, of the high school district attending such meeting shall determine that the proposed expenditures are necessary for the purposes of, altering, repairing or enlarging any high school or high schools of said district or for proper maintenance and operation of the high schools of said district or for acquisition of land for high school purposes, said trustees of the high school district shall ascertain and determine the number of mills required to be raised by special levy, and shall call an election for the purpose of

submitting the question of making such additional levy to the qualified electors who are taxpayers upon property within the high school district, and if approved by a majority vote of all the taxpayers voting at such election, the result of said election shall be certified to the board of county commissioners, and the levy approved by such majority vote shall be made upon all property within said high school district.

**History:** En. Sec. 3, Ch. 130, L. 1949; 1, Ch. 147, L. 1959; amd. Sec. 1, Ch. 163, amd. Sec. 1, Ch. 120, L. 1953; amd. Sec. L. 1961.

**75-4610. Notice and conduct of election.** Notice of such election shall be given and said election shall be held and conducted in all respects in the manner provided by sections 75-3802, 75-3803, 75-3804, 75-3805. Said election shall be conducted by judges and clerks of election appointed by the high school board of trustees from the residents of each respective common school district within the high school district in which the board determines what polling places shall be provided; provided that convenience to voters shall be a determining factor in selecting these polling places.

**History:** En. Sec. 4, Ch. 130, L. 1949;  
amd. Sec. 1, Ch. 120, L. 1953.

**75-4611. Approval of tax—other special levies not submitted.** In the event such additional levy is approved by a majority vote of all of the taxpayers voting at said election, no other special tax for the operation and maintenance of the high school may in the same year be submitted to a vote of the taxpayers within the local school district wherein such high school is situated.

**History:** En. Sec. 5, Ch. 130, L. 1949;  
amd. Sec. 1, Ch. 120, L. 1953.

## TITLE 82

### STATE OFFICERS, BOARDS AND DEPARTMENTS

#### CHAPTER 5

##### CLERK OF SUPREME COURT

Section 82-501. Election and term of office.

**82-501. (370) Election and term of office.** There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election, except that the clerk first elected under the constitution holds his office only until the general election in the year one thousand eight hundred and ninety-two, and until his successor is elected and qualified.

**History:** En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R. C. M. 1921. Cal. Pol. C. Secs. 749-758.



**TITLE 84**  
**TAXATION**

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**CHAPTER 47**

**CITIES AND TOWNS—TAXATION AND LICENSE**

- Section 84-4704. Expenditures from special fund, when—purpose—approval of electors, when.
- 84-4706. Cities and towns may raise money by taxation in excess of levy now permitted, how.
- 84-4707. Notice of election.
- 84-4708. Submission of question to state object of levy—use of funds—balance.
- 84-4709. Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election.
- 84-4710. Registration of electors.
- 84-4711. Qualifications for voting on creation or increasing municipal or school indebtedness.

**84-4704. Expenditures from special fund, when—purpose—approval of electors, when.** No expenditures for any purpose whatever shall be made from such special street fund until after April 1, 1947. The city or town council or commission of any city or town having such fund may thereafter provide for the expenditure thereof for the purpose of constructing, improving, repairing and maintaining the public streets, avenues, alleys, and ways of the city or town; provided that no expenditure in excess of ten thousand dollars (\$10,000.00) for any single purpose as defined in section 16-2009, shall be made from such fund without the approval of a majority of the electors of the city or town voting on the question of such expenditure at an election to be provided by law.

**History:** En. Sec. 3, Ch. 172, L. 1945;  
amd. Sec. 1, Ch. 107, L. 1947.

**84-4706. (5195) Cities and towns may raise money by taxation in excess of levy now permitted, how.** Whenever the council of any city or town shall deem it necessary to raise money by taxation, in excess of the levy now allowed by law, for any purpose for which said city or town is authorized to expend moneys raised by taxation in said city or town, it shall submit the question of such additional levy to the legal voters of such city or town who are tax-paying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy shall not exceed five mills.

**History:** En. Sec. 1, Ch. 12, L. 1919;  
re-en. Sec. 5195, R. C. M. 1921.

**Cross-Reference**

Constitutional provisions, see Const., Art. XIII, Sec. 6.

**84-4707. (5196) Notice of election.** Where the question of making such additional levy is so submitted, notice thereof shall be given by publication

for at least thirty days prior to such election in every newspaper published in said city or town, and by posting a like notice for the same period of time in a public place in each ward of said city or town.

History: En. Sec. 2, Ch. 12, L. 1919;  
re-en. Sec. 5196, R. C. M. 1921.

**84-4708. (5197) Submission of question to state object of levy—use of funds—balance.** The submission of said question shall expressly provide for what purpose such additional levy is to be made, and, if authorized, the money raised for such additional levy shall be used for that specific purpose only; provided, that if any balance remain on hand after the purpose for which said levy was made has been accomplished, such balance may, by vote of the council, be transferred to any other fund of said city or town.

History: En. Sec. 3, Ch. 12, L. 1919;  
re-en. Sec. 5197, R. C. M. 1921.

**84-4709. (5198) Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election.** If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots, each of which ballots shall be in substantially the following form: Shall the city (or town) council be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made.)

<input type="checkbox"/>	Against Additional Levy.
<hr/>	
<input type="checkbox"/>	For Additional Levy.

The voters shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state. The election shall be held and the votes canvassed and returned as in other city or town elections. If the majority voting on the question are in favor of such additional levy or levies, the city or town council shall so certify, and such additional levy or levies of taxes shall be made by the city or town council for that year.

History: En. Sec. 4, Ch. 12, L. 1919;  
re-en. Sec. 5198, R. C. M. 1921.

**84-4710. (5199) Registration of electors.** The council may provide by ordinance for the registration of qualified electors who are tax-paying freeholders in such city or town, and no person shall be entitled to register or vote at such election who is not such tax-paying freeholder and qualified elector.

History: En. Sec. 5, Ch. 12, L. 1919;  
re-en. Sec. 5199, R. C. M. 1921.



**84-4711. (5199.1) Qualifications for voting on creation or increasing municipal or school indebtedness.** That from and after the passage and approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof; provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another city, town, school district or other municipal corporation.

**History:** En. Sec. 1, Ch. 98, L. 1923;  
amd. Sec. 1, Ch. 47, L. 1929; amd. Sec.  
1, Ch. 126, L. 1959.

## TITLE 89

### WATERS AND IRRIGATION

#### CHAPTER 13

##### IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS, POWERS, DUTIES AND ELECTIONS

- Section 89-1302. Creation of election precincts—change in divisions and election precincts.
- 89-1303. First election of commissioners—regular election—term of office.
  - 89-1304. Vacancies among commissioners, how filled.
  - 89-1305. Notice of election and appointment of election officers.
  - 89-1306. Oaths of election officers.
  - 89-1307. Hours of election.
  - 89-1308. Conduct of election.
  - 89-1309. Canvass.
  - 89-1310. Statement of result of election.
  - 89-1311. Qualification of electors—voting rights, how determined.
  - 89-1312. Nominations.
  - 89-1313. Special elections.

**89-1302. (7175) Creation of election precincts—change in divisions and election precincts.** The board of commissioners shall, within six months after the organization of the district, divide the district into one or more election precincts.

Said board, when they deem it advisable for the best interests of the district and the convenience of the electors thereof, may, at any time, but not less than thirty days before any election to be held in the district, change the boundaries of the divisions and election precincts of the district; provided, that such action of the board, to be effective, shall be approved by the district court; and provided, also, that in making such changes the several divisions of the district shall be kept as nearly equal in area and population as practicable.

Such division into election precincts, and such change of boundaries of the divisions or election precincts, shall be made by resolution or order of the board, to be recorded in the minutes of the board, together with the order of the district court approving the same, and certified copy of the

same shall be filed in the office of the county clerk and recorder in each county in which any of the lands of the district are situated.

**History:** En. Sec. 10, Ch. 146, L. 1909;  
re-en. Sec. 7175, R. C. M. 1921.

**89-1303. (7176) First election of commissioners—regular election—term of office.** The regular election for commissioners in each district shall be held annually on the first Saturday in April of each year; and on the third Saturday in April following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office during the pleasure of the board. The term of office of each commissioner shall begin on the third Saturday in April after the regular election and shall continue for three years and until the election and qualification of his successor. Commissioners are elected by the electors of the entire district. At the regular election for commissioners held in April, 1921, there shall be elected one commissioner for the first division of each district who shall hold his office for the term of one year, one commissioner for the second division of each district who shall hold his office for the term of two years, and one commissioner for the third division of each district who shall hold his office for the term of three years; and if there be five divisions in a district one commissioner shall be elected for the fourth division who shall hold his office for two years, and one commissioner shall be elected for the fifth division who shall hold his office for three years; and if there be seven divisions in a district one commissioner shall be elected for the sixth division who shall hold his office for two years, and one commissioner shall be elected for the seventh division who shall hold his office for three years; provided, however, that this act shall not be construed to extend the term of any commissioner heretofore elected or appointed in any district.

**History:** En. Sec. 11, Ch. 146, L. 1909; Ch. 3, L. 1921; amd. Sec. 1, Ch. 7, Ex. L. amd. Sec. 4, Ch. 153, L. 1917; amd. Sec. 1, 1921; re-en. Sec. 7176, R. C. M. 1921.

**89-1304. (7177) Vacancies among commissioners, how filled.** In case of a vacancy in the board of commissioners, from any cause, such vacancy shall be filled for the remainder of the term by appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land within the district and shall be a resident of the county in which the division of the district, or some portion thereof for which such commissioner so elected, is situated, and shall hold office until his successor is elected and qualified.

**History:** En. Sec. 12, Ch. 146, L. 1909;  
re-en. Sec. 7177, R. C. M. 1921; amd. Sec.  
5, Ch. 157, L. 1923.

**89-1305. (7178) Notice of election and appointment of election officers.** Fifteen days before any election held under this act, the secretary of the board of commissioners shall post notices in three public places in each election precinct, of the time and places of holding the election, and shall also post a notice of the same in the office of said board. Prior to the



time for posting notices, the board, by a resolution or order entered on their records, shall designate the house or place within each precinct where the election shall be held, and shall appoint for each precinct, from the electors thereof, three judges, who shall constitute a board of election for such precinct. Said judges shall appoint one of their number to act as clerk. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board shall prescribe the forms, and provide for the printing and distribution of the ballots for all elections held under this act.

History: En. Sec. 13, Ch. 146, L. 1909;  
re-en. Sec. 7178, R. C. M. 1921.

**89-1306. (7179) Oaths of election officers.** The judges may administer all oaths required in the progress of an election, and appoint judges and clerks, if, during the progress of election, any judge or clerk shall cease to act. Any member of the board of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any elector of the precinct may administer and certify any such oath.

History: En. Sec. 14, Ch. 146, L. 1909;  
re-en. Sec. 7179, R. C. M. 1921.

**89-1307. (7180) Hours of election.** The polls shall be opened at one o'clock P. M., and be kept open until six o'clock P. M., when the same shall be closed.

History: En. Sec. 15, Ch. 146, L. 1909;  
re-en. Sec. 7180, R. C. M. 1921; amd. Sec.  
1, Ch. 164, L. 1947.

**89-1308. (7181) Conduct of election.** Voting may commence as soon as the polls are opened and may continue during all the time the polls remain opened, and such election shall be conducted, except as herein otherwise provided, as nearly as practicable in accordance with the provisions of the general election laws of this state, except that no registration shall be required. As soon as all the votes are counted, a certificate shall be drawn upon each of the papers containing the poll-list and tallies, or attached thereto, stating the number of votes cast for each candidate or for each proposition, and designating the office or proposition voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk and judges. One of said certificates, with the poll-list and tally-paper to which it is attached, shall be retained by one of the judges, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the judge during the counting thereof, in the order in which they were entered upon the tally-list by the clerk; and said ballots, together with the other of said

certificates, with the poll-list and tally-paper to which it is attached, shall be sealed by the judges and clerk, and indorsed, "Election returns of (naming the precinct) precinct," and be directed to the secretary of the board of commissioners of said district, and shall be immediately delivered by the judges, or some other safe and responsible carrier designated by said judges, to said secretary, and the ballots shall be kept by the board of commissioners in the same manner as ballots in other elections.

**History:** En. Sec. 16, Ch. 146, L. 1909;  
re-en. Sec. 7181, R. C. M. 1921.

**89-1309. (7182) Canvass.** No list, tally-paper, or certificate returned from any election shall be set aside or rejected merely for want of form, if it can be satisfactorily understood. The board of commissioners of the district shall meet on the first Monday after the election to canvass the returns. If, at the time of the meeting, the returns from each precinct in the district in which the polls were opened have been received, the board shall then and there proceed to canvass the returns thereof; but if all the returns have not been received, the canvass shall be postponed from day to day until all the returns have been received. The canvass must be made in public. The board shall declare elected the person receiving the highest number of votes so returned for each office, and also declare the result of the vote on any question submitted.

**History:** En. Sec. 17, Ch. 146, L. 1909;  
re-en. Sec. 7182, R. C. M. 1921.

**89-1310. (7183) Statement of result of election.** The secretary of the board of commissioners shall, as soon as the result of any election held under the provisions of this chapter is declared, enter in the records of such board, and file with the county clerk of the county in which the office of said district is located, a statement of such results, which statement must show:

1. A copy of the election notice and proof of posting the same;
2. The names of the judges and clerks of said election;
3. The whole number of votes cast in the district, and in each precinct of the district;
4. The names of the persons voted for;
5. The office to fill which each person was voted for;
6. The number of votes given in each precinct for each of such persons;
7. The number of votes given in the district for each of such persons;
8. The names of the persons declared elected;
9. The proposition or propositions submitted, the vote for and against each, and the result of the vote thereon.

The secretary shall immediately make out and deliver to each person elected a certificate of election, signed by him and authenticated with the seal of the district.

**History:** En. Sec. 18, Ch. 146, L. 1909;  
re-en. Sec. 7183, R. C. M. 1921.

**89-1311. (7184) Qualification of electors—voting rights, how determined.** At all elections held under the provisions of this act, except as



herein otherwise expressly provided, the following holders of title, or evidence of title, to lands within the district, herein designated electors, shall be entitled to vote:

1. All persons having the qualifications of electors under the constitution and general and school laws of the state;
2. Guardians, executors, administrators, and trustees residing in the state;
3. Domestic corporations, by their duly organized agents.

In all elections held under this act, each elector shall be permitted to cast one vote for each forty acres of irrigable land, or major fraction thereof, owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes, or within congressional subdivisions, platted lots or blocks, except as hereinafter provided for, election precincts or district divisions, but any elector owning any less than forty acres of irrigable land shall be entitled to one vote. Until actual determination of the irrigable area under the plan of reclamation proposed is had, all land included within the boundaries of the district shall be deemed to be irrigable land for election purposes.

Where land is owned by co-owners, said owners may designate one of their number, or an agent, to cast the vote for said owners, and one vote only for each forty acres of irrigable land, or major fraction thereof, shall be cast by said co-owner or agent. Where land is under contract of sale to a purchaser residing within the state, such purchaser may vote on behalf of the owner of said land. When voting, the agent of a corporation, or of co-owners, or the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district, or with the election officials, a written instrument of his authority, executed and acknowledged by the proper officers of said corporation, or by said co-owners, or by the owner of such land under contract of sale, as the case may be, and thereupon such agent or co-owner, or purchaser, as the case may be, shall be deemed an elector within the meaning of this act. Where the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of five per cent (5%) or more of the total acreage of the district, each elector shall be permitted to cast one vote for each one acre of irrigable land or major fraction thereof owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for the assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than one acre of irrigable land within said district shall be entitled to one vote. The balloting shall take place in the following manner: Ten (10) votes or less, separate ballots will be used; more than ten (10) votes, the elector shall vote in blocks of ten using one ballot for each ten votes and separate ballots for odd votes over multiples of ten. The election shall otherwise conform with the provisions set out in section 89-1308 of this chapter. It shall be the duty of the chairman of the commissioners, or such commissioner as he may delegate,

to determine before each election whether the provisions of this paragraph are in force or whether the provisions heretofore set out shall apply.

**History:** En. Sec. 19, Ch. 146, L. 1909; 6, Ch. 157, L. 1923; amd. Sec. 1, Ch. 164, re-en. Sec. 7184, R. C. M. 1921; amd. Sec. L. 1953.

**89-1312. (7185) Nominations.** Candidates for the office of commissioner to be filled by election under the provisions of this act may be nominated by petition filed with the secretary of the board of commissioners of the district at least ten days prior to said election, and signed by not less than five electors of the district; such petition shall specify the respective divisions for which such nominees, respectively, are candidates; and the names of all candidates for each division of the district shall be printed on the same ballot.

If no nominations are made, the electors of the district shall write on the ballots the names of the persons for whom they desire to vote for commissioners; provided, nothing herein contained shall prevent an elector from voting for any qualified person, although the name does not appear upon the official ballots.

**History:** En. Sec. 20, Ch. 146, L. 1909; re-en. Sec. 7185, R. C. M. 1921.

**89-1313. (7186) Special elections.** The board of commissioners may at any time call a special election, and submit to the qualified electors of the district any question which under the provisions of this act is required, or which, in the judgment of the board, is proper to be submitted to popular vote. Such election shall be called, noticed, and conducted, and the result thereof determined and declared, in the manner provided in this act relative to general district elections; provided, however, that the notice thereof shall, in addition to being posted, also be published at least once, not less than ten days prior to the date of the election, in some newspaper published in the county in which the office of the board of commissioners of the district is located.

**History:** En. Sec. 21, Ch. 146, L. 1909; re-en. Sec. 7186, R. C. M. 1921.

## CHAPTER 23

### DRAINAGE DISTRICTS—COMMISSIONERS—ELECTION—ORGANIZATION—REPORTS

- Section 89-2301. Term of commissioners.  
 89-2302. Election of commissioners—terms of office.  
 89-2303. Notice of election.  
 89-2304. Manner of conducting election.  
 89-2305. Qualifications of electors.  
 89-2306. Nomination of commissioners—voting.

**89-2301. (7282) Term of commissioners.** On the creation of a district the commissioners appointed by the judge or court shall hold office until the first Tuesday in May following their appointment, and until their successors are elected. When a district is in existence on the date when



this act takes effect and thereafter and order is made dividing such district into divisions the terms of office of such commissioners shall cease with the Monday immediately preceding the first Tuesday in May next following.

**History:** En. Sec. 18, Ch. 129, L. 1921;  
re-en. Sec. 7282, R. C. M. 1921; amd. Sec.  
2, Ch. 50, L. 1925.

**89-2302. (7283) Election of commissioners—terms of office.** The regular election of commissioners shall be held annually on the first Tuesday in April of each year; the term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district, and in districts heretofore organized and in existence on the date when this act takes effect and which, on petition, has been divided into divisions, as hereinbefore provided, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner and resident of the county or counties; one of such commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following his election, another of such commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following his election, and the third of such commissioners shall hold office until the first Tuesday in May in the third year following his election; thereafter one commissioner shall be elected each year who shall hold office for a term of three years and until his successor is elected and qualified; provided that the person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

**History:** En. Sec. 19, Ch. 129, L. 1921;  
re-en. Sec. 7283, R. C. M. 1921; amd. Sec.  
3, Ch. 50, L. 1925.

**89-2303. (7283.1) Notice of election.** Fifteen days before any regular election, the secretary of the board of commissioners shall give notice by mail to all landowners within the district of the time and place of holding the election. Prior to the mailing of such notices the board must, by resolution, designate a polling place and appoint three persons to act as judges and clerks of election in each precinct. The board shall prescribe the form and provide for the printing of the ballots for all elections.

**History:** En. as Sec. 7283 A, by Sec. 4,  
Ch. 50, L. 1925.

**89-2304. (7283.2) Manner of conducting election.** Any judge of election may administer any oath required to be administered during the progress of an election. Before the opening of the polls the judges of election must take and subscribe an oath to faithfully perform the duties imposed upon them by law, and such oath may be administered by any elector. The polls shall open at 12 o'clock noon and be kept open until 5 o'clock P. M. when the same shall be closed. Such elections shall be conducted, except as herein otherwise provided, as nearly as practicable in

accordance with the provisions of the general election laws of the state, except that no registration shall be required. As soon as the polls are closed the judges shall count and tabulate the votes cast and make out a certificate, to be signed by them, showing the total number of votes cast at the election and the total number cast for each candidate for commissioner, and shall deliver such certificate, with a list of the electors voting at such election to the board of commissioners, and such board of commissioners shall meet on the first Monday following such election and canvass such returns. The board shall declare elected the person or persons, receiving the highest number of votes. The clerk of the board of directors shall enter the result of such canvass in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first Tuesday in May following, and the names of all of the persons who will compose the board of directors for the year next following the said first Tuesday in May.

**History:** En. as Sec. 7283 B, by Sec. 4, Ch. 50, L. 1925.

**89-2305. (7283.3) Qualifications of electors.** At all such elections, except as herein otherwise expressly provided, the following persons holding title, or evidence of title to lands within the district shall be entitled to vote: (1) All of the persons having the qualifications of electors under the constitution and general laws of the state; (2) Guardians, administrators, executors and trustees residing in the state; (3) Domestic corporations by their duly authorized agents. In all elections each elector shall be permitted to cast one vote for each forty acres of land, or major fraction thereof in the district owned by such elector, but any elector owning twenty acres or less shall be entitled to one vote.

**History:** En. as Sec. 7283 C, by Sec. 4, Ch. 50, L. 1925.

**89-2306. (7283.4) Nomination of commissioners—voting.** Candidates for the office of commissioner to be filled by election under the provisions of this act, may be nominated by petition filed with the secretary of the board of commissioners at least ten days prior to date of holding the election and signed by at least five electors of the district. If no nominations are made the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote, provided that nothing herein contained shall prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.

**History:** En. as Sec. 7283 D, by Sec. 4, Ch. 50, L. 1925.



## CHAPTER 33

COUNTY AND MUNICIPAL PARTICIPATION IN  
FLOOD CONTROL AND WATER CONSERVATION

Section 89-3312. Indebtedness and bonds—bond election—tax levy to pay indebtedness.

**89-3312. Indebtedness and bonds—bond election—tax levy to pay indebtedness.** Cities, towns and counties are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds for the payment of the cost of improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2301 through 11-2330, Revised Codes of Montana, 1947, as amended, as to cities, and in accordance with sections 16-2002 through 16-2050, Revised Codes of Montana, 1947, as amended, as to the counties.

Taxes for the payment of said bonds shall be levied in accordance with sections 11-2301 through 11-2330 and sections 16-2002 through 16-2050, Revised Codes of Montana, 1947, as amended, as to cities and counties, respectively. The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes.

**History:** En. Sec. 12, Ch. 272, L. 1965.

## CHAPTER 34

## CONSERVANCY DISTRICTS

- Section 89-3401. Organization of conservancy districts and construction of works a public use—benefits.
- 89-3402. Purpose of act.
  - 89-3403. Definitions.
  - 89-3404. Preliminary survey—written request.
  - 89-3405. Action by water board upon receipt of request.
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  - 89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction.

**89-3401. Organization of conservancy districts and construction of works a public use—benefits.** To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by the act are a public use and will:

- (1) be essentially for the public benefit and advantage of the people of Montana;
- (2) benefit all industries of the state;
- (3) encourage economic growth;
- (4) indirectly benefit the state by increasing property valuations;
- (5) directly benefit municipalities by providing adequate supplies of water for domestic uses;
- (6) directly benefit lands irrigated or drained by works constructed;
- (7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;
- (8) enhance fish and wildlife habitat;
- (9) improve recreational facilities; and
- (10) promote the comfort, safety, and welfare of the people of Montana.

**History:** En. Sec. 1, Ch. 100, L. 1969.

**89-3402. Purpose of act.** The purpose of this act is to enable the formation of conservancy districts, comprised of area in one or more counties to promote the following purposes:

- (1) prevent and control floods, erosion and sedimentation;
- (2) provide for regulation of stream flows and lake levels;



- (3) improve drainage and to reclaim wet or overflowed lands;
- (4) promote recreation;
- (5) develop and conserve water resources and related lands, forest, fish and wildlife resources;
- (6) further provide for the conservation, development, and utilization of land and water for beneficial uses including, but not limited to, domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

**History:** En. Sec. 2, Ch. 100, L. 1969.

**89-3403. Definitions.** As used in this act unless the context clearly indicates otherwise:

(1) "District" means a conservancy district, which is a public corporation and a political subdivision of the state.

(2) "Directors" means the board of directors of a conservancy district.

(3) "Elector" means a person qualified to vote under section 23 [89-3423] of this act.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Person" means a natural person; firm; partnership; co-operative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.

(6) "Water board" means the state water resources board.

(7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

(9) "Cost of works" means the cost of construction, acquisition, improvement, extension and development of works, including financing charges, interest and professional services.

(10) "Applicants" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or if no newspaper is published in a county, a newspaper of general circulation in the county, or counties, in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.

(12) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.

(13) "Taxable valuation" shall mean the valuation determined according to section 84-302, R. C. M., 1947, and does not mean assessed valuation.

**History:** En. Sec. 3, Ch. 100, L. 1969.

**89-3404. Preliminary survey—written request.** (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written request to the water board.

(2) The request shall:

- (a) generally describe the proposed boundaries of the district;
- (b) specify the purpose or purposes of the district;
- (c) list the works contemplated.

(3) The water board may initiate a preliminary survey without any prior request.

**History:** En. Sec. 4, Ch. 100, L. 1969.

**89-3405. Action by water board upon receipt of request.** (1) Sooner than eleven (11) days after the request is received, the water board shall acknowledge the request.

(2) The water board shall itself, or through co-operating agencies, or together with co-operating agencies:

- (a) consult with the board of supervisors and all persons who may participate in the proposed project;
- (b) conduct a preliminary survey of the proposed district;
- (c) estimate costs of works, maintenance, and operation;
- (d) determine sources of financing;
- (e) reach a tentative decision on the feasibility, desirability and compatability with the state water plan of the proposed district;
- (f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;

(g) sooner than six (6) months after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, fish and game commission, state soil conservation committee, state board of health, and other affected state and federal resource agencies for their comments.

**History:** En. Sec. 5, Ch. 100, L. 1969.

**89-3406. Hearing by water board.** (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the water board to hold a hearing. The water board shall hold the hearing sooner than sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with section 3, subsection (11) [89-3403(11)] of this act.



(2) If the water board itself initiated the preliminary survey, it may hold such a hearing without being requested to do so.

**History:** En. Sec. 6, Ch. 100, L. 1969.

**89-3407. Feasibility study and report—adjustment of proposed boundaries.** After the hearing, the applicants, or any one of them, may request the water board to prepare a detailed feasibility study of the proposed district. If the water board concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report, and sooner than six (6) months after receipt of the request, send copies to the applicants, if any, the fish and game commission, state soil conservation committee, state board of health, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the water board may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The water board may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district.

**History:** En. Sec. 7, Ch. 100, L. 1969.

**89-3408. Procedure for organization of district.** If in the opinion of the water board the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the water board shall file a petition requesting organization with the court;

(2) the petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars (\$100,000) or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least fifty-one percent (51%) of the land outside the limits of an incorporated municipality,

and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

**History:** En. Sec. 8, Ch. 100, L. 1969.

**89-3409. Court hearing on organization petition — election — voters needed to organize—no jurisdiction to determine priority of appropriation.** (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the courts shall find that the prayer of the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district, and exclude those lands which will not be so benefited;

(b) make an order fixing the time and place of an organizing election;

(c) give notice of an election in the way provided in section 3, subsection (11) [89-3403(11)];

(d) provide for election judges and fix their compensation;

(e) fix the polling place or places as necessary;

(f) order the county clerk to provide pollbooks, ballots, poll lists and other necessary election supplies;

(g) provide for canvassing the results;

(h) declare the results;

(i) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, fifty-one per cent (51%) or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This act shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation, and questions of right growing out of, or in any way connected with a priority of appropriation, are expressly excluded from this act and shall be determined as otherwise provided by the laws of Montana.

**History:** En. Sec. 9, Ch. 100, L. 1969.

**89-3410. Filing of documents after organization.** Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, water board, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder



of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

**History:** En. Sec. 10, Ch. 100, L. 1969.

**89-3411. Reimbursement for expenses of organizing election.** If organized, the district shall reimburse the county, or counties, for the expenses incurred in the organizing election.

**History:** En. Sec. 11, Ch. 100, L. 1969.

**89-3423. Persons entitled to vote.** (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county and school district taxes are electors and shall be entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;

(c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district, shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners, or a guardian, executor, administrator, trustee, or purchaser under contract of sale, may be required to show his authority by the judges of the election.

**History:** En. Sec. 23, Ch. 100, L. 1969.

**89-3424. Election procedures.** Election procedures after organization are:

(1) The directors shall designate the polling places, at least one (1) in each county, and hours when the polls will be open;

(2) Notice shall be published of the location of polling places and hours when the polls are open as provided in section 3, subsection (11) [89-3403(11)] of this act;

(3) The directors shall appoint three (3) judges for each polling place and fix their compensation;

(4) The judges shall appoint one (1) of their number as clerk of the election;

(5) The clerks and recorders of the counties in which the election is to be held shall supply poll lists, registers, ballots, and other necessary election supplies;

(6) The judges shall cause the ballots to be counted and certify the results to the directors;

(7) The directors shall canvass the returns;

(8) The directors shall reimburse the counties for actual expenses incurred in the election.

**History:** En. Sec. 24, Ch. 100, L. 1969.

**89-3425. Challenging voters — oath — penalty for false subscription.** An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

“I ..... (name) solemnly swear (or affirm) that I am an elector of the district and have not voted today.”

False subscription to the oath or affirmation is perjury and punishable as such.

**History:** En. Sec. 25, Ch. 100, L. 1969.

**89-3428. Resolution for issuance of bonds—notice—election.** When the directors find it necessary to issue bonds, the directors shall:

- (1) pass a resolution which includes:
  - (a) the purpose or purposes for which the bonds will be issued;
  - (b) the maximum amount and term of the bonds;
  - (c) the maximum interest rate the bonds will bear;
  - (d) whether the bonds will be repaid from revenues, assessments, or both.
- (2) give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;
- (3) hold an election as provided by section 24 [89-3424] of this act.

**History:** En. Sec. 28, Ch. 100, L. 1969.

**89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition.**

(1) For a bond issue to be approved, forty per cent (40%) of the qualified electors must vote thereon, and sixty per cent (60%) of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments as provided in section 16 [89-3416] necessary to pay the principal and interest on bonds issued.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

**History:** En. Sec. 29, Ch. 100, L. 1969.

**89-3442. Procedure for dissolution of district.** (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution; or

(b) a petition signed by twenty per cent (20%) of the electors representing ten per cent (10%) of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for one (1) year or more, any elector may present a petition.



(2) The resolution or petition shall be presented to the court by the directors, or by the petitioners if the directors remain inactive.

(3) Not more than one (1) resolution or petition may be presented to the court in any twenty-four (24) month period, and no such petition may be presented during the first twenty-four (24) months after a district's initial organization.

**History:** En. Sec. 42, Ch. 100, L. 1969.

**89-3443. Dissolution election—majority approval required.** (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by section 24 [89-3424] of this act.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

**History:** En. Sec. 43, Ch. 100, L. 1969.

**89-3444. Submission of termination plan—termination by directors or receiver — court order — retention of jurisdiction.** (1) In the event the vote is for dissolution, any qualified elector, or the board of directors of the district may, within the time fixed by the court, present a written plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

**History:** En. Sec. 44, Ch. 100, L. 1969.

**TITLE 93**  
**CIVIL PROCEDURE**  


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**CHAPTER 2**  
**SUPREME COURT**

- Section 93-201. Justices—number increased to five—election and term of office.  
 93-202. Term of office and designation of first additional justice.  
 93-203. Term of office and designation of second additional justice.  
 93-208. Computation of years of office.  
 93-209. Vacancies.  
 93-219. Judge becoming candidate for elective office—resigning of supreme court office—exceptions—vacancy.  
 93-220. Filling vacancy.

**93-201. (8790) Justices—number increased to five—election and term of office.** On and after September 1, 1919, the supreme court shall consist of a chief justice and four associate justices, who shall be elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and shall hold their offices for the term of six years from and after the first Monday of January next succeeding their election.

**History:** En. Sec. 12, C. Civ. Proc. 1895; Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R. C. re-en. Sec. 6244, Rev. C 1907; amd. Sec. 1, M. 1921. Cal. C. Civ. Proc. Sec. 40.

**93-202. (8791) Term of office and designation of first additional justice.** The first term of office of one of the additional justices of the supreme court hereby provided for shall extend from the first day of September, 1919, to the first Monday of January, 1921; and John Hurley of Valley county, Montana, is hereby named as said justice of the supreme court, and he shall hold said office for said term.

**History:** En. Sec. 2, Ch. 31, Ex. L. 1919; re-en. Sec. 8791, R. C. M. 1921.

**93-203. (8792) Term of office and designation of second additional justice.** The first term of office of the other said additional justice of the supreme court hereby provided for shall extend from the first day of September, 1919, to the first Monday of January, 1923; and George Y. Patten of Gallatin county, Montana, is hereby named as said additional justice of the supreme court, and he shall hold office for said term.

**History:** En. Sec. 3, Ch. 31, Ex. L. 1919; re-en. Sec. 8792, R. C. M. 1921.

**93-208. (8797) Computation of years of office.** The years during which a justice of the supreme court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

**History:** En. Sec. 13, C. Civ. Proc. 1895; 8797, R. C. M. 1921. Cal. C. Civ. Proc. Sec. re-en. Sec. 6245, Rev. C. 1907; re-en. Sec. 41.



**93-209. (8798) Vacancies.** If a vacancy occur in the office of a justice of the supreme court, the governor must appoint an eligible person to hold the office until the election and qualification of a justice to fill the vacancy, which election must take place at the next succeeding general election; and the justice so elected holds the office for the remainder of the unexpired term of his predecessor.

**History:** En. Sec. 14, C. Civ. Proc. 1895; 8798, R. C. M. 1921. Cal. C. Civ. Proc. Sec. re-en. Sec. 6246, Rev. C. 1907; re-en. Sec. 42.

**93-219. Judge becoming candidate for elective office—resigning of supreme court office—exceptions—vacancy.** Whenever any person holding or occupying the office of chief justice or associate justice on the supreme court of the state of Montana shall become a candidate for election to any elective office under the laws of/or in the state of Montana, such person shall forthwith, and in any event at or before the time required for such person to file as a candidate for such office at any primary or special or general election, resign said office of chief justice or associate justice of said supreme court except where such person is a bona fide candidate for re-election to the identical office then held or occupied by him or for another non-partisan judicial office the term of which shall commence not earlier than the end of the term of the office then held or occupied by such justice and said resignation shall become effective forthwith on delivery of the same to the proper officer or superior, and in the event of failure so to resign said office of chief justice or associate justice of said supreme court or of district judge of any of said district courts the same shall, ipso facto, become wholly vacant and unoccupied and the said former holder or occupant shall have no further right, power, or authority therein for any purpose, and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected; and said vacancy shall become operative to deprive any person of the emoluments of said office then held in order to carry out the policy of this act.

**History:** En. Sec. 1, Ch. 139, L. 1957.

**93-220. Filling vacancy.** In all cases the proper appointing or other power shall promptly fill all vacancies occurring because of the provisions of this act by appointment of competent and qualified persons according to law.

**History:** En. Sec. 2, Ch. 139, L. 1957.

## CHAPTER 3

### DISTRICT COURTS

Section 93-301.	Judicial districts defined.
93-301.1.	Eighteenth judicial district created.
93-301.2.	Sixth judicial district.
93-302.	Number of judges.
93-309.	Vacancies.

**93-301. (8812) Judicial districts defined.** In this state there are seventeen judicial districts, distributed as follows:

First district: Lewis and Clark and Broadwater counties.

Second district: Silver Bow county.

Third district: Deer Lodge, Granite, and Powell counties.

Fourth district: Missoula, Mineral, Lake, Ravalli, and Sanders counties.

Fifth district: Beaverhead, Jefferson, and Madison counties.

Sixth district: Gallatin, Park, and Sweet Grass counties.

Seventh district: Dawson, McCone, Richland, and Wibaux counties.

Eighth district: Cascade and Chouteau counties.

Ninth district: Teton, Pondera, Toole, and Glacier counties.

Tenth district: Fergus, Judith Basin, and Petroleum counties.

Eleventh district: Flathead and Lincoln counties.

Twelfth district: Liberty, Hill, and Blaine counties.

Thirteenth district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure counties.

Fourteenth district: Meagher, Wheatland, Golden Valley, and Musselshell counties.

Fifteenth district: Roosevelt, Daniels, and Sheridan counties.

Sixteenth district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud counties.

Seventeenth district: Phillips and Valley counties.

**History:** En. Sec. 6256, Rev. C. 1907;  
re-en. Sec. 8812, R. C. M. 1921; amd. Sec.  
1, Ch. 91, L. 1929.

**93-301.1. Eighteenth judicial district created.** That there is hereby created a new judicial district of the state of Montana, to be known as the eighteenth judicial district of the state of Montana, and that the same shall embrace and comprise the territory within the county of Gallatin within the state of Montana, which after the passage of this act shall constitute the eighteenth judicial district of the state of Montana.

**History:** En. Sec. 1, Ch. 80, L. 1947.

**93-301.2. Sixth judicial district.** That the sixth judicial district of the state of Montana shall hereafter embrace the territory within the counties of Park and Sweet Grass.

**History:** En. Sec. 2, Ch. 80, L. 1947.

**93-302. (8813) Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be four (4) years, to wit: In the first, second, eleventh and sixteenth, two judges each, in the thirteenth, eighth and fourth, three judges, and, in all other districts, one judge each.

On or before April 1, 1963, the governor of this state shall designate and appoint a judge of the fourth judicial district who shall hold office until the general election to be held during the year 1964, and until his successor is elected and qualified.



**History:** En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1929; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963.

**93-309. (8820) Vacancies.** If a vacancy occur in the office of a district court, the governor must appoint an eligible person to hold the office until the election and qualification of a judge to fill the vacancy, which election must take place at the next succeeding general election, and the judge so elected holds office for the remainder of the unexpired term.

**History:** En. Sec. 35, C. Civ. Proc. 1895; 8820, R. C. M. 1921. Cal. C. Civ. Proc. Sec. re-en. Sec. 6269, Rev. C. 1907; re-en. Sec. 70.

## CHAPTER 4

### JUSTICES' AND POLICE COURTS

Section 93-401. Justices' courts and justices.  
93-405. Terms of office.  
93-406. Vacancies.

**93-401. (8833) Justices' courts and justices.** There must be at least two justices' courts in each of the organized townships of the state, for which two justices of the peace must be elected by the qualified electors of the township at the general state election next preceding the expiration of the term of office of his predecessor.

**History:** En. Sec. 60, C. Civ. Proc. 1895; 8833, R. C. M. 1921. Cal. C. Civ. Proc. Sec. re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 85.

**93-405. (8837) Terms of office.** The term of office of justices of peace is two years from the first Monday in January next succeeding their election.

**History:** En. Sec. 64, C. Civ. Proc. 1895; 8837, R. C. M. 1921. Cal. C. Civ. Proc. Sec. re-en. Sec. 6283, Rev. C. 1907; re-en. Sec. 110.

**93-406. (8838) Vacancies.** If a vacancy occurs in the office of a justice of the peace, the county commissioners of the county must appoint an eligible person to hold the office for the remainder of the unexpired term.

**History:** En. Sec. 65, C. Civ. Proc. 1895; 8838, R. C. M. 1921. Cal. C. Civ. Proc. Sec. re-en. Sec. 6284, Rev. C. 1907; re-en. Sec. 111.

## TITLE 94

### CRIMES AND CRIMINAL PROCEDURE

#### CHAPTER 14

##### ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

- Section 94-1401. Violation of election laws by certain officers a felony.
- 94-1402. Fraudulent registration a felony.
- 94-1403. Fraudulent voting.
- 94-1404. Attempting to vote without being qualified.
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- 94-1406. Changing ballots or altering returns by election officers.
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- 94-1428. Limitation of expenditures by candidate—by party organizations—by relatives.
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- 94-1433. Inspection of accounts—complaints—statement of receipts.
- 94-1434. Prosecutions for failure to file statement.
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- 94-1476. Violation of preceding section a misdemeanor.

**94-1401. (10747) Violation of election laws by certain officers a felony.** Every person charged with the performance of any duty, under the provisions of any law of this state relating to elections, or the registration of the names of electors, or the canvassing of the returns of election, who wilfully neglects or refuses to perform such duty, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or both.

**History:** En. Sec. 60, Pen. C. 1895;  
re-en. Sec. 8124, Rev. C. 1907; re-en. Sec.  
10747, R. C. M. 1921. Cal. Pen. C. Sec. 41.

**94-1402. (10748) Fraudulent registration a felony.** Every person who wilfully causes, procures, or allows himself to be registered in the official register of any election district of any county, knowing himself not to be entitled to such registration, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail or state prison not exceeding one year, or both. In all cases where, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in such register of any county,

without being qualified for such registration, the court must order such registration to be canceled.

History: En. Sec. 61, Pen. C. 1895;  
re-en. Sec. 8125, Rev. C. 1907; re-en. Sec.  
10748, R. C. M. 1921. Cal. Pen. C. Sec. 42.

**94-1403. (10749) Fraudulent voting.** Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any one election, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted; or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll-lists, check-lists, or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

History: En. Sec. 62, Pen. C. 1895;  
re-en. Sec. 8126, Rev. C. 1907; re-en. Sec.  
10749, R. C. M. 1921. Cal. Pen. C. Sec. 45.

**94-1404. (10750) Attempting to vote without being qualified.** Every person not entitled to vote, who fraudulently attempts to vote or register, or who, being entitled to vote, attempts to vote or register more than once at any election, is guilty of a misdemeanor.

History: En. Sec. 63, Pen. C. 1895;  
re-en. Sec. 8127, Rev. C. 1907; re-en. Sec.  
10750, R. C. M. 1921. Cal. Pen. C. Sec. 46.

**94-1405. (10751) Procuring illegal voting.** Every person who procures, aids, assists, counsels, or advises another to register or give or offer his vote at any election, knowing that the person is not entitled to vote or register, is guilty of a misdemeanor.

History: En. Sec. 64, Pen. C. 1895;  
re-en. Sec. 8128, Rev. C. 1907; re-en. Sec.  
10751, R. C. M. 1921. Cal. Pen. C. Sec. 47.

**94-1406. (10752) Changing ballots or altering returns by election officers.** Every officer or clerk of election who aids in changing or destroying any poll-list or check-list, or in placing any ballots in the ballot-box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots



polled, any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll-list, check-list, ballot-box, or ballots lawfully polled, is guilty of a felony.

**History:** En. Sec. 65, Pen. C. 1895;  
re-en. Sec. 8129, Rev. C. 1907; re-en. Sec.  
10752, R. C. M. 1921. Cal. Pen. C. Sec. 48.

**94-1407. (10753) Judges unfolding or marking ballots.** Every judge or clerk of an election who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot, with the view to ascertain the name of any person for whom the elector has voted, is punishable by imprisonment in the county jail for a period of six months, or in the state prison not exceeding two years, or by fine, not exceeding five hundred dollars, or by both.

**History:** En. Sec. 66, Pen. C. 1895;  
re-en. Sec. 8130, Rev. C. 1907; re-en. Sec.  
10753, R. C. M. 1921. Cal. Pen. C. Sec. 49.

**94-1408. (10754) Forging or altering returns.** Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term not less than two nor more than ten years.

**History:** En. Sec. 67, Pen. C. 1895;  
re-en. Sec. 8131, Rev. C. 1907; re-en. Sec.  
10754, R. C. M. 1921. Cal. Pen. C. Sec. 50.

**94-1409. (10755) Adding to or subtracting from votes given.** Every person who wilfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the state prison for not less than one nor more than five years.

**History:** En. Sec. 68, Pen. C. 1895;  
re-en. Sec. 8132, Rev. C. 1907; re-en. Sec.  
10755, R. C. M. 1921. Cal. Pen. C. Sec. 51.

**94-1410. (10756) Persons aiding and abetting.** Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections is punishable by imprisonment in the county jail for a period of six months, or in the state prison not exceeding two years.

**History:** En. Sec. 69, Pen. C. 1895;  
re-en. Sec. 8133, Rev. C. 1907; re-en. Sec.  
10756, R. C. M. 1921. Cal. Pen. C. Sec. 52.

**94-1411. (10757) Intimidating, corrupting, deceiving or defrauding electors.** Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being judge or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menaces or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or imprisonment not to exceed one year, or both.

**History:** En. Sec. 70, Pen. C. 1895;  
re-en. Sec. 8134, Rev. C. 1907; re-en. Sec.  
10757, R. C. M. 1921. Cal. Pen. C. Sec. 53.

**94-1412. (10758) Offenses under the election laws.** Every person who falsely makes, or fraudulently defaces or destroys, the certificates of nomination of candidates for office, to be filled by the electors at any election, or any part thereof, or files or receives for filing any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppresses any certificate of nomination, which has been duly filed, or any part thereof, or forges or falsely makes the official indorsement on any ballot, is guilty of a felony, and upon conviction thereof is punishable by imprisonment in the state prison not less than one nor more than five years.

**History:** En. Sec. 71, Pen. C. 1895;  
re-en. Sec. 8135, Rev. C. 1907; re-en. Sec.  
10758, R. C. M. 1921.

**94-1413. (10759) Officers of election not to electioneer, etc.** Every officer or clerk of election who deposits in a ballot-box a ballot on which the official stamp, as provided by law, does not appear, or does any electioneering on election day, is guilty of a misdemeanor, and upon conviction is punishable by imprisonment not to exceed six months, or by a fine not less than fifty nor more than five hundred dollars, or both.

**History:** En. Sec. 72, Pen. C. 1895;  
re-en. Sec. 8136, Rev. C. 1907; re-en. Sec.  
10759, R. C. M. 1921.

**94-1414. (10760) Offenses at an election.** Every person who, during an election, removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot, or prior to or on the day of election wilfully defaces or destroys any list of candidates posted in accordance with the provisions of law, or during an election tears down or defaces the cards printed for the instruction of voters, or does any electioneering on election day within any polling-place or any building in which an election is being held; or within twenty-five feet thereof, or obstructs the doors or entries thereof,



or removes any ballot from the polling-place before the closing of the polls, or shows his ballot to any person after it is marked so as to reveal the contents thereof, or solicits an elector to show his ballot after it is marked, or places a mark on his ballot by which it may afterward be identified, or receives a ballot from any other person than one of the judges of the election having charge of the ballots, or votes or offers to vote any ballot except such as he has received from the judges of election having charge of the ballots, or does not return the ballot before leaving the polling-place, delivered to him by such judges, and which he has not voted, is guilty of a misdemeanor, and is punishable by a fine not exceeding one hundred dollars.

**History:** En. Sec. 73, Pen. C. 1895;  
re-en. Sec. 8137, Rev. C. 1907; re-en. Sec.  
10760, R. C. M. 1921.

**94-1415. (10761) Furnishing money or entertainment for, or procuring attendance of, electors.** Every person who, with the intention to promote the election of himself or any other person, either:

1. Furnishes entertainments, at his expense, to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

3. Furnishes or engages to pay any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring the attendance of voters at the polls, except for the conveyance of voters who are sick or infirm;

4. Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers, previous to such election;  
is guilty of a misdemeanor.

**History:** En. Sec. 74, Pen. C. 1895;  
re-en. Sec. 8138, Rev. C. 1907; re-en. Sec.  
10761, R. C. M. 1921. Cal. Pen. C. Sec. 54.

**94-1416. (10762) Unlawful offer to appoint to office.** Every person who, being a candidate at any election, offers, or agrees to appoint or procure, the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or to procure or aid in procuring the election of such candidate, is guilty of a misdemeanor.

**History:** En. Sec. 75, Pen. C. 1895;  
re-en. Sec. 8139, Rev. C. 1907; re-en. Sec.  
10762, R. C. M. 1921. Cal. Pen. C. Sec. 55.

**94-1417. (10763) Communication of same.** Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for, or to procure or to aid

in procuring the election of the candidate making the offer, is guilty of a misdemeanor.

History: En. Sec. 76, Pen. C. 1895;  
re-en. Sec. 8140, Rev. C. 1907; re-en. Sec.  
10763, R. C. M. 1921. Cal. Pen. C. Sec. 56.

**94-1418. (10764) Bribing members of legislative caucuses, etc.** Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

History: En. Sec. 77, Pen. C. 1895;  
re-en. Sec. 8141, Rev. C. 1907; re-en. Sec.  
10764, R. C. M. 1921. Cal. Pen. C. Sec. 57.

**94-1419. (10765) Preventing public meetings of electors.** Every person who, by threats, intimidations, or violence, wilfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

History: En. Sec. 78, Pen. C. 1895;  
re-en. Sec. 8142, Rev. C. 1907; re-en. Sec.  
10765, R. C. M. 1921. Cal. Pen. C. Sec. 58.

**94-1420. (10766) Disturbances of public meetings of electors.** Every person who wilfully disturbs or breaks up any public meeting of electors or others, lawfully being held for the purpose of considering public questions, or any public school or public school meeting, is guilty of a misdemeanor.

History: En. Sec. 79, Pen. C. 1895;  
re-en. Sec. 8143, Rev. C. 1907; re-en. Sec.  
10766, R. C. M. 1921.

**94-1421. (10767) Betting on elections.** Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

History: En. Sec. 80, Pen. C. 1895;  
re-en. Sec. 8144, Rev. C. 1907; re-en. Sec.  
10767, R. C. M. 1921. Cal. Pen. C. Sec. 60.

**94-1422. (10768) Violation of election laws.** Every person who wilfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for such violation is prescribed by this code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or both.

History: En. Sec. 81, Pen. C. 1895;  
re-en. Sec. 8145, Rev. C. 1907; re-en. Sec.  
10768, R. C. M. 1921. Cal. Pen. C. Sec. 61.



**94-1423. (10769) Bribery.** The following persons shall be deemed guilty of bribery, and shall be punished by a fine not exceeding one thousand dollars, and imprisonment in the penitentiary not exceeding one year:

1. Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises, any money or valuable consideration, or promises to procure, or endeavors to procure, any money or valuable consideration, to or for any election, or to or for any person on behalf of any elector, or to or for any person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid;

2. Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, or procures, or agrees to give or procure, or offers or promises, any office, place, or employment, to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid, on account of any elector having voted or refrained from voting at any election;

3. Every person who, directly or indirectly, by himself or by any other persons on his behalf, makes any gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavor to procure the return of any person to serve in the legislative assembly, or the vote of any elector at any election;

4. Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures or promises, or endeavors to procure, the election of any candidate to the legislative assembly, or the vote of any elector at any election;

5. Every person who advances or pays, or causes to be paid, any money to, or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery, or in corrupt practices, at any election, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election;

6. Every elector who, before or during any election, directly or indirectly, by himself or any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for refusing or agreeing to refrain from voting at any election;

7. Every person who, after any election, directly or indirectly, by himself or by any other person in his behalf, receives any money, gift, loan, valuable consideration, office, place, or employment, for having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election;

8. Every person, whether an elector or otherwise, who, before or during any election, directly or indirectly, by himself or by any other person on his behalf, makes approaches to any candidate or agent, or any person representing or acting on behalf of any candidate at such election, and asks

for, or offers to agree or contract for, any money, gift, loan, valuable consideration, office, place, or employment for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at such election;

9. Every person, whether an elector or otherwise, who, after an election, directly or indirectly, by himself or by any other person on his behalf, makes approaches to any candidate, or any agent or person representing or acting on behalf of any candidate, and asks for or offers to receive any money, gift, loan, valuable consideration, office, place, or employment, for himself or any other person, for having voted or refrained from voting, or having induced any other person to vote or refrain from voting at such election;

10. Every person who, in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has so become, gives or lends any money or valuable consideration whatever, or agrees to give or lend, or offers or promises any such money or valuable consideration, or promises to procure or try to procure, or tries to procure, for such person, or for any other person, any money or valuable consideration;

11. Every person who, for the purpose and with the intent in the last preceding subsection mentioned, gives or procures any office, place, or employment, or agrees to give or procure, or offers or promises, such office, place, or employment, or endeavors to procure, or promises to procure or to endeavor to procure, such office, place, or employment, to or for such person or any other person;

12. Every person who, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in the two last preceding subsections, allows himself to be nominated, or refuses to allow himself to be nominated, as a candidate at an election, or withdraws if he has been so nominated;

13. Every elector, candidate for nomination, nominee, or political committee who shall pay, or offer to pay, the fee for any person who is about to, or has made his declaration of intention, or has taken out, or is about to take out, his final papers as a citizen of the United States; and every person who receives any money or other valuable thing to pay such fee, or permits the same to be paid for him.

History: En. Sec. 105, Pen. C. 1895;  
re-en. Sec. 8169, Rev. C. 1907; re-en. Sec.  
10769, R. C. M. 1921. Cal. Pen. C. Sec. 54b.

**94-1424. (10770) Unlawful acts of employers.** It shall be unlawful for any employer, in paying his employees the salary or wages due them, to inclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any hand-



bill or placard containing any threat or promise, notice, or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section shall apply to corporations as well as individuals, and any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, and imprisonment not exceeding six months in the county jail, and any corporation violating this section shall be punished by fine not to exceed five thousand dollars, or forfeit its charter, or both such fine and forfeiture.

**History:** En. Sec. 109, Pen. C. 1895;  
re-en. Sec. 8173, Rev. C. 1907; re-en. Sec.  
10770, R. C. M. 1921.

**94-1425. (10771) Fines paid into school fund.** All fines imposed and collected under the preceding sections shall be paid into the county treasury for the benefit of the common schools of the county in which the offense was committed.

**History:** En. Sec. 110, Pen. C. 1895;  
re-en. Sec. 8174, Rev. C. 1907; re-en. Sec.  
10771, R. C. M. 1921.

**94-1426. (10772) Violation of act voids election.** If it be proved before any court for the trial of election contests or petitions that any corrupt practice has been committed, by or with the actual knowledge and consent of any candidate at an election, if he has been elected, such election shall be void, and shall be so adjudged.

**History:** En. Sec. 111, Pen. C. 1895;  
re-en. Sec. 8175, Rev. C. 1907; re-en. Sec.  
10772, R. C. M. 1921.

**NOTE.**—The corrupt practices referred to in this section were those specified in sections 8169 and 8173 of the Revised Codes of 1907 (sections 94-1423 and 94-1424).

**94-1427. (10773) Expenditure by or for candidate for office.** No sums of money shall be paid, and no expenses authorized or incurred, by or on behalf of any candidate to be paid by him, except such as he may pay to the state for printing, as herein provided, in his campaign for nomination to any public office or position in this state, in excess of fifteen per cent of one year's compensation or salary of the office for which he is a candidate; provided, that no candidate shall be restricted to less than one hundred dollars in his campaign for such nomination. No sums of money shall be paid, and no expenses authorized or incurred, contrary to the provisions of this act, for or on behalf of any candidate for nomination. For the purposes of this law, the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow official or fellow employee of a corporation shall be deemed to be that of the candidate himself.

**History:** En. Sec. 1, Init. Act, Nov.  
1912; re-en. Sec. 10773, R. C. M. 1921.

**94-1428.** (10774) **Limitation of expenditures by candidate—by party organizations—by relatives.** No sums of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this state, except such as he may contribute towards payment for his political party's or independent statement in the pamphlet herein provided for, to be paid by him in his campaign for election, in excess of ten per cent of one year's salary or compensation of the office for which he is nominated; provided, that no candidate shall be restricted to less than one hundred dollars. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any political party or organization to promote the success of the principles or candidates of such party or organization, contrary to the provisions of this act. For the purposes of this act, the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow official or fellow employee of a corporation, shall be deemed to be that of the candidate himself.

**History:** En. Sec. 8, Init. Act, Nov. 1912; re-en. Sec. 10774, R. C. M. 1921.

**94-1429.** (10775) **Definition of terms.** Terms used in this act shall be construed as follows, unless other meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intent of the law:

"Persons" shall apply to any individual, male or female, and, where consistent with collective capacity, to any committee, firm, partnership, club, organization, association, corporation, or other combination of individuals.

"Candidate" shall apply to any person whose name is printed on an official ballot for public office, or whose name is expected to be or has been presented for public office, with his consent, for nomination or election.

"Political agent" shall apply to any person who, upon request or under agreement, receives or disburses money in behalf of a candidate.

"Political committee" shall apply to every combination of two or more persons who shall aid or promote the success or defeat of a candidate, or a political party or principle, and the provisions of law relating thereto shall apply to any firm or partnership, to any corporation, and to any club, organization, association, or other combination of persons, whether incorporated or not, with similar purposes, whether primary or incidental.

"Public office" shall apply to any national, state, county, or city office to which a salary attaches and which is filled by the voters, as well as to the office of presidential elector, United States senator, or presiding officer of either branch of the legislature.

"Give," "provide," "expend," "contribute," "receive," "ask," "solicit," and like terms, with their corresponding nouns, shall apply to money, its equivalent, or any other valuable thing; shall include the promise, advance deposit, borrowing, or loan thereof, and shall cover all or any part of a transaction, whether it be made directly or indirectly.



None of the provisions of this act shall be construed as relating to the rendering of services by speakers, writers, publishers, or others, for which no compensation is asked or given; nor to prohibit expenditure by committees of political parties or organizations for public speakers, music, halls, lights, literature, advertising, office rent, printing, postage, clerk hire, challengers or watchers at the polls, travelling expenses, telegraphing or telephoning, or making of poll-lists.

History: En. Sec. 10, Init. Act, Nov. 1912; re-en. Sec. 10775, R. C. M. 1921.

**94-1430. (10776) Statement by candidate as to moneys expended—filing after election—penalty.** Every candidate for nomination or election to public office, including candidates for the office of senator of the United States, shall, within fifteen days after the election at which he was a candidate, file with the secretary of state if a candidate for senator of the United States, representative in congress, or for any state or district office in a district composed of one or more counties, or for members of the legislative assembly from a district composed of more than one county, but with the county clerk for legislative districts composed of not more than one county, and for county and precinct offices, and with the city clerk, auditor, or recorder of the town or city in which he resides, if he was a candidate for a town, city, or ward office, an itemized sworn statement setting forth in detail all the moneys contributed, expended, or promised by him to aid and promote his nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character, and all liabilities remaining uncanceled and in force at the time such statement is made, whether such expenditures, promises, and liabilities were made or incurred before, during, or after such election. If no money or other valuable thing was given, paid, expended, contributed, or promised, and no unfulfilled liabilities were incurred by a candidate for public office to aid or promote his nomination or election, or the election of his party candidates, he shall file a statement to that effect within fifteen days after the election at which he was a candidate. Any candidate who shall fail to file such a statement shall be fined twenty-five dollars for every day on which he was in default, unless he shall be excused by the court. Fifteen days after any such election the secretary of state, or county clerk, city clerk, auditor, or recorder, as the case may be, shall notify the county attorney of any failure to file such a statement on the part of any candidate, and within ten days thereafter such prosecuting officer shall proceed to prosecute said candidate for such offense.

History: En. Sec. 11, Init. Act, Nov. 1912; re-en. Sec. 10776, R. C. M. 1921.

**94-1431. (10777) Accounts of expenditures by political committees and other persons—statement.** (1) Every political committee shall have a treasurer, who is a voter, and shall cause him to keep detailed accounts of all its receipts, payments, and liabilities. Similar accounts shall be kept by every person, who in the aggregate receives or expends money or incurs liabilities to the amount of more than fifty dollars (\$50) for political

purposes, and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination, or election concerned.

(2) Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate, or other person or political party or organization, shall, on demand, and in any event within fourteen (14) days after such receipt, expenditure, or incurrence of liability, give such treasurer, agent, candidate, or other person on whose behalf such expense or liability was incurred a detailed verified account thereof. Every payment shall be accounted for by a receipted bill stating the particulars of expense. Every voucher, receipt, and verified account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate, or other person, and shall be preserved for six (6) months after the election to which it refers.

(3) Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars (\$50) in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall, within ten (10) days after the election in which said money or value was expended, file with the secretary of state in the case of a measure voted upon by the people, or of state or district offices for districts composed of one (1) or more counties, or with the county clerk for county offices, and with the city clerk, auditor, or recorder for municipal offices, a verified itemized statement of such receipts and expenditures for every sum paid in excess of five dollars (\$5), and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such receipts.

(4) The books of account of every treasurer of any political party, committee, or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction.

History: En. Sec. 12, Init. Act, Nov. 1912; re-en. Sec. 10777, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1969.

**94-1432. (10778) Copies of act to be furnished certain public officers and candidates.** The secretary of state shall, at the expense of the state, furnish to the county clerk, and to the city and town clerks, auditors, and recorders, copies of this act as a part of the election laws. In the filing of a nomination petition or certificate of nomination, the secretary of state, in the case of state and district offices for districts composed of one or more counties, and county clerks for county offices, and the city and town clerks, auditors, or recorders for municipal offices, shall transmit to the several candidates, and to the treasurers of political committees, and to political agents, as far as they may be known to such officer, copies of



this act, and also to any other person required to file a statement such copies shall be furnished upon application therefor. Upon his own information, or at the written request of any voter, said secretary of state shall transmit to any other person believed by him or averred to be a candidate, or who may otherwise be required to make a statement, a copy of this act.

**History:** En. Sec. 13, Init. Act, Nov. 1912; re-en. Sec. 10778, R. C. M. 1921.

**94-1433. (10779) Inspection of accounts—complaints—statement of receipts.** The several officers with whom statements are required to be filed shall inspect all statements of accounts and expenses relating to nominations and elections filed with them within ten days after the same are filed; and if, upon examination of the official ballot, it appears that any person has failed to file a statement as required by law, or if it appears to any such officer that the statement filed with him does not conform to law, or upon complaint in writing by a candidate or by a voter that a statement filed does not conform to law or to the truth, or that any person has failed to file a statement which he is by law required to file, said officer shall forthwith in writing notify the delinquent person. Every such complaint filed by a citizen or candidate shall state in detail the grounds of objection, shall be sworn to by the complainant, and shall be filed with the officer within sixty days after the filing of the statement or amended statement. Upon the written request of a candidate or any voter, filed within sixteen days after any convention, primary, or nominating election, said secretary of state, county clerk, city or town clerk, auditor, or recorder, as the case may be, shall demand from any specified person or candidate a statement of all his receipts, and from whom received, disbursements and liabilities in connection with or in any way relating to the nomination or election concerned, whether it is an office to which a salary or compensation is attached or not, and said person shall thereupon be required to file such statement and to comply with all the provisions relating to statements herein contained. Whoever makes a statement required by this act shall make oath attached thereto that it is in all respects correct, complete, and true, to the best of his knowledge and belief, and said verification shall be in substantially the form herein provided.

**History:** En. Sec. 14, Init. Act, Nov. 1912; re-en. Sec. 10779, R. C. M. 1921.

**94-1434. (10780) Prosecutions for failure to file statement.** Upon the failure of any person to file a statement within ten days after receiving notice, under the preceding section, or if any statement filed as above discloses any violation of any provision of this act relating to corrupt practices in elections, or in any other provision of the election laws, the secretary of state, the county clerk, or the city clerk, auditor, or recorder, as the case may be, shall forthwith notify the county attorney of the county where said violation occurred, and shall furnish him with copies of all papers relating thereto, and said county attorney shall, within sixty days thereafter, examine every such case, and if the evidence seems to him to be

sufficient under the provisions of this act, he shall, in the name of the state, forthwith institute such civil or criminal proceedings as may be appropriate to the facts.

**History:** En. Sec. 15, Init. Act, Nov. 1912; re-en. Sec. 10780, R. C. M. 1921.

**94-1435. (10781) Jurisdiction—court may compel filing of statements.** The district court of the county in which any statement of accounts and expenses relating to nominations and elections should be filed, unless herein otherwise provided, shall have exclusive original jurisdiction of all violations of this act, and may compel any person who fails to file such a statement as required by this act, or who files a statement which does not conform to the provisions of this act in respect to its truth, sufficiency in detail, or otherwise, to file a sufficient statement, upon the application of the attorney-general or of the county attorney, or the petition of a candidate or of any voter. Such petition shall be filed in the district court within sixty days after such election if the statement was filed within the fifteen days required, but such a petition may be filed within thirty days after any payment not included in the statement so filed.

**History:** En. Sec. 16, Init. Act, Nov. 1912; re-en. Sec. 10781, R. C. M. 1921.

**94-1436. (10782) Record of statements—copies.** All statements shall be preserved for six months after the election to which they relate, and shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of other public records.

**History:** En. Sec. 17, Init. Act, Nov. 1912; re-en. Sec. 10782, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1943.

**94-1437. (10783) Payments in name of undisclosed principal.** No person shall make a payment of his own money or of another person's money to any other person in connection with a nomination or election in any other name than that of the person who in truth supplies such money; nor shall any person knowingly receive such payment, or enter, or cause the same to be entered, in his accounts or records in another name than that of the person by whom it was actually furnished; provided, if the money be received from the treasurer of any political organization, it shall be sufficient to enter the same as received from said treasurer.

**History:** En. Sec. 18, Init. Act, Nov. 1912; re-en. Sec. 10783, R. C. M. 1921.

**94-1438. (10784) Promise to procure appointment or election.** No person shall, in order to aid or promote his nomination or election, directly or indirectly, himself or through any other person, promise to appoint another person, or promise to secure or aid in securing the appointment, nomination, or election of another person to any public or private position or employment, or to any position of honor, trust, or emolument, except that he may publicly announce or define what is his choice or purpose in relation to any



election in which he may be called to take part, if elected, and if he is a candidate for nomination or election as a member of the legislative assembly, he may pledge himself to vote for the people's choice for United States senator, or state what his action will be on such vote.

History: En. Sec. 19, Init. Act, Nov. 1912; re-en. Sec. 10784, R. C. M. 1921.

**94-1439. (10785) Public officer or employee not to contribute funds.** No holder of a public position or office, other than an office filled by the voters, shall pay or contribute to aid or promote the nomination or election of any other person to public office. No person shall invite, demand, or accept payment or contribution from such holder of a public position or office for campaign purposes.

History: En. Sec. 20, Init. Act, Nov. 1912; re-en. Sec. 10785, R. C. M. 1921.

**94-1440. (10786) Certain public officers prohibited from acting as delegates or members of political committee.** No holder of a public position, other than an office filled by the voters, shall be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor shall he be a member of a political committee for such district.

History: En. Sec. 21, Init. Act, Nov. 1912; re-en. Sec. 10786, R. C. M. 1921.

**94-1441. (10787) Transfer of convention credential.** No person shall invite, offer, or effect the transfer of any convention credential in return for any payment of money or other valuable thing.

History: En. Sec. 22, Init. Act, Nov. 1912; re-en. Sec. 10787, R. C. M. 1921.

**94-1442. (10788) Inducing person to be or not to be candidate.** No person shall pay, or promise to reward another, in any manner or form, for the purpose of inducing him to be or refrain from or cease being a candidate, and no person shall solicit any payment, promise, or reward from another for such purpose.

History: En. Sec. 23, Init. Act, Nov. 1912; re-en. Sec. 10788, R. C. M. 1921.

**94-1443. (10789) What demands or requests shall not be made of candidates.** No person shall demand, solicit, ask, or invite any payment or contribution for any religious, political, charitable, or other cause or organization supposed to be primarily or principally for the public good, from a person who seeks to be or has been nominated or elected to any office; and no such candidate or elected person shall make any such payment or contribution if it shall be demanded or asked during the time he is a candidate for nomination or election to or an incumbent of any office. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot or nomination paper or petition, or to the performance of any duty imposed by law on a political committee. No person shall demand, solicit, ask, or invite any candidate to subscribe to the support of any club or organization, to buy

tickets to any entertainment or ball, or to subscribe for or pay for space in any book, program, periodical, or other publication; if any candidate shall make any such payment or contribution with apparent hope or intent to influence the result of the election, he shall be guilty of a corrupt practice; but this section shall not apply to the soliciting of any business advertisement for insertion in a periodical in which such candidate was regularly advertising prior to his candidacy, nor to ordinary business advertising, nor to his regular payment to any organization, religious, charitable, or otherwise, of which he may have been a member, or to which he may have been a contributor, for more than six months before his candidacy, nor to ordinary contributions at church services.

**History:** En. Sec. 24, Init. Act, Nov. 1912; re-en. Sec. 10789, R. C. M. 1921.

**94-1444. (10790) Contributions from corporations, public utilities and others.** No corporation, and no person, trustee, or trustees owning or holding the majority of the stock of a corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, surety, indemnity, safe deposit, insurance, railroad, street-railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery, or crematory company, or any company having the right to take or condemn land, or to exercise franchises in public ways granted by the state or by any county, city, or town, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person, or in order to aid or promote the interests, success, or defeat of any political party or organization. No person shall solicit or receive such payment or contribution from such corporation or such holders of a majority of such stock.

**History:** En. Sec. 25, Init. Act, Nov. 1912; re-en. Sec. 10790, R. C. M. 1921.

**94-1445. (10791) Treating.** Any person or candidate who shall, either by himself or by any other person, either before or after an election, or while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expenses of giving or providing any meat or drink, or other entertainment or provision, clothing, liquors, cigars, or tobacco, to or for any person for the purpose of or with intent or hope to influence that person, or any other person, to give or refrain from giving his vote at such election to or for any candidate or political party ticket, or measure before the people, or on account of such persons, or any other person, having voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people, or being about to vote or refrain from voting at such election, shall be guilty of treating. Every elector who accepts or takes any such meat, drink, entertainment, provision, clothing, liquors, cigars, or tobacco, shall also be guilty of treating; and such acceptance shall be a ground of challenge to his vote and of rejecting his vote on a contest.

**History:** En. Sec. 26, Init. Act, Nov. 1912; re-en. Sec. 10791, R. C. M. 1921.



**94-1446. (10792) Challenging voters—procedure.** Whenever any person's right to vote shall be challenged, and he has taken the oath prescribed by the statutes, and if it is at a nominating election, then it shall be the duty of the clerks of election to write in the poll-books at the end of such person's name the words "challenged and sworn," with the name of the challenger. Thereupon the chairman of the board of judges shall write upon the back of the ballot offered by such challenged voter the number of his ballot, in order that the same may be identified in any future contest of the results of the election, and be cast out if it shall appear to the court to have been for any reason wrongfully or illegally voted for any candidate or on any question. And such marking of the name of such challenged voter, nor the testimony of any judge or clerk of election in reference thereto, or in reference to the manner in which said challenged person voted, if said testimony shall be given in the course of any contest, investigation, or trial wherein the legality of the vote of such person is questioned for any reason, shall not be deemed a violation of section 94-1407.

**History:** En. Sec. 27, Init. Act, Nov. 1912; re-en. Sec. 10792, R. C. M. 1921.

**94-1447. (10793) Coercion or undue influence of voters.** Every person who shall, directly or indirectly, by himself or any other person in his behalf, make use of or threaten to make use of any force, coercion, violence, restraint, or undue influence, or inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting for any candidate, or the ticket of any political party, or any measure before the people, or any person who, being a minister, preacher, or priest, or any officer of any church, religious or other corporation or organization, otherwise than by public speech or print, shall urge, persuade, or command any voter to vote or refrain from voting for or against any candidate or political party ticket or measure submitted to the people, for or on account of his religious duty, or the interest of any corporation, church, or other organization, or who shall, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election, or shall thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election, shall be guilty of undue influence, and shall be punished as for a corrupt practice.

**History:** En. Sec. 28, Init. Act, Nov. 1912; re-en. Sec. 10793, R. C. M. 1921.

**94-1448. (10794) Bets or wagers on election results.** Any candidate who, before or during any election campaign, makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager on the result of the election in his electoral district, or in any part thereof, or on any event or contingency relating to any pending election, or who provides money or other valuables to be used by any person in betting or wagering upon the results of any impending election, shall be guilty of a corrupt practice. Any person who, for the purpose of influencing

the result of any election, makes any bet or wager of anything of pecuniary value on the result of such election in his electoral district, or any part thereof, or of any pending election, or on any event or contingency relating thereto, shall be guilty of a corrupt practice, and in addition thereto any such act shall be ground of challenge against his right to vote.

**History:** En. Sec. 29, Init. Act, Nov. 1912; re-en. Sec. 10794, R. C. M. 1921.

**94-1449. (10795) Personating another elector—penalty.** Any person shall be deemed guilty of the offense of personation who, at any election, applies for a ballot in the name of some other person, whether it be that of a person living or dead, or of a fictitious person, or who, having voted once at an election, applies at the same election for a ballot in his own name; and on conviction thereof such person shall be punished by imprisonment in the penitentiary at hard labor for not less than one nor more than three years.

**History:** En. Sec. 30, Init. Act, Nov. 1912; re-en. Sec. 10795, R. C. M. 1921.

**94-1450. (10796) Corrupt practice, what constitutes.** Any person shall be guilty of a corrupt practice, within the meaning of this act, if he expends any money for election purposes contrary to the provisions of any statute of this state, or if he is guilty of treating, undue influence, personation, the giving or promising to give, or offer of any money or valuable thing to any elector, with intent to induce such elector to vote for or to refrain from voting for any candidate for public office, or the ticket of any political party or organization, or any measure submitted to the people, at any election, or to register or refrain from registering as a voter at any state, district, county, city, town, village, or school district election for public offices or on public measures. Such corrupt practice shall be deemed to be prevalent when instances thereof occur in different election districts similar in character and sufficient in number to convince the court before which any case involving the same may be tried that they were general and common, or were pursuant to a general scheme or plan.

**History:** En. Sec. 31, Init. Act, Nov. 1912; re-en. Sec. 10796, R. C. M. 1921.

**94-1451. (10797) Compensating voter for loss of time—badges and insignia.** It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering, or for the expense of transportation to or from the polls. No person shall pay for personal service to be performed on the day of a caucus, primary, convention, or any election, for any purpose connected therewith, tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons whose sole duty is to act as challengers and watch the count of official ballots. No person shall buy, sell, give, or provide any political badge, button, or other insignia to be worn at or about the polls on the



day of any election, and no such political badge, button, or other insignia shall be worn at or about the polls on any election day.

**History:** En. Sec. 32, Init. Act, Nov. 1912; re-en. Sec. 10797, R. C. M. 1921.

**94-1452. (10798) Publications in newspapers and periodicals.** No publisher of a newspaper or other periodical shall insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure, or defeat any candidate or any political party or organization, or measure before the people, unless it is stated therein that it is a paid advertisement, the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street number thereof, if any, appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher, or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent shall accept such payment. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice.

**History:** En. Sec. 33, Init. Act, Nov. 1912; re-en. Sec. 10798, R. C. M. 1921.

**94-1453. (10799) Solicitation of votes on election day.** It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, or the candidates or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof he shall be punished by fine of not less than five dollars nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

**History:** En. Sec. 34, Init. Act, Nov. 1912; re-en. Sec. 10799, R. C. M. 1921.

**94-1454. (10800) Political criminal libel.** It shall be unlawful to write, print, or circulate through the mails or otherwise any letter, circular, bill, placard, or poster relating to any election or to any candidate at any election, unless the same shall bear on its face the name and address of the author, and of the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, or causing to be written, printed, circulated, posted, or published any such letter, bill, placard, circular, or poster as aforesaid, which fails to bear on its face the name and address of the author and of the printer or publisher, shall be guilty of an illegal practice, and shall on conviction thereof be punished by a fine of not less than ten dollars nor more than one thousand dollars. If any letter, circular, poster, bill, publication, or placard shall contain any false statement or charges reflecting on any candidate's character, morality, or integrity, the

author thereof, and every person printing or knowingly assisting in the circulation, shall be guilty of political criminal libel, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than three years. If the person charged with such crime shall prove on his trial that he had reasonable ground to believe such charge was true, and did believe it was true, and that he was not actuated by malice in making such publication, it shall be a sufficient defense to such charge. But in that event, and as a part of such defense, the author and the printer or publisher or other person charged with such crime shall also prove that, at least fifteen days before such letter, circular, poster, bill, or placard containing such false statement or statements was printed or circulated, he or they caused to be served personally and in person upon the candidate to whom it relates a copy thereof in writing, and calling his attention particularly to the charges contained therein, and that, before printing, publishing, or circulating such charges, he received and read any denial, defense, or explanation, if any, made or offered to him in writing by the accused candidate within ten days after the service of such charge upon the accused person.

**History:** En. Sec. 35, Init. Act, Nov. 1912; re-en. Sec. 10800, R. C. M. 1921.

**Compiler's Note**

This section may be partially superseded by sec. 94-1475.

**94-1455. (10801) Filing of statement of expenses by candidate.** The name of a candidate chosen at a primary nominating election, or otherwise, shall not be printed on the official ballot for the ensuing election, unless there has been filed by or on behalf of said candidate the statements of accounts and expenses relating to nominations required by this act, as well as a statement by his political agent and by his political committee or committees in his behalf, if his statement discloses the existence of such agent, committee, or committees. The officer or board entrusted by law with the preparation of the official ballots for any election shall, as far as practicable, warn candidates of the danger of the omission of their names by reason of this provision, but delay in making any such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot, if there is reasonable time therefor after the receipt of such statements. Any such vacancy on the ballot shall be filled by the proper committee of his political party in the manner authorized by law, but not by the use of the name of the candidate who failed to file such statements. No person shall receive a certificate of election until he shall have filed the statements required by this act.

**History:** En. Sec. 36, Init. Act, Nov. 1912; re-en. Sec. 10801, R. C. M. 1921.

**94-1456. (10802) Inducement to accept or decline nomination.** It shall be unlawful for any person to accept, receive, or pay money or any valuable consideration for becoming or for refraining from becoming a candidate for nomination or election, or by himself or in combination with any other person or persons to become a candidate for the purpose of defeating the



nomination or election of any other person, and not with a bona fide intent to obtain the office. Upon complaint made to any district court, if the judge shall be convinced that any person has sought the nomination, or seeks to have his name presented to the voters as a candidate for nomination by any political party, for any mercenary or venal consideration or motive, and that his candidacy for the nomination is not in good faith, the judge shall forthwith issue his writ of injunction restraining the officer or officers whose duty it is to prepare the official ballots for such nominating election from placing the name of such person thereon as a candidate for nomination to any office. In addition thereto, the court shall direct the county attorney to institute criminal proceedings against such person or persons for corrupt practice, and upon conviction thereof he and any person or persons combining with him shall be punished by a fine of not more than one thousand dollars, or imprisonment in the county jail for not more than one year.

**History:** En. Sec. 37, Init. Act, Nov. 1912; re-en. Sec. 10802, R. C. M. 1921.

**94-1457. (10803) Forfeiture of nomination or office for violation of law, when not worked.** Where, upon the trial of any action or proceeding under the provisions of this act for the contest of the right of any person declared nominated or elected to any office, or to annul or set aside such nomination or election, or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, or was committed without his sanction or connivance, and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate, or that the offense or offenses complained of were trivial, unimportant, and limited in character, and that in all other respects his participation in the election was free from such offenses or illegal acts, or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the court to be unjust that the said candidate shall forfeit his nomination or office, or be deprived of any office of which he is the incumbent, then the nomination or election of such candidate shall not by reason of such offense or omission complained of be void, nor shall the candidate be removed from or deprived of his office.

**History:** En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R. C. M. 1921.

**94-1458. (10804) Punishment for violation of act.** If, upon the trial of any action or proceeding under the provisions of this act, for the contesting of the right of any person declared to be nominated to an office, or elected to an office, or to annul and set aside such election, or to remove any person from his office, it shall appear that such person was guilty of any corrupt practice, illegal act, or undue influence, in or about such nomi-

nation or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exception to this judgment shall be that provided in the preceding section of this act. Such judgment shall not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

**History:** En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R. C. M. 1921.

**94-1459. (10805) Time for commencing contest.** Any action to contest the right of any person declared elected to an office, or to annul and set aside such election, or to remove from or deprive any person of an office of which he is the incumbent, for any offense mentioned in this act, must, unless a different time be stated, be commenced within forty days after the return day of the election at which such offense was committed, unless the ground of the action or proceeding is for the illegal payment of money or other valuable thing subsequent to the filing of the statements prescribed by this act, in which case the action or proceeding may be commenced within forty days after the discovery by the complainant of such illegal payment. A contest of the nomination or office of governor or representative or senator in congress must be commenced within twenty days after the declaration of the result of the election, but this shall not be construed to apply to any contest before the legislative assembly.

**History:** En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R. C. M. 1921.

**94-1460. (10806) Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section 94-1457, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed, or in which the incumbent resides.

**History:** En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R. C. M. 1921.

**94-1461. (10807) Repealed—Chapter 50, Laws of 1947.**

**94-1462. (10808) Duty of county attorney on violation of act—penalty for neglect or refusal to act.** If any county attorney shall be notified by any officer or other person of any violation of any of the provisions of this act within his jurisdiction, it shall be his duty forthwith to diligently inquire into the facts of such violation, and if there is reasonable ground for instituting a prosecution, it shall be the duty of such county attorney to file a complaint or information in writing, before a court of competent



jurisdiction, charging the accused person with such offense; if any county attorney shall fail or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. It shall be the duty of the county attorney, under penalty of forfeiture of his office, to prosecute any and all persons guilty of any violation of the provisions of this act, the penalty of which is fine or imprisonment, or both, or removal from office.

**History:** En. Sec. 43, Init. Act, Nov. 1912; re-en. Sec. 10808, R. C. M. 1921.

**94-1463. (10809) Declaration of result of election after rejection 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 such person nominated or elected, as the case may be.

**History:** En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R. C. M. 1921.

**94-1464. (10810) Grounds for contest of nomination or office.** Any elector of the state, or of any political or municipal division thereof, may contest the right of any person to any nomination or office for which such elector has the right to vote, for any of the following causes:

1. On the ground of deliberate, serious, and material violation of any of the provisions of this act, or of any other provision of the law relating to nominations or elections.

2. When the person whose right was contested was not, at the time of the election, eligible to such office.

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

**History:** En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R. C. M. 1921.

**94-1465. (10811) Nomination or election not to be vacated, when.** Nothing in the third ground of contest specified in the preceding section is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear, either that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes, or that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

**History:** En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R. C. M. 1921.

**94-1466. (10812) Reception of illegal votes, allegations and evidence.** 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; but no testimony shall be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement, if he did not know and by reasonable diligence was unable to learn of such additional illegal votes, and by whom they were given, before delivering such written list.

**History:** En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R. C. M. 1921.

**94-1467. (10813) Contents of contest petition—amendment—bond—costs—citation—precedence.** 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, and shall not thereafter be amended, except by leave of the court. Before any proceeding thereon the petitioner shall give bond to the state in such sum as the court may order, not exceeding two thousand dollars, with not less than two sureties, who shall justify in the manner required of sureties on bailbonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail. If the petitioner prevails, he may recover his costs, disbursements, and reasonable attorney's fees against the contestee. But costs, disbursements, and attorney's fees, in all such cases, shall be in the discretion of the court, and in case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond. On the filing of any such petition, the clerk shall immediately notify the judge of the court, and issue a citation to the person 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, and the court shall hear said cause, and every such contest shall take precedence over all other business on the court docket, and shall be tried and disposed of with all convenient despatch. The court shall always be deemed in session for the trial of such cases.

**History:** En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R. C. M. 1921.

**94-1468. (10814) Hearing of contest.** The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person, other than the petitioner and contestee, shall be made a party to the proceedings on such petition; and no person, other than said parties and their attorneys, shall be heard thereon, except by order of the court. 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 attorney's fees between them, and shall finally determine all questions of law and fact, save only that the judge may, in his discretion, impanel a jury to decide



on questions of fact. In the case of other nominations or elections, the court shall forthwith certify its decision to the board or official issuing certificates of nomination or election, which board or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by such decision. If judgment of ouster against a defendant shall be rendered, said judgment shall award the nomination or office to the person receiving next the highest number of votes, unless it shall be 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 such nomination or office, for a judgment of ouster against him; and if it shall be so determined at the trial, the nomination or office shall be by the judgment declared vacant, and shall thereupon be filled by a new election, or by appointment, as may be provided by law regarding vacancies in such nomination or office.

**History:** En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R. C. M. 1921.

**94-1469. (10815) Corporations—proceedings against, for violation of act.** In like manner as prescribed for the contesting of an election, any corporation organized under the laws of or doing business in the state of Montana may be brought into court on the ground of deliberate, serious, and material violation of the provisions of this act. The petition shall be filed in the district court in the county where said corporation has its principal office, or where the violation of law is averred to have been committed. The court, upon conviction of such corporation, may impose a fine of not more than ten thousand dollars, or may declare a forfeiture of the charter and franchises of the corporation, if organized under the laws of this state, or if it be a foreign corporation, may enjoin said corporation from further transacting business in this state, or by both such fine and forfeiture, or by both such fine and injunction.

**History:** En. Sec. 50, Init. Act, Nov. 1912; re-en. Sec. 10815, R. C. M. 1921.

**94-1470. (10816) Penalty for violations not otherwise provided for.** Whoever violates any provision of this act, the punishment for which is not specially provided by law, shall on conviction thereof be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

**History:** En. Sec. 51, Init. Act, Nov. 1912; re-en. Sec. 10816, R. C. M. 1921.

**94-1471. (10817) Advancement of cases—dismissal, when—privileges of witnesses.** Proceedings under this act shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue such trial if the ends of justice may be thereby more effectually secured, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition shall be dis-

missed without the consent of the county attorney, unless the same shall be dismissed by the court. No person shall be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person shall be offered or used against him in any civil or criminal prosecution, or any evidence that is the direct result of such evidence or information that he may have so given, except in a prosecution for perjury committed in such testimony.

**History:** En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R. C. M. 1921.

**94-1472. (10818) Form of complaint.** A petition or complaint filed under the provisions of this act shall be sufficient if it is substantially in the following form:

In the District Court of the  
.....Judicial District,  
for the County of....., State of Montana.

A B (or A B and C D), Contestants,

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 said election, and the board of canvassers has returned the said..... as being duly nominated (or elected) at said election.

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

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said ..... was not duly nominated (or elected), and that said election was void (or that the said A B or C D, as the case may be) was duly nominated (or elected), and for such other and further relief as to the court may seem just and legal in the premises.

Said 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.

**History:** En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R. C. M. 1921.



**94-1473. (10819) Form of statement of expenses.** The statement of expenses required from candidates and others by this act shall be in substantially the following form:

State of Montana, County of....., ss.

I, ....., having been a candidate (or expended money) at the election for the (state) (district) (county) (city) of ....., on the ..... day of ....., A. D. 19....., being first duly sworn, on oath do say: That I have carefully examined and read the return of my election expenses and receipts hereto attached; and to the best of my knowledge and belief that return is full, correct, and true.

And I further state on oath that, except as appears from this return, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association has on my behalf, whether authorized by me or not, made any payment, or given, promised, or offered any reward, office, employment, or position, public or private, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said nomination or election.

And I further state on oath that, except as specified in this return, I have not paid any money, security, or equivalent for money, nor has any money or equivalent for money, to my knowledge or belief, been paid, advanced, given, or deposited by any one to or in the hands of myself or any other person for my nomination or election, or for the purpose of paying any expenses incurred on my behalf on account or in respect of the conduct or management of the said election.

And I further state on oath that I will not, except so far as I may be permitted by law, at any future time make or be a party to the making or giving of any payment, reward, office, position, or employment, or valuable consideration, for the purpose of defraying any such expenses or obligations as herein mentioned for or on account of my nomination or election, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expense.

(Signature of affiant).....

Subscribed and sworn to before me by the above-named....., on the ..... day of....., A. D. 19.....

Attached to said affidavit shall be a full and complete account of the receipts, contributions, and expenses of said affiant, and of his supporters of which he has knowledge, with numbered vouchers for all sums and payments for which vouchers are required as to all money expended by affiant. The affidavit and account of the treasurer of any committee or any political party or organization shall be, as nearly as may be, in the same form, and so also shall be the affidavit of any person who has received or expended money in excess of the sum of fifty dollars to aid in securing the nomination or election or defeat of any candidate, or of any political party or organization, or of any measure before the people.

History: En. Sec. 54, Init. Act, Nov. 1912; re-en. Sec. 10819, R. C. M. 1921.

**94-1474. (10820) False oaths or affidavits—perjury.** Any person who shall knowingly make any false oath or affidavit where an oath or affidavit is required by this law shall be deemed guilty of perjury and punished accordingly.

**History:** En. Sec. 55, Init. Act, Nov. 1912; re-en. Sec. 10820, R. C. M. 1921.

**94-1475. Political literature to contain name of officer of organization or person publishing and producing.** It shall be unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document which is designed to aid, injure or defeat any candidate or any political party or organization or measure before the people unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization publishing, printing, mimeographing, typing or otherwise producing such dodger, bill, handbill, pamphlet or other document or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or the producer thereof with his residence and street address, if any, or his place of business.

**History:** En. Sec. 1, Ch. 74, L. 1951.

**94-1476. Violation of preceding section a misdemeanor.** Any person who shall violate the provisions of this act shall be guilty of a misdemeanor.

**History:** En. Sec. 2, Ch. 74, L. 1951.



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