

ELECTION LAWS

OF THE

STATE OF MONTANA

1968

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

Compiled by
Frank Murray, Secretary of State
Helena, Montana
January, 1968



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REVISED CODES OF MONTANA, 1947

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CONSTITUTION

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.)

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 prescribed 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.

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 315, Laws 1967, 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 (2/3) 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 (1) newspaper in each county (if such there be) for three (3)

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; provided, however, that not more than six (6) amendments to this constitution shall be submitted at the same election."

TITLE 1

AERONAUTICS

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 of 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 be cast therefor.

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

TITLE 4

ALCOHOLIC BEVERAGES

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 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. 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

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

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. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R. C. M. 1921.

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. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4722, Pol. C. 1895; re-en. Sec. 3210, Rev. C. 1907; re-en. Sec. 4963, R. C. 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 elec-

tion, 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.
 11-709. Annual elections in cities and towns—terms of office.
 11-710. Qualification of mayor.
 11-711. Terms of aldermen—how decided.
 11-712. Terms of office—when to begin.
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 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. O. 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. 3226, 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. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1961.

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. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R. C. M. 1921; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967.

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.
 11-1016. Referendum on parking meters required before ordinance.
 11-1017. Existing meters and ordinances unaffected.
 11-1019. Operation of bus lines—contracting indebtedness.
 11-1020. Operation subject to Motor Carrier Act—exception.
 11-1021. Contracts or lease arrangements with independent carriers of passengers—when authorized—levy of tax.
 11-1022. Bids for service—operation of carriers.

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 (1½) 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,
R. 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,
R. 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,
R. 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,
R. 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—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) 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 one thousand dollars (\$1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) 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 (1/3) thereof shall 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; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963.

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. 1895; 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.

(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; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965.
amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947;

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, R. 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, R. 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.
 11-3102. Submission to electors—petition and order of election.
 11-3103. Proclamation of election.
 11-3104. Ballots—form.
 11-3105. Certificate of result of election—no further election for two years.
 11-3106. Calling of election to elect city officers.
 11-3107. Manner of conducting election—canvassing votes.
 11-3108. Laws governing city—ordinances—territorial limits and property.
 11-3109. Number of councilmen—vacancies, how filled.
 11-3110. Beginning of term of office.
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 11-3112. Nomination of candidates—primary election.
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 11-3116. Bribery—false answers concerning qualifications of elector—voting by disqualified person.
 11-3126. Ordinances and franchises—how adopted or granted.
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 11-3132. Recall of elective officers.
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 11-3134. Taking effect and suspension of ordinances.
 11-3135. Abandonment of commission form.
 11-3136. Requirements of petitions.
 11-3137. Effect of act upon existing laws.

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, R. 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;
amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec.
5367, R. 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, R. 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 ofthe question of reorganization of the city ofunder 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 ofunder 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, R. 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. C. 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. 6, Ch. 57, L. 1911;
amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec.
5371, R. C. 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. C. 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. C. 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, R. O. 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 11-3132 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. C. 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, R. C. M. 1921; amd. Sec.
1, Ch. 36, 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.

-
- | | |
|-------------------------------------|----------------|
| <input checked="" type="checkbox"/> | John Doe |
| <hr/> | |
| <input checked="" type="checkbox"/> | Henry Smith |
| <hr/> | |
| <input checked="" type="checkbox"/> | George Jones |
| <hr/> | |
| <input checked="" type="checkbox"/> | James Richards |
| <hr/> | |
| <input checked="" type="checkbox"/> | Richard Doe |
| <hr/> | |

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, R. 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, R. 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, R. 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, R. 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 meeting attended, cities or

towns with less than twenty-five thousand inhabitants, twenty dollars (\$20.00); cities with more than twenty-five thousand inhabitants, not to exceed forty dollars (\$40.00); provided, that not more than one fee shall be paid for any one day. 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; 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. L. 1949; amd. Sec. 1, Ch. 71, L. 1965.

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 consolidated 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 require 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 com-

mission 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.

.....
.....
.....

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 (c) 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) Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question. 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 11-2308 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.

History: En. Sec. 6, Ch. 195, L. 1959;
amd. Sec. 2, Ch. 38, L. 1965.

TITLE 16

COUNTIES

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 saidcounty andcounty (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, R. 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

the 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.
4447, 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 incompletd 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 incompletd 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 style="width: 30px; height: 30px;" type="checkbox"/>	For (stating propositions.)
<input style="width: 30px; height: 30px;" 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 own and operate public hospitals, or to lease and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case 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.

16-4302. Petition to board of county commissioners. Whenever a petition, signed by not less than thirty per centum (30%) of the citizens who are owners of property located within the boundaries of a proposed public hospital district, and whose names appear as such property owners 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 hospital district, shall be addressed and presented to the board of county commissioners of the county in which the proposed district is situated, at any regular or special meeting of said board, it shall file the same and act thereon as herein prescribed. The said board of county commissioners, by resolution, shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof, and shall cause notice to be given of the time and place of said hearing by publication in a newspaper published in the county in not less than two (2) successive issues of said newspaper, the last publication of which notice shall be at least two (2) weeks before said hearing. Said notice shall state that any person residing in or owning property within said proposed district or any part

thereof as described in said petition, may appear before said board at the hearing and show cause why the said district should not be created.

History: En. Sec. 2, Ch. 155, L. 1953.

16-4303. Hearing. At the time fixed for said hearing, the board shall determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required. At such hearing the board must 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, 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.

16-4304. Reference of creation of district at election. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the prescribed notice has been published, it shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition as in this act prescribed. 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 shall define and establish the boundaries of the district, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953.

16-4305. Resolution and order of board as respects election. The board must, in its resolution, 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 places, 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; provided that the polls shall be open from eight (8) o'clock A.M. to six (6) o'clock 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 twenty-one (21) years of 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.

History: En. Sec. 5, Ch. 155, L. 1953.

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 commis-

sioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified.

History: En. Sec. 6, Ch. 155, L. 1953.

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 persons within the district who have the same qualifications as voters upon the question of "creation of the district." The trustees must be elected from among the freeholders residing within said district, and 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. The first board of trustees shall be elected at the same election held upon the creation 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. 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 by-laws 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.

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.

- 16-4504. Time of consideration—final hearing.
- 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.
- 16-4507. Nomination of officers.
- 16-4508. General law to govern.
- 16-4509. Officers subject to recall.
- 16-4513. Informality not to invalidate.
- 16-4517. Bonded indebtedness.
- 16-4518. Election.
- 16-4519. Notice.
- 16-4520. Publication.
- 16-4521. Canvass of returns.
- 16-4522. Two-thirds vote necessary.
- 16-4529. Initiative.
- 16-4530. Referendum.
- 16-4531. Adding to and consolidation of district.

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 2d 328, 333.
amd. Sec. 1, Ch. 263, L. 1967.

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 herein-after 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. Two-thirds vote necessary. If from such returns it appears that more than two-thirds 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.

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.

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, to wit: Every Sunday; the first day of January (New Year's Day); the twelfth day of February (Lincoln's Birthday); the twenty-second day of February (Washington's Birthday); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twelfth day of October (Columbus Day); the eleventh day of November (Veterans' Day); the twenty-fifth day of December (Christmas Day); every day on which a general election is held throughout the state and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. If any of the holidays herein enumerated (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days than those herein mentioned are to be deemed business days for all purposes, except as herein provided.

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, and no other holidays, viz.: Every Sunday; the first day of January (New Year's Day); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twenty-fifth day of December (Christmas Day); and every day appointed by the president of the United States of America or by the governor of the state of Montana for a public fast, thanksgiving or holiday; provided, however, that 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 the eleventh day of November (Veterans' Day) 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; 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Sec. 1, Ch. 6, L. 1965. Cal. Pol. C. Secs. Ch. 21, 1921; re-en. Sec. 10, R. C. M. 10-11.

TITLE 23

ELECTIONS

- Chapter 1. Time of holding elections—proclamations, 23-101 to 23-106.
2. Publication of questions submitted to popular vote, 23-201, 23-202.
3. Qualifications and privileges of electors, 23-301 to 23-311.
4. Election precincts, 23-401 to 23-407.
5. Registration of electors, 23-501 to 23-534.
6. Judges and clerks of elections, 23-601 to 23-612.
7. Election supplies, 23-701 to 23-713.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, 23-801 to 23-820.
9. Party nominations by direct vote—the direct primary, 23-901 to 23-936.
10. Political parties, 23-1001 to 23-1009.
11. Ballots, preparation and form, 23-1101 to 23-1117.
12. Conducting elections—the polls—voting and ballots, 23-1201 to 23-1228.
13. Voting by absent electors, 23-1301 to 23-1321.
14. Voting by absent electors in United States service, 23-1401 to 23-1406.
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16. Voting machines—conduct of election when used, 23-1601 to 23-1618.
17. Election returns, 23-1701 to 23-1715.
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21. Presidential electors, how chosen—duties, 23-2101 to 23-2111.
22. Members of Congress—elections and vacancies, 23-2201 to 23-2206.
23. Recount of ballots—results, 23-2301 to 23-2323.
24. Conventions to ratify proposed amendments to constitution of the United States, 23-2401 to 23-2411.
25. Electronic voting systems, 23-2501 to 23-2507.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

- Section 23-101. General elections, when to be held.
23-102. Special elections—purpose and calling.
23-103. Election proclamations by the governor.
23-104. Governor's proclamation, contents.
23-105. Publication and posting by county commissioners.
23-106. Election proclamation by county commissioners.

23-101. (531) General elections, when to be held. There must be held throughout the state, on the first Tuesday after the first Monday of November, in the year eighteen hundred and ninety-four, and in every second year thereafter, an election to be known as the general election.

History: En. Sec. 1150, Pol. C. 1895; Election law violations, sec. 94-1401 et re-en. Sec. 450, Rev. C. 1907; re-en. Sec. 531, R. C. M. 1921. Cal. Pol. C. Sec. 1041. seq.
Initiative and referendum, sec. 37-101 et seq.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt Practices Act, secs. 94-1427 to 94-1474.

Definition

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.

References

State ex rel. Patterson v. Lentz, 50 M 322, 338, 146 P 932; Mulholland v. Ayers, 109 M 558, 562, 99 P 2d 234; Maddox v. Board of State Canvassers, 116 M 217, 223,

149 P 2d 112; LaBorde v. McGrath, 116 M 283, 287, 149 P 2d 913; Pioneer Motors, Inc. v. State Highway Commission, 118 M 333, 165 P 2d 796, 800.

Collateral References

Elections—38.
29 C.J.S. Elections § 77.

23-102. (532) Special elections—purpose and calling. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper officer or authority. The board of county commissioners shall be authorized to call a special election at any time for the purpose of submitting to the qualified electors of the county a proposition to raise money for any public improvement desired to be made in the county.

History: En. Sec. 1151, Pol. C. 1895; amd. Sec. 451, Rev. C. 1907; re-en. Sec. 532, R. C. M. 1921. Cal. Pol. C. Sec. 1043.

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.

Definition

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.

References

State ex rel. Patterson v. Lentz, 50 M 322, 338, 146 P 932; Mulholland v. Ayers, 109 M 558, 562, 99 P 2d 234; Bottomly v. Ford, 117 M 160, 163, 157 P 2d 108.

Collateral References

Counties—151; Elections—32.
20 C.J.S. Counties § 226; 29 C.J.S. Elections § 66.

23-103. (533) Election proclamations by the governor. At least sixty days before a general election, and whenever he orders a special election to fill a vacancy in the office of state senator or member of the house of representatives, at least ten days before such special election, the governor must issue an election proclamation, under his hand and the great seal of the state, and transmit copies thereof to the boards of commissioners of the counties in which such elections are to be held.

History: En. Sec. 1160, Pol. C. 1895; re-en. Sec. 452, Rev. C. 1907; re-en. Sec. 533, R. C. M. 1921. Cal. Pol. C. Sec. 1053.

Application of Section

As this section does not impose upon the governor the duty to call an election to fill vacancies other than those in the offices of state senator and member of the house of representatives, and he is not

presumed to know what, if any, vacancy exists in any local county office, apparently proclamation by the governor is necessary only when an election is to be held to fill offices for the next regular term, except to fill vacancies in the two offices of state senator and member of the house of representatives. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

Calling of Special Election by Board of County Commissioners

While the provisions of the codes relating to the manner of calling special elections are crude and not in the most appropriate terms to confer the necessary powers upon boards of county commissioners, they are nevertheless sufficient for this purpose. *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932.

Notice of General Election

The governor issued his proclamation giving notice of a general election to be held November 8, 1904, under this section and section 23-104, 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.

A statement in the proclamation of the governor giving notice of a general elec-

tion, 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 as required by this section. *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.

References

State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183; *State ex rel. Grant v. Eaton*, 114 M 199, 209, 133 P 2d 588; *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Collateral References

Elections \S 40.
29 C.J.S. Elections \S 72.

23-104. (534) Governor's proclamation, contents. Such proclamation must contain:

1. A statement of the time of election, and the offices to be filled.
2. An offer of rewards in the following form: "And I do hereby offer a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of sections 94-1401 to 94-1426. Such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of five thousand dollars."

History: En. Sec. 1161, Pol. C. 1895; re-en. Sec. 453, Rev. C. 1907; re-en. Sec. 534, R. C. M. 1921. Cal. Pol. C. Sec. 1054.

References

State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403; *State ex rel. Rowe v. Kehoe*, 49 M 582, 591, 144 P 162; *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932;

Nordquist v. Ford, 112 M 278, 283, 114 P 2d 1071; *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Collateral References

Elections \S 41.
29 C.J.S. Election \S 73.

23-105. (535) Publication and posting by county commissioners. The board of county commissioners, upon the receipt of such proclamation, may, in the case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election; and in case of special elections to fill a vacancy in the office of state senator or member of the house of representatives, the board of county commissioners, upon receipt of such proclamation, may in their discretion, cause a copy

of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election.

History: En. Sec. 1162, Pol. C. 1895; re-en. Sec. 454, Rev. C. 1907; re-en. Sec. 535, R. C. M. 1921. Cal. Pol. C. Sec. 1055.

tice amply met by distribution of copies of the law. *Nordquist v. Ford*, 112 M 278, 283, 114 P 2d 1071.

Inapplicable to Measures Put to People by Legislature

Contention that because of failure to have the governor's proclamation that Ch. 168, Laws 1939 (omitted), would be submitted to the electors at the general election of 1940 published in newspapers as required by this section and section 37-104, the act is invalid, was not meritorious, these sections applying only to measures put before the people by their own petition, and not by the legislature, and no-

References

State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162; *State ex rel. Cryderman v. Wienrich*, 54 M 390, 170 P 942; *State ex rel. Freeze v. Taylor*, 90 M 439, 444, 4 P 2d 479; *State ex rel. Wulf v. McGrath*, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections—42.
29 C.J.S. Elections § 74.

23-106. (536) Election proclamation by county commissioners. Whenever a special election is ordered by the board of county commissioners, they must issue an election proclamation, containing the statement provided for in subdivision one of section 23-104, and must publish and post it in the same manner as proclamations issued by the governor.

History: En. Sec. 1163, Pol. C. 1895; re-en. Sec. 455, Rev. C. 1907; re-en. Sec. 536, R. C. M. 1921. Cal. Pol. C. Sec. 1056.

Application of Section

This section has 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.

Notice of Election

The notice of election does not take the place of the election proclamation. *Evers v. Hudson*, 36 M 135, 154, 92 P 462.

Special Election To Fill 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.

References

State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932; *State ex rel. Cryderman v. Wienrich*, 54 M 390, 399, 170 P 942.

Collateral References

Elections—40-42.
29 C.J.S. Elections §§ 72-74.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section 23-201. Publication and printing of amendments to constitution.
23-202. Advertisement of questions to be submitted.

23-201. (537.1) Publication and printing of amendments to constitution. Whenever a proposed constitutional amendment or amendments are submitted to the people of the state for popular vote, the secretary of state shall cause the said proposed amendment or amendments to be published in full once a week in one newspaper in each county of the state, if such there be, for three (3) months previous to the next general election for members of the legislative assembly. Such publication shall not be had in more than one paper in any one county in the state.

The secretary of state shall also cause to be printed a pamphlet containing a true and exact copy of the proposed amendment or amendments, and a true and exact copy of the existing constitutional provisions if the proposed constitutional amendment or amendments is or are a revision of an existing amendment or amendments, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The said proposed amendment or amendments, printed as herein provided, shall then be distributed as provided in section 37-107. The cost of publication of said amendment or amendments, and the cost of printing said pamphlet or pamphlets shall be a proper charge against the state at the rate, as provided for in the statutes for state printing.

History: En. Sec. 1, Ch. 62, L. 1927; amd. Sec. 1, Ch. 104, L. 1945.

Cross-Reference

Explanation of initiative, referendum and constitutional measures to be prepared by attorney general, sec. 37-104.1.

Operation and Effect

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect this section requiring publication of proposed

constitutional amendments, indicated its intent to disperse 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.

Collateral References

Constitutional Law 9 (1).
16 C.J.S. Constitutional Law § 10.

23-202. (538) Advertisement of questions to be submitted. Questions to be submitted to the people of the county or municipality must be advertised by publication in at least one newspaper within the county or municipality, once a week for two successive weeks, and one of such publications in such newspaper must be upon the last day upon which such newspaper is issued before the election.

History: En. Sec. 1, Ch. 130, L. 1919; re-en. Sec. 538, R. C. M. 1921.

References

State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections 40 et seq.
29 C.J.S. Elections § 71 et seq.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

- Section 23-301. Elections to be by ballot.
23-302. Qualifications of voter.
23-303. Qualifications of electors at elections on incurring state indebtedness.
23-304. Lists and precinct registers.
23-305. Duties of secretary of state and county clerks.
23-306. Repealing clause—exception.
23-307. Qualification of electors on elections concerning state tax levy or debt.
23-308. Privilege from arrest.
23-309. Exempt from military duty on election day.
23-310. Idiot or insane.
23-311. Who are taxpayers.

23-301. (539) Elections to be by ballot. All elections by the people shall be by ballot.

History: En. Sec. 1180, Pol. C. 1895; re-en. Sec. 461, Rev. C. 1907; re-en. Sec. 539, R. C. M. 1921.

Collateral References

Elections 161.
29 C.J.S. Elections § 149.

23-302. (540) Qualifications of voter. Every person of the age of twenty-one years or over, possessing the following qualifications, if his name is registered as required by law, is entitled to vote at all general and special elections and for all officers that now are, or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people: First, he must be a citizen of the United States; second, he must have resided in the state one year and in the county thirty days immediately preceding the election at which he offers to vote. No person convicted of felony has the right to vote unless he has been pardoned. Nothing in this section contained shall be construed to deprive any person of the right to vote who had such right at the time of the adoption of the state constitution. After the expiration of five years from the time of the adoption of the state constitution, no persons except citizens of the United States have a right to vote.

History: En. Sec. 1181, Pol. C. 1895; re-en. Sec. 462, Rev. C. 1907; re-en. Sec. 540, R. C. M. 1921. Cal. Pol. C. Sec. 1083.

NOTE.—The word “male” appearing in the first line of this section as enacted in 1895 is omitted from this code to conform to the constitutional amendment.

Voting Is an Affirmative Act, Vote for Deceased Candidate Not Counted as Opposed to Write-in

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.

References

State ex rel. Kennedy v. Martin, 24 M

403, 408, 62 P 588; Sommers v. Gould, 53 M 538, 544, 165 P 599; State ex rel. Henderson v. Dawson County, 87 M 122, 142, 286 P 125; State ex rel. Durland v. Board of County Commrs. of Yellowstone County, 104 M 21, 27, 64 P 2d 1060; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892; In re Ingersol's Estate, 128 M 230, 272 P 2d 1003, 1005.

Collateral References

Elections—59 et seq.
29 C.J.S. Elections § 16 et seq.
25 Am. Jur. 2d 751, Elections, § 58.

Removal by executive clemency of disqualification to vote resulting from conviction of crime as applicable in case of conviction in federal court or court of another state. 135 ALR 1493.

Validity of governmental requirement of oath of allegiance or loyalty as applied to voters. 18 ALR 2d 329.

State voting rights of residents of federal military establishment. 34 ALR 2d 1193.

What constitutes “conviction” within constitutional or statutory provision disenfranchising one convicted of crime. 36 ALR 2d 1238.

23-303. Qualifications of electors at elections on incurring state indebtedness. At all elections at which the question submitted is the incurring of a state debt, the issuance of bonds or debentures by the state, other than refunding bonds or debentures, or the levying of a state tax for any purpose, only registered electors residing within the state and who are taxpayers upon property therein and whose names appear upon the last completed assessment roll of some county of the state for state, county and school district taxes, shall be qualified to vote on such question. Whenever any such question is to be submitted at an election, other than a general biennial state election, the county clerk of each county must cause to be

published one time in the official newspaper of the county a notice, signed by him, stating that registration will close at noon on the thirtieth day prior to the date for the holding of the election at which the question is to be submitted, unless the act providing for the submission of the question shall fix a different time for the giving of such notice and at that time registration shall be closed. Such notice shall be published at least ten (10) days prior to the date when registration will be closed, unless the act providing for the submission of the question shall fix a different time for such closing of registration. Provided, that if the question is to be submitted at a general biennial state election then such notice of the closing of registration and the closing of registration shall be controlled and governed by the laws applying to the giving of such notice and closing of registration for such general biennial election.

History: En. Sec. 1, Ch. 28, L. 1945.

of Examiners, 125 M 419, 239 P 2d 283, 290.

Objection Must Be Raised before Election

The objection that a measure creates a state debt, levy, or liability and that therefore it should have been placed upon a separate ballot as required by this section, is waived if not raised before the election. State ex rel. Graham v. Board

References

Pioneer Motors, Inc. v. State Highway Commission, 118 M 333, 165 P 2d 796, 800.

Collateral References

Elections—79-83.
29 C.J.S. Elections §§ 28, 29.

23-304. Lists and precinct registers. After the closing of registrations the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the precinct register for each precinct in the manner provided by section 23-515, and deliver the same to the judges of election prior to the opening of the polls. In preparing precinct registers it shall not be necessary for the county clerk to make separate precinct registers containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county shall stamp the word "TAX-PAYER" on the precinct register opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.

All of the laws of this state applying to the holding of general biennial state elections, in so far as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by sections 23-1812, 23-1813, for the abstract of votes for state officers.

History: En. Sec. 2, Ch. 28, L. 1945;
amd. Sec. 1, Ch. 92, L. 1949; amd. Sec. 1,
Ch. 64, L. 1959.

Collateral References

Elections—113.
29 C.J.S. Elections § 49.

23-305. Duties of secretary of state and county clerks. When any such law is to be submitted at a general biennial election, all of the provisions of section 37-107, prescribing the duties of the secretary of state and county clerks, shall apply to and govern and control the printing and distribution of copies of such law.

History: En. Sec. 3, Ch. 28, L. 1945.

23-306. Repealing clause—exception. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that nothing in this act shall be deemed to repeal section 23-307.

History: En. Sec. 4, Ch. 28, L. 1945.

23-307. Qualification of electors on elections concerning state tax levy or debt. Whenever any question is submitted at any election concerning the creation of any tax levy for the state or the creation of any debt or liability on the part of the state, all qualified electors who are registered and whose names appear upon the last completed assessment roll of any county preceding such election, shall be entitled to vote thereon. If any elector shall be registered in any county and the name of such elector does not appear on such last completed assessment roll for such county, but does appear on the last completed assessment roll for any other county in the state, such elector shall be entitled to vote on any such question in the precinct in which he is registered, if he shall present to the county clerk and recorder before the close of registration of the election in which he wishes to vote, either a receipt from the treasurer of the county in which his property is assessed on such assessment roll showing the payment of the taxes computed against such assessment, or a certificate from the treasurer of such county certifying that such elector is assessed with property on such assessment roll but that the taxes had not been paid at the time of the issuance of such certificate. Every such certificate issued by a county treasurer shall be dated, numbered, give the name of the elector, a brief description of the property assessed to him, with the amount of the taxes thereon, and must be signed by such county treasurer, and such treasurer must keep a duplicate thereof on file in his office. Whenever any such tax receipt or treasurer's certificate is presented by a registered elector to the county clerk and recorder he shall enter his name in the pollbook of electors entitled to vote on such question, and there shall be entered therein the date and number of the tax receipt or certificate, the county in which issued and a description of the property assessed to the elector and amount of taxes against the same, as contained in such receipt or certificate, and such elector shall thereupon be given the proper ballot and shall vote the same in exactly the manner as though his name appeared on such assessment roll for such county.

History: En. Sec. 1, Ch. 44, L. 1941.

23-308. (541) Privilege from arrest. Electors must in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

History: En. Sec. 1183, Pol. C. 1895; re-en. Sec. 464, Rev. C. 1907; re-en. Sec. 541, R. C. M. 1921. Cal. Pol. C. Sec. 1069.

Collateral References
Elections—233.
29 C.J.S. Elections § 215.

Cross-Reference

Persons exempt from arrest, sec. 95-616.

23-309. (542) Exempt from military duty on election day. No elector is required to perform military duty on the days of election, except in times of war or public danger.

History: En. Sec. 1184, Pol. C. 1895; re-en. Sec. 465, Rev. C. 1907; re-en. Sec. 542, R. C. M. 1921. Cal. Pol. C. Sec. 1070.

23-310. (543) Idiot or insane. No idiot or insane person is entitled to vote at any election in this state.

History: En. Sec. 1185, Pol. C. 1895; re-en. Sec. 466, Rev. C. 1907; re-en. Sec. 543, R. C. M. 1921. Cal. Pol. C. Sec. 1084.

Collateral References
Elections—59.
29 C.J.S. Elections § 16.

23-311. (544) Who are taxpayers. The payment of a tax upon property by any person assessed therefor 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 of the state, or to the vote of the taxpayers of such county or city, or any subdivision thereof, constitutes such person a taxpayer at such election.

History: En. Sec. 1188, Pol. C. 1895; re-en. Sec. 469, Rev. C. 1907; re-en. Sec. 544, R. C. M. 1921.

NOTE.—Since the constitutional amendment granting equal rights of suffrage to women, section 468 of the Revised Codes of Montana, 1907, has been omitted from this codification and the last line of section 23-311 as enacted has also been omitted.

Voting on City Indebtedness

Since Chapter 47, Laws of 1929, impliedly repeals section 5278, Revised Codes, 1921 (since repealed), providing that only taxpayers as defined by this section shall be entitled to vote on questions concern-

ing the creation or increasing of indebtedness incident to a city water plant, it also supersedes this section, and a city no longer may require payment of taxes as a condition to the right of an elector on proposals to create or increase city indebtedness. *Weber v. City of Helena*, 89 M 109, 116, 297 P 455.

References

City of Billings v. Nore, — M —, 417 P 2d 458, 464.

Collateral References

Elections—83.
29 C.J.S. Elections § 29.

CHAPTER 4

ELECTION PRECINCTS

- Section 23-401. Establishment of election precincts.
23-402. Change in boundaries of precinct.
23-403. City council to certify ward boundaries.
23-404. County surveyor to make map of precincts.
23-405. City council to prepare map of wards.
23-406. Board to designate place in precinct for holding elections.
23-407. Proceedings where place not designated, etc.

23-401. (545) Establishment of election precincts. The territorial unit for the conduct of elections shall be the election precinct. The board of county commissioners of each county shall establish a convenient number of

election precincts therein having reference to equalizing the number of electors in the several precincts as nearly as possible. Precinct boundaries shall conform to the wards of incorporated cities of the first, second and third class and to the boundaries of school districts of the first class only, provided that any ward or school district may be divided into two or more precincts and any precinct may be divided into two or more polling places. In towns, or municipal corporations other than the cities of the first, second and third class, election precincts may, however, include two or more wards, or may comprise the territory included by one or more wards, together with contiguous territory lying outside the said incorporated towns.

History: En. Sec. 2, Ch. 113, L. 1911; amd. Sec. 2, Ch. 74, L. 1913; amd. Sec. 2, Ch. 122, L. 1915; re-en. Sec. 545, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1929. Cal. Pol. C. Secs. 1127-1132.

Collateral References

Elections 46, 48.
29 C.J.S. Elections §§ 53, 54.

References

Atkinson v. Roosevelt County, 71 M 165, 181, 227 P 811.

23-402. (546) Change in boundaries of precinct. The board of county commissioners may change the boundaries of precincts and create new or consolidated established precincts, but no precincts shall be changed or created between the first day of January and the first day of December in any year during which a general election is to be held within the state of Montana. All changes, alterations, or modifications in precinct boundaries must be certified to the county clerk within three days after the order making same shall have been made. All election precincts shall be designated by numbers but may also be designated by distinctive names in addition to such numbers.

History: En. Sec. 3, Ch. 113, L. 1911; amd. Sec. 3, Ch. 74, L. 1913; amd. Sec. 3, Ch. 122, L. 1915; re-en. Sec. 546, R. C. M. 1921.

Collateral References

Elections 48.
29 C.J.S. Elections § 54.

References

Atkinson v. Roosevelt County, 71 M 165, 181, 227 P 811.

23-403. (547) City council to certify ward boundaries. The city council of all incorporated cities and towns within the state of Montana shall certify to the county clerk and ex officio registrar of the county within which such city or town is situated, a description of the boundaries of the several wards within such city or town, and in like manner shall certify any changes or alterations in such boundaries that may from time to time be made, within ten days after the same are made.

History: En. Sec. 4, Ch. 113, L. 1911; amd. Sec. 4, Ch. 74, L. 1913; amd. Sec. 4, Ch. 122, L. 1915; re-en. Sec. 547, R. C. M. 1921.

References

Weber v. City of Helena, 89 M 109, 123, 297 P 455.

23-404. (548) County surveyor to make map of precincts. The county surveyor of each county must, within ten days after the board of county commissioners shall have established or changed the boundaries of any

election precincts within such county, deliver to the county clerk of the county a map correctly showing the boundaries of all precincts and school districts within the county as then existing.

History: En. Sec. 5, Ch. 113, L. 1911; amd. Sec. 5, Ch. 74, L. 1913; amd. Sec. 5, Ch. 122, L. 1915; re-en. Sec. 548, R. C. M. 1921.

References

Atkinson v. Roosevelt County, 71 M 165, 181, 227 P 811.

23-405. (549) City council to prepare map of wards. The city council of any incorporated city or town shall, within ten days after the ward lines of such city or town shall have been established or changed, deliver or cause to be delivered to the county clerk of said county a map correctly showing the boundaries of the wards within such city or town as then existing; such map shall also show all streets, avenues, and alleys by name, and the respective wards by numbers, with the ward boundaries clearly defined thereon.

History: En. Sec. 6, Ch. 113, L. 1911; amd. Sec. 6, Ch. 74, L. 1913; amd. Sec. 6, Ch. 122, L. 1915; re-en. Sec. 549, R. C. M. 1921.

References

Weber v. City of Helena, 89 M 109, 123, 297 P 455.

23-406. (550) Board to designate place in precinct for holding elections. The board must, at the session at which judges of election are appointed, make an order designating the house or place within the precinct where the election must be held.

History: En. Sec. 1243, Pol. C. 1895; re-en. Sec. 497, Rev. C. 1907; re-en. Sec. 550, R. C. M. 1921.

Collateral References

Elections ⇨ 203.
29 C.J.S. Elections § 193.
26 Am. Jur. 2d 61, Elections, § 228.

References

Atkinson v. Roosevelt County, 71 M 165, 181, 227 P 811.

23-407. (551) Proceedings where place not designated, etc. If the board fails to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the judges of election, or a majority of those acting as such in the precinct must, two days before the election and by order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place.

History: En. Sec. 1244, Pol. C. 1895; re-en. Sec. 498, Rev. C. 1907; re-en. Sec. 551, R. C. M. 1921.

Changing Designation

Where a board of county canvassers refused to canvass election returns from a precinct 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 precinct 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.

References

Atkinson v. Roosevelt County, 71 M 165, 181, 227 P 811.

Collateral References

Elections ⇨ 203.
29 C.J.S. Elections § 193.
26 Am. Jur. 2d 61, 62, Elections §§ 228, 229.

CHAPTER 5

REGISTRATION OF ELECTORS

- Section 23-501. County clerk as county registrar.
 23-501.1. New-voter lists furnished to political parties.
 23-502. Registry book and card index—affidavit of voter—lost naturalization papers.
 23-503. Method of registering.
 23-504. Elector infirm or residing at a distance.
 23-505. Notaries and justices of the peace—deputy registrars—compensation.
 23-506. Penalty for violation of act.
 23-507. Hours of registration—registry cards—duty of clerk.
 23-508. Procedure when applicant not qualified at time of registration.
 23-509. Transfer of registration within county.
 23-510. Inquiry as to previous registrations—procedure.
 23-511. Cancellation of registry for failure to vote—reregistration—exception of persons in United States service.
 23-512. Withdrawal from cancellation of registration cards of persons in military service.
 23-513. Close of registration—procedure.
 23-514. Printing and posting of lists of registered electors.
 23-515. Precinct register—combining—when not furnished city or town.
 23-516. Registration during period closed for election.
 23-517. Cancellation of registrations.
 23-518. Cancellation of registration cards, when.
 23-519. Compensation of county clerks.
 23-520. Copies of precinct registers.
 23-521. Challenges and action to be taken thereon.
 23-522. Residence, rules for determining.
 23-523. Certificates of naturalization, presentation to registrar.
 23-524. Voter to sign precinct register books.
 23-525. Compelling entry of names in great register.
 23-526. Name of voter must appear in copy of register—identification of voter.
 23-527. Omission of name from precinct registers—remedy.
 23-528. Authority of deputy county clerk.
 23-529. "Elector" defined.
 23-530. "Election" defined.
 23-531. Violation of act, penalty for.
 23-532. Challenging of elector and administration of oath.
 23-533. Acts constituting violation of law—penalty.
 23-534. County commissioners to supply clerk with help.

23-501. (553) County clerk as county registrar. The county clerk of each county of the state of Montana is hereby declared to be ex officio county registrar of such county, and shall perform all acts and duties in this act provided without extra pay or compensation therefor. He shall have the custody of all registration books, cards, and papers herein provided for, and the register hereinafter provided for to be kept by said county clerk is hereby declared to be an official record of the office of the county clerk of each county.

History: En. Sec. 1, Ch. 113, L. 1911; amd. Sec. 1, Ch. 74, L. 1913; amd. Sec. 1, Ch. 122, L. 1915; re-en. Sec. 553, R. C. M. 1921. Cal. Pol. Secs. 1094-1119.

References

State ex rel. Kehoe v. Stromme, 49 M 25, 139 P 1002; State ex rel. Eagye v.

Bawden, 51 M 357, 361, 152 P 761; State ex rel. Durland v. Board of County Com. Mrs. of Yellowstone County, 104 M 21, 28, 64 P 2d 1060.

Collateral References

Elections 100.
 29 C.J.S. Elections § 42.

23-501.1. New-voter lists furnished to political parties. The county clerk in each county shall, not later than thirty (30) days prior to the

close of registration for any general election, as provided in section 23-513, submit to the county chairman of the two major political parties, a list of all persons residing in the county, who have reached voting age since the last general election. This list shall be prepared from all available sources in the county, and it shall be the duty of the other county, city and school officials to co-operate with the county clerk in preparing such list. The county clerk and other officials shall, in no event, be responsible for any honest error or omission in preparing such list.

History: En. Sec. 5, Ch. 98, L. 1965.

23-502. (554) Registry book and card index—affidavit of voter—lost naturalization papers. The official register of electors in each county shall be contained in a book designated "register," which book shall be so arranged in precincts and alphabetical divisions suitable to record the full and complete information given by each elector, and a card index of which the county clerk of such county shall at all times have the custody. The cards shall be four by six inches in size, of white calendar stock, and shall be so perforated that all cards in any drawer may be fastened in by a rod passing through such perforations, which rod shall be kept locked except when the clerk shall be making necessary changes in the register. The registry book herein provided shall be in such form as shall be designated by the secretary of state of the state of Montana. The registry card shall be substantially in the following form:

(Face.)

State of Montana, }
County of } ss.

Number	Date	Name	Sex
Where born	Date of birth	Height Ft.-In.	Occupation
Naturalized when	Where		
Residence	Post office	Sec.	Twp. Rg.
Length of time in	Precinct	Ward	School Dist.
State	County	City	
Date canceled	Date registered	Disability, if any	
Place where last registered			

State of Montana, }
County of } ss.

....., being duly sworn says: I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disabilities on this card specified), and I am not registered elsewhere within the state of Montana and claim no right to vote elsewhere than in the precinct on this card specified, so help me God.

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

.....
County Clerk and Ex officio Registrar.
By Deputy.

(Back.)

Affidavit of Lost Naturalization Papers.

State of Montana, }
County of } ss.

....., being duly sworn on oath, says: I am the elector named on the face of this card; I am a naturalized citizen of the United States; my certificate of naturalization is lost or destroyed, or beyond my present reach, and I have no certified copy thereof; I came to the United States in the year; I was admitted to citizenship in the state (or territory) of county of, by thecourt during the year; I last saw my certificate of naturalization, or a certified copy thereof, at

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

.....
County Clerk and Ex officio Registrar.
By Deputy.

History: En. Sec. 7, Ch. 113, L. 1911;
amd. Sec. 7, Ch. 74, L. 1913; amd. Sec. 7,
Ch. 122, L. 1915; re-en. Sec. 554, R. C. M.
1921; amd. Sec. 1, Ch. 98, L. 1965.

Collateral References
Elections 106, 110.
29 C.J.S. Elections §§ 39, 46, 47.
25 Am. Jur. 2d 784, Elections, § 95.

Validity of statute requiring information as to age, sex, residence, etc., as a condition of registration. 14 ALR 260.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration. 76 ALR 1238.
Constitutionality of statutes in relation to registration before voting at election or primary. 91 ALR 349.
Nonregistration as affecting legality of votes cast by persons otherwise qualified. 101 ALR 657.

23-503. (555) Method of registering. Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry

card, and by signing and verifying or affirming the affidavit or affidavits on the back of such card. Any elector in the United States service who is absent from the state of Montana and the county of which he or she is a resident may register either (a) by mailing such registry card filled out and signed under oath to the county clerk of the county in which said elector resides, or (b) by mailing the federal post card application filled out and signed under oath to said county clerk.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years.

History: En. Sec. 8, Ch. 122, L. 1915; re-en. Sec. 555, R. C. M. 1921; amd. Sec. 4, Ch. 172, L. 1937; amd. Sec. 1, Ch. 83, L. 1953; amd. Sec. 1, Ch. 18, L. 1959; amd. Sec. 2, Ch. 98, L. 1965.

Collateral References

Elections 98, 106, 312.
29 C.J.S. Elections §§ 39, 40, 46, 326.

23-504. (556) Elector infirm or residing at a distance. If any elector resides more than ten miles distant from the office of the county clerk, he may register before the deputy registrar within the precinct where such elector resides. If by reason of physical infirmity the elector is unable to appear before the county clerk or any deputy registrar, he may send written notice to the county clerk or to the deputy registrar of such disability, with the request that his registration be made at his residence. Upon receipt of such notice and request it shall be the duty of the county clerk or deputy registrar, as the case may be, to make the registration of such elector at his residence; provided, that no greater sum than twenty-five cents may be charged or received by any officer or person for taking the registration of the elector herein provided for; and provided further, that no officer or person shall be entitled to receive from any county in the state of Montana any charge for expenses incurred by reason of the provisions of this section.

History: En. Sec. 15, Ch. 74, L. 1913; amd. Sec. 9, Ch. 122, L. 1915; re-en. Sec. 556, R. C. M. 1921.

Collateral References

Elections 106.
29 C.J.S. Elections §§ 39, 46.

23-505. (557) Notaries and justices of the peace—deputy registrars—compensation. All notaries public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register electors residing in any precinct within the county and shall receive as compensation for their services the sum of twenty-five cents (25¢) for each elector registered by them, provided that they shall receive no compensation for their services where the elector resides less than ten (10) miles from the county courthouse. The county commissioners shall appoint two deputy registrars, one from each of the two major political parties in this state, other than notaries public and justices of the peace,

for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of twenty-five cents (25¢) for each elector registered by him. Each deputy registrar shall forward by mail, within two (2) days, all registration cards filled out by him to the county clerk and recorder.

History: En. Sec. 10, Ch. 122, L. 1915; amd. Sec. 1, Ch. 38, L. 1917; re-en. Sec. 557, R. C. M. 1921; amd. Sec. 5, Ch. 172, L. 1937; amd. Sec. 1, Ch. 51, L. 1941; amd. Sec. 1, Ch. 80, L. 1955; amd. Sec. 3, Ch. 98, L. 1965.

Collateral References
Elections—100.
29 C.J.S. Elections § 42.

23-506. Penalty for violation of act. Any person who shall make false answers, either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers, employees, deputies, or assistants, or other persons whomsoever, upon whom any duty is imposed by this act, or any of its provisions, who shall neglect such duty, or mutilate, destroy, secrete, alter or change any such registry books, cards or records required, or shall perform it in such way as to hinder the objects and purposes of this act, shall be deemed guilty of a felony, shall, upon conviction thereof, be punished by imprisonment in the state prison for a period of not less than one (1) year or more than ten (10) years, and if such person be a public officer, shall also forfeit his office, and never be qualified to hold public office, either elective or appointive, thereafter.

History: En. Sec. 6, Ch. 172, L. 1937.

Collateral References
Elections—312.
29 C.J.S. Elections § 326.

23-507. (558) Hours of registration—registry cards—duty of clerk. The office of the county clerk shall be open for registration of voters between the hours of nine a. m. and five p. m. on all days except legal holidays. Registry cards shall be numbered consecutively in the order of their receipt at the office of the county clerk; provided, however, that electors who are registered upon the registry books in use in any county prior to the passage and approval of this law shall retain upon their registry cards the same number as they have severally had upon such books; and provided also that such electors need not again appear at the office of the county clerk to register, but the county clerk is hereby authorized to fill out from such registry books registry cards for all electors entitled to vote at the time of the passage and approval of this law, transcribing from such books the data called for by such cards. The cards so filled out from the registry books shall be marked "transcribed" by the county clerk, and shall constitute part of the official register, and shall entitle the elector represented by each such card to vote in the same manner as if the card had been filled out, signed and verified by such elector. The county clerk shall classify registry cards according to the precincts in which the several electors reside, and shall arrange the cards in each precinct in al-

phabetical order. The cards for each precinct shall be kept in a separate filing case or drawer which shall be marked with the number of the precinct. The county clerk shall, immediately after filling out the card index or registry cards as herein provided, enter upon the official register of the county in the proper precinct the full information given by said elector.

History: En. Sec. 11, Ch. 122, L. 1915;
re-en. Sec. 558, R. C. M. 1921.

Collateral References

Elections ⇨ 105, 109, 110.
29 C.J.S. Elections §§ 39, 47.

23-508. (559) Procedure when applicant not qualified at time of registration. If any applicant for registration applies to be registered who has not resided within the state of Montana, or the county or city, for the required length of time, and who shall be entitled to and is qualified to register on or before the day of election, provided he answers the question of the county clerk in a satisfactory manner, and it is made to appear to the county clerk that he will be entitled to become a qualified elector by the date upon which the election is to be held, the county clerk shall accept such registration. If any person applies to be registered who is not a citizen of the United States, but states that he will be qualified to be registered as a citizen of the United States before the date upon which the election is to be held, the county clerk shall accept such registration, but shall place opposite the name of such person the words, "to be challenged for want of naturalization papers," and such person shall not be entitled to vote unless he exhibits to the judges of election his final naturalization papers.

History: En. Sec. 12, Ch. 113, L. 1911;
amd. Sec. 12, Ch. 74, L. 1913; amd. Sec.
12, Ch. 122, L. 1915; re-en. Sec. 559, R. C.
M. 1921.

Collateral References

Elections ⇨ 106.
29 C.J.S. Elections §§ 39, 46.

23-509. (560) Transfer of registration within county. Every elector, on changing his residence from one precinct to another within the same county, may cause his registry card to be transferred to the register of the precinct of his new residence, by executing in person a registry card as described in section 23-502 before the deputy registrar of the new precinct or before a notary public or justice of the peace residing within the county, provided that the deputy registrar, notary public or justice of the peace will receive no compensation for this service, or by a request in writing to the county clerk of such county, in the following form:

I, the undersigned elector, having changed my residence from Precinct No. ——— to Precinct No. ——— in the County of ———, State of Montana, herewith make application to have my registry card transferred to the precinct register of the precinct of my present residence. My registration number is ———.

Dated at ———, on the ——— day of ———, 19—.

Whenever it shall be more convenient for any elector residing outside of an incorporated city or town to vote in another precinct in the same political township in the county, such elector may cause his registry card to be transferred from the precinct of his residence to such other precinct,

In compliance with the election laws of the State of Montana, I am hereby submitting, for your information, the above named elector, who has, on....., 19....., registered as a resident entitled to vote in.....county, in order that his registration may be canceled from the records incounty, as provided by the elections laws of the State of Montana.

Clerk and Recorder and ex officio registrar

County

Upon receiving such notice, it will be the duty of the clerk to immediately cancel the registration of the elector in his county, being the county in which said elector previously voted. This must be done by drawing a red line through the elector's name in the register, and also through his name on the registration card.

29 C.J.S. Elections § 52.

All electors whose registry cards are so removed and marked "canceled," shall within thirty (30) days thereafter, be notified by the county clerk in writing of such removal, by sending a notice to such

elector to his or her post-office address, as appearing on the registration books, cards indexes, and register of electors.

In the case of an elector in the United States service who shall fail to vote, his or her registry card shall not be canceled, except for causes designated under section 23-518.

History: En. Sec. 15, Ch. 122, L. 1915; re-en. Sec. 562, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1937; amd. Sec. 1, Ch. 144, L. 1941; amd. Sec. 1, Ch. 177, L. 1943; amd. Sec. 2, Ch. 18, L. 1959; amd. Sec. 4, Ch. 98, L. 1965.

References

State ex rel. Durland v. Board of Coun-

ty Commrs. of Yellowstone County, 104 M 21, 28, 64 P 2d 1060; Taylor v. Taylor, 125 M 341, 238 P 2d 904, 906.

Collateral References

Elections 108.

29 C.J.S. Elections § 48.

23-512. Withdrawal from cancellation of registration cards of persons in military service. It shall be the duty of the county clerk of each county, on or before the close of registration before any election to be held in the state of Montana following the general election held in November of 1942, to withdraw from the "canceled file" the registration card of any person serving in the land or naval forces of the United States, including the members of the army nurse corps, the navy nurse corps, the women's navy reserve, and the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States including persons engaged in the actual service of the American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces recognized by the government of the United States whose registry card has been removed from the official register since the date of the general election held in November of 1942, and return such card to the official register and enter the name of such elector upon the proper registration rolls, provided that—on or before the close of registration before any election to be held in the state of Montana following the general election held in November of 1942—the county clerk is furnished an affidavit or affidavits by at least two (2) registered electors of the county in which such elector serving in the land or naval forces of the United States, including persons of the army nurse corps, the navy nurse corps, the women's naval reserve, the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States including persons engaged in the actual service of the American national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces recognized by the government of the United States was registered at the time of such election, setting forth the affiants are personally acquainted with such elector and are informed and have reason to believe such elector was engaged in active service in the land or naval forces of the United States, including persons of the army nurse corps, the navy nurse corps, the women's navy reserve, the women's army auxiliary corps, and such other branches of the land and naval forces as may be organized hereafter by the government of the United States including persons engaged in the actual service of the Ameri-

can national red cross association, or the united service organizations or any similar organizations auxiliary to the land and naval forces recognized by the government of the United States on the day of such election and his residence is still within the county where he is registered; provided further, however, this shall not apply to those registration cards which have been canceled for any of the causes designated under section 23-518.

History: En. Sec. 2, Ch. 177, L. 1943.

23-513. (566) Close of registration — procedure. The county clerk shall close all registration for the full period of forty (40) days prior to and before any election. He shall immediately transmit to the secretary of state a certificate showing the number of voters registered in each precinct in said county. The county clerk of each county must cause to be published in a newspaper within his county, having a general circulation therein, for twenty (20) days before which time when such registration shall be closed for any election, a notice signed by him to the effect that such registration will be closed on the day provided by law, and which day shall be specified in such notice; and must also state that electors may register for the ensuing election by appearing before the county clerk at his office, or by appearing before a deputy registrar or before any notary public or justice of the peace in the manner provided by law. The publication of such notice must continue for the full period of twenty (20) days. At least twenty (20) days before the time when the official register is closed for any election, the county clerk shall cause to be posted in each voting precinct at such election, notice of the time when the official register will close for such election.

History: En. Sec. 18, Ch. 113, L. 1911; amd. Sec. 18, Ch. 74, L. 1913; amd. Sec. 16, Ch. 122, L. 1915; amd. Sec. 1, Ch. 97, L. 1919; re-en. Sec. 566, R. C. M. 1921; amd. Sec. 3, Ch. 156, L. 1965.

M 390, 399, 170 P 942; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

Collateral References

Elections 105.

29 C.J.S. Elections § 39.

References

State ex rel. Cryderman v. Wienrich, 54

DECISIONS UNDER FORMER LAW

Duty of County Clerk

Section 566, R. C. M. 1921, impliedly adopted by chapter 47, Laws of 1929 (84-4711) and sections 567, 568 and 571, R. C. M. 1921, incorporated therein by reference, relating to the duties of the county clerk in connection with the registration of electors, control in an election on proposals to create or increase city indebtedness.

Weber v. City of Helena, 89 M 109, 112, 297 P 455.

Time for Holding Election

Under this section, as amended in 1915, a period of not less than sixty days was required to elapse between the time an election was called and the time it was held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

23-514. (567) Printing and posting of lists of registered electors. The county clerk shall, at least ten (10) days preceding any election, cause to be printed and posted a list of all electors entitled to be registered as shown by the official register of the county, and who are on the precinct registers as entitled to vote in the several precincts of such county, city or town, or school district of the first class, provided, that if the city clerk

of any city or town shall, in writing, certify to the county clerk, not less than twenty-five (25) days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city or town clerk, not less than thirty (30) days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not cause to be printed or posted such list of registered electors for such city or town. Such printed list of registered electors shall contain the name of the elector in full, together with his residence, giving the number and street, or the name of the house, (.....) and in all cases where the elector resides outside of the city or town, such printed list shall contain the post-office address of such elector, as shown by the official register card of the elector, and the registry number. The expense of printing said list shall be paid by said county, city or town, or school district, in which the election is to be held. The county clerk shall cause to be posted at each precinct in the county, not less than ten (10) days before any election, as in this act provided for, a copy of the list of registered voters herein provided for, and shall retain sufficient number of said printed lists of registered voters in his office as may be necessary for the convenience of the public. He shall furnish to any qualified elector of any county, city or town or school district applying therefor a copy of the same. When the list of registered voters herein provided for has been printed and posted for any primary election, the same may be posted and used for the general election, but only if a supplemental list giving the names of electors who may have registered after the first list was prepared is printed and posted therewith.

History: Ap. p. Sec. 24, Ch. 113, L. 1911; amd. Sec. 24, Ch. 74, L. 1913; amd. Sec. 17, Ch. 122, L. 1915; amd. Sec. 2, Ch. 97, L. 1919; amd. Sec. 1, Ch. 235, L. 1921; re-en. Sec. 567, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1933; amd. Sec. 1, Ch. 167, L. 1945; amd. Sec. 4, Ch. 156, L. 1965.

References

State ex rel. Cryderman v. Wienrich,

54 M 390, 399, 170 P 942; Weber v. City of Helena, 89 M 109, 112, 297 P 455; State ex rel. Fisher v. School District No. 1, 97 M 358, 365, 34 P 2d 522; State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183.

Collateral References

Elections 109.
29 C.J.S. Elections § 47.

23-515. (568) Precinct register—combining—when not furnished city or town. During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the "precinct register" which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of the electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings, under which the information contained upon the registry card of each elector shall be transcribed, excepting the oath of the elector, and the certified copy of the precinct registers so prepared shall be delivered to the judges of the election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class, include more

than one county precinct, the county clerk shall combine into one precinct register the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. The county clerk shall omit from the list of names of all certified voters so inserted in the precinct register herein provided for, the names and registry of all electors which it is the duty of the county clerk to cancel under the provisions of section 23-518, provided that the requirements contained in the provisions of said section shall have been brought to the attention of the county clerk not less than twenty days preceding the election. If the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city clerk, not less than thirty days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not prepare for the city any precinct register or precinct registers for that year.

History: En. Sec. 23, Ch. 113, L. 1911; amd. Sec. 23, Ch. 74, L. 1913; amd. Sec. 18, Ch. 122, L. 1915; amd. Sec. 3, Ch. 97, L. 1919; re-en. Sec. 568, R. C. M. 1921; amd. Sec. 2, Ch. 61, L. 1933; amd. Sec. 2, Ch. 64, L. 1959.

References

Weber v. City of Helena, 89 M 109, 112, 297 P 455.

Collateral References

Elections 212.
29 C.J.S. Elections § 197.

23-516. (569) Registration during period closed for election. Whenever the period during which the official registry is closed preceding any election shall occur during the time within which any elector is entitled to register for another election, such elector shall be permitted to register for such other election, but the county clerk shall retain his registry card in a separate file until the official register is again open for filing of cards, at which time all cards in such temporary file shall be placed in their proper position in the official register.

History: En. Sec. 19, Ch. 122, L. 1915; re-en. Sec. 569, R. C. M. 1921.

Collateral References

Elections 106.
29 C.J.S. Elections § 39.

23-517. Cancellation of registrations. In all counties within the state of Montana, the county clerk and ex officio "registrar" shall, within five (5) days after the first day of June, 1937, cancel all registrations of electors in the county and shall burn all "card indexes," "registry cards" and "affidavits" theretofore executed and signed by any elector for the purpose of registration; also, all copies of the registration books used at any elections theretofore held and shall preserve the "register" theretofore used as a permanent file of the office of the county clerk.

The county clerk must cause to be published in a newspaper of general circulation, published in the county, a notice which shall state that all registrations of electors will be canceled as of the first day of June, 1937, and that duly qualified electors desiring to vote at any subsequent election in

the state of Montana, are required to register in the manner and form provided for under the general registration laws, and laws amendatory thereto, of the state of Montana. Said notice shall be published once a week for a period of four consecutive weeks. Failure to publish said notice shall not affect a registration of electors, nor of any election thereafter held.

History: En. Sec. 1, Ch. 172, L. 1937.

Collateral References

References

Elections ⇨ 108.

Wilson v. Hoisington, 110 M 20, 22, 98
P 2d 369.

29 C.J.S. Elections § 48.

23-518. (570) Cancellation of registration cards, when. The county clerk must cancel any registry card in the following cases:

1. At the request of the party registered.
2. When he has personal knowledge of the death or removal from the county of the person registered, or when duly authenticated certificate of the death of any elector is filed in the names of vital statistics in his office.
3. When there is presented and filed with the county clerk the separate affidavit of three qualified registered electors residing within the precinct, which affidavit shall give the name of such elector, his registry number and his residence, and which affidavit shall show that of the personal knowledge of the affiant, that any person registered does not reside or has removed from the place designated as the residence of such elector.
4. When the insanity of the elector is legally established.
5. Upon the production of a certified copy of a final judgment of conviction of any elector of felony.
6. Upon the production of a certified copy of the judgment of any court directing the cancellation to be made.
7. Upon the cancellation of the registration of any elector as herein provided, the county clerk shall immediately remove from the official register herein provided for the registry of voters and shall deface the name of such elector on the official register by drawing a line through said entry in red ink and the county clerk shall mark the registry card of such elector across the face thereof in red ink with the word "canceled" and shall place such canceled cards with the "canceled file," as provided for in section 23-511.

All persons whose names are so removed, except as provided in section 23-517, and stricken from the said registration books, card indexes, and register of electors, shall within forty-eight hours thereafter, be notified by the county clerk in writing of such removal, by sending a notice to such person to his or her post-office address, as appearing on such registration books, card indexes, and register of electors. If any persons, whose names are so removed, can and do prove to the county clerk that they are in fact citizens of the United States and otherwise qualified to vote, as provided by law of the state of Montana, then, and in that case, they shall be entitled to reregister as voters.

History: En. Sec. 19, Ch. 113, L. 1911; amd. Sec. 19, Ch. 74, L. 1913; amd. Sec. 20, Ch. 122, L. 1915; amd. Sec. 4, Ch. 97, L. 1919; re-en. Sec. 570, R. C. M. 1921; amd. Sec. 2, Ch. 172, L. 1937.

Collateral References

Elections ⇨ 108.

29 C.J.S. Elections § 48.

23-519. (571) Compensation of county clerks. The county clerks shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, (to which the precinct registers referred to in the last section have been furnished), the sum of three (\$0.03) cents for each and every name entered in such precinct registers, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section, within thirty (30) days after the presentation of the account to them by said county clerk, provided, however, that in event of the election of candidates at municipal primary elections, as provided for in section 11-3113, and no general municipal election is required to be held, the county clerk shall prepare no precinct registers for such general municipal election and shall make no charge therefor; provided further, that in elections of school districts of the first class if only as many candidates are nominated as there are vacancies to be filled, the county clerk shall furnish no precinct registers and make no charge therefor to such school district.

It shall be the duty of the city clerk or the clerk of the school district to notify the county clerk in such case as above-mentioned, where no precinct registers are required, immediately after the facts become known to the city council or the board of trustees of the school district, which makes unnecessary the furnishing of such precinct registers.

History: En. Sec. 29, Ch. 113, L. 1911; amd. Sec. 29, Ch. 74, L. 1913; amd. Sec. 21, Ch. 122, L. 1915; re-en. Sec. 571, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1935; amd. Sec. 3, Ch. 64, L. 1959.

Compiler's Note

The words "last section" appearing in the first paragraph of this section apparently refer to section 23-515.

References

Weber v. City of Helena, 89 M 109, 112, 297 P 455.

Collateral References

Counties⌚78 (1); Elections⌚212.
20 C.J.S. Counties § 117; 29 C.J.S. Elections § 197.

23-520. (572) Copies of precinct registers. The county clerk shall furnish to any person or persons who in writing may so request, a copy of the official precinct registers of any county, city or school district precinct, and upon delivery thereof shall charge and collect for the use and benefit of the county the sum of five cents for each and every name entered in such official precinct register.

History: En. Sec. 30, Ch. 113, L. 1911; amd. Sec. 30, Ch. 74, L. 1913; amd. Sec. 22, Ch. 122, L. 1915; re-en. Sec. 572, R. C. M. 1921.

Collateral References

Elections⌚111.
29 C.J.S. Elections § 50.

23-521. (573) Challenges and action to be taken thereon. At any time not later than the tenth day prior to any election, a challenge may be filed with the county clerk, signed by a qualified elector in writing, and duly

verified by the affidavit of the elector, that the elector designated therein is not entitled to register. Such affidavit shall state the grounds of challenge, objection and disqualification. The county clerk shall file the affidavit of challenge in his office as a record thereof. The county clerk must deliver a true and correct copy of any and all of such affidavits so filed, challenging the right of any elector to vote who has been so registered at the same time, and together with the copy of the precinct registers and check lists, and other papers required by this act to be delivered to the judges of election, as in this act provided, and he must write distinctly opposite to the name of any person to whose qualification as an elector objections may be thus made, the words, "to be challenged." It shall be the duty of the judges of election, if on election day such person who has been objected to and challenged applies to vote, to test, under oath, his qualifications. Notwithstanding the elector is registered, his right to vote may be challenged on the day of election by any qualified registered elector, orally stating, to the judges of election, the grounds of such objection or challenge to the right of any registered elector to vote.

It is the duty of the judges of election, when it appears that any elector offers to vote and is either challenged by a duly qualified registered elector, on election day, or if an affidavit of objection to the right of such elector to vote has been filed with the county clerk and the copy of the precinct registers furnished to the judges of election have endorsed thereon, opposite to the name of such elector, "to be challenged," to test the qualifications of the elector and ask any questions that such judges may deem proper, and shall compare the answers of the elector to such questions with the entries in the precinct register books, and if it be found that said elector is disqualified, or that the answers given by such elector to the questions propounded by the judges do not correspond to the entry in the precinct registers, or that said elector is disqualified from any cause under the law, or if he refuses to take an oath as to his qualifications, he shall not be permitted to vote. The judges of election, in their discretion, may require such elector to produce before them one or more freeholders of the county, as they may deem necessary, and have them examined under oath as to the qualifications of the elector.

History: En. Sec. 20, Ch. 113, L. 1911; amd. Sec. 20, Ch. 74, L. 1913; amd. Sec. 23, Ch. 122, L. 1915; re-en. Sec. 573, R. C. M. 1921.

Collateral References
Elections 223.
29 C.J.S. Elections § 209.

References

Weber v. City of Helena, 89 M 109, 125,
297 P 455.

23-522. (574) Residence, rules for determining. For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this state, 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, nor while residing on any military reservation.

3. 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. No person shall be deemed to have acquired a residence in the state of Montana by reason of being employed or stationed at any United States Civilian Conservation Corps Camp within the state of Montana or at any transient camp maintained for relief purposes by the government of the United States within the state of Montana.

4. A person must not be considered to have lost his residence who leaves his home to go into another state, or other district of this state, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district.

5. A person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely without the intention of making such county his home.

6. If a person removes to another state with the intention of making it his residence, he loses his residence in this state.

7. If a person removes to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period.

8. The place where a man's family resides is presumed his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other than where his family resides, must be regarded as a resident of the place where he so abides.

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. A residence cannot be lost until another is gained.

10. The term of residence must be computed by including the day of election.

History: En. Sec. 21, Ch. 113, L. 1911; amd. Sec. 21, Ch. 74, L. 1913; amd. Sec. 24, Ch. 122, L. 1915; amd. Sec. 1, Ch. 58, L. 1919; re-en. Sec. 574, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1935. Cal. Pol. C. Sec. 1239.

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 dec-

larations 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

This 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

Subdivision 8 of this section is in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

References

Stephens v. Nacey, 49 M 230, 237, 141 P 649; *State ex rel. Johnson v. Kassing*, 74

M 25, 30, 238 P 582; *Wilson v. Hoisington*, 110 M 20, 24, 98 P 2d 369.

Collateral References

Elections 72.

29 C.J.S. Elections § 20.

25 Am. Jur. 2d 758, Elections, § 66.

23-523. (575) Certificates of naturalization, presentation to registrar. When a naturalized citizen applies for registration his certificate of naturalization, or a certified copy thereof, must be produced and stamped, or written in ink by the registry agent, with such registry agent's name and the year and day and county where presented; but if it satisfactorily appears to the registry agent, by the affidavit of the applicant (and the affidavit of one or more credible electors as to the credibility of such applicant when deemed necessary), that his certificate of naturalization, or a certified copy thereof, is lost or destroyed, or beyond the reach of the applicant for the time being, said registry agent must register the name of said applicant, unless he is by law otherwise disqualified; but in case of failure to produce the certificate of naturalization, or a certified copy thereof, the registry agent must propound the following questions:

1. In what year did you come to the United States?
2. In what state or territory, county, court, and year were you finally admitted to citizenship?
3. Where did you last see your certificate of naturalization, or a certified copy thereof?

History: En. Sec. 22, Ch. 113, L. 1911; amd. Sec. 22, Ch. 74, L. 1913; amd. Sec. 25, Ch. 122, L. 1915; re-en. Sec. 575, R. C. M. 1921.

Collateral References

Elections 106.

29 C.J.S. Elections § 46.

23-524. (576) Voter to sign precinct register books. The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector, before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name he shall be required by the judges to produce two freeholders who shall make an affidavit before the judges of election, or one of them, in substantially the following form:

State of Montana, }
County of} ss.

"We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with, (the name of the elector) and that we know that he is residing at, and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county," which affidavit shall be filed by the judges, and returned by them

to the county clerk, with the return of the election; one of the judges shall thereupon write the elector's name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name and if unable to write fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to the county clerk the copy of said official precinct register sealed, with the election returns and pollbook, which have been used at said election.

History: En. Sec. 26, Ch. 113, L. 1911; amd. Sec. 26, Ch. 74, L. 1913; amd. Sec. 26, Ch. 122, L. 1915; re-en. Sec. 576, R. C. M. 1921.

Failure To Sign

Held, that 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 that therefore their votes were legal and properly counted. *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060.

Collateral References

Elections ⇨ 212.
29 C.J.S. Elections § 197.

23-525. (577) Compelling entry of names in great register. In any action or proceeding instituted in a district court to compel the county clerk to make and 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 against may be joined as defendants.

History: En. Sec. 32, Ch. 113, L. 1911; re-en. Sec. 32, Ch. 74, L. 1913; re-en. Sec. 27, Ch. 122, L. 1915; re-en. Sec. 577, R. C. M. 1921.

Collateral References

Elections ⇨ 107.
29 C.J.S. Elections § 46.

23-526. (578) Name of voter must appear in copy of register—identification of voter. No person shall be entitled to vote at any election mentioned in this act unless his name shall, on the day of election, appear in the copy of the official precinct register furnished by the county clerk to the judges of election, and the fact that his name so appears in the copy of the precinct register shall be prima facie evidence of his right to vote; provided, that when the judges shall have good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered.

History: En. Sec. 35, Ch. 113, L. 1911; amd. Sec. 35, Ch. 74, L. 1913; amd. Sec. 28, Ch. 122, L. 1915; re-en. Sec. 578, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1967.

Collateral References

Elections ⇨ 118.
29 C.J.S. Elections § 38.

23-527. (579) Omission of name from precinct registers—remedy. Any elector whose name is erroneously omitted from any precinct register may apply for and secure from the county clerk a certificate of such error, and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name

had appeared upon the precinct register. Such certificate shall be marked "voted" by the judges, and shall be returned by them with the precinct register.

History: En. Sec. 29, Ch. 122, L. 1915;
re-en. Sec. 579, R. C. M. 1921; amd. Sec.
4, Ch. 64, L. 1959.

23-528. (580) Authority of deputy county clerk. Wherever in this act the word "county clerk" appears, it shall be construed as extending and giving authority to any regularly appointed deputy county clerk.

History: En. Sec. 36, Ch. 113, L. 1911;
re-en. Sec. 36, Ch. 74, L. 1913; re-en. Sec.
30, Ch. 122, L. 1915; re-en. Sec. 580, R. C.
M. 1921.

Collateral References
Counties↔82.
20 C.J.S. Counties § 133.

23-529. (581) "Elector" defined. The word "elector" as used in this law, whether used with or without the masculine pronoun, shall apply equally to male and female electors.

History: En. Sec. 31, Ch. 122, L. 1915;
re-en. Sec. 581, R. C. M. 1921.

Collateral References
Elections↔63-65.
29 C.J. S. Elections § 30.

23-530. (582) "Election" defined. The word "election," as used in this law, where not otherwise qualified, shall be taken to apply to general, special, primary nominating, and municipal elections, and to elections in school districts.

History: En. Sec. 32, Ch. 122, L. 1915;
re-en. Sec. 582, R. C. M. 1921; amd. Sec.
2, Ch. 139, L. 1967.

Chapin, 64 M 376, 384, 209 P 1060; Weber
v. City of Helena, 89 M 109, 117, 297 P
455.

References
State ex rel. Cryderman v. Wienrich, 54
M 390, 399, 170 P 942; Thompson v.

Collateral References
Elections↔31, 32.
29 C.J.S. Elections § 66.

23-531. (583) Violation of act, penalty for. Any person or persons, or any officer of any county, city or town, or school district, who, under the provisions of this act, are required to perform any duty, who shall willfully or knowingly fail, refuse, or neglect to perform such duty, or to comply with the provisions of this act, shall, upon conviction, be fined in the sum of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than three months and no more than one year. Upon the conviction of any officer of the violation of the provisions of this act, the judge of the district court hearing such proceeding shall, at the time of rendering judgment of conviction, include in such order of conviction an order of the court that such officer be removed from office.

History: En. Sec. 37, Ch. 113, L. 1911;
re-en. Sec. 37, Ch. 74, L. 1913; re-en. Sec.
33, Ch. 122, L. 1915; re-en. Sec. 583, R. C.
M. 1921.

Collateral References
Elections↔309.
29 C.J.S. Elections §§ 324, 334.

23-532. (584) Challenging of elector and administration of oath. If any person offering to vote at any primary election be challenged by a judge or any qualified elector at said election, as to his right to vote there-

at, an oath shall be administered to him by one of the judges that he will truly answer all questions touching his right to vote at such election, and if it appear that he is not a qualified voter under the provisions of this act, his vote shall be rejected; and if any person whose vote shall be so rejected shall offer to vote at the same election, at any other polling place, he shall be deemed guilty of a misdemeanor.

History: En. Sec. 38, Ch. 113, L. 1911; re-en. Sec. 38, Ch. 74, L. 1913; re-en. Sec. 34, Ch. 122, L. 1915; re-en. Sec. 584, R. C. M. 1921.

Collateral References

Elections⇒223.
29 C.J.S. Elections § 209.
26 Am. Jur. 2d 67, Elections, § 237.

23-533. (585) Acts constituting violation of law—penalty. Any person who shall make false answers, either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers, or other persons upon whom any duty is imposed by this act, or any of its provisions, who shall willfully neglect such duty, or shall willfully perform it in such way as to hinder the objects and purposes of this act, shall, excepting where some penalty is provided by the terms of this act, be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period of not less than one year or more than fourteen years, and if such person be a public officer, shall also forfeit his office.

History: En. Sec. 39, Ch. 113, L. 1911; re-en. Sec. 39, Ch. 74, L. 1913; re-en. Sec. 35, Ch. 122, L. 1915; re-en. Sec. 585, R. C. M. 1921.

Collateral References

Elections⇒309, 318.
29 C.J.S. Elections §§ 324, 331, 334.

23-534. (586) County commissioners to supply clerk with help. It shall be the duty of the board of county commissioners of each county to provide the county clerk thereof with sufficient help to enable him to properly perform the duties imposed upon him by this act, and the cost of the stationery, printing, publishing, and posting to be furnished or procured by the county clerk by the provisions of this law shall be a proper charge upon the county.

History: En. Sec. 40, Ch. 74, L. 1913; amd. Sec. 36, Ch. 122, L. 1915; re-en. Sec. 586, R. C. M. 1921.

Collateral References

Counties⇒134.
20 C.J.S. Counties § 209.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

- Section 23-601. Judges of election—how appointed.
23-602. Number of judges to be appointed.
23-603. Number appointed in new precincts.
23-604. Not more than a majority to be from any one political party.
23-604.1. Candidates and relatives ineligible.
23-604.2. School district elections—precinct elections.
23-605. Compensation of election officers.
23-606. Clerk to give notice to judges of appointment—electors to elect judges in case of vacancy.
23-607. Judges to choose clerks and to serve until others appointed.
23-608. Clerks to mail to judges notices of election—form of notices.

- 23-609. Notices to be posted by the judges.
- 23-610. Oath of judges and clerk.
- 23-611. Judges and clerks may administer oaths.
- 23-612. Instructions of judges of elections.

23-601. (587) Judges of election — how appointed. The board of county commissioners of the several counties at the regular session next preceding a general election, must appoint five judges of election for each precinct in which the voters therein, by the last registration, were two hundred or more and three judges of election for each precinct in which such registration was less than two hundred, provided that in all election precincts in which there were cast three hundred and fifty or more ballots in the last general election or in which the board of county commissioners believe that as many ballots as three hundred and fifty will be cast in the next general election, the board of county commissioners may appoint a second or additional board consisting of five judges for each such precinct, who shall possess the same qualifications as the first board herein mentioned. The judges constituting the second board for each precinct, if such second board shall have been appointed, shall meet at their respective polling places, as designated in the order appointing them, at the time the polls are closed and at said hour or as soon as the first board has completed their duties in regard to the voting, the second board shall take charge of the ballot boxes containing the ballots and shall proceed to count and tabulate the ballots cast as they shall find them deposited in the ballot boxes. In the event that the count is not completed by eight o'clock a. m. of the next following day, the first board shall reconvene and relieve the second board and continue said count until eight o'clock p. m., when if the count is not yet completed, the second board shall reconvene and again relieve the first board, and so, alternately until said board shall have fully completed the count and certified the returns. The judges constituting the several boards shall number the ballots and count the tallies upon the tally sheets and so indicate upon the tally sheets as to distinctly show the work of each board separately. The board completing the count shall make such certification of returns as is required by law.

The board of county commissioners, notwithstanding the foregoing provisions in this section contained, may however, appoint a single board of judges for each precinct in the county, when, in the judgment of said board of county commissioners, a second or additional board is unnecessary.

History: En. Sec. 1260, Pol. C. 1895; re-en. Sec. 500, Rev. C. 1907; re-en. Sec. 587, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1923; amd. Sec. 1, Ch. 61, L. 1937; amd. Sec. 1, Ch. 40, L. 1943.

Collateral References

Elections—51, 241 et seq.

29 C.J.S. Elections §§ 57-59, 61, 62, 224 et seq.

Immunity of election officer from criminal arrest. 1 ALR 1160.

Result of election as affected by lack of title or by defective title of election officers. 1 ALR 1535.

23-602. (588) Number of judges to be appointed. The board of county commissioners, notwithstanding the registration, may appoint five judges of each precinct in which upon information obtained by them they have reason to believe contains two hundred voters or more and three

judges of election in preeinets which upon information obtained by them, they have reason to believe was less than two hundred.

History: En. Sec. 1261, Pol. C. 1895; re-en. Sec. 501, Rev. C. 1907; re-en. Sec. 588, R. C. M. 1921; amd. Sec. 2, Ch. 43, L. 1923.

23-603. (589) Number appointed in new precincts. In any new precinct established, the board of county commissioners must, in like manner, appoint five or three judges of election, according to the estimated number of voters therein, as required by the two next preceding sections.

History: En. Sec. 1262, Pol. C. 1895; re-en. Sec. 502, Rev. C. 1907; re-en. Sec. 589, R. C. M. 1921.

23-604. (590) Not more than a majority to be from any one political party. In making the appointment of judges of election, such judges must be chosen from a list of qualified electors to be submitted by the county central committee of the two (2) major political parties in the county at least thirty-five (35) days prior to the regular session of the board of county commissioners, next preceding a primary nominating election, a general or special election, such list to contain at least twice the number of judges to be appointed and not more than a majority of such judges must be appointed from any one political party for each precinct and such appointee shall be deemed to belong to the political party upon whose list his name appears, provided that the board of county commissioners may appoint such judges as in case of vacaney or in ease any major political party fails to submit a list of judges within the time herein provided.

History: En. Sec. 1263, Pol. C. 1895; re-en. Sec. 503, Rev. C. 1907; re-en. Sec. 590, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1941. Cal. Pol. C. Sec. 1143.

Collateral References
Elections—52.
29 C.J.S. Elections § 60.

23-604.1. Candidates and relatives ineligible. No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate or one who is related to a candidate for office at such election within the second degree of consanguinity.

History: En. Sec. 1, Ch. 99, L. 1961.

23-604.2. School district elections—precinct elections. The provisions of section 23-604.1 and this section shall not apply to school district elections nor to candidates for precinct committeeman and committeewoman.

History: En. Sec. 2, Ch. 99, L. 1961.

23-605. (591) Compensation of election officers. The compensation of members of boards of election, including judges and clerks, shall be fixed by the board of county commissioners at not to exceed one dollar twenty-five cents (\$1.25) per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury.

History: En. Sec. 1173, Pol. C. 1895; re-en. Sec. 459, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1917; re-en. Sec. 591, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1945; amd. Sec. 1, Ch. 117, L. 1947; amd. Sec. 1,

Ch. 12, L. 1951; amd. Sec. 1, Ch. 46, L. 1963. Cal. Pol. C. Sec. 1072.

Collateral References

Elections 53.
29 C.J.S. Elections § 63.

23-606. (592) Clerk to give notice to judges of appointment—electors to elect judges in case of vacancy. The clerk of the board must make out and forward by mail, immediately after the appointment of the judges, a notice thereof in writing, directed to each of them. In case there is no post office in any one or more of the precincts in any county, the clerk must forward notices of such appointment by registered mail to the post office nearest such precinct, directed to the judges aforesaid. If, in any of the precincts, any of the judges refuse or neglect to serve, the electors of such precinct may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

History: En. Sec. 1264, Pol. C. 1895; re-en. Sec. 504, Rev. C. 1907; re-en. Sec. 592, R. C. M. 1921.

23-607. (593) Judges to choose clerks and to serve until others appointed. The judges may, whenever they deem it necessary for the prompt and efficient conduct of the election within their respective polling places, appoint two persons having the same qualifications as themselves to act as clerks of the election. The judges shall continue to be judges of all elections to be held in their respective precincts until other judges are appointed; and the clerks of election continue to act as such during the pleasure of the judges of election, and the board of county commissioners must from time to time fill vacancies which may occur in the offices of judges of election in any precinct within their respective counties.

History: En. Sec. 6, p. 461, Cod. Stat. 1871; re-en. Sec. 6, p. 71, L. 1876; re-en. Sec. 520, 5th Div. Rev. Stat. 1879; re-en. Sec. 1012, 5th Div. Comp. Stat. 1887; re-en. Sec. 1265, Pol. C. 1895; re-en. Sec. 505, Rev. C. 1907; re-en. Sec. 593, R. C. M. 1921; amd. Sec. 2, Ch. 40, L. 1943.

23-608. (594) Clerks to mail to judges notices of election—form of notices. The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19...., at the house, in the county of, an election will be held for (naming the offices to be filled, including electors of president and vice-president, a representative in Congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at 8:00 a. m. and continuing open until 8:00 p. m. of the same day.

Dated this day of, A.D. 19....

Signed A. B., clerk of the board of county commissioners.

History: Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd. Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907; re-en. Sec. 594, R. C. M.

1921; amd. Sec. 2, Ch. 167, L. 1945; amd. Sec. 1, Ch. 14, L. 1957.

Collateral References

Elections 40, 41.

29 C.J.S. Elections §§ 72, 73.

23-609. (595) Notices to be posted by the judges. The judges to whom such notice is directed, as provided in the next preceding section, must cause to be put up in three of the most public places in each precinct the notices of election in such precinct, at least ten days previous to the time of holding any general election, which notices must be posted as follows: One at the house where the election is authorized to be held, and the others at the two most public and suitable places in the precinct.

History: Ap. p. Sec. 8, p. 72, L. 1876; re-en. Sec. 522, 5th Div. Rev. Stat. 1879; re-en. Sec. 1014, 5th Div. Comp. Stat. 1887; amd. Sec. 1267, Pol. C. 1895; re-en. Sec. 507, Rev. C. 1907; re-en. Sec. 595, R. C. M. 1921.

Collateral References

Elections 42.

29 C.J.S. Elections § 74.

23-610. (596) Oath of judges and clerk. Previous to votes being taken, the judges and clerks of election must take and subscribe the official oath prescribed by the constitution. It is lawful for the judges of election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election.

History: En. Sec. 1268, Pol. C. 1895; re-en. Sec. 508, Rev. C. 1907; re-en. Sec. 596, R. C. M. 1921. Cal. Pol. C. Sec. 1148.

23-611. (597) Judges and clerks may administer oaths. Any member of the board, or either clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

History: En. Sec. 1269, Pol. C. 1895; re-en. Sec. 509, Rev. C. 1907; re-en. Sec. 597, R. C. M. 1921.

Collateral References

Elections 54.

29 C.J.S. Elections § 57.

23-612. Instructions of judges of elections. Before each election, general or primary, all judges appointed to act at said election, who do not possess a certificate of instruction as provided for in this act shall be instructed by a person delegated by the board of county commissioners in regard to the powers, duties, and liabilities imposed upon election judges by the election laws of the state of Montana. For the purpose of giving such instruction, the delegate of the board of county commissioners shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive at least two (2) hours of instruction, and as compensation for the time spent in receiving such instruction, each judge that shall serve in the election shall receive the sum of one dollar (\$1.00) per hour of instruction, to be paid to him at the same time and in the same manner as compensation is paid to him for his or her services on election day.

Upon the completion of the two (2) hours of instruction, the judge shall receive a certificate from the person delegated by the board of county com-

missioners from whom he or she has received instruction, that the instruction has been completed, provided that no certificate of instruction shall be valid for a period of greater than two (2) years. No person shall serve as a judge of election unless this certificate has been received, provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency. Notice of place and time of instruction of the political judges must be given by the board of county commissioners to the county chairman of the two major political parties in the county.

History: En. Sec. 1, Ch. 210, L. 1957.

CHAPTER 7

ELECTION SUPPLIES

- Section 23-701. County commissioners to furnish pollbooks.
23-702. Form of pollbook.
23-703. Want of form not to vitiate.
23-704. County commissioners to have blanks prepared.
23-705. Clerk to deliver ballots and stamps to judges of election—stamp, what to contain.
23-706. Ballot boxes.
23-707. Size of the opening of the ballot box.
23-708. Ballot box to be exhibited.
23-709. County clerk to have printed instructions to the electors.
23-710. Forms for transmission of election returns.
23-711. Copying total vote cast for each candidate.
23-712. Posting and mailing blanks.
23-713. Penalty for failure to comply with law.

23-701. (598) County commissioners to furnish pollbooks. The board of county commissioners of each county must furnish for the several election precincts in each county pollbooks after the forms hereinafter prescribed.

History: En. Sec. 1300, Pol. C. 1895;
re-en. Sec. 517, Rev. C. 1907; re-en. Sec.
598, R. C. M. 1921.

Cross-Reference
County commissioners to furnish poll-
books, sec. 16-1156.

Collateral References
Elections—212.
29 C.J.S. Elections § 197.

23-702. (600) Form of pollbook. The following is the form of pollbooks to be kept in duplicate by the judges and clerks of election:

Pollbook of Precinct No.

Number and names of electors voting.

No.	Name.	No.	Name.	No.	Name.

Total number of votes cast at precinct No.

We, the undersigned, judges and clerks of an election held at precinct No., in the county of, in the state of Montana,

on the day of, 19....., having first been severally sworn according to law, hereby certify that the foregoing is a true statement of the number and names of the persons voting at said precinct at said election, and that the following named persons received the number of votes annexed to their respective names for the following described offices to wit:

Governor.		Members of Legislative Assembly.	
A. B.,	Votes	Senate.	House of Representatives
C. D.,	Votes	E. F., Votes	G. H., Votes

Certified and signed by us.
.....
.....

} Clerks.

.....
.....
.....
.....

} Judges.

History: En. Sec. 1302, Pol. C. 1895;
re-en. Sec. 519, Rev. C. 1907; re-en. Sec.
600, R. C. M. 1921. Cal. Pol. C. Sec. 1174.

References
Stephens v. Nacey, 47 M 479, 485, 133 P
361.

23-703. (601) **Want of form not to vitiate.** No pollbook or certificate returned from any election precinct must be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this chapter, if it can be satisfactorily understood.

History: En. Sec. 1303, Pol. C. 1895;
re-en. Sec. 520, Rev. C. 1907; re-en. Sec.
601, R. C. M. 1921. Cal. Pol. C. Sec. 1175.

References
Stephens v. Nacey, 47 M 479, 485, 133
P 361.

23-704. (602) **County commissioners to have blanks prepared.** The necessary printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns, must be furnished by the board of county commissioners to the officers of each election precinct at the expense of the county.

History: En. Sec. 1174, Pol. C. 1895;
re-en. Sec. 460, Rev. C. 1907; re-en. Sec.

602, R. C. M. 1921; amd. Sec. 5, Ch. 64,
L. 1959.

23-705. (603) **Clerk to deliver ballots and stamps to judges of election—stamp, what to contain.** Before the opening of the polls, the county clerk, or the city clerk in the case of municipal elections, must deliver to the judges of election of each election precinct which is within the county (or within the municipality in case of municipal election) and in which the election is to be held, at the polling place of the precinct, the proper number of election ballots as provided for in section 23-1117. He must also deliver to said judges a rubber or other stamp, with ink pad, for the purpose of stamping or designating the official ballots as hereinafter provided. Said stamp must contain the words “Official Ballot,” the name or number of

the election precinct, the name of the county, the date of the election, the name and official designation of the clerk who furnishes the ballots. The judge of election to whom the stamps and ballots are given pursuant to this section must be the same person who may be designated by the commissioners to post the notices required by section 23-608. But in case it be impracticable to deliver such stamps and ballots to such judge then they may be delivered to some other one of the judges of election.

History: Ap. p. Sec. 20, p. 140, L. 1889; ton, 53 M 388, 391, 164 P 537; State ex
amd. Sec. 1356, Pol. C. 1895; re-en. Sec. rel. Riley v. District Court, 103 M 576,
547, Rev. C. 1907; re-en. Sec. 603, R. C. M. 588, 64 P 2d 115.
1921.

References

State ex rel. Brooks v. Farnsham, 19
M 273, 286, 48 P 1; Harrington v. Crich-

Collateral References

Elections \hookrightarrow 163.
29 C.J.S. Elections § 155.

23-706. (604) Ballot boxes. There shall be provided at the expense of the county, for each polling preeinct, a substantial ballot box or canvas pouch with a secure lock and key for the ballots and detached stubs as hereinafter provided for. There shall be one opening, and no more in such box or canvas pouch, of suffieient size to admit a single folded ballot. The adoption of the canvas pouch to be used instead of the ballot box, in any preeinct, shall be optional with the commissioners of each county, but in such preeincts where pouehes are so adopted, the pouches shall be returned to the county clerk together with the other election returns, as by law provided.

History: Ap. p. Sec. 1270, Pol. C. 1895;
amd. Sec. 1, Ch. 88, L. 1907; re-en. Sec.
510, Rev. C. 1907; re-en. Sec. 604, R. C. M.
1921.

Collateral References

Elections \hookrightarrow 217.
29 C.J.S. Elections §§ 194, 204.
26 Am. Jur. 2d 64, Elections, § 231.

23-707. (605) Size of the opening of the ballot box. There must be an opening in the lid of such box of no larger size than shall be suffieient to admit a single folded ballot.

History: En. Sec. 18, p. 463, Cod. Stat.
1871; re-en. Sec. 17, p. 74, L. 1876; re-en.
Sec. 531, 5th Div. Rev. Stat. 1879; re-en.
Sec. 1023, 5th Div. Comp. Stat. 1887; re-

en. Sec. 1271, Pol. C. 1895; re-en. Sec. 511,
Rev. C. 1907; re-en. Sec. 605, R. C. M.
1921.

23-708. (606) Ballot box to be exhibited. Before receiving any ballots, the judges must, in the presenee of any persons assembled at the polling place, open and exhibit the ballot box and remove any contents therefrom, and then close and lock the same, delivering the key to one of their members, and thereafter the ballot box must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

History: Ap. p. Sec. 18, p. 463, Cod.
Stat. 1871; re-en. Sec. 17, p. 74, L. 1876;
re-en. Sec. 531, 5th Div. Rev. Stat. 1879;
re-en. Sec. 1023, 5th Div. Comp. Stat. 1887;

amd. Sec. 1272, Pol. C. 1895; re-en. Sec.
512, Rev. C. 1907; re-en. Sec. 606, R. C. M.
1921. Cal. Pol. C. Sec. 1162.

23-709. (607) County clerk to have printed instructions to the electors. The county clerk of each county must cause to be printed in large type on

cards, in the English language, instructions for the guidance of electors in preparing their ballots. He must furnish six cards to the judges of election in each election precinct, and one additional card for each fifty registered electors, or fractional part thereof, in the precinct, at the same time and in the same manner as the printed ballots. The judges of election must post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about polling places upon the day of election. Said cards must be printed in large, clear type, and must contain full instructions to the voters as to what should be done, viz.:

1. To obtain ballots for voting.
2. To prepare the ballots for deposit in the ballot-boxes.
3. To obtain a new ballot in the place of one spoiled by accident or mistake. Said card must also contain a copy of sections 94-1407, 94-1411, 94-1412, 94-1413, 94-1414 and 94-1415. There must also be posted in each of the compartments, or booths, one of the official tickets, as provided in sections 23-1101 to 23-1116, without the official stamp, and not less than three such tickets posted elsewhere in and about the polling places upon the day of election.

History: En. Sec. 1273, Pol. C. 1895; re-en. Sec. 513, Rev. C. 1907; re-en. Sec. 607, R. C. M. 1921. Cal. Pol. C. Sec. 1207.

Collateral References

Elections ⇨ 216.
29 C.J.S. Elections § 205.

23-710. (608) Forms for transmission of election returns. In sending out election supplies to each precinct for each general election, it shall be the duty of the county clerk in each county to send with such supplies not less than six printed forms, with a return envelope, for the use of judges of election in transmitting election returns for public information. Said printed forms shall be in ballot form on tinted paper, and the name of each candidate and each proposition voted on shall be printed on said blank. Brief instructions for the use of said blank, as contained in this act, shall also be printed on said blank.

History: En. Sec. 1, Ch. 12, L. 1915; re-en. Sec. 608, R. C. M. 1921.

Purpose of Tinted Sheets

The sole purpose of the tinted sheets provided for by this section and sections 23-711 to 23-713, on which judges of election must summarize the result of the vote and cause a copy thereof to be posted at the polling place and one to be trans-

mitted to the county clerk, is to facilitate the publication of the results; they 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.

Collateral References

Elections ⇨ 247.
29 C.J.S. Elections § 229.

23-711. (609) Copying total vote cast for each candidate. As soon as all of the ballots have been counted in any precinct, it shall be the duty of the election judges to correctly copy the total vote cast for each candidate and the total vote cast for and against each proposition on the blanks furnished by the county clerk, as provided in the preceding section.

History: En. Sec. 2, Ch. 12, L. 1915; re-en. Sec. 609, R. C. M. 1921.

References

Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

23-712. (610) Posting and mailing blanks. One of said blanks, properly filled out, shall be posted forthwith at the polling place; and one copy, correctly filled out, shall be sent by mail or by messenger, when the same can be done without expense, to the county clerk. Said copy may be sent by the same messenger carrying the official election returns, but the same shall not be enclosed or sealed with the other returns.

History: En. Sec. 3, Ch. 12, L. 1915;
re-en. Sec. 610, R. C. M. 1921.

References
Dubie v. Batani, 97 M 468, 478, 37 P
2d 662.

23-713. (611) Penalty for failure to comply with law. Any judge of election, or other officer, who shall fail or refuse to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars.

History: En. Sec. 4, Ch. 12, L. 1915;
re-en. Sec. 611, R. C. M. 1921.

Collateral References
Elections 314.
29 C.J.S. Elections § 327.

References
Dubie v. Batani, 97 M 468, 478, 37 P
2d 662.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

- Section 23-801. Convention or primary meeting defined—vacancies.
23-802. Certificates of nomination, what to contain.
23-803. Certificate, where filed.
23-804. Certificates of nomination otherwise made.
23-805. Certificate not to contain certain things—one person not to be nominated for more than one office.
23-806. Certificates to be preserved one year.
23-807. When certificates to be filed.
23-808. Nominees to pay prescribed filing fee.
23-809. Secretary of state to certify to county clerk names of persons nominated.
23-810. Declination of nomination—municipal elections.
23-811. Vacancies may be filled by further certificates.
23-812. Errors, how corrected.
23-813. Qualification of voter at primary election.
23-814. Who entitled to vote.
23-815. Judges.
23-816. Clerk.
23-817. Challenges—oath—penalty.
23-818. Fraudulent voting or counting.
23-819. Unlawful interference.
23-820. Penalties.

23-801. (612) Convention or primary meeting defined—vacancies. Any convention or primary meeting held for the purpose of making nominations to public office, or the number of electors required in this chapter, may nominate candidates for public office to be filled by election in the state. A convention or primary meeting within the meaning of this chapter is an organized assemblage of electors or delegates representing a political party or principle, and in the event a vacancy shall happen by death or resignation in the representation from any congressional district of the

state of Montana in the house of representatives of the Congress of the United States, only the electors residing within such congressional district shall vote at any such convention or primary meeting held for the purpose of making nominations to fill such vacancy.

History: En. Sec. 2, p. 135, L. 1889; amd. Sec. 1310, Pol. C. 1895; re-en. Sec. 521, Rev. C. 1907; re-en. Sec. 612, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1945. Cal. Pol. C. Sec. 1186.

Application of Section

The Primary Election Law (23-901 et seq.) applies to all situations where it can be made reasonably operative. Where a county treasurer, elected in November, 1942 for a four-year term ending March 1, 1947, died after he had qualified and before commencement of the term for which he was elected, the appointee of the county commissioners under section 5, article XVI of the constitution would hold until next general election on November 7, 1944, and procedure under Primary Law (23-901 et seq. and section 5, article XVI of the constitution) is controlling. A vacancy occurring after the primary and prior to the general election or at any other inapplicable time authorizes nomination under this section or section 23-804, section 23-909 then not applying. *LaBorde v. McGrath*, 116 M 283, 286, 149 P 2d 913, distinguished in 117 M 160, 170, 157 P 2d 108 and 130 M 202, 208, 299 P 2d 446.

Nominees to be placed on ballot at special election to fill vacancy resulting from death of representative in Congress must be chosen pursuant to this section or section 23-804 and not by special nominating election. *Bottomly v. Ford*, 117 M 160, 167, 157 P 2d 108.

Assembly To Nominate Candidates Essential

Where a call for a mass convention of electors stated that the object was to organize central committees opposed to corporate rule, and to give the voters of the state an opportunity to vote for men free from corporate control, but failed to state that the convention was to assemble to nominate candidates for any office whatever, it was not a call of the electors of the state to assemble and select candidates for public office. *State ex rel. Athey v. Hays*, 31 M 233, 236, 78 P 486.

A mass convention of electors can make nominations of candidates for public office only where such convention was called for that purpose. If the convention could not make such nominations because the call of the convention did not set forth such purpose, a committee appointed by the convention was without authority to

make the nominations. *State ex rel. Athey v. Hays*, 31 M 233, 236, 78 P 486.

Convention Representation

Convention representation is a gathering of electors springing from the electors who compose a political party or adhere to a political principle. *State ex rel. Metcalf v. Johnson*, 18 M 548, 552, 46 P 533.

"Conventions" Defined

Under this section and sections 23-802, and 23-803, conventions are meant to be organized assemblages of electors or delegates fairly representing the entire body of electors of the political party which may lawfully vote for the candidates of any such convention. *State ex rel. Woody v. Rotwitt*, 18 M 502, 506, 507, 46 P 370.

The supreme court, without directly citing this section, defined a political convention as an organized assemblage of electors or delegates representing a political party or principle. *State ex rel. Metcalf v. Johnson*, 18 M 548, 552, 46 P 533.

District Comprising Two Counties

This section and sections 23-802 and 23-803, recognize systems of conventions and primary meetings held to nominate candidates for public office. Such conventions are meant to be organized assemblages of electors or delegates fairly representing the entire body of electors of the political party which may lawfully vote for the candidates of any such convention. Where, therefore, a judicial district comprises two counties, the nomination of a candidate for district judge by a political party at a county convention composed of delegates of that county alone, without the other having been represented or having an opportunity to participate in the proceedings, such action was a mere nullity. *State ex rel. Woody v. Rotwitt*, 18 M 502, 506, 46 P 370.

A mass meeting in one of two counties composing a judicial district, called without notice, except to those present at the final adjournment of a regular county convention, for the announced purpose of formulating a protest to the action of the convention, has no authority to name delegates to represent the county in a state and judicial convention in place of those named by the regular county convention; and delegates named by such meeting, though recognized and seated by the state

convention, have no authority to represent the county in the judicial convention, and a nomination made by it is invalid, because the electors of both counties are not represented. *State ex rel. Scharnikow v. Hogan*, 24 M 383, 392, 62 P 583. See also *State ex rel. Gilchrist v. Weston*, 27 M 185, 191, 70 P 519, 70 P 1134.

New Political Parties

Since the Initiative Primary Law (23-901 et seq.) was not enacted to prevent nominations but to subject them to public regulation and control as far as possible and did not repeal this section so far as it relates to political parties coming into existence after the holding of the primary election, this section was the only law under which the socialist party organized in September, 1922, could proceed to make its nominations. *State ex rel. Mills v. Stewart*, 64 M 453, 464, 210 P 465.

Under chapter 7, Laws of 1927 (23-909), a political party which did not cast at least three per cent of the total vote cast for representative in Congress at the next preceding general election, or a new party about to be formed, may make nominations for public office by the convention system provided for by this section. *State ex rel. Foster v. Mountjoy*, 83 M 162, 168, 271 P 446.

Nomination by Political Club

Where a political club composed of four hundred members nominated a county ticket at a meeting of some fifty members, and no call for a convention was ever made nor any person ever elected as a delegate to a convention, nor any notice given that a convention was to be held, such proceedings were not those of an organized assemblage of delegates representing a political party within the meaning of this section. *State ex rel. Russell v. Tooker*, 18 M 540, 543, 46 P 530, explained in 24 M 383, 392, 62 P 583.

Partisan Nominations

Partisan nominations of candidates for judicial offices are recognized by this section and sections 23-802, 23-803. *State ex rel. Holliday v. O'Leary*, 43 M 157, 167, 115 P 204.

Presidential Electors—Nomination

The nomination for presidential electors is a nomination for public office. *State ex rel. Wheeler v. Stewart*, 71 M 358, 363, 230 P 366.

Special Elections

Since the Primary Election Law (23-901 et seq.) is made applicable only to general elections, fails to provide for the nomination of candidates to be voted for at special elections, and does not repeal prior statutes on the latter subject, this section and section 23-804, are still in force, and therefore nomination of candidates to be voted for at special elections must be made pursuant to the provisions of either this section or section 59-707. *State ex rel. Reibold v. Dunean*, 55 M 380, 177 P 250, distinguished in 116 M 283, 291, 149 P 2d 913.

Validity of Nominations

Where it appeared that a convention was participated in by twenty-one electors of the county who appeared in response to personal invitation, and after acting as a county convention then proceeded to hold a state convention, no call for a state convention having ever been given or delegates elected to either convention, and no notice published throughout the state or county of the gathering of the new party, the nomination of a county ticket and presidential electors by such convention was a nullity. *State ex rel. Metcalf v. Johnson*, 18 M 548, 552, 46 P 533.

References

State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

Collateral References

Elections—125.

29 C.J.S. Elections §§ 91, 104.

25 Am. Jur. 2d 814, Elections, § 128.

Constitutionality of statute relating to power of committee or officials of political party. 62 ALR 924.

Extent of power of political party, committee or officer to exclude persons from participating in its primaries as voter or candidates. 70 ALR 1501; 88 ALR 473; 97 ALR 685 and 151 ALR 1121.

Political principles or affiliations as ground for refusal of government officials to take steps necessary to representation of party or candidate upon official ticket. 130 ALR 1471.

Personal liability of public officer for breach of duty in respect of election or primary election laws. 153 ALR 109.

23-802. (613) Certificates of nomination, what to contain. All nominations made by such convention or primary meeting must be certified as follows: The certificate of nomination, which must be in writing, must con-

tain the name of each person nominated, his residence, his business, his business address, and the office for which he is named, and must designate, in not more than five words, the party or principle which such convention or primary meeting represents, and it must be signed by the presiding officer and secretary of such convention or primary meeting, who must add to their signatures their respective places of residence, their business, and business addresses. Such certificates must be delivered by the secretary or the president of such convention or primary meeting to the secretary of the state or to the county clerk, as in this chapter required.

History: En. Sec. 3, p. 136, L. 1889; re-en. Sec. 1311, Pol. C. 1895; re-en. Sec. 522, Rev. C. 1907; re-en. Sec. 613, R. C. M. 1921. Cal. Pol. C. Sec. 1187.

All Convention Nominations Included In One Certificate

Under this section all convention nominations of one party must be contained in a single certificate, and a separate certificate for each nominee cannot be filed. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

Purpose

The requirement of this section is evidently designed to guide the proper officer

in printing the ballot, so that he may group the candidates and distinguish them by this designation. State ex rel. Kennedy v. Martin, 24 M 403, 406, 62 P 588.

References

State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

Collateral References

Elections—138.
29 C.J.S. Elections § 135.
25 Am. Jur. 2d 833, Elections, § 141.

23-803. (614) Certificate, where filed. Certificates of nomination of candidates for the legislative assembly and for offices to be filled by the electors of the entire state, or of any division or district greater than a county, must be filed with the secretary of state. Certificates of nomination for county, township, and precinct officers must be filed with the clerks of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal officers must be filed with the clerks of the respective municipal corporations wherein the officers are to be elected.

History: En. Sec. 4, p. 136, L. 1889; re-en. Sec. 1312, Pol. C. 1895; re-en. Sec. 523, Rev. C. 1907; re-en. Sec. 614, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1967. Cal. Pol. C. Sec. 1189.

Candidate for District Judge

A district judge is a state officer, but there is no provision in this section requiring the certificate of nomination of such an officer from a district containing only a single county to be filed with the secretary of state. In this regard, therefore, there is no specific provision enjoining any duty upon this officer. In view of the policy of the statute and constitution, however, which appears to be that the nomination and election of officers in any county of the state shall be controlled exclusively by the electors therein and their local officers, the certificate of a candidate for district judge of a district containing only one county is, like that of a county officer, to be filed with the clerk of the county. State ex rel. Doran v. Hays, 27 M 174, 177, 70 P 321.

Misnomer in Party Name

An error in the certificate of nomination filed in accordance with this section consisting of a misnomer in the name of the party which the convention represented, renders such certificate insufficient and void. State ex rel. Scharnikow v. Hogan, 24 M 397, 401, 62 P 683.

References

State ex rel. Woody v. Rotwitt, 18 M 502, 506, 46 P 370; State ex rel. Scharnikow v. Hogan, 24 M 379, 380, 62 P 493; State ex rel. Holliday v. O'Leary, 43 M 157, 167, 115 P 204; State ex rel. Wheeler v. Stewart, 71 M 358, 365, 230 P 366; State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 648.

Collateral References

Elections—139.
29 C.J.S. Elections § 137.
25 Am. Jur. 2d 831, Elections, § 140.

23-804. (615) Certificates of nomination otherwise made. Candidates for public office may be nominated otherwise than by convention or primary meeting in the manner following:

A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in section 23-802, must be signed by electors residing within the state and district, or political division in and for which the officer or officers are to be elected, in the following required numbers:

The number of signatures must not be less in number than five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election, whether the said candidate be state, county, township, municipal, or any other political division or subdivision of state or county; but the signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence, his business, and his business address. Any such certificate may be filed as provided for in the next preceding section of this chapter, in the manner and with the same effect as a certificate of nomination made by a party convention or primary meeting.

History: En. Sec. 5, p. 136, L. 1889; re-en. Sec. 1313, Pol. C. 1895; re-en. Sec. 524, Rev. C. 1907; re-en. Sec. 615, R. C. M. 1921. Cal. Pol. C. Sec. 1188.

Application of Section

This section, providing that candidates for public office may be nominated otherwise than by convention or primary meeting, to wit, by petition, is applicable to the nomination of independent candidates. *State ex rel. Wheeler v. Stewart*, 71 M 358, 360, 230 P 366.

Nomination by Certificate

Court refrained from deciding the question whether, under this section, a certificate of nomination, to be valid, must contain the designation of a party or principle, but was disposed to regard it as contemplating simply the candidacy of one not a nominee of a party—an independent or elector's candidate. When all the statutes were read with relation to the different conditions contemplated, the court was not prepared to say that the information referred to in this section necessarily extended to more than the name, residence, business address, and the office for which the candidate was nominated. It was decided that a candidate for district judge could not, by petitions, have his name placed on the ticket of a regular party in existence. *State ex rel. Woody v. Rotwitt*, 18 M 502, 509, 46 P 370.

Nominee To Fill Vacancy

The primary election law applies to all situations where it can be made reasonably operative. Where a county treasurer,

elected in November, 1942 for a four-year term ending March 1, 1947, died after he had qualified and before commencement of the term for which he was elected, the appointee of the county commissioners under section 5, article XVI of the constitution would hold until next general election on November 7, 1944, and procedure under Primary Law (23-901 et seq. and section 5, article XVI of the constitution) is controlling. A vacancy occurring after the primary and prior to the general election or at any other inapplicable time authorizes nomination under this section or section 23-801, section 23-909 then not applying. *LaBorde v. McGrath*, 116 M 283, 286, 149 P 2d 913, distinguished in 117 M 160, 170, 157 P 2d 108 and 130 M 202, 208, 299 P 2d 446.

Nominees to be placed on ballot at special election to fill vacancy resulting from death of representative in Congress must be chosen pursuant to this section or section 23-801 and not by special nominating election. *Bottomly v. Ford*, 117 M 160, 167, 157 P 2d 108.

Presidential Electors

A candidate for presidential elector, is a candidate for public office within the meaning of this section and may therefore be nominated independently. *State ex rel. Wheeler v. Stewart*, 71 M 358, 360, 230 P 366.

References

State ex rel. Haviland v. Beadle, 42 M 174, 176, 111 P 720; *State ex rel. Holliday v. O'Leary*, 43 M 157, 165, 115 P 204; *State ex rel. Rowe v. Kehoe*, 49 M 582, 584, 144 P 162; *State ex rel. Reibold v.*

Duncan, 55 M 380, 383, 177 P 250; State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Collateral References

Elections 143, 144.
29 C.J.S. Elections §§ 108-110, 135.

23-805. (616) Certificate not to contain certain things—one person not to be nominated for more than one office. No certificate of nomination must contain the name of more than one candidate for each office to be filled. No person must join in nominating more than one person for each office to be filled, and no person must accept a nomination to more than one office.

History: En. Sec. 6, p. 136, L. 1889; re-en. Sec. 1314, Pol. C. 1895; re-en. Sec. 525, Rev. C. 1907; re-en. Sec. 616, R. C. M. 1921. Cal. Pol. C. Sec. 1190.

Nomination of Two Tickets

Where the same committee appointed by a mass convention nominated two tickets, composed of different persons as candidates for the same offices, such a proceeding was not only wrong, but ille-

gal, and was within the inhibition of this section. This could not have been done by the convention, nor could it be done by the committee, and the names of such nominees were not entitled to places on the official ballot. State ex rel. Athey v. Hays, 31 M 233, 237, 78 P 486.

Collateral References

Elections 144.
29 C.J.S. Elections §§ 108, 135.

23-806. (617) Certificates to be preserved one year. The secretary of state and the clerks of the several counties and of the several municipal corporations must cause to be preserved in their respective offices for one year all certificates of nomination filed under the provisions of this chapter. All such certificates must be open to public inspection under proper regulations to be made by the officers with whom the same are filed.

History: En. Sec. 7, p. 137, L. 1889; re-en. Sec. 1315, Pol. C. 1895; re-en. Sec. 526, Rev. C. 1907; re-en. Sec. 617, R. C. M. 1921. Cal. Pol. C. Sec. 1191.

References

State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 648.

Collateral References

Elections 145.
29 C.J.S. Elections § 137.
25 Am. Jur. 2d 831, Elections, § 140.

23-807. (618) When certificates to be filed. Certificates of nomination to be filed with the secretary of state must be filed with the secretary of state not less than sixty (60) days before the date fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not less than sixty (60) days before the election. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections or to fill vacancies.

History: En. Sec. 8, p. 137, L. 1889; amd. Sec. 1316, Pol. C. 1895; re-en. Sec. 527, Rev. C. 1907; re-en. Sec. 618, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1925; amd. Sec. 1, Ch. 105, L. 1943; amd. Sec. 1, Ch. 259, L. 1947; amd. Sec. 1, Ch. 160, L. 1949; amd. Sec. 5, Ch. 156, L. 1965. Cal. Pol. C. Sec. 1192.

References

State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 646.

Collateral References

Elections 145.
29 C.J.S. Elections § 137.

DECISIONS UNDER FORMER LAW

Time of Filing

Section 1316, Pol. C. 1895, 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.

23-808. (618.1) Nominees to pay prescribed filing fee. All candidates nominated under the provisions of this chapter, shall, upon filing the certificate of nomination as provided by sections 23-803 and 23-807, pay to the officer with whom the certificates of nomination are required to be filed, the fees provided by section 23-910, and such filing fee shall be paid by every person whose name appears upon the ballot at any general election, regardless of the method pursued to secure nomination, provided, however, that only one filing fee shall be required from any candidate, regardless of the method used in having his name placed upon such general election ballot.

History: En. Sec. 1, Ch. 28, L. 1933.

Collateral References

Elections—139, 145.

29 C.J.S. Elections § 137.

25 Am. Jur. 2d 879, Elections, § 132.

Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR 2d 864.

23-809. (619) Secretary of state to certify to county clerk names of persons nominated. Not less than forty-five (45) days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state.

History: En. Sec. 9, p. 137, L. 1889; re-en. Sec. 1317, Pol. C. 1895; re-en. Sec. 528, Rev. C. 1907; re-en. Sec. 619, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1925; amd. Sec. 1, Ch. 104, L. 1943; amd. Sec. 6, Ch. 156, L. 1965. Cal. Pol. C. Sec. 1193.

M 379, 380, 62 P 493; *State ex rel. Wheeler v. Stewart*, 71 M 358, 363, 230 P 366; *State ex rel. Bevan v. Mountjoy*, 82 M 594, 597, 268 P 558.

Collateral References

Elections—156.

29 C.J.S. Elections § 135.

References

State ex rel. Scharnikow v. Hogan, 24

DECISIONS UNDER FORMER LAW

Party Candidate

It is by means of the certificate mentioned in section 1317, Pol. C. 1895 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 organization, under the name of the party making such nomination. *State ex rel. Woody v. Rotwitt*, 18 M 502, 510, 511, 46 P 370.

Vacancies in Board of Railroad Commissioners

The provisions of this section, as amended in 1943, a general statute, are in conflict with the special provisions of section 72-101, a special statute, which applies specifically and exclusively to the filling of vacancies occurring in the board of railroad commissioners of the state of Montana. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 646.

The time limitations prescribed in this section, as amended in 1943, has no application to an election to fill a vacancy in the board of railroad commis-

sioners created by the resignation of a regularly elected railroad commissioner where such commissioner defers and withholds the effective date of his resignation until but 32 days remain between

such effective date and the day of the general election. *State ex rel. Mitchell v. District Court*, 128 M 325, 275 P 2d 642, 647.

23-810. (620) Declination of nomination—municipal elections. Whenever any person nominated for public office, as in this chapter provided, shall at least twenty days before election, except in the case of municipal election, in writing, signed by him, notify the office with whom the certificate nominating him is by this chapter to be filed, that he declines such nomination, such nomination shall be void. In municipal elections, such declination shall be made at least five days before the election.

History: En. Sec. 11, p. 138, L. 1889; re-en. Sec. 1319, Pol. C. 1895; re-en. Sec. 529, Rev. C. 1907; re-en. Sec. 620, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1925. Cal. Pol. C. Sec. 1192.

election. *Stackpole v. Hallahan*, 16 M 40, 51, 40 P 80.

References

State ex rel. Kennedy v. Martin, 24 M 403, 408, 62 P 588.

Collateral References

Elections—146.
29 C.J.S. Elections § 95.

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

23-811. (621) Vacancies may be filled by further certificates. When a vacancy occurs in the office of a candidate for either house of the legislative assembly after the primary election and before the printing of the tickets for the general election, or if a candidate declines the nomination as in this chapter provided, or if any certificate of nomination is or becomes insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nomination. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. If the vacancy occurs in a multicounty senatorial or representative district it shall be filled by a committee consisting of three (3) members from each county in the senatorial or representative district. The three (3) members shall be selected by the central committee, in each county, of the political party of the person for whom the new nominee is to be substituted. The chairman and secretary of such committee must thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made must be executed in the manner prescribed for the original certificate of nomination, and has the same force and effect as an original certificate of nomination. When such certificate is filed with the secretary of state he must, in certifying the nominations to the various county clerks, insert the name of the person who has thus been nominated to fill a vacancy in place of the name of the original nominee. And in the event he has already transmitted his certificate he must forthwith certify to the clerks of

the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted.

History: En. Sec. 12, p. 138, L. 1889; re-en. Sec. 1320, Pol. C. 1895; re-en. Sec. 530, Rev. C. 1907; re-en. Sec. 621, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1967. Cal. Pol. C. Sec. 1192.

Errors In Certificates

Where a convention of a political party has made a nomination, and authorized its committee to fill vacancies, and there is an error in the certificate of nomination filed, consisting of a misnomer of the party which the convention represented, such error renders the certificate void, thereby creating a vacancy to be filled by the committee as provided in this section, construed as section 1320 of the Political Code of 1895. State ex rel. Scharnikow v. Hogan, 24 M 397, 399, 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, within the meaning of this section, and entitles the proper committee to fill the vacancy. State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

Nominations by Committees

This section does not forbid a political convention from appointing and delegating to a committee power to make nominations for office, and a nomination made

by such committee after the adjournment of the convention is in effect the act of the convention, and therefore valid. State ex rel. Pigott v. Benton, 13 M 306, 325, 34 P 301.

Nominations by Committees—Filing of Certificates

This section is silent touching the time within which must be filed the certificate of nomination made by a committee to fill a vacancy occasioned by the insufficiency of the certificate of the original nomination. When a convention has made a nomination, 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. Scharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

References

State ex rel. Kennedy v. Martin, 24 M 403, 408, 62 P 588.

Collateral References

Elections—147.

29 C.J.S. Elections §§ 93, 94, 136, 166.

23-812. (622) Errors, how corrected. Whenever it appears by affidavit that an error or omission has occurred in the publication of the name or description of a candidate nominated for office, or in the printing of the ballots, the district court of the county may, upon application of any elector, by order require the county or municipal clerk to correct such error, or to show cause why such error should not be corrected.

History: En. Sec. 19, p. 140, L. 1889; re-en. Sec. 1322, Pol. C. 1895; re-en. Sec. 532, Rev. C. 1907; re-en. Sec. 622, R. C. M. 1921.

Construction of Section

This section contemplates and authorizes the institution of proceedings to cure, not alone clerical omissions or errors, but likewise extends to instances of defects by way of omissions of names of candidates from the ballot, as well as to erroneous insertions of names of persons as candidates who are not in fact entitled

to be so regarded, and whose names, unless stricken off the official ballot, will be erroneously printed thereon. State ex rel. Brooks v. Fransham, 19 M 273, 288, 48 P 1.

References

State ex rel. Scharnikow v. Hogan, 24 M 383, 392, 62 P 583.

Collateral References

Elections—158.

29 C.J.S. Elections §§ 90, 138.

23-813. (623) Qualification of voter at primary election. No person shall be entitled to vote at any caucus, primary meeting, or election, held by

any political party, except he be an elector of the state and county within which such caucus, primary meeting, or election is held, and a legal resident of the precinct or district within which such caucus, primary meeting, or election is held, and the limits of which said precinct or district are fixed and prescribed by the regularly chosen and recognized representatives of the party issuing the call for such caucus, primary meeting, or election.

History: En. Sec. 1330, Pol. C. 1895; re-en. Sec. 533, Rev. C. 1907; re-en. Sec. 623, R. C. M. 1921.

Collateral References

Elections—125, 126 (4).
29 C.J.S. Elections §§ 91, 104, 115.
25 Am. Jur. 2d 853, Elections, § 158.

23-814. (624) Who entitled to vote. No person shall be entitled to vote at any caucus, primary meeting, or election, who is not identified with the political party holding such caucus, primary meeting, or election, or who does not intend to act with such political party at the ensuing election, whose candidates are to be nominated at such caucus or primary meeting. And no person, having voted at any primary meeting or election of any political party whose candidates are to be or have been nominated, shall be permitted to vote at the primary meeting or election of any other political party whose candidates are to be or have been nominated and to be voted for at the same general or special election.

History: Ap. p. Sec. 1331, Pol. C. 1895; amd. Sec. 1, p. 115, L. 1901; re-en. Sec. 534, Rev. C. 1907; re-en. Sec. 624, R. C. M. 1921.

Collateral References

Elections—125, 126 (4).
29 C.J.S. Elections §§ 91, 104, 115 et seq.
25 Am. Jur. 2d 854, Elections, § 159.

23-815. (625) Judges. Three judges, who shall be legal voters in the precinct where such caucus or primary meeting is held, shall be chosen by the qualified voters of said precinct or district, who are present at the opening of such caucus or primary meeting, and said judges shall be empowered to administer oaths and affirmations, and they shall decide all questions relating to the qualifications of those voting or offering to vote at such caucus or primary meeting, and they shall correctly count all votes cast and certify the results of the same.

History: En. Sec. 1332, Pol. C. 1895; re-en. Sec. 535, Rev. C. 1907; re-en. Sec. 625, R. C. M. 1921.

23-816. (626) Clerk. The judges shall select one of their number who shall act as clerk, and the clerk must keep a true record of each and every person voting, with their residence, giving the street and number and post-office address.

History: En. Sec. 1333, Pol. C. 1895; re-en. Sec. 536, Rev. C. 1907; re-en. Sec. 626, R. C. M. 1921. Cal. Pol. C. Sec. 1229.

Collateral References

Elections—125.
29 C.J.S. Elections § 91.
25 Am. Jur. 2d 730, Elections, § 44.

23-817. (627) Challenges—oath—penalty. Any qualified voter may challenge the right of any person offering to vote at such caucus or primary meeting, and in the event of such challenge, the person challenged shall

swear to and subscribe an oath administered by one of the judges, which oath shall be substantially as follows:

"I do solemnly swear that I am a citizen of the United States, and am an elector of this county and of this precinct where this primary is now being held, that I have been and now am identified with the party or that it is my intention bona fide to act with the party, and identify myself with the same at the ensuing election, and that I have not voted at any primary meeting or election of any other political party whose candidates are to be voted for at the next general or special election."

If the challenged party takes the oath above prescribed he is entitled to vote; provided, in case a person taking the oath as aforesaid shall intentionally make false answers to any questions put to him by any one of the judges concerning his right to vote at such caucus or primary meeting or election, he shall, upon conviction be deemed guilty of perjury, and shall be punished by imprisonment in the penitentiary for term of not less than one year nor more than three years.

History: Ap. p. Sec. 1334, Pol. C. 1895; amd. Sec. 2, p. 115, L. 1901; re-en. Sec. 537, Rev. C. 1907; re-en. Sec. 627, R. C. M. 1921. Cal. Pol. C. Sec. 1230.

Collateral References
Elections⌞125; Perjury⌞5.
29 C.J.S. Elections § 91; 70 C.J.S. Perjury § 21.
26 Am. Jur. 2d 67, Elections, § 237.

23-818. (628) Fraudulent voting or counting. It shall be unlawful for any judge of any caucus for primary meeting or primary election to knowingly receive the vote of any person whom he knows is not entitled to vote, or to fraudulently or wrongfully deposit any ballot or ballots in the ballot box, or take any ballot or ballots from the ballot box of said caucus or primary election, or fraudulently or wrongfully mix any ballots with those cast at such caucus or primary election, or knowingly make any false count, canvass, statement, or return of the ballots cast or vote taken at such caucus or primary election.

History: En. Sec. 1335, Pol. C. 1895; re-en. Sec. 538, Rev. C. 1907; re-en. Sec. 628, R. C. M. 1921.

Collateral References
Elections⌞313.
29 C.J.S. Elections § 327.

23-819. (629) Unlawful interference. No person shall, by bribery or other improper means or device, directly or indirectly, attempt to influence any elector in the casting of any ballot at such caucus or primary meeting, or deter him in the deposit of his ballot, or interfere or hinder any voter at such caucus or primary meeting in the full and free exercise of his right of suffrage at such caucus or primary meeting.

History: En. Sec. 1336, Pol. C. 1895; re-en. Sec. 539, Rev. C. 1907; re-en. Sec. 629, R. C. M. 1921.

Collateral References
Elections⌞319.
29 C.J.S. Elections § 330.

Cross-Reference

Bribery of electors at conventions, penalty, sec. 94-1418.

23-820. (630) Penalties. Any person or persons violating any of the provisions of this act, except as provided in section 23-817, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a

fine of not less than fifty dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 3, p. 116, L. 1901;
re-en. Sec. 540, Rev. C. 1907; re-en. Sec.
630, R. C. M. 1921.

Collateral References
Elections ⇨ 323.
29 C.J.S. Elections § 355 (1).

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

- Section 23-901. Construction of law.
23-902. Date of holding primary election—purpose.
23-903. Primary nominating election notices.
23-904. Application of law to cities and towns.
23-905. Emergency clause.
23-906. Counting of ballots.
23-907. Form of tally sheets—canvass of votes.
23-908. Pollbooks, precinct register, and tally sheets to be sealed and returned.
23-909. Political party nominations made exclusively as herein provided.
23-910. Petitions for nomination to be filed.
23-911. Form of petition for nomination.
23-912. Time for filing petitions for nominations.
23-913. Register of candidates.
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23-929. County and city central committeemen, how elected.
23-930. Repealed.
23-931. Penalty for violation of law.
23-932. Repealed.
23-933. Penalty for bribery, etc.
23-934. General penal laws applicable.
23-935. Forgery and suppression of nomination papers.
23-936. General laws applicable to this enactment.

23-901. (631) Construction of law. Whenever the provisions of this law in operation prove to be of doubtful or uncertain meaning, or not sufficiently explicit in directions and details, the general laws of Montana, and especially the election and registration laws, and the customs, practice, usage, and forms thereunder, in the same circumstances or under like conditions, shall be followed in the construction and operation of this law, to the end that the protection of the spirit and intention of said laws shall be extended so far as possible to all primary elections, and especially to all primary nominating elections provided for by this law. If this proposed law

shall be approved and enacted by the people of Montana, the title of this bill shall stand as the title of the law.

History: En. Sec. 1, Initiative Measure Nov. 1912; re-en. Sec. 631, R. C. M. 1921. Cal. Pol. C. Secs. 1357-1380.

Construction of Statutes

The so-called antifusion statute (23-1105, 23-1113 to 23-1116) was not impliedly repealed by the Primary Election Law (23-901 et seq.). State ex rel. Metcalf v. Wileman, 49 M 436, 437, 143 P 565.

Under the rule that where two statutes are enacted at the same time on the same subject, they must be construed together and effect given to both if possible, held that the provisions of the Primary Law (23-901 et seq.) and the Corrupt Practices Act (94-1427 et seq.), in so far as they refer to election contests, provide a complete and workable system, omitting section 30 of the Primary Laws (omitted

from code). *Wilkinson v. La Combe*, 59 M 518, 520, 197 P 836.

Nominees to be placed on ballot at special election to fill vacancy resulting from death of representative in Congress must be chosen pursuant to section 23-801 or section 23-804 and not by special primary nominating election. *Bottomly v. Ford*, 117 M 160, 162, 157 P 2d 108.

References

Cadle v. Town of Baker, 51 M 176, 181, 149 P 960; *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060; State ex rel. *Mills v. Stewart*, 64 M 453, 464, 210 P 465; *LaBorde v. McGrath*, 116 M 283, 288, 149 P 2d 913.

Collateral References

Elections \hookrightarrow 126 (1).
29 C.J.S. Elections §§ 91, 111.

23-902. (632) Date of holding primary election—purpose. On the first Tuesday of June, preceding any general election not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections, at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this act in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this act, for United States senators and representatives, in Congress and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within the state, or any subdivision of this state, and also for choosing and electing county central committeemen and committeewomen by the several parties subject to the provisions of this act.

History: En. Sec. 2, Initiative Measure Nov. 1912; re-en. Sec. 632, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1925; amd. Sec. 1, Ch. 3, L. 1927; amd. Sec. 12, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 1, Ch. 266, L. 1955; amd. Sec. 1, Ch. 274, L. 1959; amd. Sec. 2, Ch. 156, L. 1965; amd. Sec. 1, Ch. 151, L. 1967.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. *Mills v. Stewart*, 64 M 453, 463, 210 P 465; State ex rel. *Foster v. Mountjoy*, 83 M 162, 166, 271 P 446; State ex rel. *Wulf v. McGrath*, 111 M 96, 99, 106 P 2d 183; *LaBorde v. McGrath*, 116 M 283, 288, 149 P 2d 913; *Bottomly v. Ford*, 117 M 160, 164, 157 P 2d 108.

Collateral References

Elections \hookrightarrow 126 (1).
29 C.J.S. Elections §§ 91, 111.
25 Am. Jur. 2d 839, Elections, § 147.

Determination of controversies within political party. 20 ALR 1035 and 169 ALR 1281.

Validity of public election as affected by fact that it was held at time other than that fixed by law. 121 ALR 987.

Constitutionality, construction, and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office. 153 ALR 641.

Power of political party or its officials to withdraw nominations. 155 ALR 186.

23-903. (633) Primary nominating election notices. It shall be the duty of the county clerk, twenty (20) days before any primary nominating election, to prepare printed notices of such election, and mail two of said notices to each judge and clerk of election in each precinct: and it shall be the duty of the several judges and clerks immediately to post said notices in public places in their respective precincts. Said notices shall be substantially in the following form:

PRIMARY NOMINATING ELECTION NOTICE

Notice is hereby given that on _____, the _____ day of _____, 19____, at the _____, in the precinct of _____, Montana, a primary nominating election will be held at which the (insert the names of political parties subject to this law) will choose their candidates for state, district, county, precinct and other offices, namely (here name the offices to be filled, including a senator in Congress, delegates to any constitutional convention then called, and candidates for county central committeemen to be elected); which election will be held at ten o'clock a. m., and will continue until eight o'clock p. m. of said day; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock p. m. of said day, when they must be closed; provided further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed.

Dated this _____ day of _____, 19____.

_____, county clerk.

History: En. Sec. 3, Initiative Measure Nov. 1912; re-en. Sec. 633, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1945; amd. Sec. 2, Ch. 207, L. 1955.

64 M 453, 463, 210 P 465; State ex rel. Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

Collateral References

Elections 126 (2).
29 C.J.S. Elections § 117.

23-904. (634) Application of law to cities and towns. The nomination of candidates for municipal offices by the political parties, subject to the provisions of this law, shall be governed by this law in all incorporated towns and cities of this state having a population of thirty-five hundred and upward as shown by the last preceding national or state census. All petitions by the members of such political parties for placing the names of candidates for nomination for such municipal offices on the primary nominating ballots of the several political parties shall be filed with the city clerk of said several towns and cities, and it shall be the duty of such officers to prepare and issue notices of election for such primary nominating elections in like manner as the several county clerks perform similar duties for nomination by such political parties for county offices at primary nominating elections. The duties imposed by this law on the county clerks at primary nominating elections are hereby, as to said towns and cities, designated to be the duties of the city clerk of said towns and cities as to primary

nominating elections of the political parties, subject to the provisions of this law, provided, that in cities and towns the primary nominating election shall be held on the fourteenth day preceding their municipal elections. If no petitions for nomination under this law for any office to be filled at the next ensuing annual city election is filed with the city clerk of any city, not less than 30 days before the date fixed by law for the holding of a primary nominating election, then there shall be no primary election held within such city, and the city clerk shall, not less than twenty-five days before the date fixed for the holding of the primary nominating election, certify to the county clerk of the county in which such city or town is situated that no petition for nomination under the direct primary election law for any office to be filled at the next ensuing annual election has been filed with such city clerk within the time provided by law. Under the provisions of this law the lawfully constituted legislative and executive authorities of cities and town, within the provisions of this section, shall have such power and authority over the establishing of municipal voting precincts and wards, municipal boards of judges and clerks of election and other officers of their said municipal election, and other matters pertaining to municipal primary nominating elections required for such cities and towns by this law, such legislative and executive authorities have over the same matter at their municipal elections for choosing the public officers of said cities and towns.

History: En. Sec. 4, Initiative Measure Nov. 1912; amd. Sec. 1, Ch. 88, L. 1921; re-en. Sec. 634, R. C. M. 1921; amd. Sec. 1, Ch. 62, L. 1933.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-905. (635) Emergency clause. This act is declared to be an emergency law, and a law necessary for the immediate preservation of the public peace and safety.

History: En. Sec. 3, Ch. 88, L. 1921; re-en. Sec. 635, R. C. M. 1921.

Collateral References

Elections ⇨ 126 (1).
29 C.J.S. Elections § 91.

23-906. (636) Counting of ballots. Immediately after the closing of the polls at a primary nominating election, the clerks and judges of election shall open the ballot boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each political party, at the same time bunching the tickets cast for each political party together in separate piles, and shall then fasten each pile separately by means of a brass clip, or may use any means which shall effectually fasten each pile together at the top of each ticket. As soon as the clerks and judges have sorted and fastened together the ballots separately for each political party, then they shall take the tally sheets provided by the county clerk and shall count all the ballots for each political party separately until the count is completed, and shall certify to the number of votes for each candidate for nomination for each office upon the ticket of each party. They shall then place the counted ballots in the box. After all have been counted and certified to by the clerks and judges they shall

seal the returns for each of said political parties in separate envelopes, to be returned to the county clerk.

History: En. Sec. 5, Initiative Measure
Nov. 1912; re-en. Sec. 636, R. C. M. 1921.

Wulf v. McGrath, 111 M 96, 100, 106 P
2d 183.

References	Collateral References
Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel.	Elections 126 (7). 29 C.J.S. Elections § 119. 26 Am. Jur. 2d 122, Elections, § 298.

23-907. (637) Form of tally sheets—canvass of votes. Tally sheets for each political party having candidates to be voted for at said primary nominating election shall be furnished for each voting precinct by the county clerk, at the same time and in the same manner that the ballots are furnished and shall be substantially as follows:

(1) Tally sheet of the primary nominating election for
(name of political party) held at precinct, in the county
of on the day of
19....

The names of the candidates shall be placed on the tally sheets and numbered in the order in which they appear on the official and sample ballots, and in each case shall have the proper political party designated at the head thereof.

(2) The following shall be the form of the tally sheets kept by the judges, and clerks of the primary nominating election under this law, containing the number and name of each person voted for, the particular office for nomination to which each person was voted for, the total number of votes cast for each candidate for nomination. The tally or count as it is kept by each of the clerks shall be audibly announced as it proceeds, and shall be kept in the manner and form as follows:

No.	Name of Candi- date	Office	Total Vote Received	No.	Tally 5	No.	Tally 10	No.	Tally 15
12	12	.....	12	.....	12	.....
13	13	.....	13	.....	13	.....
14	14	.....	14	.....	14	.....

The columns for the numbers 12, 13, 14, etc., shall not be over three-eighths of an inch wide. The columns for the tallies shall be three-eighths of an inch wide, the lines shall be three-eighths of an inch apart; every ten lines the captions of the columns shall be reprinted between double-ruled lines in bold-faced small pica, and all figures shall be printed in bold-faced small pica. The tally sheets shall conclude with the following form of certificate:

We hereby certify that at the above primary nominating election and polling place each of the foregoing named persons received the number of votes set opposite his name, as above set forth, for the nomination for the office specified.

....., Chairman.	....., Clerk.
	(Who kept this sheet.)
....., Judge.	....., Clerk.
....., Judge.	....., Clerk.
	(Who kept the other sheet.)

(3) During the counting of the ballots each clerk shall, with pen and ink, keep tally upon one of the above tally sheets, of each political party, and shall total the number of tallies and write the total in ink immediately to the right of the last tallies for each candidate and also in the columns headed "total vote" and shall prepare the certificate thereto above indicated; and immediately upon the completion of the count, all the clerks shall sign the tally sheets, and each of them shall certify which sheets were kept by him; and the chairman and the judges, being satisfied of the correctness of the same, shall then sign all of said tally sheets. The clerks shall then prepare a statement of that portion of the tally sheets showing the number and the 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 thereto, which statement shall be signed by the judges and clerks who complete the count, and shall be immediately posted in a conspicuous place on the outside of said polls, there to remain for ten days.

History: En. Sec. 6, Initiative Measure
Nov. 1912; re-en. Sec. 637, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520,
197 P 836; State ex rel. Mills v. Stewart,
64 M 453, 464, 210 P 465.

23-908. (638) Pollbooks, precinct register, and tally sheets to be sealed and returned. (1) Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall enclose the pollbooks in separate covers and securely seal the same. They shall also enclose the tally sheets in separate envelopes and seal the same securely. They shall also enclose the precinct registers in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely; and they shall in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by anyone until so ordered by the proper court.

(2) When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the two ballot boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be pasted over the keyhole and over the rim of the lid of the box, so that the box cannot

be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in case of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

History: En. Sec. 7, Initiative Measure Nov. 1912; re-en. Sec. 638, R. C. M. 1921; amd. Sec. 6, Ch. 64, L. 1959.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-909. (639) Political party nominations made exclusively as herein provided. Every political party which has cast three per centum (3%) or more of the total vote cast for representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or nonpartisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in Congress, as above, and any new political party about to be formed or organized, [may] make nominations for public office as provided in section 23-801.

History: En. Sec. 8, Initiative Measure Nov. 1912; re-en. Sec. 639, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1927; amd. Sec. 2, Ch. 266, L. 1955; amd. Sec. 2, Ch. 274, L. 1959.

Compiler's Note

The bracketed word "may" was inserted by the compiler, as it was omitted in the 1955 amendment. Such bracketed word was included in the enactment of the 1959 amendment.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; Bottomly v. Ford, 117 M 160, 165, 157 P 2d 108.

Collateral References

Elections—126 (1).
29 C.J.S. Elections §§ 91, 111.
25 Am. Jur. 2d 814, Elections, § 128.

Constitutionality of statute relating to power of committee or officials of political party. 62 ALR 924.

Extent of power of political party, committee or officer to exclude persons from participating in its primaries as voter or candidates. 70 ALR 1501; 88 ALR 473; 97 ALR 685 and 151 ALR 1121.

Political principles or affiliations as ground for refusal of government officials to take steps necessary to representation of party or candidate upon official ticket. 130 ALR 1471.

Personal liability of public officer for breach of duty in respect of election or primary election laws. 153 ALR 109.

Validity of percentage of vote or similar requirement for participation by political parties in primary election. 70 ALR 2d 1162.

DECISIONS UNDER FORMER LAW

Construction

Where the legislature at the same session passes two statutes relating to the same subject matter, it may not be presumed that by enacting the second, without making reference to the first, it intended to limit the scope of the first, but the two must be read together and harmonized, and under that rule, held that chapter 7, Laws of 1927 (this section prior to 1955 amendment), and chapter 126 (23-1001 et seq.), providing for a method of electing presidential electors, etc., are not in irreconcilable conflict. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Independent Party

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 provision of this section (prior to 1927 amendment), 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.

Presidential Electors Are Candidates for Public Office

Candidates for presidential electors are candidates for public office, within the meaning of this section (prior to 1955 amendment), providing for primary elections of candidates for public office. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

When Party May Nominate Candidates by Convention System

Under chapter 7, Laws of 1927 (this section prior to 1955 amendment), a political party which did not cast at least three per cent of the total vote cast for representative in Congress at the next pre-

ceding general election, or a new party about to be formed, may make nominations for public office by the convention system provided for by section 23-801 et seq. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

On application for writ of mandate to compel the secretary of state to place the names of the candidates of the Workers (Communist) party for presidential electors, nominated by it at a mass convention, upon the official ballot for the general election to be held on November 6, 1928, refusal so to do being based on the ground that such party was in existence in 1924, and therefore could not make nominations by convention, held that even if it was in existence prior to the spring primary of 1928, it was nevertheless entitled to a place on the ballot because it failed to cast three per cent of the vote for representative in Congress on the last general election, whether that election be held to be the one of 1924 or of 1926, and therefore could select its candidates by convention. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Whenever it would be impossible or unreasonable for candidates to file and otherwise comply with the Primary Nominating Election Law (23-901 et seq.) the prohibition of this section (prior to 1955 amendment) would not apply and candidates could be nominated pursuant to sections 23-801 and 23-804. LaBorde v. McGrath, 116 M 283, 288, 149 P 2d 913.

When Party Must Nominate Candidates under Primary Election Law

Whenever the provisions of the Primary Nominating Election Law (23-901 et seq.) apply, the convention or primary meeting methods of making nominations provided for in section 23-801, are expressly ruled out and prohibited by this section (prior to 1955 amendment). LaBorde v. McGrath, 116 M 283, 288, 149 P 2d 913.

23-910. (640) Petitions for nomination to be filed. (1) Any person who shall desire to become a candidate for nomination to any office under this law shall send by registered mail, or otherwise, to the secretary of state, county clerk, or city clerk, a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for, and such petition shall be filed and shall be conclusive evidence for the purpose of this law that such elector is a candidate for nomination by his party. All nominating

petitions pertaining to congressional, state or district offices to be voted for in more than one county, for members of the legislative assembly, and for judges of the district court shall be filed in the offices of the secretary of state; for county and district offices, to be voted for in one county only, and for township and precinct offices, shall be filed in the office of the county clerk; and for all city offices in the office of the city clerk.

The fees required to be paid for filing such petitions shall be as follows:

For any office with a salary attached of one thousand dollars (\$1,000.00) or less per annum, ten dollars (\$10.00); except candidates for the state senate and house of representatives shall be fifteen dollars (\$15.00).

For any office with a salary attached of more than one thousand dollars (\$1,000.00) per annum, one per cent (1%) of total amount of annual salary.

For the office of county commissioner in counties of the first class, forty dollars (\$40.00); in counties of the second class, thirty-five dollars (\$35.00); in counties of the third class, thirty dollars (\$30.00); in counties of the fourth class, twenty-five dollars (\$25.00); in all other classes of counties, ten dollars (\$10.00).

For the office the compensation of which consists of fees instead of a salary, five dollars (\$5.00).

For state, county and precinct committeeman, delegates to national conventions and presidential electors no fees shall be required to be paid.

(2) Any person receiving the nomination by having his name written in on the primary ballot, and desiring to accept such nomination, shall file with the secretary of state, county clerk, or city clerk, a written declaration indicating his acceptance of said nomination within ten (10) days after the election at which he receives such nomination, and at the same time he shall pay to the officer with whom such declaration of acceptance is filed the fee above provided for filing a primary nominating petition for such office, provided that such person must receive at least five per cent (5%) of the votes cast for such office at the last preceding general election. No candidate receiving a nomination at a primary election as above provided shall have his name printed on the official ballot for the general election without complying with the provisions of this section.

History: En. Sec. 9, Initiative Measure Nov. 1912; re-en. Sec. 640, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 125, L. 1927; amd. Sec. 1, Ch. 27, L. 1945; amd. Sec. 4, Ch. 194, L. 1967.

Resignation of Successful Write-in Candidate Who Filed Too Late Does Not Create Vacancy

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 under section 23-929. *State ex rel. Wilkin-son v. McGrath*, 111 M 102, 106 P 2d 186.

Where Deceased Candidate Received Majority of Votes, Highest Write-in Candidate Held Elected

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.

Write-in Candidates Must File Within Ten Days after "Election" Day

Construing this section as to when a write-in candidate must file written acceptance, held, that the term "election" means 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.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686; Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Collateral References

Elections 126 (4).
29 C.J.S. Elections §§ 114, 115.
25 Am. Jur. 2d 862, Elections, § 168.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR 2d 604.

23-911. (641) Form of petition for nomination. The petition for nomination required by the preceding section shall be substantially in the following form:

To (name and title of officer with whom petition is to be filed) and to the members of the party and the electors of the (state or counties of comprising the district or county or city, as the case may be) in the State of Montana;

I reside at and my post-office address is I am a candidate of the party for the nomination for the office of at the primary nominating election to be held in the (State of Montana or district, or county or city) on the day of, 19...., and if I am nominated as the candidate of the party for such office I will accept the nomination and will not withdraw, and if I am elected I will qualify as such officer.

If I am nominated and elected I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measure or principles he especially advocates).

.....
Signature of Candidate for Nomination.

Every such petition shall be signed as above by the elector seeking such nomination.

History: En. Sec. 10, Initiative Measure Nov. 1912; re-en. Sec. 641, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 6, L. 1953.

References

Wilkinson v. La Combe, 59 M 518, 520,

197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; Mulholland v. Ayers, 109 M 558, 565, 99 P 2d 234.

Collateral References

Elections 126 (1).
29 C.J.S. Elections §§ 114, 115.

23-912. (644) Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filled by the state at large or by any district consisting of more than one (1) county, and nominating

petitions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not later than five (5) o'clock p. m. on any day not less than forty (40) days before the date of the primary nominating election; and for other offices to be voted for in only one (1) county, or district or city, every such petition shall be filed with the county clerk or city clerk as the case may be, not later than five (5) o'clock p. m. on any day not less than forty (40) days before the date of the primary nominating election.

History: En. Sec. 13, Initiative Measure Nov. 1912; re-en. Sec. 644, R. C. M. 1921; amd. Sec. 2, Ch. 133, L. 1923; amd. Sec. 1, Ch. 19, L. 1955; amd. Sec. 1, Ch. 38, L. 1961.

Computation of Time

Under section 90-407, the time in which an act is to be done must be computed by excluding the first day and including the last, the day on which the act is to be done. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1002, overruling

State ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections—145.
29 C.J.S. Elections § 137.
25 Am. Jur. 2d 862, Elections, § 168.

23-913. (645) Register of candidates. The secretary of state, county clerk and city clerk shall keep a book entitled "Register of Candidates for Nomination at the Primary Nominating Election," and shall enter thereon on different pages of the book for different political parties subject to the provisions of this law, the title of the office sought and the name and residence of each candidate for nomination at the primary election; the name of his political party; the date of receiving the petition for nomination signed by the candidate; and such other information as may aid him in arranging his official ballot for said primary nominating election. Immediately after the canvass of votes cast at a primary nominating election is completed, the county clerk, secretary of state or city clerk, as the case may be, shall enter in his book marked "Register of Nominations," the date of such entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

History: En. Sec. 14, Initiative Measure Nov. 1912; re-en. Sec. 645, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 2, Ch. 6, L. 1953.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

23-914. (646) Register of candidates is public record—disposition of pollbooks, tally sheets, ballots, etc. Such registers of candidates for nomination, and of nominations and petitions, letters and notices, and other writings required by law as soon as filed, shall be public records, and shall be open to public inspection under proper regulations; and when a copy of any such writing is presented at the time the original is filed, or at any time thereafter, and a request is made to have such copy compared and certified, the officers with whom such writing was filed shall forthwith compare such copy with the original on file, and, if necessary, correct the copy and certify and deliver the copy to the person who presented it on payment of

his lawful fees therefor. All such writings, pollbooks, tally sheets, ballots, and ballot stubs pertaining to primary nominating elections under the provisions of this act shall be preserved as other records are for one (1) year after the election to which they pertain, at which time, unless otherwise ordered or restrained by some court, the county clerk shall destroy the ballots and ballot stubs, by fire, without anyone inspecting the same.

History: En. Sec. 15, Initiative Measure Nov. 1912; re-en. Sec. 646, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1949.

References

Wilkinson v. La Combe, 59 M 518, 520,

197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections 126 (4), (5), (7).

29 C.J.S. Elections §§ 114, 115, 118, 119.

23-915. (647) Vacancies in nominations, how filled. The provisions of sections 23-810 and 23-811 shall apply to nominations, or petitions for nominations, made under the provisions of this law, in case of the death of the candidate or his removal from the state or his county or electoral district before the date of the ensuing election, but in no other case. In case of any such vacancy by death or removal from the state, or from the county or electoral district, such vacancy may be filled by the committee which has been given power by the political party or this law to fill such vacancies substantially in the manner provided by said sections 23-810 and 23-811.

History: En. Sec. 16, Initiative Measure Nov. 1912; re-en. Sec. 647, R. C. M. 1921.

M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections 146, 147.

29 C.J.S. Elections §§ 93-95.

25 Am. Jur. 2d 825, Elections, § 137.

Special Election

Neither this section nor section 32 of the Primary Election Law (23-929) empowers a county central committee to make an original nomination of a candidate to an office to be filled at a special election, the officer-elect having died soon after election and before induction into office. State ex rel. Smith v. Duncan, 55

23-916. (648) Arrangement and notice of nominations. Not more than forty days and not less than twenty-five days before the day fixed by law for the primary nominating election the secretary of state shall arrange, in the manner provided by this law, for the arrangement of the names and other information upon the ballots, all the names of and information concerning all the candidates for nomination contained in the valid petitions for nomination which have been filed with him in accordance with the provisions of this law, and he shall forthwith certify the same under the seal of the state, and file the same in his office, and make and transmit a duplicate thereof by registered letter to the county clerk of each county in the state, and he shall also post a duplicate thereof in a conspicuous place in his office and keep the same posted until after said primary nominating election has taken place. In case of emergency the secretary of state may transmit such duplicate by telegraph.

History: En. Sec. 17, Initiative Measure Nov. 1912; re-en. Sec. 648, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1925.

197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel. Bevan v. Mountjoy, 82 M 594, 597, 268 P 558.

References

Wilkinson v. La Combe, 59 M 518, 520,

23-917. (649) Arrangement of ballots and notice. Not more than thirty days, and not less than twenty days before the day fixed by law for the primary nominating election, the county clerk of each county, or the city clerk of each city, as the case may be, subject to the provisions of this law, shall arrange in the manner provided by this law for the arrangement of the names and other information concerning all the candidates and parties named in the valid petitions for nomination which have been filed with him and those which have been certified to him by the secretary of state, in accordance with the provisions of this law; and he shall forthwith certify the same under the official seal of his office, and file the same in his office, and make and post a duplicate thereof in a conspicuous place in his office, and keep the same posted until after the primary nominating election has taken place; and he shall forthwith proceed and cause to be printed, according to law, the colored sample ballots and the official ballots required by this law.

History: En. Sec. 18, Initiative Measure Nov. 1912; re-en. Sec. 649, R. C. M. 1921; amd. Sec. 2, Ch. 12, L. 1925. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Elections 126 (5).
29 C.J.S. Elections § 118.

23-918. (650) Supplies printed and furnished by county. All blanks, ballots, pollbooks and other supplies to be used at any primaries shall be provided, and all expenses necessarily incurred in the preparation for, or conducting such primaries shall be paid out of the treasury of the county in the same manner and by the same officers as in the case of elections.

History: En. Sec. 19, Initiative Measure Nov. 1912; re-en. Sec. 650, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1945. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Elections 126 (5), (6).
29 C.J.S. Elections § 118.

23-919. (651) Ballots, how arranged, printed and voted. (1) At all primary elections there shall be a ballot made up of the several party tickets herein provided for, each of which shall be printed on a separate sheet of white paper, and all of which shall be the same size, and shall be securely fastened together at the top and folded, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election.

(2) The names of all candidates shall be arranged alphabetically according to surnames, under the appropriate title of the respective officers, and under the proper party designation upon the party ticket, except as hereinafter provided. When two or more persons are candidates for nomination for the same office, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by the law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows:

(3) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for the nom-

ination or election to any office, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order as provided herein, be rotated by removing one name from the top of the list for each nomination or office and placing said name or number at the bottom of the list for each successive set of ballot forms; provided, however, that no more than one of said sets shall be used in printing the ballots for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and in no case shall be counted for such person as a candidate upon any other ticket. In case any person is nominated as provided in this act, upon more than one ticket, he shall within ten (10) days after such election file with the secretary of state, county clerk or city clerk, a written document indicating the party designation under which his name is to be printed on the official ballot for the general election, failing in which, his name shall be printed upon the party ticket for which his nominating petition shall have been first filed, and no candidate shall have his name printed on more than one ticket; provided, however, that in the event a candidate whose name has been printed upon the party ticket for which his nominating petition shall have been first filed shall fail of nomination upon the ticket upon which his name is so printed, his name shall not be printed upon any ballot under any party designation; and provided further that nothing in this act shall preclude any elector from having his name printed upon the ballot as an independent candidate.

(4) The ballots with the endorsements shall be printed on white paper in substantially the forms of the Australian ballot, used in general elections, except that the candidates of each party shall be printed on a separate ticket or sheet. After preparing his ballot the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and with official stamp thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling place, vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot box to be marked and designated as the blank ballot box. Immediately after the canvass, the judges of election shall, without examination, destroy the tickets deposited in the blank ballot box.

History: En. Sec. 20, Initiative Measure Nov. 1912; re-en. Sec. 651, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923; amd. Sec. 1, Ch. 14, L. 1927; amd. Sec. 1, Ch. 67, L. 1929.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel. MeHale v. Ayers, 111 M 1, 4, 105 P 2d 686; State ex rel. Wulf v. McGrath, 111 M 96, 98, 106 P 2d 183.

Collateral References

Elections 126 (5), (6).
29 C.J.S. Elections § 118.

Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballots of names of candidates. 78 ALR 398.

Name or form of name to be used in designating candidate on election ballot. 93 ALR 911.

23-920. (652) Official and sample ballots—preparation and number. There shall be printed and furnished for each election precinct a number of ballots equal to the number of voters registered in such voting precinct and entitled to vote as such primary nominating election.

If any political party shall desire sample ballots its political committee may order the same from the county clerk or city clerk who shall collect from such committee an amount sufficient to pay the cost of printing such sample ballots, and such sample ballots after being printed, shall, on the written order of the clerk, be delivered to the committee ordering the same, but no such sample ballot shall be printed except on the order of the county or city clerk. The sample ballots shall be duplicate impressions of the official ballots to be voted, but in no case shall they be white, nor shall said sample ballots have perforated stubs, nor shall they have the same margin either at the top or sides or bottom as the official ballots have, or nearer thereto than twelve points, and the names of the candidates on the tickets composing the same shall not be rotated as required for the official ballots, but shall be impressions of the tickets belonging to lot 1 of each party.

History: En. Sec. 21, Initiative Measure Nov. 1912; re-en. Sec. 652, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1923.

Collateral References

Elections—126 (5).
29 C.J.S. Elections § 118.
26 Am. Jur. 2d 82, Elections, § 254.

References

Wilkinson v. La Combe, 59 M 518, 520,
197 P 836; State ex rel. Mills v. Stewart,
64 M 453, 464, 210 P 465.

23-921. (654) Canvass of returns. (1) On the third day after the close of any primary nominating election, or sooner if all the returns be received, the county clerk, taking to his assistance two justices of the peace of the county of different political parties, if practicable, or two members of the board of county commissioners of the county of different political parties, if possible, or one justice of the peace and one member of the board of county commissioners of the county of different political parties, if practicable, shall proceed to open said returns and make abstracts of the votes. Such abstracts of votes for nominations for governor and for senator in Congress shall be on one separate sheet for each political party, and shall be immediately transmitted to the secretary of state in like manner as other election returns are transmitted to him. Such abstract of votes for nomination of each party for 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, members of Congress, judges of the district court, and members of the legislative assembly, shall be on one sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by the following section.

(2) The abstract of votes for county and precinct offices shall be on another sheet separately for each political party; and it shall be the duty of said clerk immediately to 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 as candidates for county, and precinct offices, respectively, and to notify by mail each person who is so

nominated; provided, that when a tie shall exist between two or more persons for the same nomination by reason of said two or more persons having an equal and the highest number of votes for nomination by one party to one and the same office, the county clerk shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared nominated by his party; and said clerk shall forthwith enter upon his register of nominations the name of the persons thus duly nominated, in like manner as though he had received the highest number of the votes of his party for that nomination; and it shall be the duty of the county clerk of every county, on receipt of the returns of any general primary nominating election, to make out his certificate stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county board of county commissioners at its next term, and the said board shall order the compensation aforesaid to be paid out of the county treasury. In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office.

History: En. Sec. 23, Initiative Measure Nov. 1912; re-en. Sec. 654, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1937; amd. Sec. 5, Ch. 194, L. 1967.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

64 M 453, 464, 210 P 465; State ex rel. Wulf v. McGrath, 111 M 96, 98, 106 P 2d 183.

Collateral References

Elections 126 (7).
29 C.J.S. Elections § 119.
26 Am. Jur. 2d 122, Elections, § 298.

23-922. (655) Duties of county clerk after canvass of vote—state canvass. The county clerk, immediately after making the abstracts of votes given in his county shall make a copy of each of said abstracts and transmit it by mail to the secretary of state, at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor and the state treasurer, to proceed within fifteen days after the primary nominating election, and sooner, if all returns be received, to canvass the votes given for nomination for governor, senator in Congress, 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, members of Congress, judges of the district court, senators and representatives, and all other officers to be voted for by the people of the state, or of any district comprising more than one county; and 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. In case there shall be no choice for nomination for any office by reason of any two or more persons having an equal and the highest number of votes of his party for nomination for either of said offices, the secretary of state shall immediately give notice to the several persons so having the highest and equal number of votes to attend at his office, either in person or by attorney, at a time to be appointed by said secretary, who shall

then and there proceed to publicly decide by lot which of said persons so having an equal number of votes shall be declared duly nominated by his party; and the governor shall issue his proclamation declaring the nomination of such person or persons, as above provided.

History: En. Sec. 24, Initiative Measure Nov. 1912; re-en. Sec. 655, R. C. M. 1921. 64 M 453, 464, 210 P 465; Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

Collateral References

Elections 126 (7), 138.
29 C.J.S. Elections §§ 119, 135.

23-923. (656) Error in ballot or count. Whenever it shall appear by affidavit to the district court or judge thereof, or to the supreme court or judge thereof, 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 or that any error has been or is about to be committed in the printing of the ballots, or that the name of any person or any other matter has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed by any judge or clerk of the primary election, county clerk, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred or is about to occur, such court or judge shall by order require the officer or person or persons charged with the error, wrongful act, or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty and do as the court shall order, or show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order performed. Failure to obey the order of any such court or judge shall be contempt. Any person in interest or aggrieved by the refusal or failure of any person to perform any duty or act required by this law shall, without derogation to any other right or remedy, be entitled to pray for a mandamus in the district court of appropriate jurisdiction, and any proceedings under the provisions of this law shall be immediately heard and decided.

History: En. Sec. 25, Initiative Measure Nov. 1912; re-en. Sec. 656, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 36; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Contempt 20; Elections 126 (5);
Mandamus 74 (1).
17 C.J.S. Contempt § 12; 29 C.J.S. Elections § 118; 55 C.J.S. Mandamus § 142.
26 Am. Jur. 2d 125, Elections, § 302.

23-924. (657) Secretary of state may send for returns. If the returns and abstracts of the primary nominating election of any county in the state shall not be received at the office of the secretary of state within twelve days after said election, the secretary of state shall forthwith send a messenger to the county board of such county, whose duty it shall be to furnish said messenger with a copy of said returns, and the said messenger shall be paid out of the county treasury of such county the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county. The county clerk, whenever it shall be necessary for him to do

so in order to send said returns and abstracts within the time above limited, may send the same by telegraph, the message to be repeated, and the county shall pay the expense of such telegram.

History: En. Sec. 26, Initiative Measure Nov. 1912; re-en. Sec. 657, R. C. M. 1921. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Elections—126 (7).
29 C.J.S. Elections § 119.

23-925. (658) Penalty for official misconduct. If any judge or clerk of a primary nominating election, or other officers or persons on whom any duty is enjoined by this law, shall be guilty of any willful neglect of such duty, or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

History: En. Sec. 27, Initiative Measure Nov. 1912; re-en. Sec. 658, R. C. M. 1921. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Elections—314.
29 C.J.S. Elections § 327.

23-926. (659) Notice of contest. Any person wishing to contest the nomination of any other person to any state, county, district, township, preeinet, or municipal office may give notice in writing to the person whose nomination he intends to contest that his nomination will be contested stating the cause of such contest briefly, within five days from the time said person shall claim to have been nominated.

History: En. Sec. 28, Initiative Measure Nov. 1912; re-en. Sec. 659, R. C. M. 1921. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465; State ex rel. Stone v. District Court, 103 M 515, 518, 63 P 2d 147; State ex rel. Wulf v. McGrath, 111 M 96, 98, 106 P 2d 183.

Cross-Reference

Application of Montana Rules of Civil Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Elections—151.
29 C.J.S. Elections §§ 123, 124, 141, 142.
26 Am. Jur. 2d 153, Elections, § 332.

23-927. (660) Service of notice—contest—how heard. Said notice shall be served in the same manner as a summons issued out of the district court three days before any hearing upon such contest as herein provided shall take place, and shall state the time and place that such hearing shall be had. Upon the return of said notice served to the clerk of the court he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard forthwith by the district court; provided, that if the case cannot be determined by the district court in term time, within fifteen days after the termination of such primary nominating election, the judge of the district court may hear and determine the same at chambers forthwith, and shall make all necessary orders for the trial of

the case and carrying his judgment into effect; provided, that the district court provision of this section shall not apply to township or precinct officers. In case of contest between any persons claiming to be nominated to any township or precinct office, said notice shall be served in the manner aforesaid, and shall be returned to the district court of the county.

History: En. Sec. 29, Initiative Measure Nov. 1912; re-en. Sec. 660, R. C. M. 1921.

NOTE.—Section 30 of this act is omitted from this code in conformity with the decision of the supreme court in *Wilkinson v. La Combe*, 59 M 518, 520, 197 P 836.

References

State ex rel. *Mills v. Stewart*, 64 M 453, 464, 210 P 465.

Collateral References

Elections—151, 154 (1).
29 C.J.S. Elections §§ 123, 124, 141, 142, 148.
26 Am. Jur. 2d 154, Elections, § 333.

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR 2d 1320.

23-928. (661) Contest—how tried and decided. Each party to such contest shall be entitled to subpoenas, and subpoenas duces tecum, as in ordinary cases of law; and the court shall hear and determine the same without the intervention of a jury, in such manner as shall carry into effect the expressed will of a majority of the legal voters of the political party, as indicated by their votes for such nominations, not regarding technicalities or errors in spelling the name of any candidate for such nomination; and the county clerk shall issue a certificate to the person declared to be duly nominated by said court, which shall be conclusive evidence of the right of said person to hold said nomination; provided, that the judgment or decision of the district court in term time, or a decision of the judge thereof in vacation, as the case may be, may be removed to the supreme court in such manner as may be provided for removing such causes from the district court to the supreme court.

History: En. Sec. 31, Initiative Measure Nov. 1912; re-en. Sec. 661, R. C. M. 1921.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. *Mills v. Stewart*, 64 M 453, 464, 210 P 465.

Collateral References

Elections—154 (1-13).
29 C.J.S. Elections §§ 120-129, 148.

Violation of law as regards time for keeping polls open as affecting election results. 66 ALR 1159.

Costs or reimbursement for expenses incident to election contests. 106 ALR 928.

23-929. (662) County and city central committeemen, how elected. (1) There shall be elected by each political party subject to the provisions of this act, at said primary nominating election, two (2) committeemen, one (1) of which shall be a man and one (1) of which shall be a woman, for each election precinct, who shall be residents of such precincts. Any elector may be placed in nomination for committeeman and committeewoman of any precinct by a writing so stating, signed by such elector, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election. The names of the various candidates for precinct committeemen and committeewomen of each political party shall be printed on the ticket of the same in the same manner as other

candidates and the voter shall express his choice among them in like manner as for such other candidates.

(2) The committeemen and committeewomen thus elected shall be the representatives of their political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen and committeewomen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen and committeewomen who reside within the limits of any incorporated city or town shall constitute ex officio the city central committee of each of said respective political parties and shall have the same power and jurisdiction as to the business of their several parties in such city matters that the county committee have in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman and committeewoman shall hold such position for the term of two (2) years from the date of the first meeting of said committee immediately following their election.

(3) In case of a vacancy happening, on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman or committeewoman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurs. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and not inconsistent with the rules and regulations of their state political parties, and to elect two (2) county members of the state central committee, one (1) of which shall be a man and one (1) of which shall be a woman, and the members of the congressional committee, and said committee shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county vacancies and to make rules. In the event there is no county central committee in any county the state central committee of the political party having no county central committee in said county shall appoint a county central committee therein to consist of committeemen and committeewomen as herein provided and said county central committee shall have the same powers and duties as county central committee elected, as now provided by law.

(4) Said county and city central committee shall have the power to make nomination to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election where such vacancy is caused by death, resignation or removal from the electoral district, but not otherwise.

(5) Prior to the state convention of its political party said committee shall meet, and shall organize by electing a chairman and one (1) or more vice-chairmen, provided that either the chairman or first vice-chairman shall be a woman. They shall also elect a secretary and such other officers as they shall think proper. It shall not be necessary for such officers to be precinct committeemen or committeewomen. They may select managing or executive committees and authorize such subcommittees to exercise any

and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than four (4) days before the date of said central committee meeting shall publish said call in a newspaper published at the county seat and shall 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 the same.

(6) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman, committeewoman, or officer of the committee shall be entitled to participate in the proceedings of the committee. No proxy shall be recognized unless held by an elector of the precinct of the committeeman or committeewoman executing the same. In case of the absence of any committeeman or committeewoman and his or her duly appointed proxy, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent such precinct in the convention.

(7) The county convention shall elect delegates and alternate delegates to attend the state convention under the rules and regulations of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of said delegates.

History: En. Sec. 32, Initiative Measure Nov. 1912; re-en. Sec. 662, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1927; amd. Sec. 1, Ch. 34, L. 1929; amd. Sec. 1, Ch. 6, L. 1933; amd. Sec. 1, Ch. 84, L. 1939; amd. Sec. 1, Ch. 64, L. 1951; amd. Sec. 3, Ch. 266, L. 1955; amd. Sec. 1, Ch. 219, L. 1959; amd. Sec. 7, Ch. 156, L. 1965.

Nomination To Fill Vacancy in Office

Neither this section nor section 16 of the Primary Election Law (23-915) empowers a county central committee to make an original nomination of a candidate to an office to be filled at a special election, the officer-elect having died soon 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.

Resignation of Successful Write-in Candidate Who Filed Too Late Does Not Create Vacancy

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 under this section. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections ⇨ 121 (1), (2).
29 C.J.S. Elections §§ 83, 84, 86-88.
25 Am. Jur. 2d 808, Elections, § 123.

23-930. (663) Repealed—Chapter 156, Laws of 1965.

Repeal

This section (Sec. 1, Ch. 1, Ex. L. 1921; Sec. 1, Ch. 159, L. 1925), relating to se-

lection and terms of national committeemen was repealed by Sec. 11, Ch. 156, Laws 1965.

23-931. (665) Penalty for violation of law. If any candidate for nomination shall be guilty of any wrongful or unlawful act or acts at a primary nominating election which would be sufficient, if such wrongful or unlawful act or acts had been done by such candidate at the regular general election, to cause his removal from office, he shall, upon conviction thereof, be removed from office in like manner as though such wrongful or unlawful

act or acts had been committed at a regular general election, notwithstanding that he may have been regularly elected and shall not have been guilty of any wrongful or unlawful act at the election at which he shall have been elected to his office.

History: En. Sec. 33, Initiative Measure Nov. 1912; re-en. Sec. 665, R. C. M. 1921. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Officers \Rightarrow 66.

67 C.J.S. Officers § 60.

23-932. (666) Repealed—Chapter 156, Laws of 1965.

Repeal

This section (Sec. 34 Initiative Measure Nov. 1912; Sec. 666, R. C. M. 1921; Sec. 1, Ch. 8, L. 1953), relating to the formulation of state party platforms, was repealed by Sec. 11, Ch. 156, Laws 1965.

23-933. (667) Penalty for bribery, etc. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe to a voter to induce him to sign any nomination paper, and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such signing, shall be guilty of a misdemeanor, and upon trial and conviction thereof be punished by a fine of not less than twenty-five nor more than one thousand dollars, and by imprisonment in the county jail of not less than ten days nor more than six months.

History: En. Sec. 35, Initiative Measure Nov. 1912; re-en. Sec. 667, R. C. M. 1921.

Cross-Reference

Bribery at elections, penalty, sec. 94-1423.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections \Rightarrow 316.

29 C.J.S. Elections § 343.

26 Am. Jur. 2d 111, Elections, § 287.

Treating of voters by candidate for office as violation of corrupt practices or similar acts. 2 ALR 402.

Constitutionality of Corrupt Practices Acts. 69 ALR 377.

Construction of statute prohibiting solicitation or acceptance of contributions or subscriptions by public officer or employee. 85 ALR 1146.

Statements by candidates regarding salaries or fees of office as violation of Corrupt Practices Acts or bribery. 100 ALR 493.

Construction and application of provisions of Corrupt Practices Act regarding contributions by corporations. 125 ALR 1029.

23-934. (668) General penal laws applicable. Any act declared an offense by the general laws of this state concerning caucuses, primaries and elections shall also, in like case, be an offense in and as to all primaries as herein defined, and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such caucuses, primaries and elections, except as herein otherwise provided, shall apply in such case with equal force, and to the same extent as though fully set forth in this act.

History: En. Sec. 36, Initiative Measure Nov. 1912; re-en. Sec. 668, R. C. M. 1921. 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

References

Wilkinson v. La Combe, 59 M 518, 520,

Collateral References

Elections 309 et seq.
29 C.J.S. Elections §§ 324, 334.

23-935. (669) Forgery and suppression of nomination papers. Any person who shall forge any name of a signer or a witness to a nomination paper shall be guilty of forgery, and on conviction punished accordingly. Any person who, being in possession of nomination papers entitled to be filed under this act, or any act of the legislature, shall wrongfully either suppress, neglect or fail to cause the same to be filed at the proper time in the proper office, shall, on conviction, be punished by imprisonment in the county jail not to exceed six months, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

History: En. Sec. 37, Initiative Measure Nov. 1912; re-en. Sec. 669, R. C. M. 1921.

Cross-Reference

False nomination certificate, penalty, sec. 94-1412.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart, 64 M 453, 464, 210 P 465.

Collateral References

Elections 309; Forgery 7 (1).
29 C.J.S. Elections §§ 324, 334; 37 C.J.S. Forgery, §§ 18, 20.

23-936. (670) General laws applicable to this enactment. The provisions of the laws of this state now in force in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, the appointment and compensation of officers of election, and all other kindred subjects, shall apply to all primaries, in so far as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.

History: En. Sec. 38, Initiative Measure Nov. 1912; re-en. Sec. 670, R. C. M. 1921. 64 M 453, 464, 210 P 465; Thompson v. Chapin, 64 M 376, 383, 209 P 1060.

References

Wilkinson v. La Combe, 59 M 518, 520, 197 P 836; State ex rel. Mills v. Stewart,

Collateral References

Elections 126 (1-7).
29 C.J.S. Elections §§ 111-119, 130-134.

CHAPTER 10

POLITICAL PARTIES

Section 23-1001. Political party defined.
23-1002 to 23-1007. Repealed.
23-1008. Payment of convention expenses.
23-1009. Political parties—authority and power.

23-1001. (673.1) Political party defined. The term political party as used in this act, shall include any party conducted for political purposes, which now has or hereafter shall perfect a national organization.

History: En. Sec. 1, Ch. 126, L. 1927.

29 C.J.S. Elections § 84.

Collateral References

Elections 121 (1).

25 Am. Jur. 2d 800, Elections, § 116.

DECISIONS UNDER FORMER LAW

Construction

Where the legislature at the same session passes two statutes relating to the same subject matter, it may not be presumed that by enacting the second, without making reference to the first, it intended to limit the scope of the first, but the two must be read together and har-

monized, and under that rule held that chapter 7, Laws of 1927 (23-909, prior to 1955 amendment), and chapter 126, Laws of 1927 (23-1001 et seq.) providing for a method of electing presidential electors, etc., are not in irreconcilable conflict. State ex rel. Foster v. Mountjoy, 83 M 162, 166, 271 P 446.

23-1002. (673.2) Repealed—Chapter 156, Laws of 1965.**Repeal**

This section (Sec. 2, Ch. 126, L. 1927; Sec. 13, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954, effec-

tive December 7, 1954); Sec. 4, Ch. 266, L. 1955), relating to the selection of presidential electors and party officials, was repealed by Sec. 11, Ch. 156, Laws 1965.

23-1003 to 23-1005. (673.3 to 673.5) Repealed—Chapter 266, Laws of 1955.**Repeal**

These sections (Secs. 3 to 5, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951), relating to

county conventions, were repealed by Sec. 8, Ch. 266, Laws 1955.

23-1006, 23-1007. (673.6, 673.7) Repealed—Chapter 156, Laws of 1965.**Repeal**

These sections (Secs. 6, 7, Ch. 126, L. 1927; Sec. 1, Ch. 55, L. 1953; Secs. 14, 15, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954, effective De-

cember 7, 1954); Secs. 5, 6, Ch. 266, L. 1955; Sec. 3, Ch. 274, L. 1959), relating to state party conventions, were repealed by Sec. 11, Ch. 156, Laws 1965.

23-1008. (673.8) Payment of convention expenses. The entire expense of conducting the county and state conventions shall be defrayed by the several political parties, except that each elected delegate or alternate who shall attend any state convention which is held for the purpose of nominating presidential electors and participate therein, shall receive the sum of eight (8) cents per mile for each mile actually traveled by him in going to and returning from said convention, said mileage to be computed by the shortest practicable route, and to be paid out of the general funds of the county in the same manner as other election expenses.

History: En. Sec. 8, Ch. 126, L. 1927; amd. Sec. 16, Ch. 214, L. 1953 (Referendum Measure, adopted November 2, 1954 effective December 7, 1954); amd. Sec. 7, Ch. 266, L. 1955; amd. Sec. 8, Ch. 156, L. 1965.

Collateral References

Counties—153½; Elections—128.
20 C.J.S. Counties § 236; 29 C.J.S. Elections § 97.

23-1009. Political parties—authority and power. Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own officers;
- (c) Call conventions and provide for the number and qualifications of delegates thereat;
- (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. 1, Ch. 156, L. 1965.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

- Section 23-1101. Ballots, how printed and distributed.
 23-1102. County clerk to provide printed ballots.
 23-1103. Municipal clerk to act in municipal elections.
 23-1104. Pastors to be printed and distributed where vacancy has been filled.
 23-1105. Form, color and size of ballot.
 23-1106. Names and party of candidates to be printed on ballot.
 23-1107. Arrangement of names—rotation on ballot.
 23-1108. Repealed.
 23-1109. Columns and material to be printed on ballot.
 23-1110. Words to be printed.
 23-1111. Order of placement.
 23-1112. Ballot to facilitate expression of voter's choice.
 23-1113. Blank space and margin.
 23-1114. Stub, size and contents.
 23-1115. Uniformity of size and printing.
 23-1116. County clerk to prepare ballot, when and how.
 23-1117. Number of ballots to be provided for each precinct.

23-1101. (677) Ballots, how printed and distributed. All ballots cast in elections for public officers within the state (except school district officers), must be printed and distributed at public expense as provided in this chapter. The printing of ballots and cards of instruction for the elections in each county, and the delivery of the same to the election officers is a county charge, and the expense thereof must be paid in the same manner as the payment of other county expenses, but the expense of printing and delivering the ballots must, in the case of municipal elections, be a charge upon the city or town in which such election is held.

History: En. Sec. 1, p. 135, L. 1889;	Collateral References
re-en. Sec. 1350, Pol. C. 1895; re-en. Sec.	Elections 163.
541, Rev. C. 1907; re-en. Sec. 677, R. C.	29 C.J.S. Elections § 155.
M. 1921. Cal. Pol. C. Sec. 1185.	

23-1102. (678) County clerk to provide printed ballots. Except as in this chapter otherwise provided, it shall be the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors or any of the electors within the county participate, and to cause to be printed 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, whose names have been certified to, or filed with the county clerk, in the manner provided in this chapter. Ballots other than those printed by the respective county clerks, according to the provisions of this chapter, must not be cast or counted in any election. Any 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 the same as provided in section 23-1210. and when a ballot is so marked it must be counted the same

as though the name is printed upon the ballot and marked by the voter. Any voter may take with him into the polling place any printed or written memorandum or paper to assist him in marking or preparing his ballot except as otherwise provided in the chapter.

History: En. Sec. 1351, Pol. C. 1895; re-en. Sec. 542, Rev. C. 1907; re-en. Sec. 678, R. C. M. 1921; amd. Sec. 1, Ch. 203, L. 1937; amd. Sec. 1, Ch. 81, L. 1939. Cal. Pol. C. Sec. 1196.

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. Har-

ington v. Crichton, 53 M 388, 391, 164 P 537.

References

In State ex rel. Brooks v. Fransham, 19 M 273, 286, 48 P 1; Sawyer Stores, Inc. v. Mitchell, 103 M 148, 155, 62 P 2d 342.

Collateral References

Elections—163, 172, 181, 216.
29 C.J.S. Elections §§ 155, 161, 180, 205.

23-1103. (679) Municipal clerk to act in municipal elections. In all municipal elections the city clerk must perform all the duties prescribed for county clerks in this chapter.

History: En. Sec. 1352, Pol. C. 1895; re-en. Sec. 543, Rev. C. 1907; re-en. Sec. 679, R. C. M. 1921.

Collateral References

Elections—163.
29 C.J.S. Elections § 155.

23-1104. (680) Pastors to be printed and distributed where vacancy has been filled. When any vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this code to fill such vacancy, the officer whose duty it is to have the ballots printed and distributed must thereupon have printed a requisite number of pasters containing the name of the new nominee, and must mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election, whose duty it is made by the provisions of this chapter to distribute the ballots, must affix such pasters over the name for which substitution is made in the proper place on each ballot before it is given out to the elector.

History: En. Sec. 1353, Pol. C. 1895; re-en. Sec. 544, Rev. C. 1907; re-en. Sec. 680, R. C. M. 1921.

References

State ex rel. Scharnikow v. Hogan, 24 M 397, 403, 62 P 683.

Collateral References

Elections—182.
29 C.J.S. Elections § 179.

23-1105. (681) Form, color and size of ballot. Ballots for all general elections prepared under the provisions of this chapter must be white in color and of a good quality of paper and the names must be printed thereon in black ink. The ballots used in any one county must be uniform in size, and every ballot must contain the name of every candidate whose nomination for any special office specified in the ballot has been certified or filed according to the provisions of law 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 for by section 23-2101.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2 Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 681, R. C. M. 1921; amd. Sec.

2, Ch. 81, L. 1939; re-en. Sec. 1, Ch. 141, L. 1947; amd. Sec. 1, Ch. 79, L. 1949. Cal. Pol. C. Sec. 1197.

NOTE.—Sections 23-1105, 23-1113 to 23-1116 were originally part of section 545,

Revised Codes, 1907, which has been divided.

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.

Construction

The so-called antifusion statute, consisting of this section and sections 23-1113 to 23-1116, was not impliedly repealed by the Primary Election Law of 1913, and is not unconstitutional. *State ex rel. Metcalf v. Wileman*, 49 M 436, 437, 143 P 565.

References

State ex rel. Brooks v. Fransham, 19 M 273, 286, 48 P 1; *State ex rel. Riley v. Weston*, 31 M 218, 226, 78 P 487; *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

Collateral References

Elections—166 et seq.

29 C.J.S. Elections § 156 et seq.

Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballots of names of candidates. 78 ALR 398.

Name or form of name to be used in designating candidate on election ballot. 93 ALR 911.

23-1106. Names and party of candidates to be printed on ballot. The name of each candidate nominated shall be printed upon the ballot in but one place and there shall be added after and directly opposite to the name of each candidate nominated, the party or political designation contained in the certificate of nomination of such candidate in not more than three (3) words, except that the political designation of electors for president and vice-president of the United States shall be opposite the whole list thereof, and the names of candidates for chief justice, associate justices, and district court judges shall each be followed by the following words directly underneath the name of the candidate: "Nominated without party designation." It is provided, however, that whenever any person is nominated for the same office by more than one party the designation of the party which first nominated him shall be placed opposite his name unless he declines in writing, one or more of such nominations, or by written election indicates the party designation which he desires printed opposite his name; or if he is nominated by more than one party at the same time he shall within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written election indicating the party designation which he desires printed opposite his name, and it shall be so printed. If he shall fail or neglect to file such an election no party designation shall be placed opposite his name.

History: En. Sec. 2, Subd. A, Ch. 81, 1947; amd. Sec. 1, Subd. A, Ch. 79, L. 1939; re-en. Sec. 1, Subd. A, Ch. 141, L. 1949.

23-1107. Arrangement of names—rotation on ballot. The names of all candidates shall be arranged alphabetically according to surnames under the appropriate title of the respective offices. It is provided, however, that, while all of the candidates for the particular office shall remain together in the same box, yet the candidates of the two major parties shall appear on the ballot before and above the candidates of the minor parties and independent candidates. For the purpose of designating the candidates of the two major parties, they shall be those candidates of the two parties whose candidates for governor, excluding independent candidates, have been either first or second, (by receiving the highest or next highest number of votes cast for the office of governor at the particular election) the greatest

number of times at the next preceding four (4) general elections. In case of a tie in the number of first or second places, the determination shall be made by going back enough preceding elections to break the tie and no farther. All other candidates shall be designated as either independent candidates or as belonging to minor parties. When two or more persons are candidates for election to the same office, including presidential and vice-presidential candidates, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by the law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows:

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, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order, (for the purposes of rotation of presidential and vice-presidential candidates, the office of president and vice-president, together with presidential electors shall be considered as a group and alphabetized under the name of the candidate for president), be rotated by removing one name from the top of the list for each office and placing said name or number at the bottom of that list for each successive set of ballot forms; provided, however, that no more than one of said sets shall be used in printing the ballot for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. It is further provided that candidates of the two major parties as hereinabove defined shall be rotated as one group and the candidates of the minor parties and independent candidates shall be rotated as another group so that the candidates of the two major parties for a particular office shall appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 2, Subd. B, Ch. 81, L. 1947; amd. Sec. 1, Subd. B, Ch. 79, L. 1939; amd. Sec. 1, Subd. B, Ch. 141, L. 1949.

23-1108. Repealed—Chapter 194, Laws of 1967.

<p>Repeal This section (Sec. 1, Ch. 170, L. 1939), relating to the placement on the ballot</p>	<p>of legislative candidates, was repealed by Sec. 13, Ch. 194, Laws 1967.</p>
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23-1109. Columns and material to be printed on ballot. Each ballot shall contain at the top the stub as provided by section 23-1114, and directly underneath the perforated line shall be the following words in boldface type, "VOTE IN ALL COLUMNS." Each ballot shall contain three (3) columns. Notwithstanding the example in section 23-1112, at the head of the first column to the left shall be the words, "STATE AND NATIONAL," in large boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, and district court judges, and members of the legislative assembly, and such list shall progressively continue on to the top of the second column. Following the list of state and national candidates shall be the words "COUNTY AND TOWNSHIP," in large boldface type and beneath such heading shall be listed all candidates for county and township offices and such list shall progressively continue on to the top of the third column. Following the list

of county and township candidates shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in large boldface type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted on by the people at such election which do not involve the creation of any state levy, debt or liability. In case there are no such measures to be submitted, the said heading entitled "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," shall be eliminated. Every ballot shall be so printed that all matter heretofore required to be printed on each ballot shall be equally apportioned among the three columns as nearly as possible in the order heretofore and hereafter specified. All such measures which involve the creation of a state levy, debt or liability shall be submitted to the qualified voters upon a separate official ballot in substantial conformity with the form provided for by section 23-1112, for the submission of such measures.

History: En. Sec. 2, Subd. C., Ch. 81, 1949; amd. Sec. 1, Ch. 72, L. 1953; amd. L. 1939; amd. Sec. 1, Subd. C, Ch. 141, Sec. 6, Ch. 194, L. 1967. L. 1947; amd. Sec. 1, Subd. C, Ch. 79, L.

23-1110. Words to be printed. At the bottom of the first and second column to the left shall be the words, "VOTE IN THE NEXT COLUMN." Likewise, at the top of the second column shall be the words "STATE AND NATIONAL (continued)" and at the top of the third column shall be the words "COUNTY AND TOWNSHIP (continued)" to indicate the continuation of the list of candidates under each respective heading to the following column if after all the printed matter is equally apportioned among the three columns, one column is insufficient to contain all the candidates listed under each of the aforementioned headings.

History: En. Sec. 2, Subd. D, Ch. 81, L. 1947; amd. Sec. 1, Subd. D, Ch. 79, L. 1939; re-en. Sec. 1, Subd. D, Ch. 141, L. 1949; amd. Sec. 2, Ch. 72, L. 1953.

23-1111. Order of placement. Notwithstanding the example in section 23-1112, the order of the placement of the offices on the ballot in the first column, or to the left, designated "STATE AND NATIONAL," shall be as follows: "President and vice-president, together with the presidential electors; United States senator; United States representative in Congress; governor; lieutenant governor; secretary of state; attorney general; state treasurer; state auditor; railroad and public service commissioners; state superintendent of public instruction; clerk of the supreme court; chief justice of the supreme court; associate justice or justices of the supreme court; district court judges; state senators; members of the house of representatives;" provided, however, that in the years in which any of such offices are not to be elected, such offices shall not be designated, but the order of those offices to be filled shall maintain their relative positions as herein provided.

In the second column, designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed: "clerk of district court; county commissioner; county clerk and recorder; sheriff; county attorney; county auditor." Such other offices to be elected shall be placed following the foregoing in the order deemed most appropriate by the county clerk.

In the third column constitutional amendments shall come first with referendum and initiative measures following.

History: En. Sec. 2, Subd. E, Ch. 81, L. 1947; amd. Sec. 1, Subd. E, Ch. 79, L. 1939; re-en. Sec. 1, Subd. E, Ch. 141, 1949; amd. Sec. 7, Ch. 194, L. 1967.

23-1112. Ballot to facilitate expression of voter's choice. In case of a short term and a long term election for the same office, the long term office shall precede the short term. The ballots shall be so printed as to give each voter a clear opportunity to designate his choice of candidates by a cross mark, (X) in a square at the left of the name of each candidate. 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. As nearly as possible the ballot shall be in the following form:

(Stub hereinafter provided for by Section 23-1114)

..... Perforated Line

STATE AND NATIONAL	STATE AND NATIONAL (Continued)	COUNTY AND TOWNSHIP (Continued)
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES	FOR CHIEF JUSTICE OF THE SUPREME COURT	(Continued in like manner for all County and Township Officers.)
VOTE FOR ONE	VOTE FOR ONE	INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS
<div><input type="checkbox"/> Democrat for President of the United States JOHN DOE For Vice-President of the United States RICHARD ROE</div>	<div><input type="checkbox"/> Richard K. O'Doe (Nominated without party designation.) <input type="checkbox"/> Tom Row (Nominated without party designation.) <input type="checkbox"/></div>	CONSTITUTIONAL AMENDMENTS
For Presidential Electors: Jane Doe; Helen Doe; Pete Moe; Milton Moe.	(Continued in like manner for Associate Justice and Judges of the District Court.)	<div><input type="checkbox"/> For the Amendment <input type="checkbox"/> Against the Amendment</div>
(Same with other candidates for President and Vice-President together with blank space for write-in.)	COUNTY AND TOWNSHIP	REFERENDUM NO. 1
FOR UNITED STATES SENATOR	FOR STATE SENATOR	<div><input type="checkbox"/> For Referendum No. 1 <input type="checkbox"/> Against Referendum No. 1</div>
VOTE FOR ONE	VOTE FOR ONE	INITIATIVE NO. 1
<div><input type="checkbox"/> Frank Roe Democrat <input type="checkbox"/> Guy Doe Republican <input type="checkbox"/></div>	<div><input type="checkbox"/> Bill Doe Republican <input type="checkbox"/> John Roe Democrat <input type="checkbox"/></div>	<div><input type="checkbox"/> For Initiative No. 1 <input type="checkbox"/> Against Initiative No. 1</div>
(Same for Congressmen, Governor, Lieut. Governor, Secretary of State, Attorney General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, and Clerk of the Supreme Court.)	FOR MEMBER OF THE HOUSE OF REPRESENTATIVES	
	VOTE FOR TWO	
	<div><input type="checkbox"/> Al Johnson Republican <input type="checkbox"/> Jim Sparks Democrat <input type="checkbox"/> Jack Smith Republican <input type="checkbox"/> Dan Martin Democrat <input type="checkbox"/> <input type="checkbox"/></div>	
Vote in Next Column	Vote in Next Column	

History: En. Sec. 2, Subd. F, Ch. 81, L. 1939; re-en. Sec. 1, Subd. F, Ch. 141, L. 1947; amd. Sec. 1, Subd. F, Ch. 79, L. 1949; amd. Sec. 3, Ch. 72, L. 1953.

Cross-Reference

Legislative candidates to be listed under "State and National" column, notwithstanding this section, sees. 23-1109, 23-1111.

23-1113. (683) Blank space and margin. Below the names of candidates for each office there must be left a blank space large enough to contain as many written names of candidates as there are persons to be elected. There must be a margin on each side of at least half an inch in width, and a reasonable space between the names printed thereon, so that the voter may clearly indicate, in the way hereinafter provided, the candidate or candidates for whom he wishes to cast his ballot.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 683, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections ⇨ 170.
29 C.J.S. Elections § 156.

23-1114. (684) Stub, size and contents. The ballot shall be printed on the same leaf with a stub, 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 be of sufficient depth to allow the following instructions to voters to be printed thereon, such depth to be not less than two inches from the perforated line to the top thereof, upon the face of which stub shall be printed, in type known as brevier capitals, the following: "This ballot should be marked with an 'X' in the square before the name of each person or candidate for whom the elector intends to vote. In cases of a ballot containing a constitutional amendment, or other question to be submitted to a vote of the people, by marking an 'X' in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces, or paste over another name, the name of any person for whom he wishes to vote, and vote for such person by marking an 'X' in the square before such name." On the back of the stub shall be printed or stamped by the county clerk, or other officer whose duty it is to provide the ballots, the consecutive number of the ballot, beginning with number "1," and increasing in regular numerical order to the total number of ballots required for the precinct.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 684, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections ⇨ 168, 176.
29 C.J.S. Elections §§ 159, 171.

23-1115. (685) Uniformity of size and printing. All of the official ballots of the same sort, prepared by any officer or board for the same balloting place, shall be of precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed in black ink of the same tint, so that when the stubs numbered as aforesaid shall be detached therefrom, it shall be impossible to distinguish any one of the bal-

lots from the other ballots of the same sort, and the names of all candidates printed upon the ballots shall be in type of the same size and character.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 685, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections—166.
29 C.J.S. Elections § 156.
26 Am. Jur. 2d 38, Elections, § 205.

23-1116. (686) County clerk to prepare ballot, when and how. Whenever the secretary of state has duly certified to the county clerk any question to be submitted to the vote of the people, the county clerk must print the ballot in such form as will enable the electors to vote upon the question so presented in the manner provided by law. The county clerk must also prepare the necessary ballots whenever any question is required by law to be submitted to the electors of any locality, and any of the electors of the state generally, except that as to all questions submitted to the electors of a municipal corporation alone the city clerk must prepare the necessary ballots.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; re-en. Sec. 545, Rev. C. 1907; re-en. Sec. 686, R. C. M. 1921. Cal. Pol. C. Sec. 1197.

Collateral References

Elections—175.
29 C.J.S. Elections § 170.

23-1117. (687) Number of ballots to be provided for each precinct. The county clerk must provide for each election precinct in the county sufficient ballots for the electors registered in the precinct. If there is no registry in the precinct, the county clerk must provide ballots equal to the number of electors who voted at the last preceding election in the precinct, unless in the judgment of the county clerk a greater number be needed, but in no case to exceed one and one-half times as many as the number of registered voters in the precinct. He must keep a record in his office, showing the exact number of ballots, that are delivered to the judges of each precinct. In municipal elections it is the duty of the city clerk to provide ballots as specified in this section.

History: Ap. p. Sec. 1355, Pol. C. 1895; amd. Sec. 3, Ch. 88, L. 1907; re-en. Sec. 546, Rev. C. 1907; re-en. Sec. 687, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1925; amd. Sec. 9, Ch. 156, L. 1965. Cal. Pol. C. Sec. 1199.

Collateral References

Elections—163.
29 C.J.S. Elections § 155.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section 23-1201. Voting, to commence when and continue how long.
23-1202. Time of opening and closing of polls.
23-1203. When polls for special elections shall open and close.
23-1204. Proclamation at opening and thirty minutes before closing polls.
23-1205. Proclamation at closing polls.
23-1206. Sufficient booths or compartments must be furnished.
23-1207. Elector to cast his ballot without interference.
23-1208. Expenses of providing places for election.
23-1209. Delivery of official ballots to elector.

- 23-1210. Method of voting.
- 23-1211. Only one person to occupy booth, and no longer than five minutes.
- 23-1212. Spoiled ballot.
- 23-1213. Judges may aid disabled elector.
- 23-1214. Manner of voting.
- 23-1215. Announeement of voter's name.
- 23-1216. Putting ballot in box.
- 23-1217. Record that person has voted, how kept.
- 23-1218. Marking precinct register book when elector has voted—procedure.
- 23-1219. List of voters.
- 23-1220. Grounds of challenge.
- 23-1221. Proceedings on challenges for want of identity.
- 23-1222. Proceedings on challenges for having voted before.
- 23-1223. Proceedings on challenges on ground of conviction of crime.
- 23-1224. Challenges, how determined.
- 23-1225. Trial of challenges.
- 23-1226. If a person refuses to be sworn, vote to be rejected.
- 23-1227. Proceedings upon determination of challenges.
- 23-1228. List of challenges to be kept.

23-1201. (688) Voting, to commence when and continue how long. Voting may commence as soon as the polls are open, and may be continued during all the time the polls remain open.

History: En. Sec. 1365, Pol. C. 1895; re-en. Sec. 556, Rev. C. 1907; re-en. Sec. 688, R. C. M. 1921. Cal. Pol. C. Sec. 1224.

Collateral References

Elections ⇨ 205.
29 C.J.S. Elections § 198.

References

Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.

23-1202. (689) Time of opening and closing of polls. The polls must be opened at eight o'clock on the morning of election day and must be kept open continuously until eight o'clock p. m. of said day, when the same must be closed; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until eight o'clock p. m. of said day, when they must be closed; provided, further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887; amd. Sec. 1290, Pol. C. 1895; re-en. Sec. 514, Rev. C. 1907; re-en. Sec. 689, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1935; amd. Sec. 1, Ch. 207, L. 1955. Cal. Pol. C. Sec. 1160.

References

Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.

Collateral References

Elections ⇨ 206-208.
29 C.J.S. Elections § 198.
26 Am. Jur. 2d 60, Elections, § 227.

23-1203. When polls for special elections shall open and close. Whenever any special election is held for the purpose of submitting to the qualified electors of any county, high school district, school district, city or town, the question of incurring an indebtedness for any purpose, issuing bonds or making a special or additional levy for any purpose, the polls shall be open at 12 o'clock noon and shall remain open until 8 o'clock p. m. of the same day; provided, that if any such special election is held on the same day as any general, county, school or municipal election or any primary

election and at the same polling places with the same judges and clerks of election, then the polls shall be opened and closed at the same hours as the polls for such general, county, school, municipal or primary election.

History: En. Sec. 1, Ch. 2, L. 1937.

Collateral References

Elections 206, 208.

29 C.J.S. Elections § 198.

23-1204. (690) Proclamation at opening and thirty minutes before closing polls. Before the judges receive any ballots they must cause it to be proclaimed aloud at the place of election that the polls are open, and thirty minutes before the closing of the polls proclamation must be made that the polls will close in one-half hour.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887;

amd. Sec. 1291, Pol. C. 1895; re-en. Sec. 515, Rev. C. 1907; re-en. Sec. 690, R. C. M. 1921. Cal. Pol. C. Sec. 1163.

23-1205. (691) Proclamation at closing polls. When polls are closed, that fact must be proclaimed aloud at the place of election; and after such proclamation no ballots must be received.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887;

amd. Sec. 1292, Pol. C. 1895; re-en. Sec. 516, Rev. C. 1907; re-en. Sec. 691, R. C. M. 1921. Cal. Pol. C. Sec. 1164.

23-1206. (692) Sufficient booths or compartments must be furnished. All officers upon whom is imposed by law the duty of designating the polling places must provide in each polling place designated by them, a sufficient number of places, booths, or compartments, each booth or compartment to be furnished with a door or curtain sufficient in character to screen the voter from observation, and must be furnished with such supplies and conveniences as shall enable the elector to prepare his ballot for voting, and in which electors must mark their ballots, screened from observation, and a guardrail so constructed that only persons within such rail can approach within ten feet of the ballot boxes, or the places, booths, or compartments herein provided for. The number of such places, booths, or compartments must not be less than one for every fifty electors, or fraction thereof, registered in the precinct. In precincts containing less than twenty-five registered voters, the election may be conducted under the provisions of this chapter without the preparation of such booths or compartments, as required by this section.

History: En. Sec. 22, p. 141, L. 1889; re-en. Sec. 1357, p. 118, L. 1901; re-en. Sec. 548, Rev. C. 1907; re-en. Sec. 692, R. C. M. 1921. Cal. Pol. C. Sec. 1203.

Collateral References

Elections 201.

29 C.J.S. Elections § 195.

23-1207. (693) Elector to cast his ballot without interference. (1) No person other than electors engaged in receiving, preparing, or depositing their ballots, or a person present for the purpose of challenging the vote of an elector about to cast his ballot, is permitted to be within said rail; and in cases of small precincts where places, booths, or compartments are not required, no person engaged in preparing his ballot shall, in any way, be

interfered with by any person, unless it be someone authorized by the provisions of this chapter to assist him in preparing his ballot; nor shall any officer of election do any electioneering on election day. No person whatsoever shall do 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; said space of twenty-five feet to be protected by ropes and kept free of trespassers; nor shall any person obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officer is hereby authorized and empowered, and it is hereby made his duty, to clear the passageway, and prevent such obstruction, and to arrest any person so doing.

(2) No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot after it is marked, to any person, in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote; nor shall any person solicit the elector to show the same; nor shall any person, except the judge of election, receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots; nor shall any person other than such judge of election deliver a ballot to such elector. No elector shall vote, or offer to vote, any ballot except such as he has received from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Every elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots, shall, before leaving the polling place, return such ballot to such judges.

History: Ap. p. Sec. 22, p. 141, L. 1889; re-en. Sec. 1358, Pol. C. 1895; amd. Sec. 1358, p. 118, L. 1901; re-en. Sec. 549, Rev. C. 1907; re-en. Sec. 693, R. C. M. 1921. Cal. Pol. C. Sec. 1215.

Cross-References

Disclosing contents of ballot after marking, penalty, sec. 94-1414.

Electioneering by election officials, penalty, 94-1413.

References

Lane v. Bailey, 29 M 548, 560, 75 P 191.

Collateral References

Elections 211, 227 (5-9), 233, 234.
29 C.J.S. Elections §§ 194, 196, 200, 208, 219, 220.
26 Am. Jur. 2d 65, Elections, § 234.

23-1208. (694) Expenses of providing places for election. The expense of providing such places or compartments, ropes, and guardrails is a public charge, and must be provided for in the same manner as the other election expenses.

History: En. Sec. 1359, p. 119, L. 1901; re-en. Sec. 550, Rev. C. 1907; re-en. Sec. 694, R. C. M. 1921.

Collateral References

Elections 201.
29 C.J.S. Elections § 195.

23-1209. (695) Delivery of official ballots to elector. At any election the judges of election must designate two of their number whose duty it is to deliver ballots to the qualified electors. Before delivering any ballot to

an elector, the said judges must print on the back, and near the top of the ballot, with the rubber or other stamp provided for the purpose, the designation "official ballot" and the other words on same, as provided for in section 23-705 of this code; and the clerks must enter on the poll lists the name of such elector and the number of the stub attached to the ballot given him. Each qualified elector must be entitled to receive from the judges one ballot.

History: Ap. p. Sec. 23, p. 141, L. 1889; amd. Sec. 1360, Pol. C. 1895; amd. Sec. 4, Ch. 88, L. 1907; re-en. Sec. 551, Rev. C. 1907; re-en. Sec. 695, R. C. M. 1921.

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, 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 stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

References

State ex rel. *Brooks v. Fransham*, 19 M 273, 287, 48 P 1; State ex rel. *Riley v. District Court*, 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections ⇨ 218.
29 C.J.S. Elections § 204.

23-1210. (696) Method of voting. On receipt of his ballot the elector must forthwith, without leaving the polling place and within the guardrail provided, and alone, retire to one of the places, booths, or compartments, if such are provided, and prepare his ballot. 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. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank space or paste over any other name the name of any person for whom he wishes to vote, and vote for such person by marking an "X" before such name. No elector is at liberty to use or bring into the polling place any unofficial sample ballot. After preparing his ballot the elector must fold it so the face of the ballot will be concealed and so that the endorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the pollbooks as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive such ballot, and, after removing the stub therefrom in plain sight of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guardrail, unless he be one of the persons authorized to remain within the guardrail for other purposes than voting.

History: Ap. p. Sec. 24, p. 142, L. 1889; 1361, p. 119, L. 1901; amd. Sec. 5, Ch. amd. Sec. 1361, Pol. C. 1895; amd. Sec. 88, L. 1907; re-en. Sec. 552, Rev. C. 1907;

re-en. Sec. 696, R. C. M. 1921; amd. Sec. 7, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1205.

Acts of Election Officers

A ballot properly marked, but from which the stub has not been detached by the ballot judge as required by this section, should be counted; a 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.

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 23-1213 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.

Directory, Not Mandatory—Check Mark Counted

The provision of this section 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.

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, or any, compliance with the provisions of this 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 this 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.

Voting Is an Affirmative Act, Vote for Deceased Candidate Not Counted as Opposed to Write-in

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.

References

State ex rel. Brooks v. Fransham, 19 M 273, 292, 48 P 1; *Harrington v. Crichton*, 53 M 388, 164 P 537; *State ex rel. Riley v. District Court*, 103 M 576, 588, 64 P 2d 115; *Maddox v. Board of State Canvassers*, 16 M 217, 223, 149 P 2d 112.

Collateral References

Elections \Rightarrow 219, 221.
29 C.J.S. Elections §§ 206, 207.
26 Am. Jur. 2d 65, Elections, § 234.

23-1211. (697) Only one person to occupy booth, and no longer than five minutes. No more than one person must be allowed to occupy any

one booth at one time, and no person must remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes, if the other booths or compartments are occupied.

History: En. Sec. 25, p. 142, L. 1889; re-en. Sec. 1362, Pol. C. 1895; re-en. Sec. 553, Rev. C. 1907; re-en. Sec. 697, R. C. M. 1921. Cal. Pol. C. Sec. 1206.

Collateral References

Elections ⇨ 227 (7), 228.
29 C.J.S. Elections § 195.

23-1212. (698) Spoiled ballot. Any elector who by accident or mistake spoils his ballot, may, on returning said spoiled ballot, receive another in place thereof.

History: En. Sec. 26, p. 142, L. 1889; re-en. Sec. 1363, Pol. C. 1895; re-en. Sec. 554, Rev. C. 1907; re-en. Sec. 698, R. C. M. 1921. Cal. Pol. C. Sec. 1207.

Collateral References

Elections ⇨ 218.
29 C.J.S. Elections § 204.

23-1213. (699) Judges may aid disabled elector. Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write, or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must, upon request, receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, and said disabled elector may request that any qualified elector whom he designates to the judges, and in whom he has trust and confidence, shall also be permitted to aid him in the marking of his ballot, and such judges must certify on the official register opposite name of such disabled elector that it was so marked with their assistance, and indicate the name of the person if any of whom he requested and received assistance, and neither the judges nor, if such is the case, the person who aided him, must thereafter give information regarding the same. The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write, or of his blindness or physical disability, be unable to mark his ballot, must divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or, other than herein specifically allowed, ask or receive the assistance of any person within the polling place in the preparation of his ballot.

History: Ap. p. Sec. 27, p. 142, L. 1889; amd. Sec. 1364, Pol. C. 1895; amd. Sec. 1364, p. 120, L. 1901; re-en. Sec. 555, Rev. C. 1907; re-en. Sec. 699, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1959; amd. Sec. 1, Ch. 77, L. 1961. Cal. Pol. C. Sec. 1208.

References

Carwile v. Jones, 38 M 590, 597, 101 P 153; Gervais v. Rolfe, 57 M 209, 212, 187 P 899.

Collateral References

Elections ⇨ 220.
29 C.J.S. Elections § 208.
26 Am. Jur. 2d 68, Elections, § 238.

DECISIONS UNDER FORMER LAW

Endorsement of Ballot by Judges

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by section 1364, Pol. C. 1895, as

amended in 1901, 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.

23-1214. (700) Manner of voting. No person whomsoever, except a judge or judges of election, shall put into the ballot box any ballot, or any paper resembling a ballot, or any other thing whatsoever. Any person or persons violating the foregoing provision shall be guilty of a misdemeanor. Any judge or judges of election who shall knowingly permit a violation of any of the provisions in this section set forth shall be guilty of a felony and be punishable as in this section hereinbefore specified. The person offering to vote must hand his ballot to the judge, and announce his name, and in incorporated cities and towns any such person must also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same.

History: En. Sec. 1366, Pol. C. 1895; re-en. Sec. 557, Rev. C. 1907; re-en. Sec. 700, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1937. Cal. Pol. C. Sec. 1225.	References Goodell v. Judith Basin County, 70 M 222, 233, 224 P 1110.
	Collateral References Elections ⇐ 221, 314. 29 C.J.S. Elections §§ 207, 327.

23-1215. (701) Announcement of voter's name. The judges must receive the ballot, and before depositing it in the ballot box must, in an audible tone of voice, announce the name, and in incorporated towns and cities the judges must also announce the residence of the person voting, and the same must be recorded on each pollbook.

History: En. Sec. 1367, Pol. C. 1895; re-en. Sec. 558, Rev. C. 1907; re-en. Sec. 701, R. C. M. 1921. Cal. Pol. C. Sec. 1226.	References Goodell v. Judith Basin County, 70 M 223, 233, 224 P 1110.
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23-1216. (702) Putting ballot in box. If the name be found on the official register in use at the precinct where the vote is offered, or if the person offering to vote produce and surrender a proper registry certificate, and the vote is not rejected, upon a challenge taken, the judges must immediately and publicly, in the presence of all the judges, place the ballot, without opening or examining the same, in the ballot box.

History: En. Sec. 1368, Pol. C. 1895; re-en. Sec. 559, Rev. C. 1907; re-en. Sec. 702, R. C. M. 1921. Cal. Pol. C. Sec. 1227.	References Goodell v. Judith Basin County, 70 M 222, 233, 224 P 1110.
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23-1217. (703) Record that person has voted, how kept. When the ballot has been placed in the box, one of the judges must write the word "Voted" opposite the number of the person on the check list for the precinct.

History: En. Sec. 1369, Pol. C. 1895; re-en. Sec. 560, Rev. C. 1907; re-en. Sec. 703, R. C. M. 1921. Cal. Pol. C. Sec. 1228.	References Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.
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Deposit of Ballot in Ballot Box Under this section the 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.	Collateral References Elections ⇐ 216. 29 C.J.S. Elections § 205.
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23-1218. (704) Marking precinct register book when elector has voted—procedure. The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector. Before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name, he shall be required by the judges to produce two freeholders who shall make an affidavit before the judges of election, or one of them, in substantially the following form:

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

“We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with (the name of the elector), and that we know that he is residing at, and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county.” which affidavit shall be filed by the judges, and returned by them to the county clerk, with the return of the election; one of the judges shall thereupon write the elector’s name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name, and, if unable to write, fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to the county clerk the copy of said official precinct register, sealed, with the election returns and pollbook, which have been used at said election.

History: En. Sec. 26, Ch. 113, L. 1911; amd. Sec. 26, Ch. 74, L. 1913; amd. Sec. 26, Ch. 122, L. 1915; re-en. Sec. 704, R. C. M. 1921.

References
Thompson v. Chapin, 64 M 376, 383, 209 P 1060.

NOTE.—The foregoing section appears as section 23-524. It is also printed here because of its application to the subject embraced in this chapter.

Collateral References
Elections⇨212.
29 C.J.S. Elections § 197.

23-1219. (705) List of voters. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order voting. Such list is known as the pollbook.

History: En. Sec. 1370, Pol. C. 1895; re-en. Sec. 561, Rev. C. 1907; re-en. Sec. 705, R. C. M. 1921; amd. Sec. 8, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1229.

Collateral References
Elections⇨212.
29 C.J.S. Elections § 197.

23-1220. (706) Grounds of challenge. Any person offering to vote may be orally challenged by any elector of the county, upon either or all of the following grounds:

1. That he is not the person whose name appears on the register or check list.

2. That he is an idiot or insane person.
3. That he has voted before that day.
4. That he has been convicted of a felony and not pardoned.

History: En. Sec. 1371, Pol. C. 1895;
re-en. Sec. 562, Rev. C. 1907; re-en. Sec.
706, R. C. M. 1921. Cal. Pol. C. Sec. 1230.

Collateral References
Elections—223.
29 C.J.S. Elections § 209.
26 Am. Jur. 2d 67, Elections, § 237.

23-1221. (707) Proceedings on challenges for want of identity. If the challenge is on the ground that he is not the person whose name appears on the official register, the judges must tender him the following oath:

“You do swear (or affirm) that you are the person whose name is entered on the official register and check list.”

History: En. Sec. 1372, Pol. C. 1895;
re-en. Sec. 563, Rev. C. 1907; re-en. Sec.
707, R. C. M. 1921. Cal. Pol. C. Sec. 1231.

23-1222. (708) Proceedings on challenges for having voted before. If the challenge is on the ground that the person challenged has voted before that day, the judges must tender to the person challenged this oath:

“You do swear (or affirm) that you have not before voted this day.”

History: En. Sec. 1373, Pol. C. 1895;
re-en. Sec. 564, Rev. C. 1907; re-en. Sec.
708, R. C. M. 1921. Cal. Pol. C. Sec. 1234.

23-1223. (709) Proceedings on challenges on ground of conviction of crime. If the challenge is on the ground that the person challenged has been convicted of a felony, the judges must tender him the following oath:

“You do swear (or affirm) that you have not been convicted of a felony.”

History: En. Sec. 1374, Pol. C. 1895;
re-en. Sec. 565, Rev. C. 1907; re-en. Sec.
709, R. C. M. 1921. Cal. Pol. C. Sec. 1235.

23-1224. (710) Challenges, how determined. Challenges upon the grounds either:

1. That the person challenged 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 upon the ground that the person challenged has been convicted of a felony and not pardoned must be determined in favor of the person challenged on his taking the oath tendered, unless the fact of conviction be proved by the production of an authenticated copy of the record or by the oral testimony of two witnesses. If the person challenged asserts that he has been convicted of a felony and pardoned therefor, he must exhibit his pardon or a proper certified copy thereof to the judges, and if the pardon be found sufficient, the judges must tender to him the following oath: “You do swear that you have not been convicted of any felony other than that for which a pardon is now exhibited.” Upon taking this oath the person challenged must be permitted to vote if otherwise

qualified, unless a conviction of some other felony be proved, as in this section provided for the proof of a conviction.

History: En. Sec. 1375, Pol. C. 1895;
re-en. Sec. 566, Rev. C. 1907; re-en. Sec.
710, R. C. M. 1921. Cal. Pol. C. Sec. 1236.

23-1225. (711) Trial of challenges. Challenges for causes other than those specified in the preceding section must be tried and determined by the judges of election at the time of the challenge.

History: En. Sec. 1376, Pol. C. 1895;
re-en. Sec. 567, Rev. C. 1907; re-en. Sec.
711, R. C. M. 1921. Cal. Pol. C. Sec. 1237.

23-1226. (712) If a person refuses to be sworn, vote to be rejected. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote.

History: En. Sec. 1377, Pol. C. 1895;
re-en. Sec. 568, Rev. C. 1907; re-en. Sec.
712, R. C. M. 1921. Cal. Pol. C. Sec. 1238.

Collateral References
Elections 224.
29 C.J.S. Elections § 211.

23-1227. (713) Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot must, without examination, be destroyed by the judges in the presence of the person offering the same; if determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 1378, Pol. C. 1895;
re-en. Sec. 569, Rev. C. 1907; re-en. Sec.
713, R. C. M. 1921. Cal. Pol. C. Sec. 1242.

Collateral References
Elections 224.
29 C.J.S. Elections § 211.

23-1228. (714) List of challenges to be kept. The judges must cause each of the clerks to keep a list showing:

1. The names of all persons challenged.
2. The grounds of such challenges.
3. The determination of the judges upon the challenge.

History: En. Sec. 1379, Pol. C. 1895;
re-en. Sec. 570, Rev. C. 1907; re-en. Sec.
714, R. C. M. 1921. Cal. Pol. C. Sec. 1243.

CHAPTER 13

VOTING BY ABSENT ELECTORS

Section 23-1301. Voting by elector when absent from place of residence or physically incapacitated from going to polls.

23-1302(1). Application of absentee or physically incapacitated person for ballot.

23-1302(2). Application of absentee or physically incapacitated person for ballot.

23-1303. Form of application.

23-1303.1. Forms and regulations for absentee voting in school district elections.

23-1304. Transmission of application to county clerk—delivery of ballot.

23-1305. Duty of clerk to deliver application or ballot.

23-1306. Mailing ballot to elector—form of return and affidavit.

23-1307. Marking and swearing to ballot by elector.

23-1308. Disposition of marked ballot upon receipt by clerk.

23-1309. Delivery or mailing of ballots to election judges.

23-1310. Clerk to keep record of ballots and issue certificate.

- 23-1311. Duty of election judges—pollbooks, numbering ballots and rejected ballots.
- 23-1312. Voting before election day by prospective absentee or physically incapacitated elector.
- 23-1313. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-1314. Transmission of ballot by special delivery.
- 23-1315. Voting in person by elector on election day.
- 23-1316. Procedure when elector is present after marking absent or physically incapacitated voter ballot.
- 23-1317. Opening of envelopes after deposit.
- 23-1318. False swearing perjury—official misconduct a misdemeanor.
- 23-1319. Voting machines—canvass of votes.
- 23-1320. Duty of elector if present on election day.
- 23-1321. Violation of law by elector or officer outside of state—change of venue.

23-1301. (715) Voting by elector when absent from place of residence or physically incapacitated from going to polls. Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county or who is physically incapacitated from attending the precinct poll of which he is an elector on the day of holding any general or special election, or primary election for the nomination of candidates for such general election, or any municipal, school, general, special or primary election, may vote at any such election as hereinafter provided.

History: En. Sec. 1, Ch. 110, L. 1915; amd. Sec. 1, Ch. 155, L. 1917; re-en. Sec. 715, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1943; amd. Sec. 1, Ch. 108, L. 1963.

Constitutionality

The Absent Voters Law (23-1301 to 23-1321) is a valid enactment and not open to the objection that in permitting a ballot to be delivered to the election officers by mail, it violates section 2, article IX of the state constitution, by providing that an elector shall have resided in the state one year immediately preceding the election "at which he offers to vote." The provision of the constitution does not require his personal presence at the polls. *Goodell v. Judith Basin County*, 70 M 222, 227, 224 P 1110.

Improper Delivery Voids Ballots

Absent voters' 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.

References

Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.

Collateral References

Elections ⇐ 213.

29 C.J.S. Elections § 210 (2).

26 Am. Jur. 2d 70, Elections. § 243.

Right to vote of person inducted into military service under draft act. 129 ALR 1189.

Voting by persons in the military service. 149 ALR 1466; 151 ALR 1464; 152 ALR 1459; 153 ALR 1434; 154 ALR 1459 and 155 ALR 1459.

Validity of absentee voters' laws. 97 ALR 2d 218.

23-1302(1). (716) Application of absentee or physically incapacitated person for ballot. At any time within the period beginning forty-five (45) days next preceding such election and ending at 12 noon on the day next preceding the day of election, any elector expecting to be absent on the day of election from the county in which his voting precinct is situated, or any elector in United States service, or any elector who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed

under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 3, Ch. 18, L. 1959; amd. Sec. 2, Ch. 124, L. 1963.

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once

by Ch. 216. Chapter 18 was approved by the governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 18. The section as amended by Ch. 216 is set out as section 23-1302(2).

23-1302(2). (716) Application of absentee or physically incapacitated person for ballot. At any time within forty-five (45) days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, for any reason whatsoever, or who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by his affidavit, plainly stating the nature of the physical incapacity of the applicant, and stating (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 1, Ch. 216, L. 1959.

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once

by Ch. 216. Chapter 18 was approved by the governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 216. The section as amended by Ch. 18 is set out as section 23-1302(1).

23-1303. (717) Form of application. Application for such ballots shall be made on a blank furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:

"I, _____, a duly qualified elector of the _____precinct, in the county of _____, and State of Montana, and am to the best of my knowledge and belief entitled

to vote in such precinct in the next election, expecting to be absent from said county or, in all probability, to be physically incapacitated from going to my precinct poll on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

Post-office address to which ballot is to be mailed.....

State of
County of } ss.

On this day of, personally appeared before me, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows the contents of same and knows to his own knowledge the matters and things therein stated are true.

”

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, pursuant to the laws of the place of execution, and the application shall not be deemed complete without this affidavit.

Provided that application for such ballot by any elector in the United States may be made by the federal post card application, or by any written request, signed by said applicant, addressed to the county clerk of the county of residence of said elector.

History: En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917; re-en. Sec. 717, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1923; amd. Sec. 1, Ch. 32, L. 1941; amd. Sec. 3, Ch. 234, L. 1943; amd. Sec. 2, Ch. 104, L. 1953; amd. Sec. 1, Ch. 152, L. 1955; amd. Sec. 4, Ch. 18, L. 1959; amd. Sec. 2, Ch. 216, L. 1959.

nor, February 6, 1959 while Ch. 216 was approved March 11, 1959. Neither amendment mentioned the other act and as the acts amended the section in different respects, the compiler has made a composite section, incorporating the changes made by each act.

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18, Laws 1959 and once by Ch. 216, Laws 1959. Chapter 18 was approved by the gover-

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

23-1303.1. Forms and regulations for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee voter ballot for school districts and such other forms and regulations as may be necessary to carry out the purpose of this act, as it pertains to school districts.

History: En. Sec. 3, Ch. 108, L. 1963.

23-1304. (718) Transmission of application to county clerk—delivery of ballot. The voter making such application shall forward by mail or de-

liver in person the same to the county clerk of the county in which he is registered and it shall be the duty of the said county clerk to look up the applicant's registration card and compare the signature on the application for absent or physically incapacitated voter's ballot and the registration card and if convinced the person making the application for absent or physically incapacitated voter's ballot and the person who signed the original registration card is one and the same person, he shall accept the same in good faith and deliver the ballot as provided in section 23-1305.

History: En. Sec. 4, Ch. 110, L. 1915; amd. Sec. 4, Ch. 155, L. 1917; re-en. Sec. 718, R. C. M. 1921; amd. Sec. 2, Ch. 151, L. 1923; amd. Sec. 4, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County, 70 M 222, 227, 236, 224 P 1110; State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 892.

23-1305. (719) Duty of clerk to deliver application or ballot. Such application blank shall, upon request therefor, be sent by such county or city or town clerk to any elector of the county, by mail, and shall be delivered to any elector upon application made personally at the office of such county or city or town clerk; provided, however, that no elector shall be entitled to receive such a ballot on election day, nor unless his application is made to or received by the county or city or town clerk before the delivery of the official ballots to the judge of election.

History: En. Sec. 5, Ch. 110, L. 1915; re-en. Sec. 5, Ch. 155, L. 1917; re-en. Sec. 719, R. C. M. 1921.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

23-1306. (720) Mailing ballot to elector—form of return and affidavit. Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county or city or town clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each kind, and shall enclose with such ballot or ballots an envelope, to be furnished by such county or city or town clerk, which envelope shall bear upon the front thereof the name, official title and post-office address of such county or city or town clerk, and upon the other side a printed affidavit, in substantially the following form:

"State of }
County } ss.

I,, do solemnly swear that I am a resident of the precinct, (and if he be a resident of a city or town, Add: 'Residing at, in the town or city of'), County of and State of Montana, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence or, in all probability, to be physically incapacitated from going to my precinct poll on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me thisday of, 19.....; and I hereby certify that the affiant exhibited to me the enclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and enclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....
”

Both the envelope in which the ballot is mailed to the elector in the United States service and the return envelope enclosed therein shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words “Official Election Balloting Material—via Air Mail,” or similar language, between the bars; that there be printed in the upper right corner of each such envelope, in a box, the words “Free of U. S. Postage, Including Air Mail”; that all printing on the face of each such envelope be in red; and that there be printed in red in the upper left-hand corner of each state ballot envelope an appropriate inscription or blanks for return address of sender.

The return envelope shall be self-addressed to the county or city or town clerk.

The county or city or town clerk shall enclose with the ballot mailed to the elector in the United States service instructions for voting and returning the ballot.

History: En. Sec. 6, Ch. 110, L. 1915; amd. Sec. 6, Ch. 155, L. 1917; re-en. Sec. 720, R. C. M. 1921; amd. Sec. 5, Ch. 234, L. 1943; amd. Sec. 5, Ch. 18, L. 1959.

References

Goodell v. Judith Basin County, 70 M 222, 237, 224 P 1110.

23-1307. (721) Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, pursuant to the laws of the place of execution and may do so at any place including any foreign country, before any officer authorized by the laws of the place of execution to take acknowledgments of instruments, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed. Said officer shall thereupon append his signature and official title at the end of said jurat and affidavit. Said envelope shall be mailed by such absent or physically incapacitated voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

History: En. Sec. 7, Ch. 110, L. 1915; 721, R. C. M. 1921; amd. Sec. 3, Ch. 151, amd. Sec. 7, Ch. 155, L. 1917; re-en. Sec. L. 1923; amd. Sec. 6, Ch. 234, L. 1943;

amd. Sec. 1, Ch. 60, L. 1953; amd. Sec. 3,
Ch. 216, L. 1959.

References

Goodell v. Judith Basin County, 70 M
222, 237, 224 P 1110.

Collateral References

Elections 216.1.
29 C.J.S. Elections § 210.

23-1308. (722) Disposition of marked ballot upon receipt by clerk. Upon receipt of such envelope, such county or city or town clerk shall forthwith enclose the same, unopened, together with the written application of such absent voter or physically incapacitated voter in a larger envelope, which shall be securely sealed and endorsed with the name of the proper voting precinct, the name and official title of such clerk, and the words "This envelope contains an absent or physically incapacitated voter ballot, and must be opened only on election day at the polls when the same are open," and such clerk shall safely keep the same in his office until the same is delivered or mailed by him as provided in the next section.

History: En. Sec. 8, Ch. 110, L. 1915;
re-en. Sec. 8, Ch. 155, L. 1917; re-en. Sec.
722, R. C. M. 1921; amd. Sec. 7, Ch. 234,
L. 1943.

References

Goodell v. Judith Basin County, 70 M
222, 227, 224 P 1110.

23-1309. (723) Delivery or mailing of ballots to election judges. In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent or physically incapacitated voter resides, said larger envelope, containing the said voter's envelope, and his said application as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of election prior to the time of the receipt by the said clerk of said absent or physically incapacitated voter's envelope, such clerk shall immediately after enclosing such voter's envelope and his application in a larger envelope, and after endorsing the latter as provided in the foregoing section, address and mail the larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided. If any absentee ballots are received by the clerk for which application was made after 12 noon on the day next 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 by authority of section 23-1309, R.C.M. 1947." Absentee ballots endorsed in this manner shall be delivered to the judge of election of said precinct and shall be rejected by the judge of election.

History: En. Sec. 9, Ch. 110, L. 1915;
re-en. Sec. 9, Ch. 155, L. 1917; re-en. Sec.
723, R. C. M. 1921; amd. Sec. 8, Ch. 234,
L. 1943; amd. Sec. 1, Ch. 124, L. 1963.

References

Goodell v. Judith Basin County, 70 M
222, 227, 224 P 1110.

23-1310. (724) Clerk to keep record of ballots and issue certificate. The ballot or ballots to be delivered or marked by such absent or physically incapacitated voter shall be one of the regular official ballots to be used at such election, and of each kind of such official ballots if there be more than one kind to be voted, beginning with ballot one and following consecu-

tively, according to the number of applications for such absent or physically incapacitated voter ballots. The county or city or town clerk shall keep a record of all ballots so delivered for the purpose of absent voting, or voting by persons physically incapacitated from going to the polls, as well as of ballots, if any, marked before him as hereinafter provided, and shall make and deliver to the judge of election, to whom the ballots for the precinct are delivered, and at the time of the delivery of such ballots, a certificate stating the number of ballots delivered or mailed to absent or physically incapacitated voters, as well as those marked before him, if any, and the names of the voters to whom such ballots shall be delivered or mailed, or by whom they shall have been marked if marked before him.

History: En. Sec. 10, Ch. 110, L. 1915;
re-en. Sec. 10, Ch. 155, L. 1917; re-en. Sec.
724, R. C. M. 1921; amd. Sec. 9, Ch. 234,
L. 1943.

References

Goodell v. Judith Basin County, 70 M
222, 227, 224 P 1110.

23-1311. (725) Duty of election judges—pollbooks, numbering ballots and rejected ballots. The judges of election, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the numbers of the ballots issued to absent or physically incapacitated voters, as shown by the certificate of the county or city or town clerk, the fact that such ballots were issued to absent or physically incapacitated voters, and shall reserve said numbers for the absent or physically incapacitated voters. The notation may be made by writing the words “absent or physically incapacitated voters” opposite such numbers.

The judges shall not allow any names to be inserted in the pollbooks on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county or city or town clerk, and the number of his ballot. Any so rejected shall be placed together with the voter’s application and the absent or physically incapacitated voter’s envelope provided for the purpose by the clerk and recorder or city or town clerk, which shall be sealed and endorsed by the words, “rejected absent or physically incapacitated voter ballots” numbered, and shall put thereon the number of the ballots given to absent or physically incapacitated voters according to the county or city or town clerk’s certificate. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected, and such envelopes shall be placed in an envelope together with the other ballots, and shall not be opened without order of a court of competent jurisdiction.

History: En. Sec. 11, Ch. 110, L. 1915;
amd. Sec. 11, Ch. 155, L. 1917; re-en. Sec.
725, R. C. M. 1921; amd. Sec. 10, Ch. 234,
L. 1943; amd. Sec. 9, Ch. 64, L. 1959.

References

Goodell v. Judith Basin County, 70 M
222, 227, 224 P 1110.

Collateral References

Elections 216.1.
29 C.J.S. Elections § 210.

23-1312. (726) Voting before election day by prospective absentee or physically incapacitated elector. Any qualified elector who is present in

his county after the official ballots of such county or school district have been printed and who has reason to believe that he will be absent from such county or school district on election day, or physically incapacitated as provided in section 23-1302 may vote before he leaves his county or school district or prior to the inception of such physical incapacity, in like manner as an absent or physically incapacitated voter, before the county or city or town clerk or school district clerk, or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county or city or town or school district clerk it shall be his duty to deal with it in the same manner as if it had come by mail.

<p>History: En. Sec. 12, Ch. 110, L. 1915; amd. Sec. 12, Ch. 155, L. 1917; re-en. Sec. 726, R. C. M. 1921; amd. Sec. 11, Ch. 234, L. 1943; amd. Sec. 2, Ch. 108, L. 1963.</p>	<p>References Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.</p>
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23-1313. (727) Envelopes containing ballots—deposit in box and rejection of ballot. At any time between the opening and closing of the polls on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application, with the signature to such affidavit.

In case the judge finds the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct, and has not voted at such election, they shall open the absent or physically incapacitated voter's envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds to the number in the county or city or town clerk's certificate. If so, they shall endorse the same in like manner that other ballots are endorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot box or boxes, and make in their election records the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but, without opening the absent or physically incapacitated voter envelope, the judges of such election shall mark across the face thereof "rejected as defective" or "rejected as not an elector" as the case may be. The absent or physically incapacitated voter envelope, when such absent vote or vote by a person physically incapacitated from going to the polls is voted, and the absent or physically incapacitated voter envelope with its contents, unopened, when such absent vote or vote by a person physically incapacitated from going to the polls is rejected, shall be deposited in the ballot box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If, upon opening the absent or physically incapacitated voter's envelope, it be found that the stub of any ballot has been detached,

or that the number thereon does not correspond to the number in the county or city or town clerk's certificate of the number issued to such absent or physically incapacitated voter, the ballot shall be rejected, and it shall then and there, and without looking at the face thereof, be marked on the back "rejected on the ground of, " filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected, together with the absent or physically incapacitated voter's envelope bearing the application, and the said application, shall be all enclosed in an envelope, which shall be then and there securely sealed, and on such envelope the judges shall write or cause to be written (if not already printed thereon) the words, "rejected ballot of absent or physically incapacitated voter" (writing in the name of the elector). "The rejected ballot or ballots is or are" The judges shall designate the rejected ballot as "general ballot," if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question submitted to the vote of the electors, the judges shall designate such ballot as ballot question No. in the certificate on the envelope. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected and such enclosing envelope shall be placed in the envelope in which the other ballots voted or (are) required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county or city or town clerk shall provide and have delivered to the judge of election suitable envelopes for enclosing rejected absent or physically incapacitated voter's ballots.

History: En. Sec. 13, Ch. 110, L. 1915; amd. Sec. 13, Ch. 155, L. 1917; re-en. Sec. 727, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1943; amd. Sec. 10, Ch. 64, L. 1959.

Delivery of Ballot to Election Officials

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and deposited in the ballot box before the closing of the polls on election day, and this is equally true under the Absent Voter's

Law, (23-1301 to 23-1321) by virtue of this section. *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

Collateral References

Elections 216.1.
29 C.J.S. Elections § 210.

23-1314. (728) Transmission of ballot by special delivery. Whenever the county or city or town clerk shall mail the envelope containing an absent or physically incapacitated voter's envelope and ballots, as provided in this act, to a judge of election, he shall place thereon the proper postage and the proper stamp or stamps, and the proper markings to secure the transmission and delivery thereof as a special delivery letter, in accordance with the postal laws of the United States and the regulations of the United States post office.

History: En. Sec. 14, Ch. 110, L. 1915; amd. Sec. 14, Ch. 155, L. 1917; re-en. Sec. 728, R. C. M. 1921; amd. Sec. 13, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

23-1315. (729) Voting in person by elector on election day. Any qualified elector who has marked his ballot as hereinbefore provided, who shall be in his precinct on election day, shall be permitted to vote in person, provided his said ballot has not already been deposited in the ballot box.

History: En. Sec. 15, Ch. 110, L. 1915; re-en. Sec. 15, Ch. 155, L. 1917; re-en. Sec. 729, R. C. M. 1921.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110; State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 651.

23-1316. (730) Procedure when elector is present after marking absent or physically incapacitated voter ballot. In case any elector who shall have marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall appear at the voting place of his precinct on election day, before his ballot or ballots shall have been deposited in the ballot box, his envelope containing his ballot shall, if he so desires, be opened in his presence, and the ballot or ballots found therein shall be deposited in the ballot box as hereinbefore provided. If such elector shall ask for a new ballot or ballots with which to vote, he shall be entitled to the same, but in such case his absent or physically incapacitated voter envelope shall not be opened, and the judges shall mark, or cause to be marked, across the face thereof, "unopened because voter appeared and voted in person," and then deposit the said envelope, unopened, in the ballot box. If the envelope containing the absent or physically incapacitated voter ballot shall have been marked "rejected as defective," and deposited in the ballot box, such elector so appearing shall have the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are there used, he shall vote by machine as other voters.

History: En. Sec. 16, Ch. 110, L. 1915; re-en. Sec. 16, Ch. 155, L. 1917; re-en. Sec. 730, R. C. M. 1921; amd. Sec. 14, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110; State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 651.

23-1317. (731) Opening of envelopes after deposit. If the aforesaid envelope containing an absent or physically incapacitated voter ballot shall have been deposited, unopened, in the ballot box, the said envelope shall not be opened, without an order of a court of competent jurisdiction.

History: En. Sec. 17, Ch. 110, L. 1915; re-en. Sec. 17, Ch. 155, L. 1917; re-en. Sec. 731, R. C. M. 1921; amd. Sec. 15, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

23-1318. (732) False swearing perjury—official misconduct a misdemeanor. If any person shall willfully swear falsely to any affidavit in this act provided for, he shall, upon conviction thereof, be deemed guilty of perjury, and shall be punished as in such cases by law provided. If the county or city or town clerk, or any election officer, shall refuse or neglect to perform any of these duties prescribed by this act, or shall violate any of the provisions thereof, or if any officer taking the affidavit pro-

vided for in section 23-1306 shall make any false statement in his certificate thereto attached, or look at any mark or marks made by the voter upon any such ballot, or permit or allow any other person to be present at the marking of any such ballot by the voter, or to see any mark or marks made thereon by the voter, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 18, Ch. 110, L. 1915; amd. Sec. 18, Ch. 155, L. 1917; re-en. Sec. 732, R. C. M. 1921.

Collateral References

Elections 314; Perjury 8.
29 C.J.S. Elections § 327; 70 C.J.S. Perjury § 23.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

23-1319. (733) Voting machines—canvass of votes. In and for precincts where voting machines are to be used, the county or city or town clerk shall cause to be printed and shall provide ballots in the regular form of printed ballots, and sufficient printed ballots and sufficient in number for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes such as lists required for the precincts in which printed ballots are used. Absent or physically incapacitated voters' ballots received in such precincts shall be cast as in this act provided, and all provisions of this act and of the election laws shall apply to the casting, canvassing, counting and returning of such ballots and votes, except as herein otherwise provided. In making the canvass, the votes cast by absent or physically incapacitated voters shall be added by the judges of election to the votes cast on the voting machines, and the results determined and reported accordingly.

History: En. Sec. 19, Ch. 110, L. 1915; amd. Sec. 19, Ch. 155, L. 1917; re-en. Sec. 733, R. C. M. 1921; amd. Sec. 16, Ch. 234, L. 1943.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

Collateral References

Elections 222.
29 C.J.S. Elections § 203.

23-1320. (734) Duty of elector if present on election day. In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall not leave his county, or shall return thereto or shall have recovered physical capacity to go to the polls on or before election day, and in time to allow him to go to the polls, to wit, to the voting place in his precinct, and to be admitted therein before the close of the polls, it shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall willfully neglect so to do he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment not more than thirty (30) days in the county jail or by both such fine and imprisonment. If such an elector

so appears the judges of election shall note in the precinct register the fact of his appearance as well as whether or not he voted in person.

History: En. Sec. 20, Ch. 110, L. 1915; re-en. Sec. 20, Ch. 155, L. 1917; re-en. Sec. 734, R. C. M. 1921; amd. Sec. 17, Ch. 234, L. 1943; amd. Sec. 11, Ch. 64, L. 1959.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

Collateral References

Elections 313.
29 C.J.S. Elections § 325.

23-1321. (735) Violation of law by elector or officer outside of state—change of venue. If any elector of this state or any other person or any officer shall, in any matter connected with voting outside of the state under the provisions of this law, in any manner violate any of the provisions of this act, or of any of the election or penal laws of this state applicable to voting under this act, in such manner that such violation would constitute an offense if committed within the state, then and in such case such elector, person, or officer shall be deemed guilty of a like offense, and be punishable to the same extent and in the same manner as if the act, omission, or violation had been committed in this state, and may be prosecuted in any county in this state; provided, however, that if the defendant or one of several defendants be a resident of the state he may have the case removed to the county in which the ballot was cast, or was to be cast, if not, in fact cast; and provided, further, that the court may order any such case removed to such county, subject always to the power of the court of any county to grant a change of venue as in other cases.

History: En. Sec. 21, Ch. 155, L. 1917; re-en. Sec. 735, R. C. M. 1921.

Collateral References

Elections 313, 314.
29 C.J.S. Elections §§ 325, 327.

References

Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

- Section 23-1401. Registration of absent electors in United States service.
23-1402. Definition of electors in United States service.
23-1403. The federal post card application.
23-1404. Oath for elector in the United States service.
23-1405. Classification of federal post card application.
23-1406. Penalty applicable.

23-1401. Registration of absent electors in United States service. Any elector of this state in the United States service who is absent from the state of Montana and the county of which he or she is a resident shall be entitled to register by mailing to the county clerk a federal post card application filled out and signed under oath, which shall be the "OFFICIAL WAR REGISTRATION CARD" of the state.

History: En. Sec. 1, Ch. 99, L. 1943; amd. Sec. 6, Ch. 18, L. 1959.

Collateral References

Elections 216.1.
29 C.J.S. Elections § 210.

23-1402. Definition of electors in United States service. The phrase "elector in United States service" as used in the Revised Codes of Montana of 1947, as amended, shall include the following:

(1) Members of the armed forces while in the active service, and their spouses and dependents.

(2) Members of the merchant marine of the United States, and their spouses and dependents.

(3) Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(4) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

History: En. Sec. 2, Ch. 99, L. 1943;
amd. Sec. 7, Ch. 18, L. 1959.

23-1403. The federal post card application. The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be as follows:

(a) The cards shall be approximately nine and one-half (9½) by four and one-eighth (4⅛) inches in size.

(b) Upon one side, perpendicular to the long dimension of the card, there shall be printed in black type the following:

FILL OUT BOTH SIDES OF CARD
POST CARD APPLICATION FOR ABSENTEE BALLOT

State or Commonwealth of
(Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:
(GENERAL) (PRIMARY)* (SPECIAL) ELECTION
(Strike out inapplicable words)

(2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box: ☐
(If primary election is secret in your state, do not answer).

(3) I am a citizen of the United States, eligible to vote in above state, and am:

- a. A member of the armed forces of the United States ☐
- b. A member of the merchant marine of the United States ☐
- c. A member of a religious or welfare organization assisting service-men ☐
- d. A civilian employed by the United States government outside the United States (continental) ☐
- e. A spouse or dependent of a person listed in (a), (b), or (c) above ☐

f. A spouse or dependent residing with a person described in (d) above. ☐

(4) I was born on
(Day) (Month) (Year)

(5) For years preceding the above election my home (not military) residence in the above state has been

(Street and number or rural route, etc.)

The voting precinct or election district for this residence is

(Enter if known)

(6) Remarks:

(7) Mail my ballot to the following address:

(Unit (Co., Sq., Trp., Bn., Etc.), Governmental Agency or Office)

(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)

(Street, Street No., APO, or FPO No.)

(City, Postal Zone, and State)

(8) I am NOT requesting a ballot from any other state and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9)
(Signature of person requesting ballot)

(10)
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on

(Day, month and year)

(Signature of official
administering oath)

(Typed or printed
name of official
administering oath.)

(Title or rank, service number and organization of administering official)

INSTRUCTIONS

- A. Before filling out this form see your voting officer in regard to the voting laws of your state and absentee registration and voting procedure.
- B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.

- C. Address card to proper state official. Your voting officer or commanding officer will furnish you with his title and address.
- D. Mail card as soon as your state will accept your application.
- E. No postage is required for the card.

(c) Upon the other side of the card there shall be printed in red type the following :

FILL OUT BOTH SIDES OF THE CARD

.....
(Name)
.....

FREE OF U. S. POSTAGE
Including Air Mail

.....
(Unit, Gov't Agency, or Office)
.....

.....
(Mil. Base, Station, Ship or Office)
.....

.....
(Street No., APO, or FPO No.)
.....

.....
(City, Postal Zone, State)
.....

OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

To :

.....
(Title of election official)
.....

.....
(County or township)
.....

.....
(City or Town, State)

History: En. Sec. 3, Ch. 99, L. 1943;
amd. Sec. 8, Ch. 18, L. 1959.

23-1404. Oath for elector in the United States service. 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 the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, or any civilian official empowered by state or federal law to administer oaths. No official seal need be affixed to said oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking said oath except to the extent required by the federal post card application.

History: En. Sec. 4, Ch. 99, L. 1943;
amd. Sec. 9, Ch. 18, L. 1959.

23-1405. Classification of federal post card application. Upon receipt by the county clerk of a federal post card application properly filled out and signed under oath, the county clerk shall classify such federal post card application according to the precinct in which the elector resides, and

shall arrange the cards in each precinct in alphabetical order. The county clerk 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 said elector. Immediately upon entry upon the official register of the county of the name of the elector in the United States service the county clerk shall send to him or her 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 next preceding the election another federal post card application to his county clerk or city clerk or town clerk.

History: En. Sec. 5, Ch. 99, L. 1943;
amd. Sec. 10, Ch. 18, L. 1959.

23-1406. Penalty applicable. The penalty provided for by section 23-503, in the case of an elector residing within the county who registers, is hereby made applicable to violations of the provisions of this act.

History: En. Sec. 6, Ch. 99, L. 1943.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM COUNTY OF THEIR RESIDENCE

- Section 23-1501. Method of registration of voters absent from county.
23-1502. Registration card mailed upon application.
23-1503. Questions asked and answered in writing.

23-1501. Method of registration of voters absent from county. Any elector who is unable to make personal application for registration to vote by appearing before the county clerk and ex officio registrar of the county of his or her legal residence, by reason of being absent from the county, may register to vote prior to the close of registration, before any election to be held in the state of Montana, by appearing, executing and verifying under oath, before a notary public or other officer authorized to administer oaths, at any place within the continental limits of the United States of America, a registration card in the form prescribed in section 23-502, and returning such registration card, so executed and verified, to the county clerk and ex officio registrar of the county in which his or her legal residence is located in sufficient time to reach such county clerk and ex officio registrar before the close of registration; provided, however, such an elector shall not be entitled to have his name entered in the official register of electors until at least two (2) registered electors of the county in which such elector desiring to be registered has his place of residence, as stated in his application for registration, appear before the county clerk and ex officio registrar and make affidavit or affidavits in writing, stating they are personally acquainted with the applicant for registration, are familiar with and know his signature, have seen him write and that the signature subscribed to the application for registration is the signature of such elector.

History: En. Sec. 1, Ch. 190, L. 1943.

Collateral References

Elections 216.1.
29 C.J.S. Elections § 210.

23-1502. Registration card mailed upon application. The county clerk and ex officio registrar of the county of an elector's legal residence shall furnish to any elector applying therefor, whether application be made by mail, telegram or telephone, one (1) of the printed registration cards provided for registration of electors, to be used by such elector in registering; said card to be transmitted by United States mail, with postage prepaid, by said county clerk and ex officio registrar to the address furnished by the elector at the time of making of his application.

History: En. Sec. 2, Ch. 190, L. 1943.

23-1503. Questions asked and answered in writing. In the case of any person who desires and who is entitled to register in the manner provided in section 23-1501, the questions required by section 23-510, to be asked each person registering, shall be propounded in writing and shall be transmitted by the county clerk and ex officio registrar, together with registration card, in the manner above provided, to the person so desiring to register, who shall answer such questions in writing and shall return such answers to the county clerk and ex officio registrar, together with completed registration card.

History: En. Sec. 3, Ch. 190, L. 1943.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

- Section 23-1601. Voting machines—secretary of state.
- 23-1602. Specifications of machines required.
- 23-1603. Purchase and use of voting machines at elections.
- 23-1604. Payment for machines, how provided for.
- 23-1605. Method of conducting elections.
- 23-1606. Assistance to elector unable to record vote.
- 23-1607. Ballots and instructions to voters.
- 23-1608. City and county clerks to set up machines for use.
- 23-1608A. Ballot—arrangement on machine.
- 23-1609. Irregular ballots.
- 23-1610. Counting the votes.
- 23-1611. Election returns.
- 23-1612. Election laws applicable.
- 23-1613. Penalty for neglect of duty by election officer.
- 23-1614. Penalty for tampering with or injuring machines.
- 23-1615. Penalty for violation of duty by judge of election.
- 23-1616. Penalty for fraudulent returns or certificates.
- 23-1617. Experimental use of machines—defective machines.
- 23-1618. Approved machines—continuation of use.

23-1601. (757) Voting machines—secretary of state. It shall be the duty of the secretary of state to examine, or cause to be examined, all voting or ballot machines in order to determine whether such machines comply with the requirements of this chapter, and can safely be used by voters at elections under the provisions of said chapter, and no machine or machines shall be provided or used at any election in this state unless such machine or machines shall have received the approval of the secretary of state as herein provided. The secretary of state may employ two qualified mechanics, who shall be qualified electors of the state of Montana, to examine said machines and assist him in the discharge of his duties under

said chapter, the compensation to be paid such qualified mechanics not to exceed the sum of ten dollars (\$10.00) each for each day actually employed. Any machine or machines which shall have the approval of the secretary of state may be provided for in this chapter. The report of the secretary of state on each and every kind of voting machine shall be filed in his office within thirty days after examining the machine, and he shall, within five days after the filing of any report approving any machine or machines transmit to the board of county commissioners, city or town council or other board of officers having charge and control of elections in each of the counties, cities and towns in this state, a list of the machines so approved. No machine or machines shall be used unless they shall have received the approval of the secretary of state at least sixty days prior to any election at which such machine or machines are to be used. The compensation of the mechanics and all other expenses connected with the examination of any machine shall be paid, or cause to be paid, by the person or company submitting a machine for examination before the filing of the report thereon. The amount of such expenses shall be certified by the state auditor and paid by the state treasurer.

History: En. Sec. 1, Ch. 168, L. 1907; Sec. 609, Rev. C. 1907; re-en. Sec. 757, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1943.

Constitutionality

Chapter 168, Laws 1907 (23-1601 et seq.) is not invalid as in contravention of section 1, article IX of the constitution of Montana, providing that all elections shall be "by ballot," the term "ballot" being em-

ployed 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.

Collateral References

Elections ⇨ 222.
29 C.J.S. Elections § 203.
26 Am. Jur. 2d 80, Elections, § 253.

23-1602. (758) Specifications of machines required. No machine or machine system shall be approved by the secretary of state unless it is so constructed as to afford every elector a reasonable opportunity to vote for any person for any office, or for or against any proposition for whom, or for or against which he is entitled by law to vote, and enable him to do this in secrecy; and it must be so constructed as to preclude an elector from voting for any candidate for the same office or upon any question more than once, and from voting for any person for any office or on any proposition, for whom or on which he is not entitled to vote. The machine or machine system must admit of his voting a split ticket as he may desire. It must also be constructed as to register or record each and every vote cast. For presidential electors one device may be provided for voting for all the candidates on one party at one time by the use of such device, opposite or adjacent to which shall be a ballot on the machine containing the names of all the candidates for all presidential electors for that party, and a vote registered or recorded by the use of such device shall be counted for each of such candidates on said ballot. The machine must be so constructed that it cannot be tampered with or manipulated for any fraudulent purpose; and the machine must be so locked, arranged, or constructed, that during the progress of the voting no person can see or know the num-

ber of votes registered or recorded for any candidate or for or against any proposition.

History: En. Sec. 2, Ch. 168, L. 1907; Sec. 610, Rev. C. 1907; re-en. Sec. 758, R. C. M. 1921; amd. Sec. 2, Ch. 19, L. 1943.

Type of Machine Required

In an action of quo warranto to determine the title to an office, the claim was made that the voting machines used at an election in one of the counties of the state did not comply with the law which authorizes their use, basing the contention upon the provision of above section, that "the machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purpose." The provision quoted is, however, to be read in connection with the remainder of

the act and, when so read, it becomes obvious that the 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.

Collateral References

Elections—27.

29 C.J.S. Elections § 191.

23-1603. (759) Purchase and use of voting machines at elections. The boards of county commissioners of counties of the first class shall, and the boards of county commissioners of other counties and city councils of all cities and towns, may, at their option, adopt and purchase, for use in the various precincts, any voting machine approved in the manner above set forth in section 23-1601, by the secretary of state, and none other. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following the adoption of such machines in a city, village, or town, as many may be supplied as it is practicable to procure, and the same shall be used in such precinct of the municipality, as the proper officers may order. The proper officers of any city, village, or town may, not later than the tenth (10th) day of September, in any year in which a general election is held, unite two or more precincts into one for the purpose of using therein at such election a voting machine, and the notice of such uniting shall be given in the manner prescribed by law for the change of election districts.

History: En. Sec. 3, Ch. 168, L. 1907; Sec. 611, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1909; re-en. Sec. 759, R. C. M. 1921; amd. Sec. 1, Ch. 26, L. 1947.

Collateral References

Elections—222.

29 C.J.S. Elections § 203.

26 Am. Jur. 2d 80, Elections, § 253.

23-1604. (760) Payment for machines, how provided for. Payment for voting machines purchased may be provided by the issuance of interest-bearing bonds, certificates of indebtedness, or other obligation, which will be a charge upon such county, city, or town. Such bonds, certificates, or other obligation may be made payable at such time or times, not exceeding ten years from the date of issue, as may be determined, but shall not be issued or sold at less than par.

History: En. Sec. 4, Ch. 168, L. 1907; Sec. 612, Rev. C. 1907; re-en. Sec. 760, R. C. M. 1921.

Collateral References

Counties—164, 173 (1); Municipal Corporations—897, 910.

20 C.J.S. Counties §§ 248, 258; 64 C.J.S. Municipal Corporations §§ 1893, 1905.

23-1605. (761) Method of conducting elections. (1) The room in which the election is held shall have a railing separating that part of the room to be occupied by the election officers from that part of the room occupied by the voting machine. The exterior of the voting machine and every part of the polling place shall be in plain view of the judges. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or determine from the outside of the room. After the opening of the polls, the judges shall not allow any person to pass within the railing to that part of the room where the machine is situated, except for the purpose of voting and except as provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted. No voter shall remain within the voting machine booth or compartment longer than one minute, and if he should refuse to leave it after that lapse of time he shall at once be removed by the judges. The election board of each election precinct in which a voting machine is used shall consist of three judges of election. Where more than one machine is to be used in an election precinct, one additional judge shall be appointed for each additional machine. Before each election at which voting machines are to be used, the custodian shall instruct all judges of election that are to serve thereat in the use of the machine and their duties in connection therewith; and he shall give to each judge that has received such instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect. For the purpose of giving such instruction, the custodian shall call such meeting or meetings of the judges of election as shall be necessary.

(2) Each judge of election shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction, each judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No such judge of election shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine, and has received a certificate to that effect from the custodian of the machines; provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency.

History: En. Sec. 5, Ch. 168, L. 1907;
Sec. 613, Rev. C. 1907; amd. Sec. 1, Ch. 99,
L. 1909; re-en. Sec. 761, R. C. M. 1921.

Collateral References
Elections \Rightarrow 222.
29 C.J.S. Elections § 203.

23-1606. (762) Assistance to elector unable to record vote. If any voter shall, in the presence of the judges of election, declare that he is unable to read or write the English language, or that by reason of a physical disability or total blindness he is unable to register or record his vote upon

the voting machine, he shall be assisted as provided by section 23-1213. Any person who shall deceive any elector in registering or recording his vote under this section, or who shall register or record his vote in any other way than as requested by such person or who shall give information to any person as to what ticket or for what person or persons such person voted, shall be punished as provided in section 94-1407.

History: En. Sec. 6, Ch. 168, L. 1907; Sec. 614, Rev. C. 1907; re-en. Sec. 762, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1935.

Collateral References

Elections—220.

29 C.J.S. Elections § 208.

26 Am. Jur. 2d 68, Elections, § 238.

23-1607. (763) Ballots and instructions to voters. (1) Not more than ten (10) or less than three (3) days before each election at which voting machines are to be used, the board, or officials, charged with the duty of providing ballots, shall publish in newspapers representing at least two (2) political parties a diagram of reduced size showing the face of the voting machine, after the official ballot labels are arranged thereon, together with illustrated instructions how to vote, and a statement of the locations of such voting machines as shall be on public exhibition; a voting machine shall at all time be on exhibition for public demonstration in the office of the county clerk and recorder in the counties where said voting machines are used, and it shall be the duty of said county clerk and recorder to demonstrate and explain the working and operation of said voting machine to any inquiring voter; or in lieu of such publication, said board or officials may send by mail or otherwise at least three (3) days before the election, a printed copy of said reduced diagram to each registered voter.

(2) Not later than forty (40) days before each election at which voting machines are to be used the secretary of state shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or officials having charge of election in each county, city, or village in which the machines are to be used, such samples to meet the requirements of the election to be held, and to suit the construction of the machine to be used.

(3) The board or officials charged with the duty of providing ballots, shall provide for each voting machine for each election the following printed matter and supplies; suitable printed or written directions to the custodian for testing and preparing the voting machines for the election; one certificate on which the custodian can certify that he has properly tested and prepared the voting machine for the election; one certificate on which some person other than the custodian preparing the machine, can certify that the voting machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can verify that they have witnessed the testing and preparation of the machines; one certificate on which the deliverer of the machine can certify that he has delivered the machines to the polling places in good order; one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing the voting machine; one envelope in which the keys to the voting machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the des-

ignation and location of the election district in which the machine is to be used, the number of machine, the number shown on the protective counter thereof after the machine has been prepared for the election and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting machine to the judge of election; one envelope in which keys to the voting machine can be returned by the election officers after the election; one card stating the name and telephone address of the custodian on the day of the election; two statements of canvass on which the election officers can report the canvass of votes as shown on the voting machine, together with other necessary information relating to the election, said statements of canvass to take the place of all tally papers, statements, and returns as provided heretofore; three (3) complete sets of ballot labels; two diagrams of the face of the machine with the ballot labels thereon, each diagram to have printed above it the proper instructions to voters for voting on the machine; six (6) suitable printed instructions to judges of election; six (6) notices to judges of election to attend the instruction meeting; six (6) certificates that the judges of election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine.

(4) The ballot labels shall be printed in black ink on clear white material of such size and arrangement as shall suit the construction of the machine; provided, however, that the ballot labels for the questions may contain a condensed statement of each question to be voted on, followed by the words "Yes" and "No"; and provided further, that the titles of the officers thereon shall be printed in type as large as the space for each office will reasonably permit, and wherever more than one candidate will be voted for for an office, there shall be printed below the office title thereof the words "vote for any two," or such number as the voter is lawfully entitled to vote for for such office.

(5) When any person is nominated for an office by more than one political party his name shall be placed upon the ticket under the designation of the party which first nominated him; or, if nominated by more than one party at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written statement indicating the party designation under which he desires his name to appear upon the ballot, and it shall be so printed. If he shall refuse or neglect to so file such a statement, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties nominating him, but under no other designation whatsoever.

(6) If the election be one at which all the candidates for office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine twenty-five (25) ballots for each political party, each ballot containing the names of the candidates for the office of presidential electors of such party and a suitable space for writing in names, so that the voter can vote thereon for part of the candidates for the office of presidential electors of one party and part of the candidates

therefor of one or more other parties or for persons for that office not nominated by any party. For election precincts in which voting machines are to be used, no books or blanks for making poll lists shall be provided, but in lieu thereof, the registry lists shall contain a column in which can be entered the number of each voter's ballot as indicated by the number registered on the public counter as he emerges from the voting machine.

History: En. Sec. 7, Ch. 168, L. 1907;
Sec. 615, Rev. C. 1907; amd. Sec. 2, Ch. 99,
L. 1909; amd. Sec. 1, Ch. 246, L. 1921;
re-en. Sec. 763, R. C. M. 1921.

Collateral References
Elections—222.
29 C.J.S. Elections § 203.

23-1608. (764) City and county clerks to set up machines for use.

(1) The city or county clerks of each city or county in which a voting machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same in the room where the election is to be held in the precinct, in time for the opening of the polls on election day; provided, however, that a shield of tin painted black made to conform with the shape of the keys or levers on said voting machine, shall be placed over the keys or levers not in use on the face of the ballot of the voting machine; said shields to be plainly marked with the words "not in use."

(2) In primary elections a separate row or column shall be assigned to each political party and at least one row or column shall separate the rows assigned to the two major political parties as defined in section 23-1107. In this row or column shall be placed the nonpartisan judicial ballot. In general elections the ballot on the voting machines shall be arranged and the names of the candidates for each office rotated to conform as nearly as possible to the requirements for paper ballots set forth in section 23-1107. The names of the candidates of the two major parties as defined in section 23-1107 shall appear in and be rotated between the first two horizontal rows or vertical columns, and the names of the candidates of minor parties and independent candidates shall appear in and be rotated between succeeding rows or columns; provided, however, that the arrangement of the ballot shall be uniform on all machines in the same precinct. The party designation of each candidate shall be printed after or below his name in type as large as the design of the machine will allow.

(3) The nonpartisan judicial ballot shall be placed in the first two horizontal or vertical rows or columns in the same position as prescribed for judicial candidates in section 23-1111.

(4) The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is

otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so arranged.

History: En. Sec. 8, Ch. 168, L. 1907; 246, L. 1921; re-en. Sec. 764, R. C. M. Sec. 616, Rev. C. 1907; amd. Sec. 2, Ch. 1921; amd. Sec. 1, Ch. 20, L. 1959.

23-1608A. Ballot—arrangement on machine. The arrangement of the general election ballot on voting machines with horizontal rows shall be, as nearly as possible, in the following form:

INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS	CONSTITUTIONAL AMENDMENT						FOR AGAINST		INITIATIVE NO. 1		FOR AGAINST	
	<div></div>						<div></div>		<div></div>		<div></div>	
OFFICES	FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE-PRESI- DENT OF THE UNITED STATES Vote for one	UNITED STATES SENATOR Vote for one	REPRESENT- ATIVE IN CONGRESS Vote for one	GOVERNOR Vote for one		STATE SENATOR Vote for one	MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four		COUNTY COMMISS- SIONER Vote for one			
CANDIDATES	Democrat JOHN DOE for President ALBERT ORE for Vice-President John Doe, Ella Moe, Jane Roe, Tom Voe	TOM COE Republican	JOHN DOE Democrat	BILL COE Republican	(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treas- urer, State Auditor, Railroad and Public Service Commis- sioners, State Superin- tendent of Public In- struction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, As- sociate Justice of the Supreme Court, and District Judges)	JOE COE Republican	JACK BOE Democrat	PETE COE Democrat	BILL DOE Republican	FRANK HOE Democrat	JOHN DOE Democrat	(Same for all County and Town- ship offices)
CANDIDATES	Republican FRANK MOE for President HARRY COE for Vice-President Jane Doe, John Moe, Tom Roe, John Voe	JACK MOE Democrat	MIKE ORE Republican	TOM ROE Democrat		TOM DOE Democrat	OLE KOE Republican	JOHN MOE Democrat	EARL ROE Republican	MIKE ROE Republican		
CANDIDATES		JOE ROE Socialist					MIKE FOE Independent	JIM GOE Socialist	BILL LOE Prohibition			
CANDIDATES												

The arrangement of the general election ballot on voting machines with vertical columns shall be, as nearly as possible, in the following form:

Offices	Candidates	Candidates	Candidates	Candidates	Initiatives, Referendums and Constitutional Amendments	
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES Vote for one	Democrat JOHN DOE for President ALBERT ORE for Vice-President John Doe, Ella Moe Jane Roe, Tom Voe	Republican FRANK MOE for President HARRY COE for Vice-President Jane Doe, John Moe Tom Roe, John Voe				CONSTITUTIONAL AMENDMENT
UNITED STATES SENATOR Vote for one	TOM COE Republican	JACK MOE Democrat	JOE HEO Socialist		FOR	
REPRESENTATIVE IN CONGRESS Vote for one	JOE DOE Democrat	MIKE ORE Republican			AGAINST	
GOVERNOR Vote for one	BILL COE Republican	TOM ROE Democrat				
(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, Associate Justice of the Supreme Court and District Judges.)						
STATE SENATOR Vote for one	JOE COE Republican	TOM DOE Democrat				INITIATIVE NO. 1
MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four	JACK BOE Democrat	ALLEN JOE Republican	MIKE FOE Independent			
	PETE COE Democrat	OLE KOE Republican	JIM GOE Socialist		FOR	
	BILL DOE Republican	JOE MOE Democrat	BILL LOE Prohibition		AGAINST	
	FRANK HOE Democrat	EARL ROE Republican				
COUNTY COMMISSIONER Vote for one	JOHN DOE Democrat	MIKE ROE Republican				
(Same for all County and Township offices.)						

History: En. 23-1608A by Sec. 2, Ch. 20, L. 1959.

word "Justice" in the sixth line of the parenthetical note in the ballot form for voting machines with vertical columns.

Compiler's Note

The compiler deleted a repetition of the

23-1609. (765) Irregular ballots. In case a voting machine be adopted which provides for the registry or recording of votes for candidates whose names are not on the official ballot, such ballots shall be denominated irregular ballots. A person whose name appears on a ballot, or on or in a machine or machine system, shall not be voted for for the same office or on or in any regular device for casting an irregular ticket, and any such vote shall not be counted, except for the office of presidential electors, and an


elector may vote in or on such irregular device for one or more persons nominated by one party with one or more persons nominated by any one or all other parties, or for one or more persons nominated by one or more parties with one or more persons not in nomination, or he may vote in such irregular device a presidential electoral ticket composed entirely of names of persons not in nomination.

History: En. Sec. 9, Ch. 168, L. 1907;
Sec. 617, Rev. C. 1907; re-en. Sec. 765,
R. C. M. 1921.

23-1610. (766) Counting the votes. As soon as the polls of the election are closed the judges shall immediately lock the machine, or remove the recording device so as to provide against voting, and open the registering or recording compartments in the presence of any person desiring to attend the same, and shall proceed to ascertain the number of votes cast for each person voted for at the election, and to canvass, record, announce, and return the same as provided by law.

History: En. Sec. 10, Ch. 168, L. 1907;
Sec. 618, Rev. C. 1907; re-en. Sec. 766,
R. C. M. 1921.

Collateral References

Elections  222.
29 C.J.S. Elections § 203.

23-1611. (767) Election returns. (1) The judges, as soon as the count is completed and fully ascertained, shall place the machine for one (1) hour in such a position that the registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Immediately after the above said one (1) hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least twenty (20) days, except when used in a municipal primary nominating election, unless opened by order of a court of competent jurisdiction or the county recount board. Whenever a machine has been used in a municipal primary nominating election, it shall remain sealed and locked for a period of at least five (5) days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed "irregular ballots," and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six (6) months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction or the county recount board; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

(2) The officers heretofore charged with the duty of furnishing tally sheets and return blanks shall furnish suitable return blanks and certificates to the officers of election. Such return sheets shall have each candidate's name designated by the same reference character that said candidate's name bears on the ballot labels and counters, and shall make provision for writing

in of the vote for such candidate in figures and shall also provide for writing in of the vote in words. Such return sheet shall also provide for the return of the vote on questions. It shall also have a blank thereon, on which can be marked the precinct, ward, etc., of which said return sheet bears the returns and the number and make of the machine used. Said return sheet shall also have a certificate thereon, to be executed before the polls open by the judges of election, stating that all counters except the protective counter, if any, and except as otherwise noted thereon, stood at "000" at the beginning of the election, and that all of said counters had been carefully examined before the beginning of the election; that the ballot labels were correctly placed on the machine and correspond to the sample ballot, and such other statements as the particular machine may require; and shall provide for the signature of the election officers. Said return sheet shall also have thereon a second certificate stating the manner of closing the polls, the manner of verifying the returns, that the foregoing returns are correct, giving the indication of the public counter, and poll list, and protective counter, if any, at the close of the election. Such certificate shall properly specify the procedure of canvassing the vote and locking the machine, etc., for the particular type of machine used, and such certificate shall be such that the election officers can properly subscribe to it as having been followed and shall have provisions for the signature of the election officers. The election officers shall conform their procedure to that specified in the certificate to which they must certify. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 11, Ch. 168, L. 1907; Sec. 619, Rev. C. 1907; amd. Sec. 3, Ch. 246, L. 1921; re-en. Sec. 767, R. C. M. 1921; amd. Sec. 16, Ch. 42, L. 1963; amd. Sec. 1, Ch. 57, L. 1963; amd. Sec. 10, Ch. 156, L. 1965.

Collateral References

Elections—248, 250.
29 C.J.S. Elections §§ 230, 231.

23-1612. (768) Election laws applicable. All laws of this state applicable to elections where voting is done in another manner than by machine, and all penalties prescribed for violation of such laws, shall apply to elections and precincts where voting machines are used, in so far as they are not in conflict with the provisions of this chapter.

History: En. Sec. 12, Ch. 168, L. 1907; Sec. 620, Rev. C. 1907; re-en. Sec. 768, R. C. M. 1921.

23-1613. (769) Penalty for neglect of duty by election officer. Any public officer, or any election officer upon whom any duty is imposed by this act, who shall willfully neglect or omit to perform any such duties, or do any act prohibited herein for which punishment is not otherwise provided herein, shall, upon conviction, be imprisoned in the state prison for not less than one year or more than three years, or be fined in any sum not exceeding one thousand dollars, or may be punished by both such imprisonment and fine.

History: En. Sec. 13, Ch. 168, L. 1907; Sec. 621, Rev. C. 1907; re-en. Sec. 769, R. C. M. 1921.

Collateral References

Elections—314.
29 C.J.S. Elections § 327.

23-1614. (770) Penalty for tampering with or injuring machines. Any person not being an election officer who, during any election or before any election, after a voting machine has had placed upon it the ballots for such election, shall tamper with such machine, disarrange, deface, injure, or impair the same in any manner, or mutilate, injure, or destroy any ballot placed thereon or to be placed thereon, or any other appliance used in connection with such machine, shall be imprisoned in the state prison for a period of not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

History: En. Sec. 14, Ch. 168, L. 1907;
Sec. 622, Rev. C. 1907; re-en. Sec. 770,
R. C. M. 1921.

Collateral References
Elections 309.
29 C.J.S. Elections §§ 324, 334.

23-1615. (771) Penalty for violation of duty by judge of election. Whoever, being a judge of election, with intent to permit or cause any voting machine to fail to correctly register or record any vote cast thereon, tampers with or disarranges such machine in any way, or any part or appliance thereof, or who causes or consents to said machine being used for voting at any election with knowledge of the fact that the same is not in order or not perfectly set and adjusted, so that it will correctly register or record all votes cast thereon, or who, for the purpose of defrauding or deceiving any voter, or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear upon said machine that votes cast for one ticket, candidate, or proposition were cast for another ticket, candidate, or proposition, removes, changes, or mutilates any ballot on said machine, or any part thereof, or does any other like thing, shall be imprisoned in the state prison not more than ten years, or fined not exceeding one thousand dollars, or punished by both such fine and imprisonment.

History: En. Sec. 15, Ch. 168, L. 1907;
Sec. 623, Rev. C. 1907; re-en. Sec. 771,
R. C. M. 1921.

23-1616. (772) Penalty for fraudulent returns or certificates. Any judge or clerk of an election who shall purposely cause the vote registered or recorded on or in such machine to be incorrectly taken down as to any candidate or proposition voted on, or who shall knowingly cause to be made or signed any false statement, certificate, or return of any kind, of such vote, or who shall knowingly consent to such things, or any of them, being done, shall be imprisoned in the state prison not more than ten years, or fined not more than one thousand dollars or punished by both such fine and imprisonment.

History: En. Sec. 16, Ch. 168, L. 1907;
Sec. 624, Rev. C. 1907; re-en. Sec. 772,
R. C. M. 1921.

23-1617. (773) Experimental use of machines—defective machines. The proper officers authorized by section 23-1603 to adopt voting machines, may provide for the experimental use at an election of a machine or machines, approved by the secretary of state, in one or more precincts, without a formal adoption or purchase thereof, and the use thereof at such election

shall be as valid for all purposes as if formally adopted. If from any cause a machine becomes unworkable, or unfit for use, voting shall proceed as in cases where machines are not used, and the county clerk must furnish each voting place with the supply of ballots and other supplies required by the election laws, to be used in case of emergency herein provided for, and in such case only.

History: En. Sec. 17, Ch. 168, L. 1907; re-en. Sec. 773, R. C. M. 1921; amd. Sec. Sec. 625, Rev. C. 1907; amd. Sec. 3, Ch. 99, 3, Ch. 19, L. 1943. L. 1909; amd. Sec. 4, Ch. 246, L. 1921;

23-1618. Approved machines—continuation of use. All voting machines heretofore approved in accordance with the provisions of said sections 23-1601 and 23-1602 prior to the amendment thereof by this act, and now owned and used by any of the several counties, cities or towns in this state, may be continued in use by such counties, cities and towns without the same being required to be again approved by the secretary of state in accordance with the provisions of said sections as hereby amended.

History: En. Sec. 4, Ch. 19, L. 1943.

CHAPTER 17

ELECTION RETURNS

- Section 23-1701. Canvass to be public and without adjournment.
 23-1702. Mode of canvassing.
 23-1703. Where ballots are in excess of names on pollbooks.
 23-1704. What ballots must be counted.
 23-1705. Ascertaining the number of votes cast and persons voted for.
 23-1706. Ballots to be strung and enclosed in sealed envelopes.
 23-1707. Rejected ballots.
 23-1708. Pollbooks—signing and certification of.
 23-1709. Election returns by judges—how made.
 23-1710. Custody of election returns.
 23-1711. Delivery to county clerk.
 23-1712. Filing of ballots and stubs by county clerk.
 23-1713. Keeping returns pending contest.
 23-1714. Disposition of returns prior to canvass of vote.
 23-1715. Clerk to file in his office books, papers, etc.

23-1701. (774) Canvass to be public and without adjournment. As soon as the polls are closed, the judges must immediately proceed to canvass the votes given at such election. The canvass must be public in the presence of bystanders and must be continued without adjournment until completed and the result thereof is publicly declared.

History: Ap. p. Sec. 22, p. 380, Bannack Stat.; re-en. Sec. 22, p. 464, Cod. Stat. 1871; re-en. Sec. 21, p. 75, L. 1876; re-en. Sec. 535, 5th Div. Rev. Stat. 1879; re-en. Sec. 1027, 5th Div. Comp. Stat. 1887; amd. Sec. 1400, Pol. C. 1895; re-en. Sec. 572, Rev. C. 1907; re-en. Sec. 774, R. C. M. 1921. Cal. Pol. C. Sec. 1252.

References

Harrington v. Crichton, 53 M 388, 392, 164 P 537; Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112

Collateral References

Elections—259-261.
 29 C.J.S. Elections § 237.
 26 Am. Jur. 2d 122, Elections, § 298.

23-1702. (775) Mode of canvassing. The canvass must commence by a comparison of the pollbooks from the commencement, and the cor-

rection of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots corresponds with the number of names on the pollbooks. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if, on comparing the count with the pollbooks and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: Ap. p. Sec. 23, p. 380, Ban-nack Stat.; re-en. Sec. 23, p. 464, Cod. Stat. 1871; re-en. Sec. 22, p. 75, L. 1876; re-en. Sec. 546, 5th Div. Rev. Stat. 1879; re-en. Sec. 1028, 5th Div. Comp. Stat. 1887; amd. Sec. 1401, Pol. C. 1895; re-en. Sec. 573, Rev. C. 1907; re-en. Sec. 775, R. C. M. 1921; amd. Sec. 12, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1253.

References

Harrington v. Crichton, 53 M 388, 392, 164 P 537.

Collateral References

Elections—257.

29 C.J.S. Elections § 237 (3).

26 Am. Jur. 2d 122, Elections, § 298.

23-1703. (776) Where ballots are in excess of names on pollbooks. If the ballots then are found to exceed in number the whole number of names on the pollbooks, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the pollbooks of the number of ballots so destroyed.

History: Ap. p. Sec. 24, p. 380, Ban-nack Stat.; re-en. Sec. 24, p. 464, Cod. Stat. 1871; re-en. Sec. 23, p. 76, L. 1876; re-en. Sec. 537, 5th Div. Rev. Stat. 1879; re-en. Sec. 1029, 5th Div. Comp. Stat. 1887; amd. Sec. 1402, Pol. C. 1895; re-en. Sec. 574, Rev. C. 1907; re-en. Sec. 776, R. C. M. 1921; amd. Sec. 13, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1255.

References

State ex rel. Riley v. District Court, 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections—241.

29 C.J.S. Elections § 224.

23-1704. (777) What ballots must be counted. In the canvass of the votes, any ballot which is not endorsed as provided in this code by the official stamp is void and must not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice is void and must not be counted; if part of a ballot is sufficiently plain to gather therefrom the elector's intention, it is the duty of the judges of election to count such part.

History: En. Sec. 30, p. 143, L. 1889; re-en. Sec. 1403, Pol. C. 1895; re-en. Sec. 575, Rev. C. 1907; re-en. Sec. 777, R. C. M. 1921.

Indistinct and Irregular Marking of Ballots

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot

was void under this 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.

Liberal Construction—Intention of Voter

Under this 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 Missing

This section was enacted prior to the provision for a stub at the head of the ballot. The legislature, by providing for the stub to be numbered, and to be removed only at the time of depositing the ballot in the ballot box, has hit upon an effective method of guarding against fraud and illegal voting, and has ensured the

deposit of the ballot in the ballot box, and the provisions of the section should now be construed in the light of the changed conditions. Hence 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 as set forth in this section. *Woolsey v. Carney*, 141 M 476, 378 P 2d 658.

References

State ex rel. *Brooks v. Fransham*, 19 M 273, 292, 48 P 1; *Goodell v. Judith Basin County*, 70 M 222, 242, 224 P 1110; State ex rel. *Riley v. District Court*, 103 M 576, 588, 64 P 2d 115.

Collateral References

Elections—224.
29 C.J.S. Elections § 211.

23-1705. (778) Ascertaining the number of votes cast and persons voted for. The ballots and poll lists agreeing or being made to agree, the judges must then proceed to count and ascertain the number of votes cast for each person voted for. In making such count the ballots must be opened singly by one of the judges, and the contents thereof, while exposed to the view of the other judges, must be distinctly read aloud by the judge who opens the ballot. As the ballots are read, each clerk must write at full length on a sheet to be known as a tally sheet the name of every person voted for and of the office for which he received votes, and keep by tallies on such sheet the number of votes for each person. The tally sheets must then be compared and their correctness ascertained, and the clerks must, under the supervision of the judges, immediately thereafter set down, at length and in their proper places in the pollbooks, the names of all persons voted for, the offices for which they respectively received votes, and the total number of votes received by each person, as shown by the tally sheets. No ballot or vote rejected by the judges must be included in the count provided for in this section.

History: Ap. p. Sec. 25, p. 380, *Bannack Stat.*; re-en. Sec. 25, p. 464, *Cod. Stat.* 1871; re-en. Sec. 24, p. 76, *L.* 1876; re-en. Sec. 538, 5th Div. *Rev. Stat.* 1879; re-en. Sec. 1030, 5th Div. *Comp. Stat.* 1887; amd. Sec. 1404, *Pol. C.* 1895; re-en. Sec. 576, *Rev. C.* 1907; re-en. Sec. 778, *R. C. M.* 1921.

References

Dubie v. Batani, 97 M 468, 476, 37 P 2d 662; *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112; State ex rel. *Thomas v. District Court*, 116 M 510, 513, 154 P 2d 980.

Collateral References

Elections—241.
29 C.J.S. Elections § 224.

23-1706. (779) Ballots to be strung and enclosed in sealed envelopes. The ballots, as soon as read or rejected for illegality, must be strung upon a string by one of the judges, and must not thereafter be examined by any person, but must, as soon as all legal ballots are counted, be carefully sealed in a strong envelope, each member of the judges writing his name across the seal.

History: En. Sec. 1405, Pol. C. 1895; re-en. Sec. 577, Rev. C. 1907; re-en. Sec. 779, R. C. M. 1921. Cal. Pol. C. Sec. 1259.

prevent the ascertainment of the result of the election, and was insufficient to impeach the returns of the precinct. *Dubie v. Batani*, 97 M 468, 479, 37 P 2d 662.

Failure To String Voted Ballots

Failure of the judges of election of a voting precinct to place the voted ballots on a string in compliance with the provisions of this section did not obstruct or

Collateral References

Elections \hookrightarrow 255.
29 C.J.S. Elections § 234.

23-1707. (780) Rejected ballots. Any ballot rejected for illegality must be marked by the judges, by writing across the face thereof "Rejected on the ground of, " filling the blank with a brief statement of the reasons for the rejection, which statement must be dated and signed by a majority of the judges.

History: En. Sec. 1406, Pol. C. 1895; re-en. Sec. 578, Rev. C. 1907; re-en. Sec. 780, R. C. M. 1921.

Collateral References

Elections \hookrightarrow 224.
29 C.J.S. Elections § 211.

23-1708. (781) Pollbooks—signing and certification of. As soon as all the votes are counted and the ballots sealed up, the pollbooks must be signed and certified to by the judges and clerks of election substantially as in the form in section 23-702.

History: En. Sec. 1407, Pol. C. 1895; re-en. Sec. 579, Rev. C. 1907; re-en. Sec. 781, R. C. M. 1921.

23-1709. (782) Election returns by judges—how made. The judges must, before they adjourn, enclose in a strong envelope, securely sealed and directed to the county clerk, the precinct registers, all certificates of registration received by them, the lists of persons challenged, both of the pollbooks, both of the tally sheets, and the official oaths taken by the judges and clerks of election; and must enclose in a separate package or envelope, securely sealed and directed to the county clerk, all unused ballots with the numbered stubs attached; and must also enclose in a separate package or envelope, securely sealed and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and all detached stubs from ballots voted, and endorse on the outside thereof "ballots voted." Each of the judges must write his name across the seal of each of said envelopes or packages. The ballot box must be returned to the county clerk.

History: Ap. p. Sec. 1408, Pol. C. 1895; amd. Sec. 6, Ch. 88, L. 1907; re-en. Sec. 580, Rev. C. 1907; re-en. Sec. 782, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1937; amd. Sec. 1, Ch. 65, L. 1943; amd. Sec. 1, Ch. 23, L. 1945; amd. Sec. 14, Ch. 64, L. 1959.

Construction

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.

References

Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

Collateral References

Elections \Rightarrow 241, 248-250.
29 C.J.S. Elections §§ 224, 230, 231.

23-1710. (784) Custody of election returns. The sealed envelope containing the check lists, certificates of registration, pollbook, tally sheets, oaths of election officers, also the package or envelope containing the voted ballots and detached stubs and the package or envelope containing the unused ballots, must, before the judges adjourn, be delivered to one of their number, to be determined by lot, unless otherwise agreed upon.

History: Ap. p. Sec. 1410, Pol. C. 1895; amd. Sec. 7, Ch. 88, L. 1907; re-en. Sec. 582, Rev. C. 1907; re-en. Sec. 784, R. C. M. 1921; amd. Sec. 2, Ch. 23, L. 1945. Cal. Pol. C. Sec. 1263.

Collateral References

Elections \Rightarrow 251.
29 C.J.S. Elections § 232.

23-1711. (785) Delivery to county clerk. The judges to whom such packages are delivered must, within twenty-four hours, deliver them, without their having been opened, to the county clerk, or convey the same, unopened, to the post office nearest the house in which the election for such precinct was held, and register and mail the same, duly directed to the said clerk.

History: En. Sec. 1411, Pol. C. 1895; re-en. Sec. 583, Rev. C. 1907; re-en. Sec. 785, R. C. M. 1921.

23-1712. (786) Filing of ballots and stubs by county clerk. Upon the receipt of the packages or envelopes by the county clerk, he must file the package or envelope containing the ballots voted and detached stubs and the package or envelope containing the unused ballots, and must keep them unopened and unaltered for twelve (12) months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election or a recount is had as provided by law, he must burn such packages, or envelopes, without opening or examining their contents.

History: Ap. p. Sec. 1412, Pol. C. 1895; amd. Sec. 8, Ch. 88, L. 1907; re-en. Sec. 584, Rev. C. 1907; re-en. Sec. 786, R. C. M. 1921; amd. Sec. 3, Ch. 23, L. 1945; amd. Sec. 17, Ch. 42, L. 1963. Cal. Pol. C. Sec. 1265.

Collateral References

Elections \Rightarrow 255.
29 C.J.S. Elections § 234.

23-1713. (787) Keeping returns pending contest. If, within twelve months, there is such a contest commenced, he must keep the packages of envelopes unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy them, unless the same are by virtue of an order of the tribunal in which the contest is pending, brought and opened before it to the end that evidence may be had of their contents, in which event the packages or envelopes and their contents are in the custody of such tribunal.

History: Ap. p. Sec. 1413, Pol. C. 1895; amd. Sec. 9, Ch. 88, L. 1907; re-en. Sec. 585, Rev. C. 1907; re-en. Sec. 787, R. C. M. 1921. Cal. Pol. C. Sec. 1266.

References

Lane v. Bailey, 29 M 548, 560, 75 P 191.

23-1714. (788) Disposition of returns prior to canvass of vote. The envelopes containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the board of county commissioners meet for the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened.

History: Ap. p. Sec. 1414, Pol. C. 1895; amd. Sec. 10, Ch. 88, L. 1907; re-en. Sec. 586, Rev. C. 1907; re-en. Sec. 788, R. C. M. 1921; amd. Sec. 15, Ch. 64, L. 1959.

References

Maddox v. Board of State Canvassers, 116 M 217, 225, 149 P 2d 112.

23-1715. (789) Clerk to file in his office books, papers, etc. As soon as the returns are canvassed, the clerk must file in his office the pollbooks, election records and the papers produced before the board from the package mentioned in the next preceding section.

History: En. Sec. 1415, Pol. C. 1895; 789, R. C. M. 1921; amd. Sec. 16, Ch. 64, re-en. Sec. 587, Rev. C. 1907; re-en. Sec. L. 1959. Cal. Pol. C. Sec. 1268.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

- Section 23-1801. Meeting of county commissioners to canvass returns.
 23-1802. In case of absence certain county officers to act.
 23-1803. Canvass to be postponed, when.
 23-1804. Canvass to be public.
 23-1805. Statement of the result to be entered of record.
 23-1806. Plurality to elect.
 23-1807. Duty of canvassing board.
 23-1808. Certificates issued by the clerk.
 23-1809 to 23-1811. Repealed.
 23-1812. State returns, how made.
 23-1813. How transmitted.
 23-1814. State canvassers, composition and meeting of board.
 23-1815. Messenger may be sent for returns—his duty and compensation.
 23-1816. Governor to issue commissions.
 23-1817. Defect in form of returns to be disregarded.
 23-1818. Duty of secretary of state to print election laws.
 23-1819. Penalties.

23-1801. (790) Meeting of county commissioners to canvass returns. The board of county commissioners of each county is ex officio a board of county canvassers for the county, and must meet as the board of county canvassers at the usual place of meeting of the county commissioners within ten days after each election, at twelve o'clock noon, to canvass the returns.

History: En. Sec. 2, p. 299, L. 1891; amd. Sec. 1430, Pol. C. 1895; re-en. Sec. 588, Rev. C. 1907; re-en. Sec. 790, R. C. M. 1921. Cal. Pol. C. Sec. 1278.

Wulf v. McGrath, 111 M 96, 100, 106 P 2d 183; Maddox v. Board of State Canvassers, 116 M 217, 225, 149 P 2d 112.

Collateral References

References

State ex rel. Cryderman v. Wienrich, 54 M 390, 400, 170 P 942; State ex rel.

Elections 258.

29 C.J.S. Elections § 236.

26 Am. Jur. 2d 122, Elections, § 298.

23-1802. (791) In case of absence certain county officers to act. If, at the time and place appointed for such meeting, one or more of the county commissioners should not attend, the place of the absentees must be sup-

plied by one or more of the following county officers, whose duty it is to act in the order named, to wit, the treasurer, the assessor, the sheriff, so that the board of county canvassers shall always consist of three acting members. The clerk of the board of county commissioners is the clerk of the board of county canvassers.

History: Ap. p. Sec. 2, p. 299, L. 1891; amd. Sec. 1431, Pol. C. 1895; re-en. Sec. 589, Rev. C. 1907; re-en. Sec. 791, R. C. M. 1921.

Reconvening of County Board of Canvassers

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.

References

State ex rel. Cryderman v. Wienrich, 54 M 390, 400, 170 P 942.

Collateral References

Elections 257.
29 C.J.S. Elections § 235.

23-1803. (792) Canvass to be postponed, when. If, at the time of meeting, the returns from each precinct in the county in which polls were opened have been received, the board of county canvassers must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all of the returns are received, or until seven postponements have been had. If the returns from any election precinct have not been received by the county clerk within seven days after any election, it is his duty forthwith to send a messenger to the judges for the missing returns, who must procure such returns from the judges, or any of them, and return the same to the county clerk. Such messenger must be paid out of the county treasury fifteen cents per mile in going and coming. If it appears to the board, by evidence, that the polls were not opened in any precinct, and no returns have been received therefrom, the board must certify to the same, and file such certificate with the county clerk, with the evidence, if any, who must enter the same in the minutes and in the statement mentioned in section 23-1805.

History: Ap. p. Sec. 3, p. 300, L. 1891; amd. Sec. 1432, Pol. C. 1895; re-en. Sec. 590, Rev. C. 1907; re-en. Sec. 792, R. C. M. 1921. Cal. Pol. C. Sec. 1280.

References

State ex rel. Cryderman v. Wienrich, 54 M 390, 400, 170 P 942.

23-1804. (793) Canvass to be public. The canvass must be made in public by opening the returns and determining therefrom the vote of such county or precinct for each person voted for, and for and against each proposition voted upon at such election, and declaring the result thereof. In canvassing, no returns must be rejected if it can be ascertained therefrom the number of votes cast for each person. The fact that the returns do not show who administered the oath to the judges or clerks of election, or a failure to fill out all the certificates in the pollbooks, or to do or perform any other act in making up the returns, that is not essential to determine for whom the votes were cast, is not such an irregularity as to

entitle the board to reject the same, but they must be canvassed as other returns are.

History: En. Secs. 4 and 5, p. 301, L. 1891; re-en. Sec. 1433, Pol. C. 1895; re-en. Sec. 591, Rev. C. 1907; re-en. Sec. 793, R. C. M. 1921. Cal. Pol. C. Sec. 1281.

Exclusion 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, as required by sections 4 and 6, pages 301, 302 of the Laws of 1891, 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. Lecch 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 candi-

date 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. Lecch 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. Lecch 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. Lecch v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

References

Stephens v. Nacey, 47 M 479, 485, 133 P 361.

Collateral References

Elections \hookrightarrow 259.

29 C.J.S. Elections § 237.

23-1805. (794) Statement of the result to be entered of record. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the county.
2. The names of the persons voted for and the propositions voted upon.
3. The office to fill which each person was voted for.
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions.
5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

History: En. Sec. 6, p. 301, L. 1891; re-en. Sec. 1434, Pol. C. 1895; re-en. Sec. 592, Rev. C. 1907; re-en. Sec. 794, R. C. M. 1921. Cal. Pol. C. Sec. 1282.

Collateral References

Elections \hookrightarrow 259.

29 C.J.S. Elections § 237.

23-1806. (795) Plurality to elect. The person receiving at any election the highest number of votes for any office to be filled at such election is elected thereto.

History: En. Sec. 1170, Pol. C. 1895; re-en. Sec. 456, Rev. C. 1907; re-en. Sec. 795, R. C. M. 1921. Cal. Pol. C. Sec. 1066.

Where Deceased Candidate Received Majority of Votes, Highest Write-in Candidate Held Elected

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.

Collateral References

Elections ⇨ 237.
29 C.J.S. Elections § 241.

23-1807. (796) Duty of canvassing board. The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof, except members of the legislative assembly. If a recount shall show that two or more persons received an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives, the state recount board shall certify such facts to the governor.

History: En. Sec. 6, p. 302, L. 1891; re-en. Sec. 1435, Pol. C. 1895; re-en. Sec. 593, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1909; re-en. Sec. 796, R. C. M. 1921; amd. Sec. 18, Ch. 42, L. 1963; amd. Sec. 8, Ch. 194, L. 1967.

Collateral References

Elections ⇨ 259, 260.
29 C.J.S. Elections § 237.

23-1808. (797) Certificates issued by the clerk. The clerk of the board of county commissioners must immediately make out and deliver to such persons (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners, and said certificate shall contain therein written notice that the official bond of the elected or appointed official must be filed within thirty (30) days after notice of election or appointment, and that failure to file such bond shall cause the office to become vacant.

History: En. Sec. 7, p. 302, L. 1891; re-en. Sec. 1436, Pol. C. 1895; re-en. Sec. 594, Rev. C. 1907; re-en. Sec. 797, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1959. Cal. Pol. C. Sec. 1284.

References

State ex rel. Wallace v. Callow, 78 M 308, 315, 254 P 187; *State ex rel. Riley v. District Court*, 103 M 576, 581, 64 P 2d 115.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

Collateral References

Elections ⇨ 265.
29 C.J.S. Elections § 240.

23-1809 to 23-1811. (798 to 800) Repealed—Chapter 194, Laws of 1967.

Repeal

These sections (Secs. 8, 9, pp. 302, 303, L. 1891; Secs. 1437 to 1439, Pol. C. 1895), relating to returns for election of legislators representing more than one county, were repealed by Sec. 13, Ch. 194, Laws

1967. However, the title of the repealing act, apparently through clerical error, listed 23-1812 as repealed, instead of this section. For present law, see secs. 23-1812 to 23-1814.

23-1812. (801) State returns, how made. When there has been a general or special election for officers voted for by the electors of the state at large, for members of the legislative assembly, or for judicial officers (except justices of the peace), each clerk of the board of county canvassers, so soon as the statement of the vote of his county is made out and entered upon the records of the board of county commissioners, must make a certified abstract

of so much thereof as relates to the votes given for persons for said offices to be filled at such election.

History: En. Sec. 10, p. 303, L. 1891; amd. Sec. 1440, Pol. C. 1895; re-en. Sec. 598, Rev. C. 1907; re-en. Sec. 801, R. C. M. 1921; amd. Sec. 9, Ch. 194, L. 1967. Cal. Pol. C. Sec. 1288.

Statutes In Pari Materia with Others

This section and sections 23-1813 and 23-1814, relating to canvassers' abstract to secretary of state, and section 23-2301 et seq., authorizing recount of votes, etc., are in pari materia and must be construed together, both the county and state board of canvassers being governed by the former

provisions in case the result of the election is changed upon a recount. State ex rel. Riley v. District Court, 103 M 576, 583, 64 P 2d 115.

References

Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Collateral References

Elections—247.
29 C.J.S. Elections § 229.

23-1813. (802) How transmitted. The clerk must seal up such abstract, endorse it "Election Returns," and without delay transmit it to the secretary of state by certified mail.

History: En. Sec. 11, p. 303, L. 1891; re-en. Sec. 1441, Pol. C. 1895; re-en. Sec. 599, Rev. C. 1907; re-en. Sec. 802, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1959. Cal. Pol. C. Sec. 1289.

References

Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Collateral References

Elections—251.
29 C.J.S. Elections § 232.

23-1814. (803) State canvassers, composition and meeting of board. Within thirty days after the election and sooner if the returns be all received, the state auditor, state treasurer, and attorney general, who constitute a board of state canvassers, must meet in the office of the secretary of state and compute and determine the vote, and the secretary of state, who is secretary of said board, must make out and file in his office a statement thereof and transmit a copy of such statement to the governor.

History: En. Sec. 14, p. 304, L. 1891; amd. Sec. 1442, Pol. C. 1895; re-en. Sec. 600, Rev. C. 1907; re-en. Sec. 803, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1949. Cal. Pol. C. Sec. 1290.

References

Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Collateral References

Elections—258, 259.
29 C.J.S. Elections §§ 236, 237.

23-1815. (804) Messenger may be sent for returns—his duty and compensation. If the returns from all the counties have not been received on the fifth day before the day designated for the meeting of the board of state canvassers, the secretary of state must forthwith send a messenger to the clerk of the board of county canvassers of the delinquent county, and such clerk must furnish the messenger with a certified copy of the statement mentioned in section 23-1805. The person appointed is entitled to receive as compensation five dollars per day for the time necessarily consumed in such service, and the traveling expenses necessarily incurred. His account therefor, certified by the secretary of state, must be paid out of the general fund of the state treasury.

History: Ap. p. Secs. 12 and 13, L. 1891; amd. Sec. 1443, Pol. C. 1895; re-en. Sec. 601, Rev. C. 1907; re-en. Sec. 804, R. C. M. 1921; amd. Sec. 16, Ch. 97, L. 1961.

Collateral References
Elections 252.
29 C.J.S. Elections § 229.

23-1816. (805) Governor to issue commissions. Upon receipt of such copy mentioned in section 23-1814, the governor must issue commissions to the persons who from it appear to have received the highest number of votes for offices to be filled at such election. In case a governor has been elected to succeed himself, the secretary of state must issue the commission.

History: En. Sec. 15, p. 304, L. 1891; amd. Sec. 1444, Pol. C. 1895; re-en. Sec. 602, Rev. C. 1907; re-en. Sec. 805, R. C. M. 1921. Cal. Pol. C. Sec. 1291.

sembly of State of Montana, 246 F Supp 454.

Collateral References
States 48.
81 C.J.S. States § 76.

References

Herweg v. Thirty Ninth Legislative As-

23-1817. (806) Defect in form of returns to be disregarded. No declaration of the result, commission, or certificate must be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended and who is elected thereto.

History: En. Sec. 17, p. 305, L. 1891; re-en. Sec. 1448, Pol. C. 1895; re-en. Sec. 606, Rev. C. 1907; re-en. Sec. 806, R. C. M. 1921. Cal. Pol. C. Sec. 1297.

Collateral References
Elections 257, 265; States 48.
29 C.J.S. Elections §§ 235, 240; 81 C.J.S. States § 76.

References

Stephens v. Nacey, 47 M 479, 485, 133 P 361.

23-1818. (807) Duty of secretary of state to print election laws. It is the duty of the secretary of state to cause to be published, in pamphlet form, a sufficient number of copies of election laws and such other provisions of law as bear upon the subject of elections, and to transmit the proper number to each county clerk, whose duty it is to furnish each election officer in his county with one of such copies.

History: En. Sec. 18, p. 305, L. 1891; re-en. Sec. 1449, Pol. C. 1895; re-en. Sec. 607, Rev. C. 1907; re-en. Sec. 807, R. C. M. 1921.

23-1819. (808) Penalties. The penalties for the violation of election laws are prescribed in sections 94-1401 to 94-1474.

History: En. Sec. 1450, Pol. C. 1895; re-en. Sec. 608, Rev. C. 1907; re-en. Sec. 808, R. C. M. 1921.

section, was repealed by Sec. 4, Ch. 50, Laws 1947.

Compiler's Note

Section 94-1461, included in the reference to sections 94-1401 to 94-1474 in this

Collateral References
Elections 309 et seq.
29 C.J.S. Elections §§ 324, 334.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

Section 23-1901. Tie vote on representative in Congress.
23-1902. Proceedings on tie vote.

23-1903. Tie vote on state officers.
23-1904. Tie vote on judicial officers.

23-1901. (809) Tie vote on representative in Congress. In case of a failure, by reason of a tie vote or otherwise, to elect a representative in Congress, the secretary of state must transmit to the governor a certified statement showing the vote cast for such persons voted for, and in case of a failure to elect, by reason of a tie vote or otherwise, the governor must order a special election.

History: En. Sec. 16, p. 305, L. 1891; re-en. Sec. 1447, Pol. C. 1895; re-en. Sec. 605, Rev. C. 1907; re-en. Sec. 809, R. C. M. 1921.

Collateral References
Elections ⇐ 238.
29 C.J.S. Elections § 244.

23-1902. (810) Proceedings on tie vote. In case any two or more persons have an equal and highest number of votes for either 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, must forthwith, by joint ballot of the two houses, elect one of such persons to fill such office; and in case of a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, and for any township officer, the board of county commissioners must appoint some eligible person, as in case of other vacancies in such offices; and in case of a tie vote for county commissioner, the district judge of the county must appoint an eligible person to fill the office, as in other cases of vacancy.

History: En. Sec. 1171, Pol. C. 1895; re-en. Sec. 457, Rev. C. 1907; re-en. Sec. 810, R. C. M. 1921. Cal. Pol. C. Secs. 1067-1068.

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, under this section, to fill by appointment. State ex rel. Jones v. Foster, 39 M 583, 592, 104 P 860. See also State ex rel. Patterson 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

This section does 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 relates to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it is 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.

23-1903. (811) Tie vote on state officers. In case of a tie vote for state officers, as specified in the preceding section, it is the duty of the secretary of state to transmit to the legislative assembly, at its next regular session,

a certified copy of the statement showing the vote cast for the two or more persons having an equal and the highest number of votes for any state office.

History: En. Sec. 1445, Pol. C. 1895; re-en. Sec. 603, Rev. C. 1907; re-en. Sec. 811, R. C. M. 1921.

23-1904. (812) Tie vote on judicial officers. In case any two or more persons have an equal and highest number of votes for justice of the supreme court, or judge of a district court, or member of the legislative assembly, the secretary of state must transmit to the governor a certified statement showing the vote cast for such person, and thereupon the governor must appoint an eligible person to hold office as in case of other vacancies in such offices.

History: En. Sec. 1446, Pol. C. 1895; re-en. Sec. 604, Rev. C. 1907; re-en. Sec. 812, R. C. M. 1921; amd. Sec. 10, Ch. 194, L. 1967.

Collateral References

Elections ⇨ 238; Judges ⇨ 8.
29 C.J.S. Elections § 244; 48 C.J.S. Judges § 32.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF SUPREME COURT AND DISTRICT COURTS

- Section 23-2001. Nomination and election of district court and supreme court judges.
23-2002. Nominations.
23-2003. Petition for nomination—contents—form—filing—fees.
23-2004. Register of candidates for nomination.
23-2005. Arrangement and certification of judicial candidates—separate from party designation.
23-2006. Primary ballots—preparation and distribution.
23-2007. Judicial primary ballots—voting.
23-2008. Separate counting and canvassing of judicial ballots—application of general laws.
23-2009. Nominations—placing names on ballots.
23-2010. Tie vote, how decided.
23-2011. Vacancies among nominees after nomination and before general election, how filled.
23-2012. Unlawful for political party to endorse judicial candidate.
23-2013. Repealed.
23-2014. Repealing clause—application of general laws.

23-2001. (812.1) Nomination and election of district court and supreme court judges. That hereafter all candidates for the office of justice of the supreme court of the state of Montana or judge of the district court in any judicial district of the state of Montana, shall be nominated and elected in accordance with the provisions of this act and in no other manner.

Each vacancy for associate justice of the supreme court is to be considered as a separate and independent office for election purposes, and to facilitate the nomination and election of candidates thereto, 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 the date of the primary nominating election.

Each department in a judicial district which has more than one (1) judge of the district court is to be considered as a separate and independent office for election purposes.

History: En. Sec. 1, Ch. 182, L. 1935; amd. Sec. 2, Ch. 229, L. 1961.

Purpose of Nonpartisan Judiciary Act

The purpose of the Nonpartisan Judiciary Act (23-2001 et seq.), is to eliminate, so far as possible, the selection of judges from partisan politics, and the phrase found in this section, declaring that candidates for judicial office "shall be nominated and elected in accordance with the provisions of this act and in no other manner," intended merely to exclude the

selection of judges on a party ticket. The word "candidate" as used in this act should not receive a different construction from that as used in the general primary law. The act must 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.

Collateral References

Judges 3.

48 C.J.S. Judges § 12.

25 Am. Jur. 2d 814, Elections, § 128.

23-2002. (812.2) Nominations. Candidates for any office within the provisions of this act, to be filled at any election to be held in the state of Montana, shall be nominated in the manner herein provided at the regular primary nominating election provided by law for the nomination of other candidates for other offices to be filled at such election, and all laws relating to such primaries shall continue to be in force and to be applicable to the said offices in so far as may be consistent with the provisions of this act.

History: En. Sec. 2, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

23-2003. (812.3) Petition for nomination — contents — form — filing — fees. All persons who shall desire to become candidates for nomination to any office within the provisions of this act shall prepare, sign and file petitions for nomination in compliance with the requirements of the primary election laws, which petition for nomination shall be substantially in the following form: To..... (Name and title of officer with whom the petition is to be filed), and to the electors of the (state or counties of comprising the district or county as the case may be) in the state of Montana:

I,, reside at, and my post-office address is I am a candidate on the nonpartisan judicial ticket for the nomination for the office of at the primary nominating election to be held in the (state of Montana or district or county), on the day of, 19....., and if I am nominated as a candidate for such office I will accept the nomination and will not withdraw, and if I am elected, I will qualify as such officer.

Each person filing a petition for nomination to the office of associate justice of the supreme court shall, in the blank wherein he indicates the office for which the petition for nomination is being filed, designate the number of the associate justice whose office he is seeking. Each person filing a petition can make only one (1) such designation.

All persons who shall desire to become candidates for nomination as judge of the district court in any district having more than one (1) judge shall specify in said petition for nomination the number of the department to which they seek nomination and election, and their candidacy shall be limited solely to the numbered department so specified, it being intended hereby that the office of judge of each respective numbered department shall be filled in all respects as though each of said numbered departments were an entirely separate and independent elective office.

Provided, however, that no such petition for judicial office shall indicate the political party or political affiliations of the candidate, and provided further that no candidate for judicial office may in his petition for nomination state any measures or principles he advocates, or have any statement of measures or principles which he advocates, or any slogans, after his name on the nominating ballot as permitted by section 23-911.

Each person so filing a petition for nomination shall pay or remit therewith the fee prescribed by law for the filing of such a petition for the particular judicial position for which he aspires for nomination. All such petitions for justices of the supreme court and judges of the several district courts of the state shall be filed with the secretary of state.

History: En. Sec. 3, Ch. 182, L. 1935;
amd. Sec. 3, Ch. 229, L. 1961.

Collateral References

Elections 126 (1).
29 C.J.S. Elections §§ 91, 111, 131.

References

State ex rel. McHale v. Ayers, 111 M 1,
3, 105 P 2d 686.

23-2004. (812.4) Register of candidates for nomination. On receipt of each of such petitions the secretary of state shall make corresponding entries in the "Register of Candidates for Nomination" as now provided by law, but on a page or pages of such register apart from entries made with reference to the district candidates of political parties.

History: En. Sec. 4, Ch. 182, L. 1935.

23-2005. (812.5) Arrangement and certification of judicial candidates—separate from party designation. At the same time and in the same manner as by law he is required to arrange and certify the names of candidates for other state offices the secretary of state shall separately arrange and certify and file as required by law, the names of all candidates for judicial office, certifying to each county clerk of the state the names of all candidates for judicial office entitled to appear on the primary ballot in his county, with all other information required by law to appear upon the ballot, which certificate shall separately state the names of candidates for each respective numbered associate justice and department in districts having more than one (1) judge, and which lists of judicial candidates shall be made upon separate sheets of paper from the lists of candidates to appear under party or political headings.

History: En. Sec. 5, Ch. 182, L. 1935;
amd. Sec. 4, Ch. 229, L. 1961.

Collateral References

Elections 126 (5).
29 C.J.S. Elections § 118.

23-2006. (812.6) Primary ballots—preparation and distribution. At the same time and in the same manner as he is by law required to prepare the primary election ballots for the several political parties, the county clerk of each county shall arrange, prepare and distribute official primary ballots for judicial offices which shall be known and designated and entitled "Judicial Primary Ballots," which shall be arranged as are other primary ballots, except that the name of no political party shall appear thereon. The same number of official judicial primary ballots and sample ballots shall be furnished for each election precinct, as in the case of other primary election ballots.

History: En. Sec. 6, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

23-2007. (812.7) Judicial primary ballots—voting. Each elector having the right to vote at a primary election shall be furnished with a separate "Judicial Primary Ballot" at the same time and in the same manner as he or she is furnished with other ballots provided by law and each elector, without regard to political party, may mark such "Judicial Primary Ballot" for one or more persons of his choice for judicial nominations, depending on the number to be nominated and elected, which shall be deposited in the general ballot box provided. The official number of such judicial primary ballot so delivered and voted shall correspond to the official number of the regular ballot of the elector. Every elector shall be entitled to vote, without regard to politics, for one or more persons of his choice for nomination for judicial office, depending on the number of places to be filled at the succeeding general election. Different terms of office for the same position shall be considered as separate offices.


History: En. Sec. 7, Ch. 182, L. 1935.

Electors May Write in Names of Candidates

The Nonpartisan Judiciary Act (23-2001 et seq.) does not restrict electors to the privilege of voting only for candidates whose names appear on the primary judicial ballot, but, though the act is silent as to their right to write in the name of a qualified person to judicial office, they

may do so under the act, in view of the provisions of sections 23-2002, 23-2006 and 23-2014, when construed in pari materia with the laws relating to primary and general elections (23-910 and 23-2009). State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.


Collateral References

Elections  126 (6).
29 C.J.S. Elections § 118.

23-2008. (812.8) Separate counting and canvassing of judicial ballots—application of general laws. After the closing of the polls at a primary election, the election officers shall separately count and canvass the judicial primary ballots and make record thereof, and certify to the same, showing the number of votes cast for each person upon the judicial primary ballot, in addition to certifying the party vote or other matters voted upon as required by law. Judicial ballots, their stubs, and unused ballots, shall be disposed of in the same manner as other ballots, stubs and unused ballots, and all returns made in the same manner now provided by law.

History: En. Sec. 8, Ch. 182, L. 1935.

Collateral References

Elections  126 (7).
29 C.J.S. Elections § 119.

23-2009. (812.9) Nominations—placing names on ballots. The candidates for nomination at any primary election for any office within the provisions of this act, to be filled at the succeeding general election, equal in number to twice the number to be elected at the succeeding general election, who shall have received at any such primary election the highest number of votes cast for nomination to the office for which they are candidates (or if the number of all of the candidates voted for as aforesaid be not more than twice the number to be elected, then all the candidates) shall be the nominees for such office; and their names, and none other, except as hereinafter provided, shall be printed as candidates for such respective offices upon the official ballots which are provided according to law for use at such succeeding primary or general election; provided that no candidate shall be entitled to have his name placed on the judicial ballot at the general election, in any form, unless he shall have been a successful candidate at the primary election.

History: En. Sec. 9, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

Collateral References

Elections—172.

29 C.J.S. Elections § 161.

23-2010. (812.10) Tie vote, how decided. In case of a tie vote, candidates receiving tie vote for justice of the supreme court or judge of the district courts shall appear and cast lots before the secretary of state on the fifth day after such vote is officially canvassed. In case any such candidate or candidates shall fail to appear either in person or by proxy in writing, before twelve o'clock noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be certified for the general election and printed on the official ballot.

History: En. Sec. 10, Ch. 182, L. 1935.

Collateral References

Elections—238.

29 C.J.S. Elections § 244.

23-2011. (812.11) Vacancies among nominees after nomination and before general election, how filled. If after any primary election, and before the succeeding general election, any candidate nominated pursuant to the provisions of this act, shall die or by virtue of any present or future law become disqualified from or disentitled to have his name printed on the ballot for the election, a vacancy shall be deemed to exist which shall be filled by the otherwise unnominated and not disentitled candidate for the same office next in rank with respect to the number of votes received in such primary election. If after the primary, and before the general election, there should not be any candidate nominated and living and entitled to have his name printed on the ballot for any office which is within the provisions of this act, or not enough of such candidates to equal the number of persons to be elected to such office, then the governor in the case of justices of the supreme court and judges of the district courts is authorized and empowered to certify to the secretary of state the names of persons qualified for such office or offices equal in number to twice the number to be elected at the general election, and the names of the persons so nominated shall there-

upon be printed on the official ballot in the same manner as though regularly nominated at the judicial primary election. Nominations so made by the governor to fill a vacancy shall not be deemed filed too late if filed within ten days after the vacancy occurs, and in case the ballots for the election have already been printed, stickers may be used to place the names of such candidates upon the ballot.

History: En. Sec. 11, Ch. 182, L. 1935.

23-2012. (812.13) Unlawful for political party to endorse judicial candidate. It shall be unlawful for any political party to endorse any candidate for the office of justice of the supreme court or judge of a district court, and anyone who in any way participates in such endorsement by any political party, or who purports to act on behalf of any political party in endorsing any candidate, shall be guilty of a misdemeanor.

History: En. Sec. 13, Ch. 182, L. 1935.

Collateral References

Judges 3.

48 C.J.S. Judges § 12.

23-2013. (812.14) Repealed—Chapter 20, Laws of 1959.

Repeal

This section (Sec. 14, Ch. 182, L. 1935), relating to the arrangement of the judi-

cial ballot when voting machines are used, was repealed by Sec. 3, Ch. 20, Laws 1959.

23-2014. (812.15) Repealing clause—application of general laws. All acts and parts of acts in conflict herewith are hereby repealed, and all laws pertaining to elections, both primary and general, and to special elections, not in conflict herewith are hereby declared applicable to the nomination and election of the officers herein referred to.

History: En. Sec. 15, Ch. 182, L. 1935.

References

State ex rel. McHale v. Ayers, 111 M 1, 4, 105 P 2d 686.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

- Section 23-2101. Electors, when chosen.
 23-2102. Returns, how made.
 23-2103. Duty of governor.
 23-2104. Meeting of electors.
 23-2105. Vacancies, how supplied.
 23-2106. Voting of electors.
 23-2107. Separate ballots for president and vice-president.
 23-2108. Must make list of persons voted for.
 23-2109. Result to be transmitted as provided by law of the United States.
 23-2110. Compensation of electors.
 23-2111. How audited and paid.

23-2101. (813) Electors, when chosen. At the general election in November, preceding the time fixed by the law of the United States for the choice of president and vice-president of the United States, there must be elected as many electors of president and vice-president as this state is entitled to appoint. The names of the presidential electors shall appear on the ballot and in addition thereto, preceding them, shall appear the names

of the presidential and vice-presidential candidates in their respective party designated columns. No square shall appear in front of the names of the presidential electors instead of which there shall be one square in front of the names of the presidential and vice-presidential candidates. The ballot shall also have the following direction printed thereon: "To vote for the presidential electors of any party, the voter shall place a cross in the square before the names of the candidates for president and vice-president of said party." The number of votes received by presidential and vice-presidential candidates shall, within the meaning of this act, be the number of votes to be credited to each of the electors representing them.

History: En. Sec. 1, p. 173, L. 1891; re-en. Sec. 1460, Pol. C. 1895; re-en. Sec. 626, Rev. C. 1907; re-en. Sec. 813, F. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1933. Cal. Pol. C. Sec. 1307.

Collateral References

United States ⇨ 25.
91 C.J.S. United States § 28.
25 Am. Jur. 2d 700, Elections, § 9.

23-2102. (814) Returns, how made. The votes for electors of president and vice-president must be canvassed, certified to, and returned in the same manner as the votes for state officers.

History: En. Sec. 2, p. 173, L. 1891; re-en. Sec. 1461, Pol. C. 1895; re-en. Sec. 627, Rev. C. 1907; re-en. Sec. 814, R. C. M. 1921. Cal. Pol. C. Sec. 1308.

Collateral References

Elections ⇨ 247, 257, 265.
29 C.J.S. Elections §§ 229, 235, 240.

23-2103. (815) Duty of governor. The governor must transmit to each of the electors a certificate of election, and on or before the day of their meeting deliver to each of the electors a list of the names of electors, and must do all other things required of him in the premises by any act of Congress in force at the time.

History: En. Sec. 3, p. 174, L. 1891; re-en. Sec. 1462, Pol. C. 1895; re-en. Sec. 628, Rev. C. 1907; re-en. Sec. 815, R. C. M. 1921. Cal. Pol. C. Sec. 1314.

Collateral References

Elections ⇨ 265; United States ⇨ 25.
29 C.J.S. Elections § 240; 91 C.J.S. United States § 28.

23-2104. (816) Meeting of electors. The electors must assemble at the seat of government the first Monday after the second Wednesday in December next following their election, at two o'clock in the afternoon.

History: En. Sec. 4, p. 174, L. 1891; re-en. Sec. 1463, Pol. C. 1895; re-en. Sec. 629, Rev. C. 1907; re-en. Sec. 816, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1933; amd. Sec. 1, Ch. 33, L. 1935. Cal. Pol. C. Sec. 1315.

Act Extending Time for Depositing Military Ballots Unconstitutional in Part

Since, under this 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 following 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.

Collateral References

United States ⇨ 25.
91 C.J.S. United States § 28.

23-2105. (817) Vacancies, how supplied. In case of the death or absence of any elector chosen, or in case the number of electors from any cause be deficient, the electors then present must elect, from the citizens of the state, so many persons as will supply such deficiency.

History: En. Sec. 5, p. 174, L. 1891; 630, Rev. C. 1907; re-en. Sec. 817, R. C. M. re-en. Sec. 1464, Pol. C. 1895; re-en. Sec. 1921. Cal. Pol. C. Sec. 1316.

23-2106. (818) Voting of electors. The electors, when convened, must vote by ballot for one person for president and one for vice-president of the United States, one of whom at least is not an inhabitant of this state.

History: En. Sec. 1465, Pol. C. 1895; re-en. Sec. 631, Rev. C. 1907; re-en. Sec. 818, R. C. M. 1921. Cal. Pol. C. Sec. 1317.

23-2107. (819) Separate ballots for president and vice-president. They must name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president.

History: En. Sec. 1466, Pol. C. 1895; re-en. Sec. 632, Rev. C. 1907; re-en. Sec. 819, R. C. M. 1921. Cal. Pol. C. Sec. 1318.

23-2108. (820) Must make list of persons voted for. They must make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes given for each.

History: En. Sec. 1467, Pol. C. 1895; re-en. Sec. 633, Rev. C. 1907; re-en. Sec. 820, R. C. M. 1921. Cal. Pol. C. Sec. 1319.

23-2109. (821) Result to be transmitted as provided by law of the United States. They must certify, seal up, and transmit such lists in the manner prescribed by the constitution and laws of the United States.

History: En. Sec. 1468, Pol. C. 1895; re-en. Sec. 634, Rev. C. 1907; re-en. Sec. 821, R. C. M. 1921. Cal. Pol. C. Sec. 1320.

23-2110. (822) Compensation of electors. Electors receive the same pay and mileage as is allowed to members of the legislative assembly.

History: En. Sec. 7, p. 174, L. 1891; re- Rev. C. 1907; re-en. Sec. 822, R. C. M. en. Sec. 1469, Pol. C. 1895; re-en. Sec. 635, 1921. Cal. Pol. C. Sec. 1321.

23-2111. (823) How audited and paid. Their accounts therefor, certified by the secretary of the state, must be audited by the state auditor, who must draw his warrants for the same on the treasurer, payable out of the general fund.

History: En. Sec. 1470, Pol. C. 1895; re-en. Sec. 636, Rev. C. 1907; re-en. Sec. 823, R. C. M. 1921. Cal. Pol. C. Sec. 1322.

Collateral References
States—126, 169.
81 C.J.S. States §§ 158, 194.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

- Section 23-2201. Election of United States senators—for full term and to fill vacancies.
23-2202. Writs of election to fill vacancy.
23-2203. When held.
23-2204. Returns, how made.
23-2205. Certificates issued by governor.
23-2206. Residence required for election or appointment to Congress.

23-2201. (824) Election of United States senators—for full term and to fill vacancies. The election of senators in Congress of the United States

for full terms must be held on the first Tuesday after the first Monday in November next preceeding the commencement of the term to be filled; and the elections of senators in Congress of the United States to fill vacancies therein must be held at the time of the next succeeding general state election following the occurrence of such vacancy; if any election therefor be invalid or not held at such time, then the same shall be held at the second succeeding general state election. Nominations of candidates and elections to the office shall be made in the same manner as is provided by law in case of governor.

History: En. Sec. 1480, Pol. C. 1895; re-en. Sec. 637, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1915; amd. Sec. 1, Ch. 134, L. 1917; re-en. Sec. 824, R. C. M. 1921.

Collateral References
United States 11.
91 C.J.S. United States § 11.

23-2202. (825) Writs of election to fill vacancy. When a vacancy happens in the office of one or more senators from the state of Montana in the Congress of the United States, the governor of this state shall issue, under the seal of the state, a writ or writs of election, to be held at the next succeeding general state election, to fill such vacancy or vacancies by vote of the electors of the state; provided, however, that the governor shall have power to make temporary appointments to fill such vacancy or vacancies until the electors shall have filled them.

History: En. Sec. 1481, Pol. C. 1895; re-en. Sec. 638, Rev. C. 1907; amd. Sec. 2, Ch. 126, L. 1915; re-en. Sec. 825, R. C. M. 1921.

References
Bottomly v. Ford, 117 M 160, 163, 157 P 2d 108.

23-2203. (826) When held. At the general election to be held in the year eighteen hundred and ninety-two, and at the general election every two years thereafter, there must be elected for each congressional district one representative to the Congress of the United States.

History: En. Sec. 2, p. 306, L. 1891; re-en. Sec. 1490, Pol. C. 1895; re-en. Sec. 639, Rev. C. 1907; re-en. Sec. 826, R. C. M. 1921. Cal. Pol. C. Sec. 1343.

23-2204. (827) Returns, how made. The vote for representative in Congress must be canvassed, certified to, and transmitted in the same manner as the vote for state officers.

History: En. Sec. 2, p. 306, L. 1891; re-en. Sec. 1491, Pol. C. 1895; re-en. Sec. 640, Rev. C. 1907; re-en. Sec. 827, R. C. M. 1921. Cal. Pol. C. Sec. 1344.

Collateral References
Elections 257, 265.
29 C.J.S. Elections §§ 235, 240.

23-2205. (828) Certificates issued by governor. The governor must, upon the receipt of the statement mentioned in section 23-1814, transmit to the person elected a certificate of his election, sealed with the great seal and attested by the secretary of the state.

History: En. Sec. 3, p. 306, L. 1891; re-en. Sec. 1492, Pol. C. 1895; re-en. Sec. 641, Rev. C. 1907; re-en. Sec. 828, R. C. M. 1921. Cal. Pol. C. Sec. 1347.

23-2206. Residence required for election or appointment to Congress. No person shall be elected or appointed to the office of senator or repre-

sentative in the Congress of the United States who has not resided in this state at least one year prior to his election or appointment.

History: En. Sec. 1, Ch. 146, L. 1965.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

- Section 23-2301. Recount of votes, order for—application, contents and time for making—hearing—determination by court.
- 23-2302. Failure to comply with provisions for counting votes, presumption of incorrectness from.
- 23-2303. Calling in other judge—court not divested of jurisdiction by failure to hear application within prescribed time.
- 23-2304. Precincts in which recount ordered—deposit of cost of recount—procedure when more than one application for recount made—manner of recounting votes—certificates of election.
- 23-2305. Recount limited to precincts and offices specified in order of court.
- 23-2306. Certificates of election, effect of recount on.
- 23-2307. Election officers not to be paid until after recount—not paid on finding incorrect count.
- 23-2308. Other provisions concerning contests, reference to.
- 23-2309. Purpose of act—liberal construction.
- 23-2310. Application of act.
- 23-2311. Close vote as ground for recount—petition filed with clerk of court or secretary of state.
- 23-2312. Tie vote as ground for recount.
- 23-2313. Total vote—manner of computation.
- 23-2314. County recount board—composition—disqualification of interested candidates.
- 23-2315. Clerk of county recount board.
- 23-2316. Notice to recount board of filing of petition—convening of board.
- 23-2317. Persons entitled to appear at recount—opening and recount of ballots.
- 23-2318. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.
- 23-2319. Reconvening state board of canvassers—re canvass by state board—corrected abstract of votes—new certificate of election or nomination.
- 23-2320. Effect of new certificate of election or nomination.
- 23-2321. Tie vote after recount.
- 23-2322. Expenses of recount.
- 23-2323. Supplemental to prior law.

23-2301. (828.1) Recount of votes, order for—application, contents and time for making—hearing—determination by court. Any unsuccessful candidate for any public office at any general or special election, or at any municipal election, may within five days after the canvass of the election returns by the board or body charged by law with the duty of canvassing such election returns, apply to the district court of the county in which said election is held, or to any judge thereof, for an order directed to such board to make a recount of the votes cast at such election, in any or all of the election precincts wherein the election was held, as hereinafter provided. Said application shall set forth the grounds for a recount, and it shall be verified by the applicant to the effect that the matters and things therein stated are true to the best of the applicant's knowledge, information and belief. Within five days after the filing of said application in the office of the clerk of said district court, the said court, or the judge thereof, shall

hear and consider said application, and determine the sufficiency thereof; And, if from said verified application, the district court, or the judge thereof, finds that there is probable cause for believing that the judges and clerks of election did not correctly count and ascertain the number of votes cast for such applicant at any one or more of the election precincts that the judges and clerks of election might not have correctly counted and ascertained the number of votes cast for the applicant in any one or more election precincts, then, or in either of such events, the court or judge shall make an order addressed to the said board of county canvassers, requiring them at the time and place fixed by said order, which time shall be not more than five days from the making of such order to reassemble and reconvene as a canvassing board, and to recount the ballots cast at said election precinct or precincts of which complaint is made as in said order specified.

History: En. Sec. 1, Ch. 27, L. 1935.

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.

Constitutionality

Section 23-2301 et seq., held constitutional under section 23, article V as to sufficiency of title; section 27, article III as to due process of law, the holding of public office not being a property right, and the clause is satisfied when one is accorded the right to appear, be heard, file pleadings, make objections and participate fully in the hearing. *State ex rel. Riley v. District Court*, 103 M 576, 584, 586, 64 P 2d 115.

Applicable to Candidates for Senate and House

The election recount statutes, section 23-2301 et seq., 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 Legislature, but May Hear Application for Recount

Section 9, article V of the constitution makes each house of the legislative assembly the judge of the elections, returns and qualifications of its members, and 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 the recount statutes, section 23-2301 et seq.; 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.

Direction by Court within Its Jurisdiction

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code (93-1106) 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.)

Dismissal of Application for Noneligibility

District court committed error in dismissing the application for a recount under this section on the ground that applicant, convicted of a felony in federal court, lost his citizenship; such issue being properly triable in an election contest under the provisions of section 23-926 et seq., or section 94-1459 et seq. *State ex rel. Stone v. District Court*, 103 M 515, 519, 63 P 2d 147.

Functions of Court and Canvassing Board Divide

The law relating to proceedings for election recounts (23-2301 et seq.) 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.

Includes District Judge

Under this section, providing for the recount of votes by board of county canvassers, 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.

Liberal Construction Required

Sections 23-2301 to 23-2307 should be liberally construed. 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.

Not Made in Presence of Court—Illegal Ballots

A recount of ballots under this act (23-2301 et seq.) 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.

Not Remedy for Failure of Canvassing Board To Perform Duty Properly—Mandamus

Sections 23-2301 to 23-2307, providing for a recount of votes in one or more precincts alleged improperly counted, does 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.

Purpose of Recount Statute—Constitution

The sole purpose of the recount statutes, section 23-2301 et seq. 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 an Election Contest

A proceeding to obtain a recount of votes under section 23-2301 et seq. 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.

Statute In Pari Materia with Others

This section and sections 23-2302 to 23-2307 authorizing recount of votes, etc. and section 23-1812 et seq. relating to canvassers' abstract to secretary of state, are in pari materia and must be construed together, both the county and state board of canvassers being governed by the latter provisions in case the result of the election is changed upon a recount. *State ex rel. Riley v. District Court*, 103 M 576, 583, 64 P 2d 115.

Successive Recounts

This statute provides that an unsuccessful candidate may within five days after canvass of the ballots petition for a recount; 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.

When 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.

When District and Supreme Courts May Not Control Actions of Boards

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 con-

trol 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.

References

State ex rel. Wulf v. McGrath, 111 M 96, 101, 106 P 2d 183.

Collateral References

Elections \Rightarrow 260.

29 C.J.S. Elections § 237.

Costs or reimbursement for expenses incident to election contest. 106 ALR 928.

Notice of election to fill vacancy in office at general election. 158 ALR 1184.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of election board. 61 ALR 2d 484.

Validity of write-in vote where candidate's surname only is written in on ballot. 86 ALR 2d 1025.

23-2302. (828.2) Failure to comply with provisions for counting votes, presumption of incorrectness from. If it shall be made to appear by such verified application that the judges or clerks of election in any one or more election precincts did not comply with each and all of the provisions and requirements of section 23-1705, in counting and ascertaining the number of votes cast for each person voted for at said election, that shall be considered as sufficient probable cause for believing that the judges and clerks of election of said election precinct, or precincts, did not correctly count and ascertain the number of votes cast for the applicant in such election precinct or precincts.

History: En. Sec. 2, Ch. 27, L. 1935.

23-2303. (828.3) Calling in other judge—court not divested of jurisdiction by failure to hear application within prescribed time. If the judge of said district court of the county in which said election is held be ill, or absent, or for any other reason disqualified from acting, then and in that event another district court judge shall be called in to hear and determine said application, either by an order of a judge of said district court, or by an order by a justice of the supreme court of the state of Montana. A failure to hear, consider or determine said application within the time herein provided, shall not divest the court of jurisdiction, but the said court before which said application is presented and filed shall retain jurisdiction thereof for all purposes until said application is finally acted upon, considered and determined, and until a final count is made and had by the said board of county canvassers and the result thereof finally determined as herein provided.

History: En. Sec. 3, Ch. 27, L. 1935.

Extent of Jurisdiction of District Court

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 recanvass 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. Dis-

trict Court, 103 M 576, 587, 588, 64 P 2d 115.

References

State ex rel. Peterson v. District Court, 107 M 482, 487, 86 P 2d 403.

Collateral References

Elections \Rightarrow 260.

29 C.J.S. Elections § 237.

23-2304. (828.4) **Precincts in which recount ordered—deposit of cost of recount—procedure when more than one application for recount made—manner of recounting votes—certificates of election.** (1) If said application asks for a recount of the votes cast in more than one election precinct, but the grounds thereof are not sufficient for a recount in all, the court shall order a recount as to only such precinct as to which there are sufficient grounds stated and shown. The court in its order shall determine the probable expense of making such recount, and the applicant or applicants asking for such recount shall deposit with the said board the amount so determined and specified in said order, in cash; and if it be ascertained by said recount that the applicant or applicants have been elected to said office, then and in that event all money so deposited with said board shall be returned to the said applicant or applicants, but if an applicant as a result of said recount is found not to have been elected, then if the expense of making said recount shall be greater than the estimated cost thereof said applicants shall pay said excess, but if less than the estimated cost, then the difference shall be refunded to the applicant or applicants. The expense of making said recount as herein provided, shall be the salary of the members of the canvassing board for the period of time required to make such recount, and the salary of two clerks at the rate of not more than \$8.00 per day each.

(2) If more than one candidate makes application for a recount of the votes cast at said election, the court may, in its discretion, consider such applications separately or together, and may make separate or joint orders in relation thereto, and apportion the expense between said applicants. The board of canvassers, in recounting said ballots cast in said election, shall count the votes cast in the respective precincts as to which a recount is ordered for the several candidates in whose behalf a recount is ordered, at the same time, in the following manner:

(3) The county clerk shall produce, unopened, the sealed package or envelope received by him from the judges of election of the election precinct, or precincts, as to which a recount is ordered, in which is enclosed all ballots voted at such election in said precinct or precincts; and the package or envelope must then be opened by a member of the board of county canvassers in the presence and view of the other members of said board and of the county clerk, and of the candidates for said office or offices as to which said recount is ordered, present thereat. The ballots must then be taken from said packages or envelope by a member of the board, and in the presence of the candidate or candidates seeking such recount, and the candidate or candidates who by the first canvass was found to have received the highest number of votes, the ballots must be taken singly by one of the members of the canvassing board, and the contents thereof, while exposed to the view of said candidates and of one of the other members of said canvassing board, must be distinctly read aloud, and as the ballots are read, two clerks must write at full length, on sheets to be known as tally sheets, which shall be previously prepared for that purpose, one for each clerk, with the name of said respective candidates and the office or offices as to which a recount is being made, with the numbers of such election

precincts as to which said recount is ordered, and the number of votes for each person in said election precinct or precincts. At the completion of said recount the tally sheets must then be compared and their correctness ascertained, and the total number of votes cast for any candidate determined. If, on such recount, the votes cast for any candidate who makes such application shall be either more or less than the number of votes shown upon the official returns for that person and office, then the original returns shall be thereupon by the clerk of said board of canvassers, and under its direction, corrected so as to state the number of votes ascertained on such recount.

(4) The said board of canvassers shall thereupon cause its clerk to enter on the records of said board the result of said election as determined by such recount, and the clerk of said board shall thereupon make out and deliver certificate of election in conformity to the result ascertained by said recount.

(5) The candidate who as a result of the original or first canvass of the returns by the board of canvassers was found to be elected, shall be served with a copy of the application, and shall be given an opportunity to be heard thereon, and he shall be permitted to be present and to be represented at any recount ordered.

(6) When said recount of the ballots in any election precinct has been finished, the ballots shall then be again enclosed in the same package or envelope in which they had been placed by the judges of election, and in the presence and view of the county clerk and the members of the board of canvassers the said packages or envelopes shall again be closed and sealed, and then again delivered into the custody of the county clerk.

History: En. Sec. 4, Ch. 27, L. 1935.

23-2305. (828.5) Recount limited to precincts and offices specified in order of court. The board of canvassers shall make no recount of any votes cast in any election precinct or for any office other than the precinct or precincts and office or offices specified in said order.

History: En. Sec. 5, Ch. 27, L. 1935.

23-2306. (828.6) Certificates of election, effect of recount on. If it shall be found and determined by said recount that the person to whom the county clerk had issued a certificate of election pursuant to section 23-1808, did not in fact receive the highest number of votes cast at said election for said office, then the said certificate of election first issued by said clerk shall be void, and the certificate of election issued by said clerk pursuant to the findings and determination of said recount shall be treated and considered, for all purposes as the only certificate of election to said office, and the person named therein shall be the person elected to said office.

History: En. Sec. 6, Ch. 27, L. 1935.

Collateral References

Elections 267.

29 C.J.S. Elections § 240.

23-2307. (828.7) Election officers not to be paid until after recount—
not paid on finding incorrect count. No judge or clerk of any election, of

any election precinct, as to which a recount is ordered shall receive any pay for his or her services as such judge or clerk until the completion of such recount by the said canvassing board, and if it shall be ascertained on such recount that any applicant in whose behalf such recount is had, has been elected, then in that event, the judges and clerks of the election precincts in which the votes were found to have not been correctly counted shall not be paid or receive any pay for their services as such.

History: En. Sec. 7, Ch. 27, L. 1935.

Collateral References

Elections 53.

29 C.J.S. Elections § 63.

23-2308. (829) Other provisions concerning contests, reference to. See sections 23-926 to 23-928 and sections 94-1464 to 94-1468 for other provisions governing election contests.

History: New section recommended by code commissioner, 1921.

23-2309. Purpose of act—liberal construction. It is the purpose of this act to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this act shall be liberally construed to that end.

History: En. Sec. 1, Ch. 42, L. 1963.

23-2310. Application of act. The provisions herein shall apply to the recount of ballots cast in any election.

History: En. Sec. 2, Ch. 42, L. 1963.

23-2311. Close vote as ground for recount—petition filed with clerk of court or secretary of state. A recount shall be made under any of the following conditions:

1. When any candidate for any office, position, or nomination which is voted upon only by the electors of one county, or some part thereof, except the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total vote cast for all candidates for such office, position, or nomination, or is defeated by a margin not exceeding ten (10) votes, whichever is the greater, he may within five (5) days after completion of the official canvass of the returns file with the county clerk his duly verified petition stating he believes a recount will change the result and praying for a recount of all votes cast for such office, position; or nomination.

2. Whenever any candidate for any office, position, or nomination which is voted upon in more than one county or for the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total vote cast for all candidates for such office, position, or nomination, he may within five (5) days after completion of the official canvass of the returns file a petition with the secretary of state such as set forth in subdivi-

sion one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk whose county includes any precincts which voted for such office, position, or nomination of the filing of such petition, and the recount shall be conducted as to all of such precincts in each such county.

3. Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total vote cast for and against on such question, there may be filed with the secretary of state within five (5) days after the completion of the official canvass, a petition signed by not less than one hundred (100) legally qualified electors of the state, and representing at least five (5) counties of the state, a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk of the filing of such petition, and the recount shall be conducted as to all precincts in each county.

History: En. Sec. 3, Ch. 42, L. 1963.

23-2312. Tie vote as ground for recount. When by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall be the duty of the canvass board making such canvass to certify said vote to the county clerk where the election involved is confined to one county, except for the office of district judge, and to the secretary of state as to all other elections. The county clerk, or the secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under this act, and the recount shall proceed accordingly. In case of a tie vote found to exist after the recount, such tie vote shall be resolved as provided by existing statutes.

History: En. Sec. 4, Ch. 42, L. 1963.

23-2313. Total vote—manner of computation. When in any election an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for such office shall for the purposes of this act be the total vote actually cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 5, Ch. 42, L. 1963.

23-2314. County recount board—composition—disqualification of interested candidates. The county recount board of each county shall consist of the three members of the board of county commissioners. If at the time and place appointed for the recount one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following county officers, whose duty it is to act in the order named: the treasurer, the assessor, the sheriff, the clerk of court. The county recount board shall always consist of three acting members. If any member of the county recount board was among

the candidates for an office, nomination, or position to which votes are to be recounted, he shall thereby be disqualified.

History: En. Sec. 6, Ch. 42, L. 1963.

23-2315. Clerk of county recount board. The county clerk shall be the clerk of the county recount board, and the board may hire additional clerks as needed.

History: En. Sec. 7, Ch. 42, L. 1963.

23-2316. Notice to recount board of filing of petition--convening of board. The county clerk shall immediately upon the filing with him of any petition for a recount, or upon receipt from the secretary of state of notice of such filing with the secretary of state, notify the members of the county recount board. The board shall then convene at the usual place of meeting of the county commissioners without undue delay, and in no event more than five (5) days after the filing of the petition with the county clerk or the notice of the filing with the secretary of state.

History: En. Sec. 8, Ch. 42, L. 1963.

23-2317. Persons entitled to appear at recount--opening and recount of ballots. Each candidate for any office, nomination, or position 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. If the recount is upon a referred or submitted question, one legally qualified elector of the state favoring each side as to such question may be present and represent such side. The county clerk shall produce, unopened, the sealed package or envelope received by him from the judges of election of each election precinct in the county. The procedure for conducting the recount of votes shall be as provided in subsection three (3) of section 23-2304, and the recount shall proceed as expeditiously as reasonably possible until completed.

History: En. Sec. 9, Ch. 42, L. 1963.

23-2318. Certification of recount results--transmittal to secretary of state--corrected abstract of votes--new certificate of election or nomination. Immediately upon conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate must be signed by at least two members of such board, attested under seal by the county clerk. The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, shall adequately designate each precinct recounted, the vote of such precinct according to the official canvass thereof previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as determined by the board through the recount. When the certificate relates to the recount ballots as to an office, nomination, position, or question voted upon in more than one county or for the office of judge of the district court, the certificate shall be made in duplicate, and either the original or duplicate original immediately transmitted to the secretary of state by registered mail. If the recount relates to the recount of ballots as to an office, nomination, position, or

question voted upon in only one county, or some part thereof, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount, and make a new and corrected abstract of the votes cast. If such correct abstract shows no change in the result as previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated.

History: En. Sec. 10, Ch. 42, L. 1963.

23-2319. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination. Upon receipt by the secretary of state of certificates by all county recount boards required to be forwarded, the secretary of state shall file the same, and fix a time and place as early as reasonably possible for reconvening the state board of canvassers, and shall notify the members of the state board of canvassers thereof. The state board of canvassers shall reconvene at the time and place designated and recanvass the official returns as to such office, nomination, position or question, as corrected by such certificates, and shall make a new and corrected abstract of the votes cast. If such corrected abstract shows no change in the result previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated.

History: En. Sec. 11, Ch. 42, L. 1963.

23-2320. Effect of new certificate of election or nomination. Any certificate of nomination or election issued under the provisions of this act shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which is inconsistent with the new certificate, and the holder of any certificate of nomination or election issued under this act shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

History: En. Sec. 12, Ch. 42, L. 1963.

23-2321. Tie vote after recount. When a tie vote between candidates is found to exist on the basis of the recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-1901 to 23-1904.

History: En. Sec. 13, Ch. 42, L. 1963.

23-2322. Expenses of recount. The expense of the recount of the votes as provided in this act shall be a county charge, except that any expenses of the secretary of state, and state board of canvassers shall be a state charge.

History: En. Sec. 14, Ch. 42, L. 1963.

23-2323. Supplemental to prior law. This act is supplemental to and not in derogation of the law relating to contest of elections, or the recount procedure set forth in sections 23-2301 to 23-2308.

History: En. Sec. 15, Ch. 42, L. 1963.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

- Section 23-2401. Convention for ratification of amendments to United States constitution.
- 23-2402. Delegates to constitutional convention.
- 23-2403. Nomination of delegates.
- 23-2404. Election of delegates.
- 23-2405. Form of ballot.
- 23-2406. Time for convention of delegates.
- 23-2407. Quorum—officers—procedure—qualifications.
- 23-2408. Compensation of delegates and officers.
- 23-2409. Certificate of result—transmission to secretary of state of United States.
- 23-2410. Qualification of signers of petitions and electors.
- 23-2411. Federal acts to supersede state provisions concerning amendments.

23-2401. (829.1) Convention for ratification of amendments to United States constitution. Whenever the Congress shall propose an amendment to the constitution of the United States and shall propose that the same be ratified by convention in the states, a convention shall be held, as provided herein, for the purpose of ratifying such amendment.

History: En. Sec. 1, Ch. 188, L. 1933.

Collateral References

Constitutional Law 10.

16 C.J.S. Constitutional Law § 6.

23-2402. (829.2) Delegates to constitutional convention. The number of delegates to be chosen to such convention shall be not less than one-half of the number of the members of the legislative assembly of Montana, and each district shall have one-half of the number of delegates as it is then entitled to elect members of the legislative assembly of Montana, provided, that when the number is an odd number, each district shall be entitled to one-half of the next even number. The delegates shall be elected at the next general election or primary nominating election held throughout the state, after the Congress has proposed the amendment, or at a special election to be called by the governor, at his discretion, by proclamation at any time after the Congress has proposed the amendment, and except as otherwise provided herein, the election, in all respects, from the nomination of candidates to and including the certificate of election, shall be in accordance as nearly as may be with the laws of the state relating to the election of members of the legislative assembly of the state.

History: En. Sec. 2, Ch. 188, L. 1933;
amd. Sec. 11, Ch. 194, L. 1967.

23-2403. (829.3) Nomination of delegates. Nomination of a candidate for the office of delegate shall be by petition, which shall be signed by not less than one hundred voters of the district. Nominations shall be without

party or political designation, but shall be as “in favor of” or “opposed to” ratification of the proposed amendment. All petitions and the acceptances thereof shall be filed not less than thirty days prior to the election.

History: En. Sec. 3, Ch. 188, L. 1933;
amd. Sec. 12, Ch. 194, L. 1967.

23-2404. (829.4) Election of delegates. The results of the election shall be determined as follows: The total number of votes cast for each candidate “in favor of” ratification, and the total number of votes cast for all candidates “in favor of” ratification and the total number of votes cast for each candidate “opposed to” ratification and the total number of votes cast for all candidates “opposed to” ratification shall be ascertained, and the candidates equal to the number to be elected receiving the highest number of votes from the side that casts the greater number of votes in favor of or opposed to ratification, as the case may be, shall be deemed elected.

History: En. Sec. 4, Ch. 188, L. 1933.

23-2405. (829.5) Form of ballot. On the official ballot there shall be printed the proposed amendment, the names of candidates for delegates to the convention, and appropriate instructions to the voters, all in substantially the following form:

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES	
Delegates to the Convention to Ratify the Proposed Amendment.	
The Congress has proposed an amendment to the constitution of the United States which provides, (insert here the substance of the proposed amendment.)	
The Congress has also proposed that the said amendment shall be ratified by conventions in the states.	
In favor of	Opposed to
ratification of the proposed amendment.	ratification of the proposed amendment.
Vote for	Vote for
.....
candidates only.	candidates only.
Names of candidates.	Names of candidates.

History: En. Sec. 5, Ch. 188, L. 1933.

23-2406. (829.6) **Time for convention of delegates.** The delegates to the convention shall meet at the state capitol on the first Monday in the month following the election, at 10:00 o'clock a. m., and shall constitute a convention to act upon the proposed amendment to the constitution of the United States.

History: En. Sec. 6, Ch. 188, L. 1933.

23-2407. (829.7) **Quorum — officers—procedure—qualifications.** A majority of the total number of delegates to the convention shall constitute a quorum. The convention shall have power to choose a president and secretary, and all other necessary officers, and to make rules governing the procedure of the convention. It shall be the judge of the qualifications and election of its own members.

History: En. Sec. 7, Ch. 188, L. 1933.

23-2408. (829.8) **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 such compensation as may be fixed by the convention.

History: En. Sec. 8, Ch. 188, L. 1933.

23-2409. (829.9) **Certificate of result—transmission to secretary of state of United States.** When the convention shall have agreed by a majority of the vote of the total number of delegates in attendance at such convention, a certificate to that effect shall be executed by the president and secretary of the convention, and transmitted to the secretary of state of the United States.

History: En. Sec. 9, Ch. 188, L. 1933.

23-2410. (829.10) **Qualification of signers of petitions and electors.** Those entitled to petition for the nomination of candidates and to vote at such election shall be determined as now provided by the registration laws of Montana.

History: En. Sec. 10, Ch. 188, L. 1933.

23-2411. (829.11) **Federal acts to supersede state provisions concerning amendments.** If the Congress shall either in the resolution submitting the proposed amendment, or by statute, prescribe the manner in which the convention shall be constituted, the preceding provisions of this act shall be inoperative, and the convention shall be constituted and held as the said resolution or act of Congress shall direct, and all officers of the state of Montana who may by said resolution or statute be authorized to direct, or be directed to take any action to constitute such a convention for this state, are hereby authorized and directed to act thereunder, and in obedience thereto, with the same force and effect as if acting under a statute of this state.

History: En. Sec. 11, Ch. 188, L. 1933.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

- Section 23-2501. Purpose of act.
 23-2502. Definition of terms.
 23-2503. Use of electronic systems authorized—specifications—use at primaries—procedure.
 23-2504. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.
 23-2505. Closing of polls—counting of votes—sealing and preservation of ballots—returns.
 23-2506. Rules and regulations—specifications for devices and equipment.
 23-2507. General election laws applicable.

23-2501. Purpose of act. The purpose of this act 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. 1, Ch. 20, L. 1965.

23-2502. Definition of terms. As used in this act, unless otherwise specified:

(a) "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.

(b) "Ballot card" means a ballot which is voted by the process of punching.

(c) "Ballot labels" means the cards, papers, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(d) "Ballot" may include ballot cards, ballot labels and paper ballots.

(e) "Counting location" means a location selected by the county clerk and recorder or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(f) "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.

(g) "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. 2, Ch. 20, L. 1965;
 amd. Sec. 1, Ch. 220, L. 1967.

Compiler's Note

Chapter 20, as enacted in 1965, contained no section "3."

23-2503. Use of electronic systems authorized—specifications—use at primaries—procedure. (a) Electronic voting systems may be used in elections, 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.

(b) 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.

(c) So far as applicable, the procedure provided for voting paper ballots shall apply.

(d) The governing body of any county, city or town may 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.

History: En. Sec. 4, Ch. 20, L. 1965.

23-2504. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (a) 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.

(b) 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.

(c) 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.

(d) 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.

(c) The county clerk and recorder 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.

(f) Within five days prior to the election day, the county clerk and recorder 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. 5, Ch. 20, L. 1965.

23-2505. Closing of polls—counting of votes—sealing and preservation of ballots—returns. (a) 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.

(b) 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.

(c) All proceedings at the counting location shall be under the direction of the county clerk and recorder or city clerk under the observation of at least three election judges designated by the county commissioners, city council or commission 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.

(d) 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. 6, Ch. 20, L. 1965.

23-2506. Rules and regulations—specifications for devices and equipment. (a) The secretary of state may promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems, provided, however, that the governing body of any county, city or town is authorized to adopt, experiment with or abandon any electronic voting system which has been used for at least two (2) successive elections in a state other than Montana without the approval of the secretary of state if the governing body of the county, city or town finds that the marking devices and automatic tabulating equipment proposed to be used fulfill the requirements of subsection (b).

(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.

History: En. Sec. 7, Ch. 20, L. 1965;
amd. Sec. 2, Ch. 220, L. 1967.

23-2507. General election laws applicable. 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 this act.

History: En. Sec. 8, Ch. 20, L. 1965.

TITLE 32
HIGHWAYS, BRIDGES AND FERRIES

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—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 hercunto 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—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 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. The statement as prepared by the attorney general, shall be in addition to the legislative title of the measure. On the printing of the ballot, 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.

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:

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | For Initiative Measure No. 6
Relating to Duties of Sheriffs. |
| <input checked="" type="checkbox"/> | Against Said Measure No. 6. |
| <input type="checkbox"/> | For Referendum Measure No. 7
Relating to Purchase of Insane Asylum. |
| <input checked="" type="checkbox"/> | Against Said Measure No. 7. |

History: En. Sec. 6, Ch. 62, L. 1907; 66, L. 1913; re-en. Sec. 104, R. O. 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

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. C. 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. Certificate of election evidence of a right to seat.
 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.

43-201. (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. (56) Certificate of election evidence of a right to seat. The certificate of election from the clerk of the proper county is prima-facie evidence of the right to membership of the person certified therein to be elected, for all purposes of organization of either branch of the legislative assembly.

History: En. Sec. 1, p. 89, L. 1885; re-en. Sec. 1325, 5th Div. Comp. Stat. 1887; amd. Sec. 161, Pol. C. 1895; re-en. Sec. 56, Rev. C. 1907; re-en. Sec. 56, R. C. M. 1921. Cal. Pol. C. Sec. 236.

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.

TITLE 44

LIBRARIES

CHAPTER 2

COUNTY AND REGIONAL FREE LIBRARIES

Section 44-213. Participation of other governmental units.

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.

TITLE 62

PARKS AND PUBLIC RECREATION

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

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. re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. 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. 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. Sec. 952, R. C. M. 1921; amd. Sec. 2, Ch. amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 10, L. 1945.

CHAPTER 16

SCHOOL TRUSTEES

Section 75-1601.	Qualifications of.
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 bona fide 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.

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.

NOTE.—This section, as it existed in 1914, held in violation of Section 10, Arti-

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 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.

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" or "Against consolidation." 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" and "Against annexation." 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.

History: En. Sec. 407, Ch. 76, L. 1913; 1951; amd. Sec. 1, Ch. 23, L. 1953; amd. re-en. Sec. 1034, R. C. M. 1921; amd. Sec. Sec. 1, Ch. 205, L. 1965; amd. Sec. 2, Ch. 1, Ch. 201, L. 1943; amd. Sec. 1, Ch. 32, L. 271, L. 1967. 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 school-house 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 registered 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 school-house 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 registered 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 registered 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. 267, 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, L. 1963; amd. Sec. 1, Ch. 140, L. 1967. L. 1935; amd. Sec. 12, Ch. 199, L. 1949;

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 shall be credited to the sinking fund of the school district notwithstanding the provisions of subsection (6) of section 16-2618.

(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.

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'clockm. and until o'clockm. 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 dis-

trict 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 sub-

mitted to the qualified electors of a school district at either a general or special school election not less than forty (40) per centum of the qualified electors entitled to vote on such question at such election must vote thereon, otherwise such question shall be deemed to have been rejected; provided, however, that if forty (40) per centum 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. 14, Ch. 147, L. 1927; amd. Sec. 1, Ch. 40, L. 1935; amd. Sec. 1, Ch. 7, L. 1937.

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'clockm. 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. C. 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.
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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.
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county as high school district.
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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-
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**75-4148. Petition—resolution of board—approval of superintendent of public
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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 Revised 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 indebted-

ness 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 proposed 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 appoint-

ment 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; and subject to the approval of the state board of education provide instruction, courses and classes for vocational training within the district in the trades and industries and commercial branches, and for adult 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.

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 mean those students enrolled and in attendance, in a community college for a period of not less than thirty (30) days, and carrying a course of study of not less than ten (10) class hours in courses, including vocational courses meeting standards prescribed by the state board of education, during each calendar week. A class hour shall mean not less than fifty (50) minutes of instruction or supervised laboratory training. Each student, enrolled for a period of more than thirty (30) days in any one (1) quarter or semester but less than two (2) complete semesters or three (3) complete quarters, shall entitle the college district to receive proportionate credit based upon the number of weeks the student is enrolled and in attendance bears to the total weeks in the two (2) complete semesters or three (3) quarters. Such calculations shall exclude weeks of regular vacation time.

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.

History: En. Sec. 13, Ch. 274, L. 1965.

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, enlarge, 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 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.

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 fourteen (14) 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 fourteen (14) 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. Ch. 202, L. 1953; amd. Sec. 1, Ch. 246,

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 additional 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 appointment 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

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 there-

after 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.
<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.

TITLE 93

CIVIL PROCEDURE

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; re-en. Sec. 6269, Rev. C. 1907; re-en. Sec. 8820, R. C. M. 1921. Cal. C. Civ. Proc. 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.
94-1405. Procuring illegal voting.
94-1406. Changing ballots or altering returns by election officers.
94-1407. Judges unfolding or marking ballots.
94-1408. Forging or altering returns.
94-1409. Adding to or subtracting from votes given.
94-1410. Persons aiding and abetting.
94-1411. Intimidating, corrupting, deceiving or defrauding electors.
94-1412. Offenses under the election laws.
94-1413. Officers of election not to electioneer, etc.
94-1414. Offenses at an election.
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94-1418. Bribing members of legislative caucuses, etc.
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94-1420. Disturbances of public meetings of electors.
94-1421. Betting on elections.
94-1422. Violation of election laws.

- 94-1423. Bribery.
- 94-1424. Unlawful acts of employers.
- 94-1425. Fines paid into school fund.
- 94-1426. Violation of act voids election.
- 94-1427. Expenditure by or for candidate for office.
- 94-1428. Limitation of expenditures by candidate—by party organizations—by relatives.
- 94-1429. Definition of terms.
- 94-1430. Statement by candidate as to moneys expended—filing after election—penalty.
- 94-1431. Accounts of expenditures by political committees and other persons—statement and vouchers.
- 94-1432. Copies of act to be furnished certain public officers and candidates.
- 94-1433. Inspection of accounts—complaints—statement of receipts.
- 94-1434. Prosecutions for failure to file statement.
- 94-1435. Jurisdiction—court may compel filing of statements.
- 94-1436. Record of statements—copies.
- 94-1437. Payments in name of undisclosed principal.
- 94-1438. Promise to procure appointment or election.
- 94-1439. Public officer or employee not to contribute funds.
- 94-1440. Certain public officers prohibited from acting as delegates or members of political committee.
- 94-1441. Transfer of convention credential.
- 94-1442. Inducing person to be or not to be candidate.
- 94-1443. What demands or requests shall not be made of candidates.
- 94-1444. Contributions from corporations, public utilities and others.
- 94-1445. Treating.
- 94-1446. Challenging voters—procedure.
- 94-1447. Coercion or undue influence of voters.
- 94-1448. Bets or wagers on election results.
- 94-1449. Personating another elector—penalty.
- 94-1450. Corrupt practice, what constitutes.
- 94-1451. Compensating voter for loss of time—badges and insignia.
- 94-1452. Publications in newspapers and periodicals.
- 94-1453. Solicitation of votes on election day.
- 94-1454. Political criminal libel.
- 94-1455. Filing of statement of expenses by candidate.
- 94-1456. Inducement to accept or decline nomination.
- 94-1457. Forfeiture of nomination or office for violation of law, when not worked.
- 94-1458. Punishment for violation of act.
- 94-1459. Time for commencing contest.
- 94-1460. Court having jurisdiction of proceedings.
- 94-1461. Repealed.
- 94-1462. Duty of county attorney on violation of act—penalty for neglect or refusal to act.
- 94-1463. Declaration of result of election after rejection of illegal votes.
- 94-1464. Grounds for contest of nomination or office.
- 94-1465. Nomination or election not to be vacated, when.
- 94-1466. Reception of illegal votes, allegations and evidence.
- 94-1467. Contents of contest petition—amendment—bond—costs—citation—precedence.
- 94-1468. Hearing of contest.
- 94-1469. Corporations—proceedings against, for violation of act.
- 94-1470. Penalty for violations not otherwise provided for.
- 94-1471. Advancement of cases—dismissal, when—privileges of witnesses.
- 94-1472. Form of complaint.
- 94-1473. Form of statement of expenses.
- 94-1474. False oaths or affidavits—perjury.
- 94-1475. Political literature to contain name of officer of organization or person publishing and producing.
- 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 provi-

sions 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 filed 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 and vouchers. 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 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. 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 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 detailed account thereof, with proper vouchers. Every payment, except payments less in the aggregate than five dollars to any person, shall be vouched for by a receipted bill stating the particulars of expense. Every voucher, receipt, and account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate, or other person, and shall be preserved by the public officer with whom it shall be filed for six months after the election to which it refers. Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars 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 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 or more counties, or with the county clerk for county offices, and with the city clerk, auditor, or recorder for municipal offices, an itemized statement of such receipts and expenditures and vouchers for every sum paid in excess of five dollars, 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 vouchers. 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.

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 au-

thor, 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 nomination 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 per-

son, 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 dismissed 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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