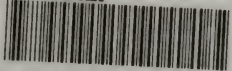


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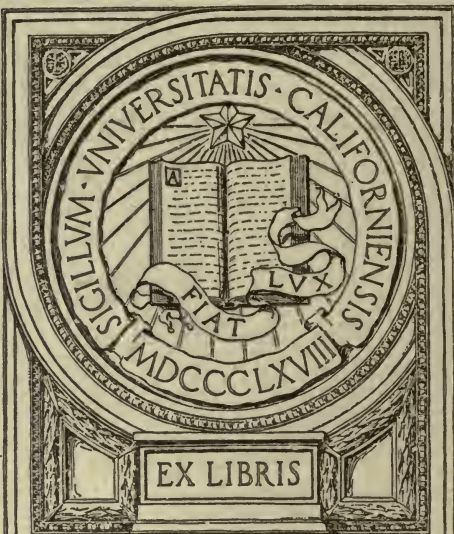
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ELECTION LAWS

PART I

NOMINATION OF CANDIDATES.

DIVISION 1.

PRIMARY ELECTION LAWS

Section 1087-a1. **Primary elections authorized—offices affected.** That from and after the passage of this act the candidates of political parties for all offices which under the law are filled by the direct vote of the voters of this state at the general election in November, (except candidates for the office of judge of the supreme, district and superior courts*), for the office of senator in the congress of the United States, and for the office of elector of the president and vice-president of the United States, shall be nominated by a primary election, and delegates to the county conventions of said political parties or organizations and party county committeemen shall be elected at said primary election, at the times and in the manner hereinafter provided. The provisions of chapter three (3) and four (4), title six (6), and chapter eight (8), title twenty-four (24), of the code, shall apply so far as applicable to all such primary elections, the same as general elections, except as hereinafter provided. [32 G. A., ch. 51, § 1.] [33 G. A., ch. 69, § 1.]

The method of nomination provided for in the statute is exclusive and supercedes provisions as to nomination by district central committees found in Code section 1102. *State vs. Hayward, Secretary of State*, 141-196.

The courts have no jurisdiction to determine the validity of a certificate to the nomination paper of candidates for state offices. *Ibid.*

*Chapter 104 Acts of the Thirty-fifth General Assembly provides for non-partisan nomination and election of judges. [Supp. to C. 1913, § 1087-b to 1087-b5.]

Sec. 1087-a2. Primary election defined. The term "primary election" as used in this act shall be construed to apply to an election by the members of various political parties for the purpose of placing in nomination candidates for public office, for selecting delegates to conventions, and for the selection of party committeemen. [32 G. A., ch. 51, § 2.]

Sec. 1087-a3. Political party defined. The title "political party" shall mean a party which, at the last preceding general election, cast for its candidate for governor at least two per centum of the total vote cast at said election, provided that such other political organizations as may, under sections 1098 and 1099 of the code nominate and certify candidates and have their names placed upon the ballot for the November election, shall have the right so to do in the manner and under the conditions therein prescribed. [32 G. A., ch. 51, § 3.]

Sec. 1087-a4. When held. The primary election herein provided for shall consist of an election by all political parties and shall be held at the usual voting places of the several precincts on the first Monday in June, in the year nineteen hundred twelve, and biennially thereafter, for the nomination of candidates for such offices as are to be filled at the general election in November next ensuing, (except candidates for the office of judge of the supreme, district and superior courts*), for senator in the congress of the United States in the next year preceding the filling of that office by the general assembly,† and for the electors of the president and vice-president of the United States, in the year in which a president and vice-president are to be elected. [32 G. A., ch. 51, § 4.] [34 G. A., ch. 58, § 1.]

Sec. 1087-a5. Judges and clerks—how selected—oath—expenses. The judges and clerks of all primary elections under this act shall be made up and selected and appointed in the same manner as for the general election held in November, and they shall take the same oath and the judges are hereby authorized to administer oaths as hereinafter provided. Vacancies shall be filled as provided for the judges and clerks of the general elec-

*Chapter 104 Acts of the Thirty-fifth General Assembly provides for non-partisan nomination and election of judges. [Supp. to C. 1913, § 1087-b to 1087-b5.]

†Chapter 105, Acts of the Thirty-fifth General Assembly provides for election of United States Senator by direct vote of the people. [Supp. to C. 1913, § 1087-c.]

tion. The expenses of the primary election shall be audited by the board of supervisors of each county and be paid the same as the expenses of the general election. The compensation of the judges and clerks of the primary election shall be the sum of twenty-five cents per hour for all official services rendered by any such judge or clerk at any such election. [32 G. A., ch. 51, § 5.] [33 G. A., ch. 69, § 2.]

The certification by the board of supervisors to the executive council of the expense of primary elections is a part of its proceedings to be published under the provisions of the Code Section 441. *Index Printing Company vs. Board of Supervisors*, 150-411.

Sec. 1087-a6. Australian ballot—polls open—ballots. The Australian ballot system as now used in this state, except as hereinafter provided, shall be used at said primary election in all precincts. The voter shall in all cases mark the ballot in the square before the name of each person for whom he desires to vote. In cities where registration is required by law, the polls shall be open from 7:00 a. m. to 8:00 p. m., and in all other precincts from nine o'clock a. m. to eight o'clock p. m. The elector voting at said primary election shall be allowed to vote for candidates for nomination on the ticket of only one political party, and that shall be the party with which he is registered as affiliated. The endorsement of the judges of election and the fac simile of the auditor's signature shall appear upon the ballots as provided by law for the ballots used for the November election. The voter shall return the ballot folded to one of the judges of election who shall deposit it in the ballot box. If any primary elector write upon his ticket the name of any person who is a candidate for the same office upon some other party ticket than that upon which his name shall be so written, such ballot shall be so counted for such person only as a candidate of the party upon whose ballot his name is written, and shall in no case be counted for such person as a candidate upon any other ticket. In case the person is nominated upon more than one ticket, he shall forthwith file with the proper officer a written declaration indicating the party designation under which his name is to be printed on the official ballot for the general election following such primary election. [32 G. A., ch. 51, § 6.] [33 G. A., ch. 69, § 3.]

Sec. 1087-a7. First declaration of party affiliation—record. At the primary election to be held in June in the year nineteen hundred eight any person shall be entitled to participate therein

who is a qualified elector in such precinct at the time of said primary election, and when the voter seeks to pass the guard-rail he shall indicate the party ballot he desires and one of the judges of the primary election board shall give him such primary ballot, (unless challenged, and if so challenged, then only in the event that the challenge is determined in favor of the voter), and such person shall thereupon be allowed to vote. The voter's selection shall constitute his declaration of party affiliation, and it shall be the duty of the primary election board to record his name and check his declaration of party affiliation on the poll books used by the clerks of the primary election board, and said list properly certified to by said primary election board shall be returned to the county auditor for preservation. Copies of the names and party entries on such list together with the changes of party affiliation as hereinafter provided, arranged alphabetically by surnames, shall be used at subsequent primaries for determining with what party the voter has been enrolled, and no voter enrolled under the provisions of this act shall be allowed to receive the ballot of any political party except that with which he is enrolled, but he may change his enrollment as hereinafter provided. The county auditor shall prepare for each voting precinct two of the above mentioned lists duly certified by him, and taken from the poll books of the last preceding primary election, which he shall deliver to the succeeding primary election boards in the year nineteen hundred ten and biennially thereafter, at least one day prior to the day of the primary election, and which lists together with the poll books of the primary election shall be returned to the said auditor in good condition within twenty-four hours after the primary election, to be preserved by him. [32 G. A., ch. 51, § 7.]

Sec. 1087-a8. Change of affiliation—first voter—removal. Any person who has thus declared his party affiliation shall thereafter be listed on the poll books as a member of that political party, and such person while a resident of the same voting precinct need not declare his party affiliation at succeeding primary elections unless he desires to change his party affiliation. Any elector, who, having declared his party affiliation, desires to change the same, may, not less than ten days prior to the date of any primary election, file a written declaration with the county auditor stating his change of party affiliation, and the auditor shall enter a record of such change on the poll books of the last preceding primary

election in the proper column opposite the voter's name and on the voting list. Any elector whose party affiliation has for any reason not been registered or any elector who has changed his residence to another precinct, or a first voter or citizen of this state casting his first vote in this state shall be entitled to vote at any subsequent primary election in the same manner and upon the same terms as provided in section seven (7) of this act, and the clerks of the primary election shall record his party affiliation and the county auditor shall add his name to the alphabetical lists for use in subsequent primary elections as provided for in section seven (7) of this act. [32 G. A., ch. 51, § 8.]

Sec. 1087-a9. Challengers—affidavit. Each political party shall be entitled to have two party challengers present at each polling place, to be appointed by the respective party committeemen. Any judge or clerk of the primary election or any party challenger may challenge any voter upon the grounds mentioned in section eleven hundred fifteen (1115) of the code and such challenge shall be determined as there provided. Any elector whose party affiliation has been recorded as provided by this act and who desires to change his party affiliation on the primary election day, shall be subject to challenge. If the person challenged insists that he is entitled to vote the ticket of the political party to which he has transferred his political affiliation and the challenge is not withdrawn, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you have in good faith changed your party affiliation to and desire to be a member of the.....party." And if he takes such oath he shall thereupon be given a ticket of such political party and the clerks of the primary election shall change his enrollment of party affiliation accordingly. [32 G. A., ch. 51, § 9.]

The judges of a primary election have no duty imposed upon them with reference to the right of one proposing to cast a ballot at such election, save that of entertaining the challenge and requiring the proposed voter to take the prescribed oath as to his qualifications. *Jones vs. Fisher*, 156-582.

Sec. 1087-a10. Nomination papers—candidates—affidavit. No candidate for an elective county office shall have his name printed upon the official primary ballot of his party unless at least thirty days prior to the day fixed for holding the primary election a nomination paper shall have been filed in his behalf in the office of the county auditor; and no candidate for nomination for an elective state office, or for representative in the congress of the

United States, or member of the general assembly, shall have his name printed upon the official primary ballot of his party unless at least forty days prior to such primary election a nomination paper shall have been filed in his behalf in the office of the secretary of state; and no member of a political party desiring or intending to be a candidate for the office of senator in the congress of the United States, or a candidate for the office of elector of the president and vice-president of the United States, shall have his name printed upon the official primary ballot of his party in any election precinct unless at least forty days prior to such primary election a nomination paper shall have been filed in his behalf in the office of the secretary of state. A candidate for an office to be filled by the voters of any sub-division of a county, or a candidate for party committeeman, shall not be required to file any nomination paper or papers. All nomination papers shall be in substantially the following form :

“I, the undersigned, a qualified elector of.....county, and state of Iowa, and a member of the.....party, hereby nominate.....of.....county, state of Iowa, who has affiliated with and is a member of theparty, as a candidate for the office of..... to be voted for at the primary election to be held in June, 19..”, and shall consist of sheets of uniform size about 8½ by 13 inches. No signatures shall be counted unless they are on sheets each having such form written or printed at the top thereof. 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. Each signer of a nomination paper shall add his residence with street and number, if any, and the date of signing. For all nominations, all signers of each separate part of a nomination paper shall reside in the same county. When more than one sheet is used for any nomination paper, the sheets shall be laid one upon the other and neatly, evenly, and securely fastened together before filing, and shall be considered as one nomination paper only. A nomination paper, when filed, shall not be withdrawn nor added to, nor any signature thereon revoked. The affidavit of a qualified elector shall be appended to each such nomination paper, or papers, if more than one for any

candidate, stating that he is personally acquainted with all the persons who have signed the same; that he knows them to be electors of that county and believes them to be affiliated with the party named therein; that he knows that they signed the same with full knowledge of the contents thereof; that their respective residences are truly stated therein; and that each signer signed the same on the date stated opposite his name, but such affidavit shall not be made by the candidate. Each and every candidate shall make and file his affidavit stating that he is eligible to the office for the township, county, district or state in which he is and will be a bona fide candidate for nomination for said office, and shall file such affidavit with the said nomination paper or papers, when such paper or papers are required. If no such paper or papers are required, then he shall file such affidavit alone, or there shall be filed a nomination paper signed by ten qualified voters of any sub-division of a county with the county auditor, at least fifteen days prior to such primary election, and the filing of such affidavit or such nomination paper shall entitle such candidate to have his name printed on the official primary ballot of his party. Such affidavit shall be in form and substance as follows:

“I being duly sworn, say that I reside at.....street, (city or town) of....., county of.....in the state of Iowa; that I am eligible to the office for which I am a candidate, and that the political party with which I affiliate is the.....party; that I am a candidate for nomination to the office of.....to be made at the primary election to be held in June, 19...., and hereby request that my name be printed upon the official primary ballot as provided by law, as a candidate of the.....party. I furthermore declare that if I am nominated and elected I will qualify as such officer.”

(Signed).....

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

The nomination papers above required shall be signed as follows:

(1). If for a state office, United States senator, or elector at large, by at least one per centum of the voters of the party (as shown by the returns of the last general election) of such candidates, in each of at least ten counties of the state, and in the

aggregate not less than one-half of one per centum of the total vote of his party in the state, as shown by the last general election.

(2). If for a representative in congress, district elector, or senator in the general assembly in districts composed of more than one county, by at least two per centum of the voters of his party, as shown by the last general election, in at least one-half of the counties of the district, and in the aggregate not less than one per centum of the total vote of his party in such district, as shown by the last general election.

(3). If for an office to be filled by the voters of the county, by at least two per centum of the party vote in the county, as shown by the last general election.

In each of the above cases, the vote to be taken for the purpose of computing the percentage shall be the vote cast for the head of the ticket. All nomination papers shall be destroyed at the same time and in the manner in which the primary election ballots are destroyed. [32 G. A., ch. 51, § 10.] [33 G. A., ch. 69, § 4.] [35 G. A., ch. 110, § 1.]

Sec. 1087-a11. Blank nomination papers. The secretary of state shall cause to be printed and keep on hand a sufficient quantity of nomination paper blanks in form as provided for in this act and shall furnish the same on application to any qualified elector in the state desiring to petition for the nomination of any candidate, or to a person who intends to be a candidate for any office whose nomination paper is required to be filed in his office; and the county auditor of each county shall likewise cause to be printed and keep on hand a sufficient quantity of such nomination paper blanks and furnish the same on application to any qualified elector in his county desiring to petition for the nomination of any candidate, or to a person who intends to be a candidate, for any office whose nomination paper is required to be filed in his office. [32 G. A., ch. 51, § 11.]

Sec. 1087-a12. Nomination certified to county auditor—order on ballot—notice published. At least thirty days before any such primary election, the secretary of state shall transmit to each county auditor a certified list containing the name and postoffice address of each person for whom a nomination paper has been filed in his office, in accordance with the provisions of section ten

of this act and entitled to be voted for at such primary election by the voters of such county, together with a designation of the office for which he is a candidate, and the party from which he seeks a nomination.

Such lists shall also designate the order in which the names of all candidates for the office of senator in the congress of the United States and for offices to be filled by the voters of the entire state shall be arranged and printed upon the primary election ballots in each county, in the following manner, to-wit: The secretary of state shall prepare a list of the counties of the state for each political party by arranging the various counties in the order of the vote cast by each political party in each county for its candidate for governor at the last preceding general election, or for the head of the ticket of any political party when it had no candidate for governor at such election, numbering the counties consecutively on each list from 1 to 99, both inclusive, beginning with the county which cast the largest vote, which shall be numbered '1.' He shall then arrange the surnames of such candidates in alphabetical order for the respective offices for the several political parties for the first county on the respective lists; thereafter, for each succeeding county, the names appearing first for the respective offices in the last preceding county shall be placed last, so that the names that occupied second position before the change shall occupy first position after the change. Such auditor shall forthwith publish a proclamation of the time of holding the primary election, the hours during which the polls will be open, the offices for which candidates are to be nominated and that the primary election will be held in the regular polling places in each precinct. Such notice shall be published once each week for two consecutive weeks before the primary election, in not to exceed two newspapers of general circulation in such county. One of such newspapers shall represent the political party which cast the largest vote in such county at the last preceding general election, and the other, if any, that shall represent the political party which cast the next largest vote in such county at such general election. The county auditor shall correct any errors or omissions in names of candidates and any other errors brought to his knowledge before the printing of the ballots. [32 G. A., ch. 51, § 12.] [33 G. A., ch. 69, § 5.]

Sec. 1087-a13. Repeal—printing—order of names on ballot.
That the law as it appears in section one thousand eighty-seven.

a13 (1087-a13) of the supplement to the code, 1907, be, and the same is hereby, repealed and the following enacted as a substitute therefor :

“The names of the candidates of each political party for nomination for the several offices, and for party committeemen and blank spaces for the delegates to the county convention shall be printed in black ink on separate sheets of paper, uniform in color, quality, texture and size, with the name of the political party printed at the head of said ballots, which ballots shall be prepared by the county auditor in the same manner as for the general election, except as in this chapter otherwise provided. The names of candidates for the office of senator in the congress of the United States and for offices to be filled by the voters of the entire state shall be arranged and printed on the primary election ballots in the order in which they are certified by the secretary of state. The names of candidates for offices to be filled by the voters of a county, and by the voters of any district of the state composed of more than one county, shall be arranged and printed upon the primary election ballots in the following manner, to-wit: The county auditor shall prepare a list of the election precincts of his county, by arranging the various townships, towns and cities in the county in alphabetical order and the wards or precincts of each city, town or township in numerical order under the name of such city, town or township. He shall then arrange the surnames of all candidates for such offices alphabetically for the respective offices for the first precinct in the list; thereafter, for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. The names of candidates for all offices to be filled by the voters of a territory smaller than a county shall be arranged and printed alphabetically according to the surnames for the respective offices. [33 G. A., ch. 69, § 6.]

Sec. 1087-a14. Ballot—form. The official primary election ballot shall be prepared, arranged and printed substantially in the following form :

.....PRIMARY ELECTION BALLOT

(Name of Party)

of

.....Township or Precinct,Ward, City or town
of....., County of....., State of Iowa.

Primary election held on the.....day of June, 19....

FOR UNITED STATES SENATOR.

(Vote for one.)

- William K. Brown
- J. R. Wayne
-

FOR GOVERNOR.

(Vote for one.)

- Howard Collins
- William Longley
-

(Followed by other elective state and district officers in order.)

FOR COUNTY AUDITOR.

(Vote for one.)

- William Strong
- Robert Thompson
-

(Followed by other elective county officers in order.)

FOR DELEGATES TO COUNTY CONVENTION.

(Vote for)

-
-
-
-
-

FOR TOWNSHIP CLERK.

(Vote for one.)

- John H. Black
- Joseph Raymond
-

FOR TOWNSHIP TRUSTEES.

(Vote for two.*)

- Clarence Foster
 William Jones
 H. S. Wilson

(Followed by other elective township officers in order.)

FOR PARTY COMMITTEEMAN.

(Vote for one.)

- John Doe
 Richard Roe

[32 G. A., ch. 51, § 14.] [33 G. A., ch. 69, § 7.]

Sec. 1087-a15. **Repeal—sample ballots.** That the law as it appears in section one thousand eighty-seven-a15 (1087-a15) of the supplement to the code, 1907, be, and the same is hereby, repealed and the following enacted as a substitute therefor:

“After the printing of the official ballots, the county auditor shall change a sufficient number thereof to supply each voting precinct in the county with ten sample ballots of each political party. The auditor shall change the same by writing or stamping the words ‘sample ballot’ in red ink near the top of each of such ballots, and by signing his name or stamping a fac simile thereof and his title of office immediately thereunder. Such sample ballots shall not be voted, received or counted in any primary election. The county auditor shall distribute such sample ballots with the official ballots, and it shall be the duty of the judges of election to see that such sample ballots are posted in and about the polling places upon the day of the primary election and before the opening of the polls.” [33 G. A., ch. 69, § 8.]

Sec. 1087-a16. **Supplies—poll books.** All necessary election supplies, including poll books as provided by law, for the general election, together with a sufficient number of official primary ballots of each party, shall be furnished for the primary election board for each precinct by the county auditor, and such poll books shall contain blank spaces for the names of the candidates of the several parties for the different offices to be written in, and

*Section 1074 of the Code Supplement requires the election of three trustees at each general election; therefore on the Primary Ballot this should read “Vote for three.”

blank spaces for entering by the clerks the names of the electors voting at said primary election; and upon the pages provided for entering the names of said voters there shall be ruled spaces for the listing of the names of said voters and for the designation of the party ticket voted by said elector in manner and form substantially as follows:

No.	Name	Republican	Democrat	Prohibitionist	Socialist
1	James Smith	X	.....	.....	.....
2	Tom Jones .....	.....	X	.....	.....
3	Dan Brown .....	.....	.....	X	.....
4	George White .....	.....	.....	.....	X

It shall be the duty of the clerks of the primary election when entering the name of a voter to place in the poll books a cross thus (X) in the column designating the party ticket which was given to said voter upon his application for a ticket. [32 G. A., ch. 51, § 16.]

Sec. 1087-a17. Ballots counted—returns. Upon the closing of the polls the clerks and judges shall immediately open the ballot box and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast for each party, at the same time bunching the tickets cast for each party, in separate piles. As soon as the clerks and judges shall have sorted the ballots of each party, separately, they shall take the tally sheets provided in the poll books and shall count all the ballots for each party separately until the count is completed, and shall certify to the number of votes cast for each candidate for each office upon the ticket of each party. After all have been counted and certified to by the clerks and judges, they shall seal the ballots cast by each of the parties in separate envelopes, on the outside of which shall be printed or written the names of that party's candidates for the different offices, and opposite each candidate's name shall be placed the number of votes cast for such candidate in said precinct, and then seal the envelopes containing the votes of the different political parties, in one large envelope, on the outside of which, or on a paper attached thereto, shall be printed or written, in perpendicular columns, the names of the several political parties with the names of the candidates for the different offices under their respective party headings, and opposite each

candidate's name shall be placed the number of votes cast for such candidate in said precinct, and at the bottom the total vote cast by each political party in said precinct, and such envelopes shall be returned to the county auditor, who shall carefully preserve the same in said condition and deliver them to the county board of canvassers. But any elector of the county shall have the right, before the day fixed for canvassing the returns, to ascertain the vote cast for any candidate in any precinct in the county, as shown on the outside of the large envelope. Said judges of election shall deliver the returns so made, together with the poll books, including tally sheets and certificates of the judges and clerks written thereon, to the county auditor within twenty-four hours after the primary election has closed; and if the returns from any precinct be not so delivered within the said time, the county auditor shall forthwith send a messenger for any such missing returns, and said messenger shall be paid, as provided by law, for the general election. [32 G. A., ch. 51, § 17.]

In case the returns from any precinct are challenged the board of supervisors has no authority to do more than to recount the ballots and verify and correct the returns. It has no authority to pass upon the qualifications to vote of persons who in fact vote at such election. *Jones vs. Fisher*, 156-582.

Sec. 1087-a18. Repeal—recount of ballots. That the law as it appears in section one thousand eighty-seven-a18 (1087-a18) of the supplement to the code, 1907, be, and the same is hereby, repealed and the following enacted as a substitute therefor:

“Any candidate whose name appears upon the official primary ballot of any voting precinct may require the board of supervisors of the county in which such precinct is situated to recount the ballots cast in any such precinct as to the office for which he was a candidate, at the time fixed for canvassing the returns of the judges of election, by filing with the county auditor not later than the day before such meeting, a showing in writing, duly sworn to by such candidate, that fraud was committed, or error or mistake made, in counting or returning the votes cast in any such precinct as to the office for which he was a candidate. The showing must be specific and from it there must appear reasonable ground to believe that recount of the ballots would produce a result as to his candidacy different from the returns made by the judges. If such showing is made to the satisfaction of the board, it shall thereupon recount the ballots cast in any such precinct for the office for which the contestant was a candidate, and

if the result reached by the board on the recount of the ballots as to such office be different from that returned by the judges of election it shall be substituted therefor as the true and correct return and so regarded in all subsequent proceedings. The action of the board shall be final and no other contest of any kind shall be permitted. The term 'candidate' as used in this section shall include and apply to persons voted for for delegates and party committeemen." [33 G. A., ch. 69, § 9.]

Under this section as amended by 33rd G. A., ch. 69, section 9, held that the power conferred upon the board of supervisors is to recount the ballots actually cast for the purpose of correcting the returns if they be found erroneous through fraud or mistake. No authority is conferred upon the board to determine whether the persons who cast ballots in the precinct at the primary election were entitled to cast such ballots. *Jones vs. Fisher*, 156-582.

Where the returns from a precinct were counted and the board ascertained by examination of the voting machines used that the votes shown were correctly returned, held that the board could not proceed further to hear witnesses for the purpose of finding whether persons had voted at the primary election in such precinct who were not qualified to vote. *Ibid.*

In a proceeding by certiorari to annul alleged illegal action of the board as a board of canvassers in declaring the result of the recount of the ballots cast at the primary election, held that the court might determine that the action of the board in announcing a result based upon the receipt of evidence that persons had voted at such primary election who were not authorized to so vote, was illegal. *Ibid.*

Sec. 1087-a19. Canvass by board of supervisors—certificates.
 "On the second Tuesday next following the primary election in June, the board of supervisors shall meet, open, and canvass the returns from each voting precinct in the county, and make abstracts thereof, stating in words written at length the number of ballots cast in the county by each political party, separately, for each office, the name of each person voted for and the number of votes given to each person for each different office and shall sign and certify thereto and file the same with the county auditor. Such canvass and certificate shall be final as to all candidates for nomination to any elective county office or office of a sub-division of a county; and the candidate or candidates of each political party for each office to be filled by the voters of any sub-division of a county having received the highest number of votes shall be duly and legally nominated as the candidate of his party for such office. Provided, however, that no candidate whose name is not printed on the official primary ballot, who receives less than five per centum of the votes cast in such sub-division for governor on the party ticket with which he affiliates, at the last general election, nor less than five votes shall be declared to have been nominated to any such office; and the candidate or candidates of

each political party for each office to be filled by the voters of the county having received the highest number of votes, and not less than thirty-five per centum of all the votes cast by the party for such office, shall be duly and legally nominated as the candidate of his party for such office. Provided, however, that no candidate whose name is not printed on the official ballot, who receives less than ten per centum of the whole number of votes cast in the county for governor on the party ticket with which he affiliates, at the last general election, shall be declared to have been nominated to any such office; and each candidate so nominated shall be entitled to have his name printed on the official ballot to be voted for at the general election without other certificate, and the board shall prepare and certify a list of the candidates of each party so nominated, separately, and deliver to the chairman of each party central committee for the county a copy of the list of candidates nominated by the party he represents; and shall also prepare, certify and deliver to such chairman a list of the offices to be filled by the voters of a county for which no candidate of his party was nominated, together with the names of the candidates for each of such offices voted for at the primary election and the number of votes received by each of such candidates." [32 G. A., ch. 51, § 19.] [33 G. A., ch. 69, § 10.] [34 G. A., ch. 59.]

Nominations of county supervisors by districts does not give the nominee a vested right to be placed on the official ballot, and if under the provisions of Code Sec. 416 supervisor districts are abolished after the nomination of candidates for supervisors therein such nominees are not entitled to have their names on the official ballots for election in such districts. *Lahart vs. Thompson*, 140-298.

The certificate of nomination from the board of supervisors is final as to all candidates for nomination to any county office or office of a subdivision of a county; but held that where a vacancy was created in the nomination for county supervisor by a re-districting of the county the certificate was no longer of any effect. *State vs. Parker*, 147-69.

Sec. 1087-a20. Abstracts forwarded to secretary of state. The county board of canvassers shall also make a separate abstract of the canvass as to the following offices and certify to the same and forthwith forward it to the secretary of state, viz.:

- United States senator,
- Electors of the president and vice-president of the United States,
- All state officers,
- Representative in congress,
- Senators and representatives in the general assembly. [32 G. A., ch. 51, § 20.]

Sec. 1087-a21. County returns—filed—proceedings—printed—what to contain. When the canvass is concluded, the board shall deliver the original returns to the auditor, who shall file the same and record each of the abstracts above mentioned in the election book.

The published proceedings of the board of supervisors as a canvassing board shall contain only a brief statement of the names of the candidates nominated by the electors of any county or sub-division thereof under the title of the office for which they are nominated, and a statement of the title of the office for which they are nominated, and a statement of the title of the county offices, if any, for which no nomination was made by any political party participating in the primary election for the failure of any one of its candidates for any office to receive thirty-five per centum of all the votes cast by the party for such office. [32 G. A., ch. 51, § 21.] [33 G. A., ch. 69, § 11.]

Sec. 1087-a22. Canvass by state board—certificates. On the second Monday after the June primary election, the executive council shall meet as a canvassing board, and open and canvass the abstract returns received from each county in the state. If returns are not received from all the counties, the secretary of state shall immediately send a messenger after the abstract returns and the board may adjourn from day to day until they are received. The board shall make an abstract of its canvass, stating in words written at length, the number of ballots cast by each political party separately, for each office designated in section twenty hereof, the names of all the persons voted for, and the number of votes received by each person for each office, and shall sign and certify thereto. Such canvass and certificates shall be final as to all candidates named therein; and the candidate of each political party for each office to be filled by vote of the people, having received the highest number of votes in the state or district of the state, as the case may be, provided he received not less than thirty-five per centum of all the votes cast by the party for such office, shall be duly and legally nominated as the candidate of his party for such office and entitled to have his name printed on the official ballot to be voted at the general election without other certificate; and the board shall prepare and certify a list of the candidates of each party so nominated, separately, and deliver to the chairman of each party central committee for the state a copy of the list of candidates nominated

by the party he represents; and shall also forthwith prepare a certificate as to each office, separately, for which no candidate was nominated, by reason of the failure of any candidate for any such office to receive thirty-five per centum of all votes cast by such party for such office, together with the names of the several candidates for each of such offices voted for at the primary election and the number of votes received by each of such candidates and send such certificate to the chairman of the party central committee for the state, in case of offices to be filled by the voters of the entire state, and to the chairman of the party central committee for a district of the state, if known, in case of offices to be filled by the voters of any such district of the state composed of more than one county, and to the county auditor of each county in any such district, and to the county auditor and the chairman of the party central committee for the county, in case any such district is composed of one county. The candidate of any party for the office of senator in the congress of the United States having received the highest number of votes of his party in the state, shall be the nominee of his party for such office and the secretary of state shall certify the result of said primary election as to such office to the next convening general assembly.* [32 G. A., ch. 51, § 22.] [33 G. A., ch. 69, § 12.]

Sec. 1087-a23. State returns filed—nominations certified to county auditor. When the canvass is concluded, the board shall deliver the original abstract returns to the secretary of state, who shall file the same in his office and record the abstracts of the canvass of the state board and certificates attached thereto in the book kept by him known as the election book; and not less than fifteen days before the general election he shall certify to the auditor of each county, under separate party headings, the name of each person nominated as shown by the official canvass made by the executive council, or as certified to him by the proper persons when any person has been nominated by a convention or party committee, his place of residence, the office to which he is nominated, and the order in which the tickets of the several political parties shall appear on the official ballot. Should a vacancy in the nominations occur and be filled after such certificate has been forwarded, a like certificate shall at once be made and sent to the proper officer together with a statement showing the

*Chapter 105, Acts of the Thirty-fifth General Assembly provides for election of United States Senator by direct vote of the people. [Supp. to C. 1913, §1087-c.]

reason for its subsequent issue. [32 G. A., ch. 51, § 23.] [33 G. A., ch. 69, § 17.]

Sec. 1087-a24. Tie vote—vacancies—vacancy in nomination for U. S. senator—how filled. In case of a tie vote resulting in no nomination for any office, or election of delegates or party committeeman, the tie shall forthwith be determined by lot by the board of canvassers, or judges of election, as the case may be. Vacancies occurring in nominations made in the primary election before the holding of the county, district or state convention, shall be filled by the county convention if the office in which the vacancy in nomination occurs is to be filled by the voters of the county; by a district convention if the office in which the vacancy in nomination occurs is to be filled by the voters of a district composed of more than one county; by the state convention if the office in which the vacancy occurs is to be filled by the voters of the entire state. Vacancies in nominations in such offices occurring after the holding of a county, district or state convention, or on failure of any such convention to fill a vacancy in a nomination, as aforesaid, then it shall be filled by the party committee for the county, district or state, as the case may be. If a vacancy shall occur in any such office too late for the filing of nomination papers for candidates therefor in the primary election and before the holding of a county, district or state convention, as the case may be, then the convention having jurisdiction shall make nomination for such office; and if a vacancy in any such office shall occur after the holding of a county, district or state convention, then nomination for such office may be made by the party committee for the county, district or state, as the case may be. Vacancies in nominations for offices to be filled by the voters of a territory smaller than a county shall be filled by the members of the party committee for the county from such sub-division. Nominations made as above provided and as provided in sections one thousand eighty-seven-a25 (1087-a25), one thousand eighty-seven-a26 (1087-a26) and one thousand eighty-seven-a27 (1087-a27) of the supplement to the code, 1907, shall be certified forthwith to the proper officer by the chairman and secretary of the convention or committee as the case may be, and if received in time shall be printed upon the official ballots the same as if the nomination had been made in the primary election. Such certificate of nomination shall state the name,

place of residence, and postoffice address of the person nominated, the office to which he is nominated and the name of the political party making the nomination.

If the candidate of any party for the office of senator in the congress of the United States who has received the highest number of votes in his party at any primary election as a candidate for such office, die, resign or remove from the state of his residence, or for any other cause a vacancy in such candidacy shall occur after such primary election is held and before thirty days prior to the day of the general election in November next following, a new primary election shall be held by the members of such party on the day of such general election for the purpose of again nominating or expressing their choice for a candidate for said office in the manner herein provided viz.:

(A) Any person desiring to be a candidate for said office shall have the qualifications required by law, and shall file nomination papers with the secretary of state in manner and form substantially as required by section ten (10) of chapter fifty-one (51) of the acts of the thirty-second general assembly, at least twenty (20) days prior to the day of the general election next following.

(B) Each candidate for said office who has filed nomination papers as required by sub-division (A) hereof shall be entitled to have his name printed on a primary election ballot which shall be prepared, arranged and printed by the secretary of state substantially in the following form:

PRIMARY ELECTION BALLOT.

.....Party of the State of Iowa.
Primary election to be held on the.....day of November,
A. D....., for the purpose of placing in nomination a candidate of the.....party for the office of senator in the congress of the United States.

For United States Senator.

(Vote for one.)

- John Doe
- Richard Roe
-

(C) Any member of the party holding a primary election under the provisions of this act desiring to vote for a candidate for the office of senator in the congress of the United States

shall make a written or printed request of the judges of election for a primary ballot in the following form:

"I request a primary election ballot for the purpose of voting at this primary election for a candidate of the..... party for the office of senator in the congress of the United States. I declare that I affiliate with and am in sympathy with the principles of the.....party; that it is my intention to support generally at this general election the nominees of such party; that I have not enrolled with nor participated in any primary election or convention of any other political party since the first day of the last preceding year."

Upon the presentation of such request it shall be the duty of the judges of election to deliver to the applicant, if a qualified elector, a primary election ballot unless challenged on the ground that he is not a member of such political party; and if challenged on said ground it shall not be delivered to him unless he make oath to the statement he has made in his request to be administered by one of the judges of election, and if he make said oath he shall be entitled to receive and vote said primary ballot; provided that no person shall receive a primary ballot who participated in the last preceding primary election of any other political party, as shown by his enrollment.

(D) The officers of the general election shall be the officers of the primary election hereby authorized, provided, however, that in precincts in which more than four hundred votes were cast at the last general election an additional clerk may be employed and paid as other clerks of the general election.

(E) The names of the members of the party voting at said primary election shall be recorded in separate poll books, and the clerks of election shall designate the party affiliation of each person receiving a senatorial primary ballot.

(F) The primary election provided for in this act shall be held in each voting precinct of the state at the same time and concurrent with the holding of the general election.

(G) The votes of any political party cast at such primary election for the nomination of a senator in the congress of the United States shall be canvassed, recorded and certified the same as those cast for state officers, and the candidate of any party for such office at the primary election herein provided for receiving the highest number of votes of his party in the state shall be the nominee of his party for such office and the secre-

tary of state shall certify the result of such primary election to the next convening general assembly.*

(H) The secretary of state shall distribute to each county auditor in the state, at least fifteen days prior to the general election, a sufficient number of primary election ballots and request statements, as herein provided for, for the use of the members of any party holding a primary election under the provisions of this act, and each county auditor shall distribute a sufficient number thereof to the judges of each election precinct at the same time and in the same manner as required by law for the distribution of the official ballots for the general election. The fac simile signature of the secretary of state shall be placed upon each primary election ballot.

(I) The provisions of chapter fifty-one (51), acts of the thirty-second general assembly, shall apply to the primary election provided for in this act so far as applicable, except as herein otherwise provided. [32 G. A., ch. 51, § 24.] [32 Ex. G. A., ch. 1, § 1.] [33 G. A., ch. 69, § 13.]

The authority of a party committee is limited to cases where nominations have previously been made at the primaries and vacancies have occurred. This section does not authorize a party committee to make a nomination in the first instance. *State vs. Hayward, Secretary of State, 141-196.*

Where after the nomination of the candidate for supervisor for a particular district the county was redistricted, held that there was a vacancy in the nomination. *State vs. Parker, 147-69.*

Sec. 2087-a24a. Applicable to existing vacancy. The provisions of this act shall apply to any vacancy now existing in the candidacy of any party for the office of senator in the congress of the United States as well as to any vacancy that may hereafter occur as set forth in section one (1) hereof. [32 Ex. G. A., ch. 1, § 2.]

Sec. 1087-a25. County convention—delegates—committeemen. In each county there shall be held in each year in which a general election in November is to take place a county convention of each political party. Said county convention shall be composed of delegates elected at the last preceding primary election, and shall be held on the fourth Saturday following the primary election, convening at 11:00 o'clock a. m. The number of delegates from each voting precinct shall be determined by a ratio adopted

*Chapter 105, Acts of the Thirty-fifth General Assembly provides for election of United States Senator by direct vote of the people. [Supp. to C. 1913, § 1087-c.]

by the respective party county central committees, and shall be thus determined and a statement designating the number from each voting precinct in the county filed in the office of the county auditor at least thirty days before the primary election; if not so done, the auditor shall fix the number. The requisite number of names of candidates of his choice for delegates to the county convention to which each precinct is entitled shall be written, or pasted with uniform white pasters, on the blank lines upon the ballot by the voter while in the booth, or by some one designated by a voter unable to write, after the ballots are received and before they are deposited, and the requisite number of persons from each precinct who receive the highest number of votes shall be the delegates from the precinct to the county convention. The term of office of such delegates shall begin on the day following the final canvass of the votes by the board of supervisors, and shall continue for two years and until their successors are elected. One member of the county central committee for each political party from each precinct shall be elected. His term of office shall begin on the day of the county convention and immediately following the adjournment thereof and shall continue for two years and until his successor is elected and qualified, unless such committeeman shall be removed by the county central committee for inattention to the duties of his position, incompetency or failure to support the ticket nominated by the party which elected him to such position. The county central committee elected in the primary election shall organize on the day of the convention, immediately following the same. Vacancies in such committee may be filled by majority vote of the committee. Returns shall be made by the judges of election respecting delegates and members of the county central committee in the same manner as for other offices, except that the judges of election shall canvass the returns as to delegates and members of the county central committee, and certify the result to the auditor with the returns. The auditor shall, immediately after the final count and canvass of the votes and returns by the board of supervisors, notify the delegates and members of the county central committee who have thus been elected, of their election, and of the time and place of holding the county convention, and shall on the second Thursday following the primary election, deliver a certified list thereof to the chairmen of the respective party central committees for the county. When the delegates, or a majority thereof, or when delegates representing a majority of

the precincts thus elected shall have assembled in the county convention at the time herein prescribed and at the county seat the convention shall be called to order by the chairman of the county central committee, who shall present the certified list of delegates and members of the county central committee, and a list of the offices for which no nomination was made at the primary election, by reason of the failure of any candidate for any such office to receive thirty-five per centum of all votes cast by such party therefor. If any precinct shall not be fully represented the delegates present from such precinct shall cast the full vote thereof, but there shall be no proxies. The said county convention shall make nominations of candidates for the party for any office to be filled by the voters of a county when no candidate for such office has been nominated at the preceding primary election, by reason of the failure of any candidate for any such office to receive thirty-five per centum of all votes cast by such party therefor, as shown by the canvass of the returns provided for in section 19 of this act, and shall nominate candidates for the office of judge of the district court in counties comprising one judicial district of the state,* and shall select delegates to the next ensuing state and district conventions of that year upon such ratio of representation as may be determined by the party organization for the state, district or districts of the state, as the case may be, but no delegates shall be so selected to any of the district conventions referred to in section 26 of this act, except judicial conventions, unless a call therefor has been issued as therein provided. The said county convention shall also elect a member of the party central committee for the senatorial, judicial, and congressional districts composed of more than one county. But in no case shall the county convention make a nomination for an office for which no person was voted for in the primary election of such party, except for judges of the superior and district courts.* [32 G. A., ch. 51, § 25.] [33 G. A., ch. 69, § 14.]

Sec. 1087-a26. District convention. In any senatorial, judicial, or congressional district composed of more than one county, in any year in which a senator in the general assembly, a judge of the district court, or a representative in the congress of the

*Chapter 104, Acts of the Thirty-fifth General Assembly provides for non-partisan nomination and election of supreme, district and superior judges, the secretary of state, and county auditor determining by lot in case of tie vote at primary. [Supp. to C. 1913, § 1087-b2.]

United States, is to be elected, a senatorial or congressional convention may be held, and a judicial convention shall be held by each political party participating in the primary election of that year. Not less than ten days and not more than sixty days before the day fixed for holding the county convention a call for such senatorial, judicial and congressional convention to be held shall be issued by the party central committee for any such district and published in at least one newspaper of general circulation of each county composing any such district and which call shall state among other things the number of delegates each county of the district shall be entitled to and the time and place of holding the convention. Any such call shall be signed by the chairman of the party central committee for any such district, and be filed by him with the county auditor not less than five days before the county convention and the county auditor shall attach a true copy thereof to the certified list of delegates required to be delivered by him to the chairmen of the respective party county central committees. In case no nomination was made in the primary election for the office of senator in the general assembly in any district composed of more than one county, or for the office of representative in congress of the United States, by reason of the failure of any candidate for any office to receive thirty-five per centum of all votes cast by his party therefor, as shown by the certificate issued by the state board of canvassers provided for in this act, then in any such district the chairman of the party central committee therefor shall forthwith issue such call for a convention in such district and deliver the same to the county auditor of each county in the district and in such case said call need not be published. No such district convention shall be held earlier than the first Thursday or later than the fifth Thursday following the county convention. The convention when organized shall make nominations of candidates for the party for any such district office when no candidate for such office has been nominated at the preceding primary election, by reason of the failure of any candidate for any such office to receive thirty-five per centum of all votes cast by such party therefor, as shown by the canvass of the votes provided for in section twenty-two hereof. The organization of and procedure in any such district convention shall be the same as in the state convention. Such district conventions may adopt party platforms and transact such other business as may properly be brought before them. But in no case

shall any such convention of a party make a nomination for an office for which no person was voted for in the primary election of such party, except for judges of the district court.* [32 G. A., ch. 51, § 26.] [33 G. A., ch. 69, § 15.]

Where there has been a failure to nominate at a primary election the vacancy should be filled by the convention as herein provided. *State vs. Hayward, Secretary of State, 141-196.*

Sec. 1087-a27. State convention—state central committee. A state convention of each political party, composed of delegates chosen in the manner herein provided, shall be held not earlier than the first Wednesday, and not later than the fifth Wednesday following the county convention, in the year nineteen hundred eight, and biennially thereafter, convening at such time and place as may be determined upon by the party organization. The convention shall be called to order by the chairman of the state central committee, who shall thereupon present a list of delegates, as certified by the various county conventions, and effect a temporary organization. If any county shall not be fully represented, the delegates present from such county shall cast the full vote thereof, but there shall be no proxies. Such convention when permanently organized shall formulate and adopt the state platform of the party it represents, and shall make nominations of candidates for the party for any state office to be filled by the voters of the entire state when no candidate for such office has been nominated at the preceding primary election, by reason of the failure of any candidate for any such office to receive thirty-five per centum of all votes cast by such party therefor, as shown by the canvass of the returns provided for in section twenty-two hereof; and shall nominate candidates for the office of judge of the supreme court.* It shall also elect a state central committee consisting of not less than one member from each congressional district and transact such other business as may properly be brought before it. The state central committee elected at said state convention may organize at pleasure for political work as is usual and customary with such committees and shall continue to act until succeeded by another committee duly elected. But in no case shall the state convention of a party make a nomination for an office for which no person was voted for in the primary elec-

*Chapter 104, Acts of the Thirty-fifth General Assembly provides for non-partisan nomination and election of judges, the secretary of state, determining by lot in case of tie vote at primary. [Supp. to C. 1913, § 1087-b2.]

tion of such party, except for judges of the supreme court.* [32 G. A., ch. 51, § 27.] [33 G. A., ch. 69, § 16.]

Sec. 1087-a28. Existing party committees. The regularly organized political committees of each party as at present or hereafter constituted may continue to act until supplanted by the committees elected under the provisions of this act. [32 G. A., ch. 51, § 28.]

Sec. 1087-a29. Nomination by petition. Nothing contained in this act shall be construed so as to prohibit nomination of candidates for office by petition as now authorized by law; but no person so nominated shall be permitted to use the name of any political party authorized or entitled under this act to nominate a ticket by primary vote or that has nominated a ticket by primary vote under the provisions of this act. [32 G. A., ch. 51, § 29.]

Sec. 1087-a30. Special elections. This act shall not apply to special elections to fill vacancies. [32 G. A., ch. 51, § 30.]

Sec. 1087-a31. Misconduct of election officials—penalty. Any party committeeman or any primary election or other public officer upon whom a duty is imposed by this act or by acts herein made applicable to primary elections, who shall wilfully neglect to perform any such duty, or who shall wilfully perform it in such a way as to hinder the objects thereof, or shall disclose to anyone, except as may be ordered by any court of justice, the contents of any ballot or any part thereof, as to the manner in which the same may have been voted, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment. [32 G. A., ch. 51, § 31.]

Sec. 1087-a32. Services for hire—penalty. Any person who shall agree to perform any services in the interest of any candidate in consideration of any money or other valuable thing, or who shall accept any money or other valuable thing for such services performed in the interest of any candidate, or any person paying or offering to pay or giving or offering to give money or other valuable things for such services, shall be punished by a fine of not

*Chapter 104, Acts of the Thirty-fifth General Assembly provides for non-partisan nomination and election of judges, the secretary of state, determining by lot in case of tie vote at primary. [Supp. to C. 1913, § 1087-b2.]

more than three hundred dollars, or by imprisonment in the county jail not exceeding ninety days. But nothing herein shall be construed to prohibit any person from making contracts in good faith for the announcement of his candidacy in the newspapers and for securing the names of voters required to file preliminary nomination papers and the payment of any reasonable compensation for such services. [32 G. A., ch. 51, § 32.]

Sec. 1087-a33. Bribery—illegal voting—penalty. Any person offering or giving a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at a primary election, or any elector entitled to vote at such primary election receiving and accepting such bribe; any person making false answer to any of the provisions of this act relative to his qualifications and party affiliations; any person wilfully voting or offering to vote at a primary election who has not been a resident of this state for six months next preceding said primary election; or who, at the primary election 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; or any person violating any of the provisions of this act, or of any provisions of the code as may be hereto applied, and any person knowingly procuring, aiding or abetting such violation, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than six months. [32 G. A., ch. 51, § 33.]

Sec. 1087-a34. Primary elections in certain cities. The provisions of this act shall, so far as applicable, govern the nominations of candidates by political parties for all offices to be filled by a direct vote of the people in cities of the first class and cities acting under a special charter having a population of over fifteen thousand, except all such special charter cities and cities of the first class as have by vote of the people adopted a plan of municipal government which specifically provides for a non-partisan primary election. The duties devolving upon the county auditor, by the foregoing provisions of this act, shall in municipal elections, devolve upon the city auditor and the duties devolving upon the board of supervisors by the foregoing provisions of this act, devolve upon the city council which shall meet to per-

form said duties within two days next following the primary election. The date of the municipal primary election shall be the last Monday in February of each year in which a municipal election is held in said cities, after the year 1907, and the percentage of voters signing petitions required for printing the name of a candidate upon the official primary ballot shall be the same as is required of a candidate for a county office and shall be based upon the vote cast for mayor by the respective parties in the preceding city election. The names of candidates for ward aldermen, for city precinct committeemen and for delegates to the city convention, shall not be printed upon the official primary ballot but in each case a blank line or lines shall be provided therefor. A plurality shall nominate the party candidate for alderman and a plurality shall elect the precinct committeeman and delegates to the city convention. The entire expense of conducting a primary election provided for in this section shall be audited by the city council and paid by the city. This section shall not be held to repeal any law which provides for the adoption of a plan of municipal government by vote of the people and which embraces a non-partisan primary election. [32 G. A., ch. 51, § 34.]

Sec. 1087-a35. Repealed. Chapter forty (40) of the laws of the thirtieth general assembly, relating to primary elections; and chapters forty-five (45) and forty-six (46) of the laws of the thirty-first general assembly, relating to primary elections, are hereby repealed. [32 G. A., ch. 51, § 35.]

Sec. 1087-a36. Election of delegates—national committeeman. That from and after the passage of this act in the years in which a president and vice-president of the United States are to be elected, there shall be held a primary election for the election of delegates and alternate delegates to the national conventions of all political parties at which candidates for president and vice-president are to be nominated, for the election of a party national committeeman for each party, and for the election of delegates to county conventions, which shall choose delegates to the state convention. [35 G. A., ch. 111, § 1.]

Sec. 1087-a37. Number of delegates and alternates. The number of delegates to national conventions to be elected under the provisions of this act for each party shall be the number of delegates for each congressional district, and the number of delegates at large to which each party is entitled as set forth in the call for

the national convention by the national committee for each party and certified to the secretary of state by the state chairman of each of the different parties. There shall also be elected one alternate delegate for each district delegate and one alternate for each delegate at large. [35 G. A., ch. 111, § 2.]

Sec. 1087-a38. Primary election. The primary election herein provided for shall consist of an election by all political parties and shall be held at the usual voting places of the several precincts on the second Monday in April in the year 1916, and quadrennially thereafter for the election of officers provided in section one of this act, and for the purpose of ascertaining the sentiment of the voters of the state in the respective parties as to candidates for president and vice-president of the United States. [35 G. A., ch. 111, § 3.]

Sec. 1087-a39. Candidate—nomination papers—affidavit. No candidate for district delegate or alternate or delegates at large or alternate at large to the national convention of any political party, and no candidate for national committeeman shall have his name printed upon the official ballot of his party to be used at the primary election herein provided, unless at least thirty days prior to the day fixed for holding such primary election, a nomination paper shall have been filed in his behalf in the office of the secretary of state in the form and manner provided in section ten hundred eighty-seven-a-ten (1087-a-10), supplement to the code, 1907, and the number of signers of such nomination paper for district delegates and alternate delegates shall be equal to one half the number as is in said section provided for representatives in congress, and the number of signers of such nomination paper for delegates at large and alternate delegates at large and for the office of party national committeeman shall be equal to one half the number as in said section provided for senators in the congress of the United States, and each candidate shall take the oath as provided in said section.

Candidates for delegates to the county conventions shall be elected in the same manner as provided in section ten hundred eighty-seven-a twenty-five (1087-a25), supplement to the code, 1907, as amended by chapter sixty-nine (69) of the acts of the thirty third general assembly.

No candidate for nomination to the office of president or vice-president of the United States shall have his name printed upon

the official ballot of his party as herein provided for, unless at least thirty days prior to the day fixed for holding the primary election herein provided for, he shall cause to be filed in the office of the secretary of state his affidavit that he is eligible to the office for which he is a candidate, and that he is a bona fide candidate for such office, and that he will, in good faith, submit his candidacy to the national convention of his political party. Such affidavit shall be in form and substance as follows:

I,being duly sworn, say that I reside in the city of.....county ofand state of.....; that I am eligible to the office for which I am a candidate, and that the political party with which I affiliate is the..... party; that I am a bona fide candidate for the office of..... and that I shall in good faith submit my candidacy to the national convention of my political party in the year.....and I hereby request that my name be printed upon the official primary ballot as provided by law as a candidate of the..... party. I furthermore declare that if I am nominated and elected, I will qualify as such officer.

Signed.....

Subscribed in my presence and sworn to (or affirmed) before me by.....this.....day of19.....

Title of officer.

[35 G. A., ch. 111, § 4.]

Sec. 1087-a40. **Ballot form.** The official primary election ballot herein provided for shall be prepared, arranged and printed substantially in the following form:

PRIMARY ELECTION BALLOT.

(Name of party)

of.....township, or precinct, ward, city or town of....., county ofstate of Iowa. Primary election held on theday of April, 19....

For President of the United States.

- John B. Sullivan
- Henry Smith
-

For Vice-President of the United States.

- Thomas H. Stevens
- Christopher Swanson
-

For Party National Committeeman.

- Theodore Thompson
-

For Delegates at Large to National Convention.

-
-
-
-

For District Delegates to National Convention.

-
-
-

For Alternate Delegates at Large to National Convention.

-
-
-
-

For Alternate District Delegates to National Convention.

-
-
-

For Delegates to County Convention.

-
-
-

Shall the district delegates to the national convention be instructed by the vote of the state at large?

- Yes
- No

Shall the district delegates to the national convention be instructed by the vote of the congressional district?

- Yes
- No

Sec. 1087-a41. Nominations certified to county auditor—notice published. At least twenty days before the holding of the primary election herein provided for, the secretary of state shall transmit to each county auditor a certified list containing the name and postoffice address of each person for whom a nomination paper has been filed in his office, as provided in section one hereof, and entitled to be voted for at such primary election by the voters of such county, together with a designation of the office for which he is a candidate and the party from which he seeks an election. Such auditor shall forthwith, upon receipt thereof, publish under the proper party designation the title of each office to be filled, the names and proper designation of all for whom nominations have been filed in the office of the secretary of state, giving the name and address of each, and the number of delegates from each precinct of the county to which each party is entitled, the date of the primary, the hours during which the polls will be open and that the primary will be held in the regular polling place in each precinct. It shall be the duty of said auditor to publish said notice once each week for two consecutive weeks prior to the said election; each publication shall be made in at least two, and not to exceed four newspapers of general circulation in such county; one of such newspapers shall represent the political party which cast the largest vote in such county at the last preceding general election, and one of such newspapers shall represent the political party which cast the next largest vote in such county at said general election. In any case where the publication of a notice cannot be made as herein required, it may be made in any newspaper having a general circulation in the county in which the notice is required to be published. [35 G. A., ch. 111, § 6.]

Sec. 1087-a42. Printing. The names of the candidates of each political party for election to the several offices provided in section one hereof and blank space for delegates to county conventions shall be printed in black ink on separate sheets of paper uniform in color, quality, texture and size, with the name of the political party printed at the head of said ballot; each ballot shall be prepared by the county auditor in the same manner as for a general election except as provided in section ten hundred eighty-seven a-thirteen (1087-a13), chapter sixty-nine (69) acts of the thirty-third general assembly. [35 G. A., ch. 111, § 7.]

Sec. 1087-a43. Ballots counted—returns. On the first Monday following the holding of the primary election herein provided for the board of supervisors of each county shall meet, open and canvass the returns in the manner provided in section ten hundred eighty-seven-a-seventeen (1087-a17), supplement to the code, 1907, as amended, and shall certify the result of said canvass to the county auditor, who shall certify to the county chairman of the respective parties a list of the delegates elected to the county convention; the county auditor shall certify to the secretary of state the result as to all other offices in the form and manner as provided in section ten hundred eighty-seven-a-nineteen (1087-a19) and ten hundred eighty-seven-a-twenty (1087-a20), supplement to the code, 1907, for representation in congress and for the office of senator in congress of the United States. [35 G. A., ch. 111, § 8.]

Sec. 1087-a44. Canvass by state board—certificates. On the second Monday following the primary election herein provided for, the executive council shall meet as a canvassing board and open and canvass the abstract returns received from each county in the state. If returns are not received from all the counties, the secretary of state shall immediately send a messenger after the abstract returns and the board may adjourn from day to day until they are received. The board shall make an abstract of its canvass, stating in words written at length the number of ballots cast by each political party separately for each office designated in section one hereof, the names of all the persons voted for and the number of votes received for each person for each office, the number of votes cast in favor of instructing delegates by the vote of the state at large, the number of votes cast in favor of instructing the delegates by congressional districts, and shall sign and certify thereto. Such canvass and certificates shall be final as to all candidates named herein, and the candidate of each political party for each office to be filled under the provisions of this act having received the highest number of votes in the state or district, as the case may be, shall be held to be duly and legally elected to such office, and shall be entitled to represent his political party as delegate at large or as a district delegate to the national convention, or as party national committeeman, as the case may be, and the alternate delegates herein provided to be elected shall be entitled to represent the state or district of the state, as the case may be, in case the delegate elected fails or refuses to qualify or act. [35 G. A., ch. 111, § 9.]

Sec. 1087-a45. State returns filed—certificate of election. When the canvass is concluded the board shall deliver the original abstract returns with their certificate, to the secretary of state, who shall file the same in his office and record the abstracts of the canvass by the state board and certificates attached thereto in the book kept by him, known as the "election book"; and shall forthwith issue a certificate of election to each candidate whom the certificate of the executive council shows to have been elected in the state or district, as the case may be, including alternate delegates to the national convention of each political party, and shall forward said certificate by mail to such officer at the postoffice address as shown by the records of his office; and shall certify the vote of the state on president and vice-president to the state chairman of each political party, and each candidate for president and vice president whose names have appeared upon the official primary ballot used at said election, and shall prepare a list of the candidates elected by the several political parties, including alternate delegates in their rank as herein provided, and a certificate as to each office separately for which no candidate was elected, the result of the vote on question of instructing delegates, which result shall be determined by the vote of the entire state and shall forward to the chairman of the state central committee and to the party national committeeman for the state of Iowa, a copy of such list for the party which he represents. [35 G. A., ch. 111, § 10.]

Sec. 1087-a46. Alternates. The alternate delegates to the national convention, both at large and district delegates of each political party, shall not be entitled to represent such party unless the delegates or some one or more of them should fail or refuse to qualify or act as such delegate, and in such case the alternate delegate receiving the highest number of votes shall be entitled to act in place of the first duly elected delegate who fails to act under the provisions of this chapter for the state or district in which he was elected, and so on, to each alternate delegate. [35 G. A., ch. 111, § 11.]

Sec. 1087-a47. Certain sections made applicable. Except as herein otherwise provided, sections ten hundred eighty-seven-a-two (1087-a2), ten hundred eighty-seven-a-three (1087-a3), ten hundred eighty-seven-a-five (1087-a5) as amended by chapter sixty-nine (69) acts of the thirty-third general assembly; ten

hundred eighty-seven-a-six (1087-a6) as amended by chapter sixty-nine (69) acts of the thirty-third general assembly; ten hundred eighty-seven-a-seven (1087-a7), ten hundred eighty-seven-a-eight (1087-a8); ten hundred eighty-seven-a-nine (1087-a9), ten hundred eighty-seven-a-eleven (1087-a11), ten hundred eighty-seven-a-fifteen (1087-a15), as amended by chapter sixty-nine (69) acts of the thirty-third general assembly; ten hundred eighty-seven-a-sixteen (1087-a16), ten hundred eighty-seven-a-seventeen (1087-a17), ten hundred eighty-seven-a-eighteen (1087-a18) as amended by chapter sixty-nine (69) acts of the thirty-third general assembly, ten hundred eighty-seven-a-twenty-four (1087-a24) as amended by chapter sixty-nine (69) acts of the thirty-third general assembly, ten hundred eighty-seven-a-twenty-five (1087-a25), ten hundred eighty-seven-a-twenty-six (1087-a26), ten hundred eighty-seven-a-twenty-seven (1087-a27), ten hundred eighty-seven-a-thirty-one (1087-a31); ten hundred eighty-seven-a-thirty-two (1087-a32), ten hundred eighty-seven-a-thirty-three (1087-a33) of the supplement to the code, 1907, are hereby made applicable to and shall govern and control in the conduct of the election herein provided. [35 G. A., ch. 111, § 12.]

Sec. 1087-b. Nomination—election. That from and after the passage of this act, all candidates for the office of judge of the supreme, district and superior court, in the state of Iowa, shall be nominated at the regular primary election, and elected at the general election in November, in the manner hereinafter provided. [35 G. A., ch. 104, § 1.]

Sec. 1087-b1. Candidate—petition. Any person desiring to become a candidate for the office of supreme or district judge at the regular primary election shall, not less than forty (40) days prior to the date of such primary election, file in the office of the secretary of state, a petition favoring his nomination signed by qualified electors as follows: If the person on whose behalf said petition is filed is a candidate for nomination for judge of the supreme court, said petition shall be signed by not less than five thousand (5,000) qualified electors of the state of which at least thirty (30) shall reside in each county of the state, and the name of such candidate shall not appear upon the primary ballot in any county where the petition of the required thirty (30) qualified electors has not been filed. If the person on whose behalf said petition is filed is a candidate for nomination

for judge of the district court, said petition shall be signed by not less than five hundred (500) qualified electors of the judicial district for which he is a candidate, and at least fifty (50) of such qualified electors shall reside in each county of such district, and the name of any such candidate shall not be printed upon the primary ballot in any county of such district where the petition signed by the required fifty (50) qualified electors has not been filed. Any person desiring to become a candidate for the office of judge of the superior court at the regular primary election shall, not less than forty (40) days before such primary election, file in the office of the county auditor in the county in which said court is located a petition favoring his nomination signed by not less than two hundred fifty (250) qualified electors of the municipality in which said superior court is located. [35 G. A., ch. 104, § 2.]

Sec. 1087-b2. Non-partisan judiciary ticket—primary. At all primary elections at which candidates for judges are to be nominated, there shall be provided on each ballot for each political party, a ticket entitled "Non-partisan judiciary ticket", and the names of such candidates as shall have complied with the requirements of this act shall be placed thereon in the same order as the names of the party candidates, but without any party designation; and the ticket shall be the same on all ballots, except as varied to change the alphabetical rotation. The number of judges each elector is entitled to vote for shall be stated on the ballot. Each elector shall be allowed to vote at each primary for twice as many candidates to be nominated as there are number of places to be filled at the election. In case of a tie vote which leaves it unsettled as to which candidates are nominated, the secretary of state shall determine it by lot, except as to superior judge in which case the county auditor instead of the secretary of state shall determine who is nominated in the same manner by lot. [35 G. A., ch. 104, § 3.]

Sec. 1087-b3. Non-partisan judicial ticket—election. At the general election in November there shall be placed on the ballots a separate ticket entitled non-partisan judicial ticket, upon which shall be placed the names of the candidates nominated for judges of the supreme court, district, or superior courts in the state, and in the several districts and cities who have been nominated as herein provided. The names of all candidates shall be placed

on said ticket and in the same order as far as possible as other candidates and with the same provisions with reference to alphabetical rotation and the number of candidates for each office to which the elector is entitled to vote. The candidate or candidates on such judicial ticket receiving the highest number of votes shall be considered elected. [35 G. A., ch. 104, § 4.]

Sec. 1087-b4. Withdrawals—vacancies. The method of withdrawal, filling vacancies, conducting such primary and general elections, of preparation of the ballot, of canvassing the vote, of announcing the result, of recounting the ballot, of publishing notice of nomination and election, and the penalty for the illegal voting, misconduct of the election officials, and the making of the sworn return of nomination and election expenses, shall, so far as applicable, be the same as now provided for the regular primary and general election laws of Iowa. [35 G. A., ch. 104, § 5.]

Sec. 1087-b5. Acts in conflict repealed. All acts and parts of acts inconsistent with this act, are hereby repealed. [35 G. A., ch. 104, § 6.]

Sec. 1087-c. Primary and general election—same as state officers. The names of the candidates of the different parties for United States senator shall, at the primary election and the general election in the year preceding the expiration of the term of office of United States senator, or in case of a vacancy in said office, be placed on the official ballot in the proper place, and there shall be nominated and elected a United States senator or senators, as the case may be, in the manner now provided by law for the nomination and election of state officers, and all provisions of the law pertaining to the nomination and election of state officers, congressmen and presidential electors shall apply to the nomination and election of United States senators in so far as the same may be applicable, the same as though the words "United States senator" were specifically written therein. [35 G. A., ch. 105, § 1.]

(While the principal provisions of Chapter 109 of the Acts of the Thirty-fifth General Assembly, commonly known as the "Oregon Law" are now rendered inoperative by an amendment to the federal constitution providing for the election of senators in the congress of the United States by a direct vote of the people, there are minor provisions of this chapter not readily separated from the others, which seem to amend existing statutes of the state and, therefore, the entire chapter is included in this compilation.—Ed.)

CHAPTER 109.

ACTS OF THE THIRTY-FIFTH GENERAL ASSEMBLY.

NOMINATION AND CANVASS OF VOTE FOR UNITED STATES
SENATOR.

H. F. 1.

AN ACT to amend the law as it appears in sections ten hundred eighty-seven-a-ten (1087-a10), ten hundred eighty-seven-a-twenty-two (1087-a22), and ten hundred eighty-seven-a-twenty-seven (1087-a27), of the supplement to the code, 1907, as amended by chapter sixty-nine (69) of the acts of the thirty-third (33d) general assembly, section eleven hundred six (1106) of the supplement to the code, 1907, and sections eleven hundred fifty (1150), eleven hundred fifty-one (1151), eleven hundred fifty-seven (1157), and eleven hundred sixty-two (1162), of the code, and repealing chapter one (1) of the acts of the special session of the thirty-second (32d) general assembly, and enacting a substitute therefor, all relating to the nomination of candidates for the office of senator in the congress of the United States and of the canvass of the vote for senator in the congress of the United States, and providing for nominations for such office in case of vacancy.

Be it enacted by the General Assembly of the State of Iowa,

Section 1. **Nomination papers—candidate—affidavit.** That section ten hundred eighty-seven-a-ten (1087-a10) of the supplement to the code, 1907, as amended by section four (4) of chapter sixty-nine (69) of the acts of the thirty-third (33d) general assembly, be and the same is hereby amended by adding thereto the following: In case an elector seeks the nomination for office of senator or representative in the general assembly he shall be furnished, on application to the secretary of state, an affidavit blank in the form as required herein, save that there shall be printed in blank form and on the same sheet of paper, by way of addition thereto, the following statements, either of which he may sign, but if he does not do so, the secretary of state shall not on that account refuse to file his nomination paper:

STATEMENT NO. 1.

I further state to the people of Iowa and of my legislative district, that, during my term of office I will always vote for the candidate for senator in congress from this state who has received the highest number of the people's votes for that position in the entire state at the general election next preceding the

election of a senator in congress of the United States without regard to my individual preference.

.....
Signature of Candidate.

STATEMENT NO. 2.

I hereby declare that if elected to the office which I seek, I shall consider the vote of the people for senator in the congress of the United States nothing more than a recommendation, and shall feel free to wholly disregard the same.

.....
Signature of Candidate.

Upon the primary ballot, below the name of such candidate, shall be printed one of the following statements, according to which of the preceding statements, if either, is signed by such candidate:

- 1. "Promises to abide by vote of the people on United States senator."
- 2. "Refuses to be bound by vote of people on United States senator."
- 3. "Refuses to make any statement on United States senator."

Sec. 2. **Canvass by state board—certificates.** That section ten hundred eighty-seven-a-twenty-two (1087-a22) of the supplement to the code, 1907, as amended by section twelve (12) of chapter sixty-nine (69) of the acts of the thirty-third (33d) general assembly be and the same is hereby amended by inserting after the comma, following the word "people" in the thirteenth (13th) line thereof, and before the word "having" in the fourteenth (14th) line thereof, the following: "including the office of senator in the congress of the United States."

Sec. 3. **State convention—state central committee.** That section ten hundred eighty-seven-a-twenty-seven (1087-a27) of the supplement to the code, 1907, as amended by section sixteen of chapter sixty-nine (69) of the acts of the thirty-third (33d) general assembly be and the same is hereby amended by inserting after the word "state" in the fifteenth (15th) line thereof, and before the word "when" in the fifteenth (15th) line thereof, the following: "including the office of senator in the congress of the United States."

Sec. 4. **Ballot—form.** That section eleven hundred six (1106) of the supplement to the code, 1907, be and the same is hereby amended by inserting therein after the word “designation” in the ninth (9th) line thereof the following: “provided further, however, that at all general elections next preceding the election of a senator in the congress of the United States there shall be placed upon the official ballot the names of all candidates for the office of senator in the congress that have been nominated by any of the methods now, or which may hereafter be provided by law, for the nomination of state officers, the votes for which candidate shall be counted and certified to by the election judges in the same manner as the votes for other candidates.”

Sec. 5. **Abstracts.** That section eleven hundred fifty (1150) of the code be and the same is hereby amended by adding thereto the following: “Senators in the congress of the United States.”

Sec. 6. **United States senators.** That section eleven hundred fifty-one (1151) of the code be and the same is hereby amended by inserting between the words “for” and “congressman” in the first line thereof, the following: “senators in the congress of the United States.”

Sec. 7. **Abstracts forwarded to secretary of state.** That section eleven hundred fifty-seven (1157) of the code be and the same is hereby amended by inserting between the words “electors” and “representatives,” in the sixth line thereof, the following: “senators and.”

Sec. 8. **Canvass by state board.** That section eleven hundred sixty-two (1162) of the code be and the same is hereby amended by adding thereto the following: “The said board shall at the same time and in the same manner open the abstracts of the vote for senator in the congress of the United States, transmitted to the secretary of state, and canvass the vote therein returned. They shall make an abstract of said returns in duplicate and duly certify the same and deliver the same to the secretary of state, properly sealed, who shall retain the same in his office until the convening of the next general assembly, when he shall transmit one of said certified abstracts to the president of the senate and one to the speaker of the house of representatives, who shall open the same respectively and lay them before the respective houses when the same bodies shall be in session for the election of a senator in the congress of the United States.”

Sec. 9. **Repealed—withdrawal—vacancy—how filled.** Chapter one (1) of the acts of the special session of the thirty-second general assembly is hereby repealed, and the following enacted as a substitute therefor:

“In case of death, withdrawal, or inability to act, for any cause, of a party’s candidate for senator in the congress of the United States, as expressed in the regular June primary, such vacancy shall be filled by the state convention of said party, held in accordance with the provisions of section ten hundred eighty-seven-a-twenty-seven (1087-a27) of the supplement to the code, 1907, provided that if such vacancy occurs after the holding of said convention and thirty (30) days prior to the holding of the regular November election, said delegates to said convention shall be reconvened within ten days after such vacancy has occurred, by the chairman of said party’s state central committee, and a party candidate shall be named in said convention to fill such vacancy. If such vacancy occur too late to be filled in the manner above provided prior to the regular November election, the vote and pledge here provided for shall not be binding upon the members of the general assembly.”

Approved March 18th, 1913.

PART I

DIVISION 2.

NOMINATIONS BY PETITION OR CONVENTION.

Sec. 1098. Nomination by convention. Any convention of delegates, and any primary, caucus or meeting of qualified electors, representing a political party which, at the general election next preceding, polled at least two per cent. of the entire vote cast in the state, may, for the state, or any division or municipality thereof for which the same is held, make one nomination of a candidate for each office therein to be filled at the election, and any such convention, primary, caucus or meeting, representing a political party which, at the general election next preceding, polled at least two per cent. of the entire vote cast in any division or municipality of the state, may, for such division or municipality, or for any political sub-division thereof for which the same is held, make one such nomination for each office therein to be filled at the election. [24 G. A., ch. 33, § 4.]

Sec. 1099. Certificates. Certificates of nominations, made as provided in the preceding section, shall, besides containing the names of candidates, specify as to each:

1. The office to which he is nominated;
2. The party making such nomination, or political principle which he represents, expressed in not more than five words;
3. His place of residence, with the street and number thereof, if any.

In case of electors for president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political name. Every such certificate of nomination shall be signed by the presiding officer and secretary of the convention, caucus or meeting of qualified electors, or by the board of canvassers to which the returns of such primary election are made, each of whom shall add to his signature his place of residence, and shall be sworn to by each signer thereof to be true to the best of his knowledge and belief, and a certificate of the oath shall be annexed to the certificate of nomination. The presiding officer and secretary of each con-

vention, primary, caucus or meeting shall also certify, to the officer with whom the nomination certificates are filed, the names and addresses of each of the members of the executive or central committee appointed or elected by or representing it, and the provisions, if any, made by it for filling vacancies in nominations; and this may be done in the nomination certificate, or by a separate certificate. [Same, §§ 4, 6.]

Sec. 1100. Nominations by petition. Nominations for candidates for state offices, may also be made by nomination paper or papers signed by not less than five hundred qualified voters of the state; for county, district or other division, not less than a county, by such paper or papers signed by not less than twenty-five qualified voters, residents of such county, district or division; and for township, city, town or ward, by such paper or papers signed by not less than ten qualified voters, residents of such township, city, town or ward; but the name of a candidate placed upon the ballot by any other method shall not be added by petition for the same office. Each elector so petitioning shall add to his signature his place of business and postoffice address. [Same, § 5.]

Petitioners who have candidates placed on the ballot without a nominating convention are not entitled to have their ticket headed by the name of the party which they may claim to represent, when such party nominates a ticket by convention. The appellation of the ticket is a matter to be determined by the officers making up the ballot. *Lowery v. Davis*, 70 N. W., 190, 101-236.

Sec. 1101. Withdrawals. Any candidate named by either of the methods authorized in this chapter may withdraw his nomination by a written request, signed and acknowledged by him before any officer empowered to take the acknowledgment of deeds, and filed in the office of the secretary of state fifteen days, or the proper auditor or clerk eight days, before the day of election, and no name so withdrawn shall be printed upon the ballot. In case of a special election to fill vacancies in office, such withdrawal papers shall be filed with the secretary of state seven days, and with the proper auditor or clerk four days, before the day of such special election. [Same, § 8.]

Sec. 1102. Vacancies filled. If a candidate declines a nomination, or dies before election day, or should any certificate of nomination or nomination paper be held insufficient or inoperative by the officer with whom it may be filed, or in case any objection made to any certificate of nomination, nomination paper, or to

the eligibility of any candidate therein named, is sustained by the board appointed to determine such questions as hereinafter provided, the vacancy or vacancies thus occasioned may be filled by the convention, caucus, meeting or primary, or other persons making the original nominations, or in such a manner as such convention, caucus, meeting or primary has previously provided. If the time is insufficient for again holding such convention, caucus, meeting or primary, or in case no such previous provisions being made, such vacancy shall be filled by the regularly elected or appointed executive or central committee of the particular division or district representing the political party or persons holding such convention, primary, meeting or caucus, and certified as hereinbefore provided. The certificates of nominations made to supply such vacancies shall state, in addition to the facts hereinbefore required, the name of the original nominee, the date of his death or declination of nomination, or the fact that the former nomination has been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and shall be signed and sworn to by the presiding officer and secretary of the convention, caucus, meeting or primary, or by the chairman and secretary of the committee, as the case may be. [Same, § 9.]

When a certificate of nomination of candidates is held by the county auditor not to have been filed with him in time, the vacancies in nomination for such office may be filled in accordance with the provisions of this section. The holding of the auditor that the filing is not as required by law is a holding that the nominating certificate is insufficient and inoperative. *Reese v. Hogan*, 117-603.

These provisions as to filling vacancies by a party central committee are superceded by the provision as to primary elections found in Code Supp. Sec. 1087-a24. *State v. Hayward, Secretary of State*, 141-196.

Sec. 1103. Objections. All objections or other questions arising in relation to certificates of nomination or nomination papers shall be filed with the officer with whom the certificate of nomination or nomination papers to which objection is made are filed. Those with the secretary of state shall be filed not less than twenty days, and those with other officers not less than eight days, before the day of election, except that nominations to fill vacancies occurring after said time, or in case of nomination made to be voted on at a special election, objection shall be filed within three days after the filing of the certificate or nomination papers. Objections filed with the secretary of state shall be considered by the secretary and auditor of state and attorney-general, and a majority decision shall be final; but if the objection is to the certificate

or nomination papers of one or more of the above named officers, said officer or officers so objected to shall not pass upon the same, but their places shall be filled, respectively, by the treasurer of state, the governor, and the superintendent of public instruction. Objections filed with the county auditor shall be considered by the county auditor, clerk of the district court and county attorney, and a majority decision shall be final; but if the objection is to the certificate or nomination papers of one or more of the above named county officers, said officer or officers so objected to shall not pass upon such objection, but their places shall be filled, respectively, by the county treasurer, the sheriff and county superintendent. Objections filed with the city or town clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate or nomination papers of either of said city or town officials, he shall not pass upon said objection, but his place shall be filled by a member of the council against whom no such objection exists, chosen as above provided. When any of the above objections are made, notice shall forthwith be given to the candidate affected thereby, addressed to his place of residence as given in the certificate or nomination papers, stating that objections have been made to his certificate or nomination papers, also stating the time and place such objections will be considered. [Same, § 10.]

This section creates a tribunal for the determination of all questions arising in relation to nominations or nomination papers and makes the decision of such tribunal final. *State v. Hayward, Secretary of State*, 141-196.

While objections to a relator's nomination can only be made as here provided yet where by re-districting a nomination for county supervisor is rendered ineffectual there is a vacancy as to such nomination. *State v. Parker*, 147-69.

Sec. 1104. Filing certificates and petitions. Certificates of nomination and nomination papers of candidates for state, congressional, judicial and legislative offices shall be filed with the secretary of state, not more than sixty nor less than thirty days; those for all other officers, except for cities and towns, with the county auditors of the respective counties, not more than sixty nor less than twenty days; and for the offices in the cities and towns, with the clerks thereof, not more than forty nor less than ten days, before the day fixed by law for the holding of the election. Such certificates and nomination papers thus filed, and being apparently in conformity with law, shall be regarded as

valid, unless objection in writing thereto shall be made, and, under proper regulations, shall be open to public inspection, and preserved by the receiving officer for not less than six months after the election is had. Any error found in such papers may be corrected by the substitution of another, executed as is required for an original nomination certificate or paper. In case of special election to fill vacancies in office, certificates of nomination or nomination papers, for nomination of candidates for office to be filled by the electors of a larger district than a county, may be filed with the secretary of state, not later than ten days before the time of election. Certificates of nomination or nomination papers, nominating candidates for office to be filled by the electors of a county, may be filed with the county auditor at any time not less than five days before the election. [26 G. A., ch. 68, §§ 1-2; 24 G. A., ch. 33, §§ 4, 7, 8, 10.]

Sec. 1105. Nominations transmitted to county auditor. Not less than fifteen days before the election, the secretary of state must certify to the auditor of each county in which any of the electors have the right to vote for any candidate or candidates, the name and residence of each person nominated, whether an original nomination or to fill a vacancy, to be voted for at such election, and the order in which the tickets shall appear on the ballot. Should a vacancy in the nominations occur and be filled after this certificate has been forwarded, a like certificate shall at once issue and be sent the proper officer. In case of special election to fill vacancy in office, the certificate by the secretary of state to the county auditor may be made at any time not later than seven days before the election. [26 G. A., ch. 68, §§ 1, 2; 24 G. A., ch. 33, §§ 11-13.]

PART II

REGISTRATION OF VOTERS.

Sec. 1076. **Board of registers.** In cities having a population of thirty-five hundred or more, not including the inmates of any state institution, the council, on or before the sixth Monday preceding each general election, and on or before the third Monday prior to any city election to be held during the year 1906, shall appoint one suitable person from each of the two political parties which cast the greatest number of votes at the last general election, from three names presented by each chairman of the city central political committee of such parties, to be registers in each election precinct in the city for the registration of voters therein, who shall be electors of the precinct in which they are to serve, of good clerical ability, speaking the English language understandingly, temperate, of good habits and reputation, who shall qualify by taking an oath or affirmation to the effect that they will well and truly discharge all of the duties required of them by law. They shall hold their office for two year [s], but registers appointed for city elections during the year 1906 shall hold such office only until such election is completed, and receive compensation at the rate of two dollars and fifty cents for each calendar day engaged in the discharge of their duties, to be paid by the county, except in case of city elections, when they shall be paid by the city. If for any cause such registers, or any of them, shall not be appointed at or before the time above mentioned, or, if appointed, shall be unable for any cause to discharge the duties of such office, the mayor of such city shall forthwith, on similar recommendation, make such appointments and fill all vacancies. Should the mayor, upon the request of five freehold electors, fail for a period of three days to perform the duties aforesaid, he shall forfeit and pay, at the action of any such elector, the sum of one hundred dollars per day, for the equal benefit of the city and plaintiff. The provisions of this title shall apply to cities acting under special charters, with like effect as though said cities were acting under the general incorporation laws of the state.

If any voting precinct or one or more adjoining, contains a village having a population of thirty-five hundred (3500) or more, the

board of supervisors of the county shall appoint two registrars for each of such voting precincts for the purpose of registering the voters thereof for general election. [26 G. A., ch. 62; 22 G. A., ch. 48, §§ 5, 12; 21 G. A., ch. 167, § 3.] [31 G. A., ch. 40, § 1.] [31 G. A., ch. 41.] [35 G. A., ch. 108, § 1.]

The provisions of this title of the code relating to election contests are applicable to cities under special charter. *Sterne v. Off*, 149-96.

Sec. 1076-1a. Registrars. One registrar for each political party shall be appointed from names presented by the chairman of the county central committee of the two political parties in each of said precincts casting the greatest number of votes therein at the last general election. In all other respects relating to registration of voters in such precincts, the law applicable to voters at the general election in cities shall be applicable to such voting precincts, and registrars and voters of such voting precincts shall be governed thereby except that the expense thereof shall be paid by the county. [35 G. A., ch. 108, § 2.]

Sec. 1076-a. Special charter cities. This act shall apply to cities under special charters with same effect as to cities under the general laws. [31 G. A., ch. 40, § 2.]

Sec. 1077. Registration. The registers shall meet on the second Thursday prior to any general, city, or special election, at the usual voting place in the precinct in which they have been appointed, and shall hold continuous sessions for two consecutive days, from eight o'clock in the forenoon until nine o'clock in the afternoon, and, in presidential years, such sessions shall be held for three days. Any person claiming to be a voter, or that he will be on election day, may appear before them in the election precinct where he claims he is or will be entitled to vote, and make and subscribe, under oath, a statement in a registry book, to be provided by the clerk and furnished the registers, at the equal expense of the city and county, and kept open for public inspection and examination during the time fixed for the registration, which statement shall be in the following form and contain the following matter:

quired by law, was held void, the provisions of the law being mandatory and imperative. *Nefzger v. Davenport & St. P. R. R. Co.*, 46-642.

Sec. 1078. Statements—registry books—school elections. The statements thus made shall be dated and consecutively numbered, commencing with number one at each registration. At the close of each day's registration, the registry book shall be ruled off so as to prevent further entries, and, when not in use by the registers, shall be kept in the custody of the clerk until disposed of as provided by law. No person shall register at any other place or time than is designated in this chapter, and no registration of voters for school elections shall be required. [22 G. A., ch. 48, § 10; 21 G. A., ch. 161, §§ 6, 8.]

Sec. 1079. List of voters. The registers shall, within three days after the registration made in the second week preceding the election, prepare two alphabetical lists, for their respective voting precincts, of the names of all persons registered, their residences, their last preceding places of residence, the dates of removal when removals occur within one year, nativity, color, term of residence in precinct, county and state, whether naturalized, date of papers, the naturalizing court, or place of naturalization if court is not known, whether naturalized by act of congress, date of application for registration; one of which lists they shall forthwith conspicuously post or cause to be posted at the usual place of holding elections in such precinct, for inspection of the public, and retain the other one in their possession. [22 G. A., ch. 48, § 12; 21 G. A., ch. 161, § 7.]

Sec. 1080. Correction of registry—lists delivered to judges. On the Saturday before any election at which registration is required, the registers shall meet at the place where registration was last made, and hold a continuous session, from eight o'clock in the forenoon until nine o'clock in the afternoon, at which they shall revise and correct the registry book of voters, adding thereto, consecutively numbering them, the names of all applying for registration who on election day will be entitled to vote in that precinct, and by striking therefrom the name of any one not entitled to vote thereat. The registers shall revise and correct the alphabetical list in their possession to correspond therewith. When thus revised and corrected, it shall be certified and copied by the registers, who shall deliver, or cause to be delivered, such list and copy to the judges of the election of the proper precinct, and which delivery shall be made on election day, and before the opening of the polls. The copy thus delivered shall be preserved

by the judges, and returned with the vote from that precinct, and the original to the clerk. At the opening of the polls and before any ballot shall be received, the judges of the election shall appoint one of their number, or one of the clerks, to check the name of each voter whose name is on the alphabetical lists, to whom a ballot is delivered. [22 G. A., ch. 48, §§ 1, 3, 4; 21 G. A., ch. 161, § 8.]

Sec. 1081. Appearance and hearing. All proceedings of registers shall be public, and any person entitled to vote in a precinct shall have the right to be heard before them in reference to corrections of or additions to the lists of such precinct. No person shall be admitted to registry unless he appears in person, except as in this chapter provided, and, if demanded, he shall furnish to the registers such proofs of his right thereto as may by law be required by judges of election of any person offering to vote. If an elector is, by reason of sickness, unable to go to the place of registry on any day the registers may be in session, the registers shall, upon the filing before them, by a registered elector, of an affidavit to that effect, visit such sick elector at his place of residence on any day when not in session, and place his name on the registry book and alphabetical list, if found entitled thereto; at which time and place the registers may administer the oath hereinbefore provided to be taken by applicants for registry. [21 G. A., ch. 161, § 9.]

Sec. 1082. Registration on election day. The registers shall also be in session on the day for the holding of each election, at some place convenient to, but not within one hundred feet of, the voting place, and during all the hours in which by law the polls are required to be kept open, for the purpose only of granting certificates of registration to persons who, being electors, are not registered. Such registration shall be allowed and certificate thereof granted only to a person who was absent from the city during all the days fixed for registration of voters for that election, or to a person who, being a foreigner, has received his final papers since the last preceding day for the registration of voters for that election, or to a person whose name was, on the preceding Saturday, and in the absence of such person, stricken from registration, and who, on said day of election, shall prove to the satisfaction of said registers that he is a lawfully qualified elector of said voting precinct. These certificates of registration shall contain all the data showing the qualification of the voter as shown by the registration, and in addition, the special matter

showing the voter's right to such certificate under this section, and, before delivery to the applicant, shall be endorsed by the registers, to the effect that the person therein named is a qualified voter in that precinct, and that he is entitled to be registered as such. The proper statement shall be signed and sworn to by the voter before one of the registers, supported by the affidavit of a freeholder who is a registered voter in that precinct, who shall make oath to the qualification of the applicant as a voter in that precinct; and if the applicant be one whose name was stricken from registration, such affidavit of said freeholder shall contain the facts showing the right of said applicant to vote in that precinct. Registration in such cases shall be made in the manner required for regular registration. The certificate of registration shall be handed in to the judges of election when a ballot is delivered to him. The data therefrom, showing the voter's name and his qualification as a voter, shall be entered on the alphabetical lists by the judges and clerks of the election, under the appropriate headings, and the original certificate shall be returned to the city clerk, who shall carefully preserve it in the same manner and for the same time as the alphabetical list and poll book. [22 G. A., ch. 48, § 7.]

Sec. 1083. Striking off names. The registers, prior to each election except presidential elections, and after completing their registration, shall certify the names of all persons by them registered to the registers of the ward or precinct of the same city, which the registration shows such persons gave as their last place of residence, and the names of such persons so certified shall be stricken from the registry lists of the ward or precinct in which they last resided, if found thereon. [25 G. A., ch. 58, § 1.]

Sec. 1084. New registry—how often. A new registry of voters shall be taken in each year of a presidential election. For all other state or municipal elections, general or special, the registers shall prepare a new registry book in each year, by copying from the poll book of the preceding general election all the names found therein, adding thereto those of all persons registered and voting at any subsequent election, which new registry book shall show all the facts of qualification of each voter as they appear on the last preceding registry book, which, when thus made up, shall be used at each election until a new registry book is prepared as required by law. Every person thus registered shall be considered as entitled to vote at any election at which said

registry book may be used, unless his name shall be dropped by the correction of registration, as authorized by law. [25 G. A., ch. 58, § 1; 22 G. A., ch. 48, §§ 2, 3.]

Sec. 1085. Notice. The times and places of making registration of voters shall be published by the mayor in the two leading political party papers published in such city, except no publication shall be required for a special election. If there be but one such paper published in the city, publication of notice therein shall be sufficient. The publication shall be made for a period of three days prior to the opening of the registry book, if the paper is a daily paper, and for one week, if a weekly paper, and shall call the attention of the voters to the necessity of complying with the laws with reference to registration, in order to be entitled to vote at the ensuing election. [21 G. A., ch. 161, § 12.]

Sec. 1086. City clerk. The city clerk shall carefully preserve all registry books and alphabetical lists and other papers pertaining to the registration, until destroyed as provided in the chapter on the canvass of votes. He shall, on the application of the registers, deliver to them, prior to their first meeting for each election, the registry book, alphabetical list and poll book, which they require in order to properly prepare the necessary registry book for the next ensuing election; all of which shall be returned to him when they have completed their work for such election. [22 G. A., ch. 48, § 6.]

Sec. 1087. Penalty. If any register shall fail to perform any duty required of him in this chapter, he shall forfeit the sum of one hundred dollars, to be recovered by any person in any court having jurisdiction; and if any register or judge of election shall wilfully neglect or disregard any duty imposed, or shall make, or permit to be made, any registration, statement or list, except at the time and place and in the manner herein authorized and prescribed, or shall knowingly make, or permit to be made, any false statement as aforesaid, or if any person shall wilfully make, or authorize to be made, any statement required to be made, false in any particular, or shall violate any of the provisions of this chapter, every such register or judge of election, person or persons, shall be guilty of a misdemeanor, and, upon conviction, fined in a sum not less than fifty nor more than two hundred dollars, or be imprisoned in the county jail not less than twenty days, nor more than six months, or both, at the discretion of the court. [21 G. A., ch. 161, § 10.]

PART III

CALLING THE ELECTION; OFFICERS AND THEIR TERMS; ELECTION PRECINCTS.

Sec. 1057-a. **General election.** The general election for state, district, county and township officers shall be held throughout the state on Tuesday, next after the first Monday in November in the year 1906 and each two years thereafter. [31 G. A., ch. 36, § 2.]

The statutory prohibition of sales of liquor under the mulct law on "any election day" relates not only to the day of a general election but also to any day on which a school election is provided to be held. *Hammond v. King*, 137-548.

Sec. 1058. **Special election.** Special elections authorized by any law, or held to supply vacancies in any office to be filled by the vote of the qualified voters of the entire state, or of any district, county or township, may be held at the time designated by such law, or by the officer authorized to order such election. [C. '73, § 574; R., § 460.]

Sec. 1059. **When officer to be chosen.** At the general election next preceding the expiration of the term of any officer his successor shall be elected. [C. '73, § 575; R., § 461.]

Sec. 1060. **Term of office.** The term of office of all officers chosen at a general election for a full term shall commence on the second secular day of January next thereafter, except when otherwise provided by the constitution or by statute; that of an officer chosen to fill a vacancy shall commence as soon as he has qualified therefor. [16 G. A., ch. 72; C. '73, § 576; R., § 462.] [31 G. A., ch. 37, § 1.] [33 G. A., ch. 68.]

See Const., Art. IV, § 15.

Sec. 1061. **Proclamation.** At least thirty days before any general election, the governor shall issue his proclamation, designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative or judicial district, and, in the years required by article ten, section three, of the constitution, submitting the question: "Shall there be a convention to revise the constitution and amend the same?" and transmit a copy thereof to the sheriff of each county. [C. '73, § 577; R., § 462.]

Sec. 1062. Notice. The sheriff shall give at least ten days' notice thereof, by causing a copy of such proclamation to be published in some newspaper printed in the county; or, if there be no such paper, by posting such a copy in at least five of the most public places in the county. [C. '73, § 578; R., § 463.]

Where the time of the regular election is fixed by law such time is to be taken notice of judicially. *Davis v. Best*, 2-96.

Failure to give proper notice of an election will not invalidate it. In matters of such public nature the observance of the particular requirement is not a prerequisite to validity, and the statutes as to notice are to be deemed directory. The people are not to be disfranchised or deprived of their voice by the omission of some duty by an officer. *Dishon v. Smith*, 10-212.

If an election has in fact been held at the proper time, and it is not alleged or shown that any portion of the electors failed in knowledge of the pendency of the question submitted at such election, or to exercise their franchise, it will not be held void on account of want of notice. *Ibid.*

Sec. 1063. Of special election. A similar proclamation shall be issued before any special election ordered by the governor, designating the time at which such special election shall be held; and the sheriff of each county in which such election is to be held shall give notice thereof, as provided in the last section. [C. '73, § 579; R., § 464.]

Sec. 1064. This section, relating to elections in odd-numbered years, was repealed by § 1, ch. 36, 31 G. A.

Sec. 1065. State officers. The governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney-general, shall be chosen at the general election in each even-numbered year and their terms of office shall be for two years. [31 G. A., ch. 36, § 3.] [35 G. A., ch. 103, § 9.]

As to governor and lieutenant-governor, see Const., art IV, § 15.

As to secretary, auditor and treasurer, see Const., art. IV, § 22. As to attorney-general, see Const., art. V, § 12.

Sec. 1066. Judges of the supreme court.* Two judges of the supreme court shall be chosen at the general election in the year 1906 and two shall be chosen at each general election thereafter, whose terms of office shall continue for six years.

Of the judges whose terms of office first expire, the senior in time of service shall be chief justice for one year, and, if there be but two of them, the junior for one year, and so on in rotation.

*Chapter 22, Acts of Thirty-fifth General Assembly increases the number of judges from six to seven.

If two or more are equal in time of service, then the right to the position and the order in which they serve shall be determined by seniority in age. And at the last term in each year, the supreme court shall determine and enter of record, who, under these rules, shall be chief justice for the year next ensuing, and at the session of the supreme court next preceding the commencement of the first of the said two years, the supreme court shall cause a record to be made as to who shall be the chief justice for the year next ensuing. [31 G. A., ch. 36, § 4.] [35 G. A., ch. 22, § 4.]

See Const., Art. V, §§ 3, 11.

Sec. 1067. That section one thousand sixty-seven (1067) of the code be and the same is hereby repealed. [35 G. A., ch. 106, § 1.]

Sec. 1068. Railroad commissioners—election and term. At the general election in the year 1906, and every four years thereafter, there shall be elected two railroad commissioners, whose term of office shall be for a period of four years; and at the general election in the year 1908, and every four years thereafter, there shall be elected one railroad commissioner, whose term of office shall be for a period of four years; and the present incumbents of the office of railroad commissioner shall continue in office until their successors are elected and qualified, as in this act provided. [31 G. A., ch. 38.]

Sec. 1069. Judges of district court. The judges of the district court shall be elected in each judicial district at a general election, and shall hold office for four years, except when elected to fill a vacancy, in which case it shall be only for the unexpired term. [21 G. A., ch. 134, § 4.]

Sec. 1070. Representatives. Members of the house of representatives shall be elected in the respective representative districts in each even-numbered year, and hold office for the term of two years. [31 G. A., ch. 36, § 5.]

See Const., Art. III, § 3.

Sec. 1071. Senators. Senators in the general assembly, to succeed those whose terms are about to expire shall be elected in the respective senatorial districts in each even-numbered year, and shall hold office for the term of four years. [31 G. A., ch. 36, § 6.]

See Const., Art. III, § 5.

Sec. 411. Members board of supervisors—term—only one from one township. At the general election in the year 1906 there shall

be elected for a term of two years, members of the county board of supervisors to succeed those whose terms were extended one year by the biennial election amendment. At the general election in the year 1906, and biennially thereafter, there shall be elected members of the board of supervisors for a term of three years to succeed those whose terms of office will expire on the first Monday in January following said election; there shall also be elected members for a term of three years to succeed those whose terms will expire on the first Monday in January one year later than the aforesaid date. It shall be specified on the ballot when each shall begin his term of office. No member shall be elected who is a resident of the same township with either of the members holding over (but a member-elect may be a resident of the same township as the member he is elected to succeed), except that, in counties having five or seven supervisors, and having therein a township embracing an entire city of thirty-five thousand inhabitants or over, he may be a resident of the same township; and in no case shall there be more than two supervisors from such township. [31 G. A., ch. 12, § 2.]

Whether elected by a district or the entire county, a member of the board acts for the county and only as a district is a part of the county can the member elected from such district be said to be a representative of such district. *In re Assessment Farmers Loan & Trust Co.*, 155-536.

Sec. 1072. County officers—terms. There shall be elected in each county, at the general election in 1906, and in each even-numbered year thereafter an auditor, a treasurer, a clerk of the district court, a sheriff, a recorder of deeds, a county attorney, a county superintendent of schools,* and a coroner, who shall hold office for the term of two years or until their successors are elected and qualified. [31 G. A., ch. 39.] [34 G. A., ch. 24, § 1.]

[Women are by § 2748 made eligible to school offices, and by § 493 to the office of county recorder.]

Sec. 1073. Justices and constables. Two justices of the peace and two constables shall be elected by the voters of each township at the general election in each even-numbered year, and shall hold office for two years, and be county officers. [25 G. A., ch. 74, § 4; C. '73, §§ 389, 590, 592-3; R., §§ 443, 726, 474, 477-8; C. '51, §§ 221, 243.]

The ballots for justice of the peace should be canvassed by the board of supervisors under the provisions of § 1150. *Lynch v. Vermazen*, 61-76.

*Chapter 107, Acts of the Thirty-fifth General Assembly, provides for the election of County Superintendent by county school corporations. [Supp. to C. 1913, § 1072.]

The constable is properly a township officer although he is to be voted for under this section like a justice of the peace as a county officer by the voters of his township. *State v. Bevans*, 37-178.

As two justices of the peace are to be elected for each township and the mayor of a city situated within the township has to some extent a jurisdiction co-ordinate with that of the justices of the peace, held that the acceptance by the mayor of a city of the office of justice of the peace in the township created a vacancy in the office of mayor. *State v. Anderson*, 155-271.

Sec. 1074. Township trustees—election—term. At the general election in the year 1906 there shall be elected in each township a successor to those trustees whose term of office will expire January 1st, 1907; and at the general election in the year 1908, and biennially thereafter, there shall be elected in each township three trustees, whose term of office shall be for a period of two years, and until their successors are elected and qualified, and those trustees whose term of office does not expire until the first day of January, 1908, shall continue in office until their successors are elected and qualified. [31 G. A., ch. 37, § 2.]

Sec. 1074-a. At any time when a new township has been created in a year in which no general election is held by law, the county board of supervisors of the county affected, shall call a special election for the election of three trustees and other township officers of the new township, which officers shall continue in office until their successors are elected and qualified. [32 G. A., ch. 49.]

Sec. 1075. Township clerk—assessor. At the general election in each even-numbered year, there shall be elected in each civil township one township clerk, and, where not otherwise provided, one assessor, to be elected by the voters of such district, who shall hold their offices for the term of two years. [18 G. A., ch. 161, § 1; C. '73, § 591.] [29 G. A., ch. 53, § 1,]

The offices of township trustee and clerk are abolished in some cases where the township constitutes a city or town. See §§ 560, 562.

As to method of voting for assessor, see § 1130.

Sec. 565. Election of assessor where city included. In each even-numbered year there shall be elected in each township, a part of which is included within the corporate limits of any city or town, by the voters of such township residing without the corporate limits of such city or town, one assessor who shall be a resident of said territory outside of said city or town. [19 G. A., ch. 110; 18 G. A., ch. 201, § 1; 16 G. A., ch. 6; C. '73, § 390.] [33 G. A., ch. 37.]

Under the original section, held, that an assessor elected by the city as therein prescribed was not a city but a township officer. *Kinne v. Waverly*, 42-486.

This section, both as it originally stood and as re-enacted by the Sixteenth General Assembly, applied only to townships containing cities incorporated under the general incorporation law and not those existing under special charter. *State v. Finger*, 46-25.

Where two townships being included within the corporate limits of a city comprise but one assessorial district, the county board of equalization cannot equalize taxation as between such townships, but can only act upon the whole district. *Getchell v. Board of Supervisors*, 51-107.

As to the election of assessors in other townships, see section 1075, and in cities and towns, see chapter 2, of title five.

Sec. 1088. All elections except school. The provisions of this chapter shall apply to all elections known to the laws of the state, except school elections. [21 G. A., ch. 141, § 2.]

Notwithstanding the provision of this chapter making a distinction between general elections and school elections, the statutory prohibition of the sale of liquors under the mulct law "on any election day" included days on which school elections are held. *Hammond v. King*, 137-548.

Sec. 1089. General and special. The term "general election," as used in this chapter, shall apply to any election held for the choice of national, state, judicial, district, county or township officers; that of "city election" shall apply to any municipal election held in a city or town; and that of "special election" shall apply to any other election held for any purpose authorized or required by law. [24 G. A., ch. 33, § 2.]

The Australian ballot law as originally adopted (24 G. A., ch. 33) did not apply to special elections held for the purpose of voting taxes in aid of railroads or bridges. *Pritchard v. Magoun*, 109-364; *Bras v. McConnell*, 114-401.

Sec. 1090. Election precincts. Each township, or, in case a township contains a city or a portion thereof, such portion of the township as is outside the limits of the city, and each ward of a city, shall, respectively, constitute an election precinct. But the board of supervisors or the council, as the case may be, shall have power to divide a township or part thereof, or a ward, into two or more precincts, or to change or abolish the same; or the board of supervisors and the council of any city of less than thirty-five hundred inhabitants, not including the inmates of any state institution, may combine any part of the township outside of such city with any or all the wards thereof as one election precinct, or change or abolish such precinct; or the council of such city may combine the several wards into one or more precincts. No precinct shall contain different townships or parts thereof, except that where an incorporated town embraces within its limits terri-

tory situated in different townships of any county, the board of supervisors may, for the convenience of the electors, constitute such town and, if desired, additional territory thereto abutting, into an election precinct. The board of supervisors in the order establishing such precinct shall define its boundaries and may change same if in their judgment occasion arises. In such cases, separate ballots and ballot boxes shall be provided for voting for township officers, only. Each incorporated town shall constitute a precinct for town elections. No person shall vote in any precinct but that of his residence. [25 G. A., ch. 60; 21 G. A., ch. 141, § 2; C. '73, §§ 501, 603, 605; R., § 480; C. '51, § 245.] [33 G. A., ch. 70.]

Residence: By going into a township and remaining there for the sole purpose of voting, with no intention of remaining longer, one will not acquire sufficient residence to entitle him to vote; but if the removal is in good faith, no length of residence is necessary. *State v. Minnick*, 15-123.

Where the time, place and manner of holding elections are not prescribed by the constitution, but committed to the legislature, the reception of votes out of the precinct or the county of elector's residence may be constitutionally authorized. *Morrison v. Springer*, 15-304.

If no requirements as to length of residence were contained in the constitution, the legislature might fix such length of residence as it should see fit. *Ibid.*

The residence of a voter is the place of his domicile or place of abode, as distinguished from the residence acquired as a sojourner for business, education, or other temporary purpose. Therefore, *held*, that a student in the university at Iowa City, sent there and supported by his father, and making his father's home his "headquarters" during vacation, was not entitled to vote in Iowa City, though he had been there the requisite length of time and had no present intention of leaving there when he ceased to attend the university. *Vanderpool v. O'Hanlon*, 53-246.

If the ballot of a voter is received it is no ground of complaint that an improper oath has been administered to him touching his qualifications. *State ex rel v. O'Day* 69-368.

The vital inquiry in determining the residence of a person is as to where is his home. This is not purely a matter of intention. A person cannot live in one place and by force of imagination constitute some other his place of abode. The intent and the fact must concur. *State v. Savre*, 129-122.

The home of an unmarried man is where he has his rooms, in which he keeps such personal effects as he has, where he rests when not at work, and spends his evenings and Sundays, and not the boarding house at which he takes his meals. *Ibid.*

Evidence in a particular case as to the actual residence of a voter considered. *Kelso v. Wright*, 110-560.

Persons in military service: A soldier serving in the volunteer forces of the federal government does not thereby lose nor change his place of residence, which remains that of the county of his residence at the time of entering the service; and if he should be in such county on the day of election he would unquestionably have the right to vote, if otherwise qualified. *Morrison v. Springer*, 15-304.

And *held*, that the legislature may authorize the casting of ballots by soldiers at points where they are stationed outside the state. *Ibid.*

Under the statute authorizing persons absent from the state in military service to vote at general elections, *held*, that the submission of a proposition for the disposition of swamp lands at a special election at which persons in the military service could not vote was not illegal. *Cedar Rapids & M. R. R. Co. v. Boone County*, 34-45.

Sec. 1091. Polling places for county precincts. Polling places for precincts outside the limits of a city, but within the township, or originally within and set off as a separate township from the township in which the city is in whole or in part situated, may, for the convenience of the voters, be fixed at some room or rooms in the courthouse or in some other building within the limits of the city as the board of supervisors may provide. [33 G. A., ch. 71.]

Sec. 1092. Notice of boundaries of precincts. The board of supervisors or council shall number or name the several precincts established, and cause the boundaries of each to be recorded in the records of said board of supervisors or council, as the case may be, and publish notice thereof in some newspaper of general circulation, published in such county or city, once each week for three consecutive weeks, the last to be made at least thirty days before the next general election. The precincts thus established shall continue until changed. [C. '73, § 604.]

PART IV

THE ELECTION.

DIVISION I.

THE CONDUCT OF THE ELECTION.

Sec. 1093. **Election boards.** Election boards shall consist of three judges and two clerks. Not more than two judges and not more than one clerk shall belong to the same political party or organization, if there be one or more electors qualified and willing to act as such judge or clerk, and a member or members of opposite parties. In cities and towns, the councilmen shall be judges of election; but in case more than two councilmen belonging to the same political party or organization are residents of the same election precinct, the county board of supervisors may designate which of them shall serve as judges. In township precincts, the clerk of the township shall be a clerk of election of the precinct in which he resides, and the trustees of the township shall be judges of election, except that, in townships not divided into election precincts, if all the trustees be of the same political party, the board of supervisors shall determine by lot which two of the three trustees shall be judges of such precinct. The membership of such election board shall be made up or completed by the board of supervisors from the parties which cast the largest and next largest number of votes in said precinct at the last general election, or that one which is unrepresented; but, in city and town elections, the powers given in this chapter and duties herein made incumbent upon the board of supervisors shall be performed by the council. If, at the opening of the polls in any precinct, there shall be a vacancy in the office of clerk or judge of election, the same shall be filled by the members of the board present, and from the political party which is entitled to such vacant office under the provisions of this chapter. The election board at any special election shall be the same as at the last preceding general election. In case of vacancies happening therein, the county auditor may make the appointments to fill the same when the board of supervisors is not in session. [26 G. A., ch. 68,

§ 3; C. '73, §§ 606-8; R., §§ 481-3; C. '51, §§ 246-8.] [31 G. A., ch. 42.] [35 G. A., ch. 112, § 1.]

Sec. 1094. Oath. Before opening the polls, each of the judges and clerks shall take the following oath: "I, A. B., do solemnly swear that I will impartially, and to the best of my knowledge and ability, perform the duties of judge (or clerk) of this election, and will studiously endeavor to prevent fraud, deceit and abuse in conducting the same." [C. '73, § 609; R., § 484; C. '51, § 249.]

These provisions are directory. A failure of the officers mentioned to be sworn will not vitiate the election, and in a case in court involving the validity of an election, the fact that the officers were sworn may be proved *aliunde*. The return is not conclusive. *Dishon v. Smith*, 10-212.

Sec. 1095. How administered. Any one of the judges or clerks present may administer the oath to the others, and it shall be entered in the poll books, subscribed by the person taking it, and certified by the officer administering it. [C. '73, § 610; R., § 485; C. '51, § 250.]

Sec. 1096. Polls open. At all elections the polls shall be open at eight o'clock in the forenoon, except in cities where registration is required, when the polls shall be opened at seven o'clock in the forenoon, or in each case as soon thereafter as vacancies in the places of judges or clerks of election have been filled. In all cases the polls shall be closed at seven o'clock in the evening. [24 G. A., ch. 33, § 32; C. '73, § 611; R., § 486; C. '51, § 251.] [28 G. A., ch. 34, § 1.]

Sec. 1097. Voting by ballot. In all elections regulated by this chapter, the voting shall be by ballots printed and distributed as hereinafter provided, except as may be otherwise especially directed by law. [24 G. A., ch. 33, § 1.]

Sec. 1106. Ballot—form—candidates for district judge—separate ballot for constitutional amendments, etc. The names of all candidates to be voted for in each election precinct shall be printed on one ballot, all nominations of any political party or group of petitioners being placed under the party name or title of such party or group, as designated by them in their certificates of nomination or petitions, or, if none be designated, then under some suitable title, and the ballot shall contain no other names, except that, in case of electors for president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political designation.

Each list of candidates for the several parties and groups of petitioners shall be placed in a separate column on the ballot, in such order as the authorities charged with the printing of the ballots shall decide, except as otherwise provided, and be called a ticket. But the name of no candidate shall appear upon the ballot in more than one place for the same office, whether nominated by convention, primary, caucus or petition, except as hereinafter provided. Where two or more conventions, primaries or caucuses, or any two of them, may nominate the same candidate for any office, the name of such candidate shall be printed under the name of the party first filing nomination papers bearing such name, unless the candidate himself shall, in writing duly verified, request the officer with whom the nomination papers are filed to cause the name to be printed upon some other ticket, provided, that in any judicial district of the state in which the bar association, or a convention of attorneys of the district nominates or recommends candidate or candidates for the office of district judge,* and such candidates are also nominated or indorsed by any political party, in preparing the ballots for the general election, the names of such candidate or candidates shall be printed as candidate or candidates for each party by whom they are nominated, whether by primary, convention or petition. Each of the columns containing the list of candidates, including the party name, shall be separated by a distinct line. Said ballot shall be substantially in the following form:

REPUBLICAN	DEMOCRATIC	PROHIBITION	UNION LABOR
For Governor, <input type="checkbox"/> A.....B..... of .....County.	For Governor, <input type="checkbox"/> G.....H..... of .....County.	For Governor, <input type="checkbox"/> M.....N..... of .....County.	For Governor, <input type="checkbox"/> S.....T..... of .....County.
For Lieutenant Governor, <input type="checkbox"/> C.....D..... of .....County.	For Lieutenant Governor, <input type="checkbox"/> I.....J..... of .....County.	For Lieutenant Governor, <input type="checkbox"/> O.....P..... of .....County.	For Lieutenant Governor, <input type="checkbox"/> U.....V..... of .....County.
For Judge of Supreme Court,* <input type="checkbox"/> E.....F..... of .....County.	For Judge of Supreme Court,* <input type="checkbox"/> K.....L..... of .....County.	For Judge of Supreme Court,* <input type="checkbox"/> Q.....R..... of .....County.	For Judge of Supreme Court,* <input type="checkbox"/> W.....X..... of .....County.

When a constitutional amendment or other public measure is to be voted upon by the electors, it shall be printed in full upon

*Chapter 104, Acts Thirty-fifth General Assembly, provides for non-partisan nomination and election of Supreme, District and Superior Judges. [Supp. to C. 1913, §§ 1037-b to 1037-b5.]

a separate ballot, preceded by the words, "Shall the following amendment to the constitution (or public measure) be adopted?" and upon the right hand margin, opposite these words, two spaces shall be left, one for votes favoring such amendment or public measure, and the other for votes opposing the same. In one of these spaces the word "yes" or other word required by law shall be printed; in the other, the word "no" or other word required, and to the right of each space a square shall be printed to receive the voting cross, all of which shall be substantially in the following form:

"Shall the following amendment to the constitution (or public measure) be adopted?"

(Here insert in full the proposed constitutional amendment or public measure.)

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

The elector shall designate his vote by a cross mark, thus X, placed in the proper square. At the top of such ballots shall be printed the following words, enclosed in brackets: [Notice to voters. For an affirmative vote upon any question submitted upon this ballot make a cross (x) mark in the square after the word "Yes." For a negative vote make a similar mark in the square following the word "No."] If more than one constitutional amendment or public measure is to be voted upon, they shall be printed upon the same ballot, one below the other, with one inch space between each constitutional amendment or public measure that is to be submitted. All of such ballots for the same polling-place shall be of the same size, similarly printed, upon yellow colored paper. On the back of each such ballot shall be printed appropriate words, showing that such ballot relates to a constitutional or other question to be submitted to the electors, so as to distinguish the said ballots from the official ballot for candidates for office, and a facsimile of the signature of the auditor or other officer who has caused the ballot to be printed. Such ballots shall be endorsed and given to each voter by the judges of election, as provided in section eleven hundred and sixteen (1116), and shall be subject to all other laws governing ballots for candidates, so far as the same shall be applicable. [26 G. A., ch. 68, §§ 14, 16; 24 G. A., ch. 33, §§ 11-13.] [28 G. A., ch. 35, § 1.] [31 G. A., chs. 43-44.]

Sec. 1107. Printing. For all elections held under this chapter, except those of cities or towns, the county auditor shall have charge of the printing of ballots in his county, and shall cause to be placed thereon the names of all candidates which have been certified to him by the secretary of state, in the order the same appear upon the certificate issued by the secretary of state, together with those of all other candidates to be voted for thereat, whose nominations have been made in conformity with law. If a township election precinct includes a town or any part thereof, the names of nominees for township assessors shall not be placed upon the official ballot for that precinct. In city or town elections, the clerk shall have charge of the printing of the ballots, and shall cause to be placed thereon the names of all candidates to be voted for thereat, whose nominations have been made as provided in this chapter; and in either case such ballots shall be furnished the election judges at the polling place in each precinct not less than twelve hours before the opening of the polls on the morning of the election. [24 G. A., ch. 33, § 15.]

Where the auditor refused to furnish ballots containing the names of persons who it was claimed had been properly put in nomination to be voted for at a town election and the officers of the town thereupon caused to be printed ballots containing such names, which ballots were distributed by the officers of election and used by the voters, *held*, that these ballots were not such as were contemplated by law and that the election was wholly invalid, and that this must be the result whether the law in this respect is to be deemed mandatory or only directory. *State ex rel v. Smith*, 63 N. W., 453. [Now see § 1122.] 94-616.

Sec. 1108. Vacancies filled. The name supplied for a vacancy by the certificate of the secretary of state, or by nomination certificates or papers for a vacancy filed with the county auditor, or city or town clerk, shall, if the ballots are not already printed, be placed on the ballots in place of the name of the original nominee, or, if the ballots have been printed, new ballots, whenever practicable, shall be furnished. Whenever it may not be practicable to have new ballots printed, the election officers having charge of them shall place the name supplied for the vacancy upon each ballot used before delivering it to the judges of election. If said ballots have already been delivered to the judges of election, said auditor or clerk shall immediately furnish the name of such substituted nominee to all judges of election within the territory in which said nominee may be a candidate, and such election officer having charge of the ballots shall place the name supplied for the vacancy upon each ballot issued before delivering it to the voter, by affixing a paster, or by writing or stamping the name thereon. [Same, §§ 11, 12.]

Sec. 1109. Method of printing. The ballot shall be on plain white paper, through which the printing or writing cannot be read. The party name or title shall be printed in capital letters, not less than one-fourth of an inch in height. The names of candidates shall be printed in capital letters not less than one-eighth nor more than one-fourth of an inch in height, and, at the beginning of each line in which the name of a candidate is printed, a square shall be printed, the sides of which shall not be less than one-fourth of an inch in length. On the back or outside of the ballot, so as to appear when folded, shall be printed the words "official ballot," followed by the designation of the polling place for which the ballot is prepared, the date of the election, and a facsimile of the signature of the auditor or other officer who has caused the ballot to be printed. [26 G. A., ch. 68, § 14.] [31 G. A., ch. 44, § 2.]

Sec. 1110. Delivery of official ballots to judges. Ballots shall be printed and in the possession of the officer charged with their distribution at least two days before the election, and subject to the inspection of candidates and their agents. If mistakes are discovered, they shall be corrected without delay, in the manner provided in this chapter. The officers charged with the printing of the ballots shall cause to be delivered to the judges of election seventy-five ballots, of the kind to be voted in such precinct, for every fifty votes or fraction thereof cast therein at the last preceding election of state officers. Such ballots shall be put up in separate sealed packages, with marks on the outside, clearly designating the polling place for which they are intended and the number of ballots inclosed, and receipt therefor shall be given by the judge or judges of election to whom they are delivered, which receipt shall be preserved by the officer charged with the printing of the ballots. Any officer charged with the printing and distribution of ballots shall provide and retain at his office an ample supply of ballots, in addition to those distributed to the several voting precincts, and if at any time the ballots furnished to any precinct shall be lost, destroyed or exhausted before the polls are closed, on written application, signed by a majority of the judges of such precinct, or signed and sworn to by one of such judges, he shall immediately cause to be delivered to such judges, at the polling place, such additional supply of ballots as may be required, and sufficient to comply with the provisions of this chapter. For general elections, the supply of ballots so retained shall

only equal the number provided for the precinct casting the largest vote at the preceding general election, and shall include only the portions of the various tickets to be voted for throughout the entire county, with blank spaces in which the names of candidates omitted may be written by the voter, and with blank spaces in the indorsement upon the back of such ballots, in which the name of the precinct shall be written by the judges of election. [26 G. A., ch. 68, § 15.]

Sec. 1111. Card of instructions. The officer whose duty it is to have the ballots printed shall cause to be copied upon cards in large, clear type, under the heading "Card of Instructions," the following matters for the guidance of the voters:

1. The manner of obtaining ballots;
2. The manner of marking ballots;
3. That unmarked or improperly marked ballots will not be counted;
4. The method of gaining assistance in marking ballots;
5. That any erasures or identification marks, or otherwise spoiling or defacing a ballot, will render it invalid;
6. Not to vote a spoiled or defaced ballot;
7. How to obtain a new ballot in place of a spoiled or defaced one;
8. Upon the right of an employe to absent himself for two hours for the purpose of voting, by application for leave so to do made before the day of election, without deduction from his salary or wages;
9. Any other matters thought necessary.

Such instructions shall be prepared by the attorney-general and delivered to the secretary of state, who shall cause copies of the same to be furnished to the county auditor of each county. New or amended instructions may be so prepared from time to time, if thought necessary, and copies thereof furnished to the county auditors, who shall furnish to the judges of election a sufficient number of such cards of instruction as will enable them to comply with the provisions of this chapter. [Same, § 17.]

Sec. 1112. Cards posted—publication of ballot. The judges of election shall cause at least one of each of such cards to be posted in each voting booth or apartment provided for the preparation of ballots, and not less than four, with an equal number of sample ballots, in and about the polling place, upon the day of election before the opening of the polls. The county auditor shall cause

to be published, prior to the day of election, in two newspapers, if there be so many published in such county, selecting, if possible, papers representing the political parties which cast at the preceding general election the largest number and the next largest number of votes, a list of all the nominations made, as herein provided, and to be voted for at such election, as near as may be in the form in which they shall appear upon the general ballot, but such publication shall not include portions of the ballot relating to township, city or town officers. [Same, § 18.]

Sec. 1113. Polling places—voting booths. In townships the trustees, and in cities and towns the mayor and clerk, shall provide suitable places in which to hold all elections provided for in this chapter, and see that the same are warmed, lighted, and furnished with proper supplies and conveniences, including a sufficient number or supply of booths, shelves, pens, penholders, ink, blotters and pencils to enable the voter to prepare his ballot for voting, screened from all observation as to the manner in which he does so. A guard rail shall be so constructed and placed that only such persons as are inside such rail can approach within six feet of the ballot box, or of the booths. The voting booths shall be so arranged that they can only be reached by passing within said guard rail, and so that they shall be in plain view of the election officers, and both booths and ballot boxes shall be in plain view of persons outside of the guard rail. Each booth shall be at least three feet square, and have three sides inclosed, the side in front to open and shut by a door swinging outward, or closed with a curtain. Each side of the booth shall be seven feet high, and the door or curtain shall extend to within two feet of the floor, and shall be closed while the voter is preparing his ballot. Each booth shall contain a shelf at least one foot wide, at a convenient height for writing, and shall be well lighted. The booths and compartments shall be so built and arranged, if possible, as to be permanent, so that after the election they may be taken down and deposited with the township, city or town clerk, as the case may be, for safekeeping and for future use. The number of voting booths shall not be less than one to every sixty voters or fraction thereof who voted at the last preceding election in the precinct. In precincts outside of cities and towns the election shall, if practicable, be held in the public school building, for the use of which there shall be no charge, but all damage to the building or furniture shall be paid by the county. [Same, § 20.]

Sec. 1114. Ballot furnished to voter. The judges of election of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall give his name, and, if required, his residence, to such judges, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear and audible. In precincts where registration is required, if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat such name in the same manner; if the name of the person desiring to vote is not found on the register of voters, his ballot shall not be received until he shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. [Same, § 19.]

Sec. 1115. Challenges. Any person offering to vote may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified; and he shall not receive a ballot from a voter who is challenged, until such voter shall have established his right to vote. When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him under oath touching his qualifications as a voter. In all precincts where registration is not required, and in other precincts where the name of such voter is entered upon the registration lists, if the person challenged insists that he is qualified, and the challenge is not withdrawn, one of the judges shall tender to him the following oath: "You do solemnly swear that you are a citizen of the United States, that you are a resident in good faith of this precinct, that you are twenty-one years of age as you verily believe, that you have been a resident of this county sixty days, and of this state six months next preceding this election, and that you have not voted at this election," and if he takes such oath, his vote shall be received. [Same, § 21; C. '73, §§ 619, 620; R., §§ 493-4; C. '51, §§ 258-9.]

The duties and powers conferred by this section on judges of election, are ministerial and such judges can not refuse to administer the oath provided for or to receive the ballot after the oath has been taken. *Lane v. Mitchell*, 153-139.

A wilful and malicious refusal to receive a ballot which the voter is entitled to cast, may subject an election judge to liability beyond merely nominal damages. *Ibid.*

Sec. 1116. Method of voting. Any voter entitled to receive a ballot under the provisions of this chapter shall be allowed to

enter the space enclosed by the guard rail. One of the judges shall give him one, and only one, ballot, on the back of which such judge shall indorse his initials, in such manner that they may be seen when the ballot is properly folded, and the voter's name shall immediately be checked on the registry list. The name of each person, when a ballot is delivered to him, shall be entered by each of the clerks of election in the poll-book kept by him, in the place provided therefor. [24 G. A., ch. 33, § 21; C. '73, § 621; R., § 495; C. '51, § 260.]

Sec. 1117. Depositing ballot. On receipt of the ballot, the voter shall, without leaving the enclosed space, retire alone to one of the voting booths, and without delay mark his ballot, and, before leaving the voting booth, shall fold the same in such manner as to conceal the marks thereon, and deliver the same to one of the judges of election, but the number of the voter on the poll-books or register lists shall not be indorsed on the back of his ballot. One of the judges of election shall thereupon, in the presence of the voter, deposit such ballot in the ballot box, but no ballot without the official indorsement shall be allowed to be deposited therein. The voter shall quit said enclosed space as soon as he has voted. Any voter who, after receiving an official ballot, decides not to vote, shall, before retiring from within the guard rail, surrender to the election officers the official ballot which has been given him, and such fact shall be noted on each of the poll lists. A refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties provided in this chapter. No voter shall vote or offer to vote any ballot except such as he has received from the judges of election in charge of the ballots. No person shall take or remove any ballot from the polling place before the close of the poll. No voter shall be allowed to occupy a voting booth already occupied by another, nor remain within said inclosed space more than ten minutes, nor to occupy a voting booth more than five minutes, in case all of said voting booths are in use and other voters waiting to occupy the same, nor to again enter the inclosed space after having voted; nor shall more than two voters in excess of the whole number of voting booths provided be allowed at any one time in such inclosed space, except by the authority of the election officers to keep order and enforce the law. [24 G. A., ch. 33, §§ 20-2, 25; C. '73, § 617; R., § 492; C. '51, § 257.]

A ballot not bearing endorsement of the judge should not be counted. *Kelso v. Wright*, 110-560.

Sec. 1118. Assistance to vote. Any voter who may declare upon oath that he cannot read the English language, or that, by reason of any physical disability, he is unable to mark his ballot, shall, upon request, be assisted in marking the same by two of the election officers of different political parties, to be selected from the judges and clerks of the precinct in which they are to act, to be designated by the judges of election of each precinct at the opening of the polls. Such officers shall mark the ballot as directed by the voter, and shall thereafter give no information regarding the same. The clerks of election shall enter upon the poll lists, after the name of any elector who received such assistance in marking his ballot, a memorandum of the fact. Intoxication shall not be regarded as a physical disability, and no intoxicated person shall be entitled to assistance in marking his ballot. [24 G. A., ch. 33, § 23.]

Sec. 1119. Marking the ballot. Upon retiring to the voting booth, the voter shall prepare his ballot by placing a cross in the square opposite the name of each candidate for whom he desires to vote. The voter may also insert in writing, in the proper place, the name of any person for whom he desires to vote, making a cross opposite thereto. The writing of such name without making a cross opposite thereto, or the making a cross opposite such blank without writing a name therein shall not affect the validity of his vote. [24 G. A., ch. 33, § 22.] [28 G. A., ch. 36, § 1.] [31 G. A., ch. 44, § 3.]

The law does not recognize the writing of the name of a candidate on the ballot, except by inserting it in the ballot in the proper place, with a cross in the square opposite the name as written. *Voorhees v. Arnold*, 108-77.

The amendment of this section, made by 28 G. A., chap. 36, held not applicable in a case tried and appealed before the amendment went into effect. *Morrison v. Pepperman*, 112-471.

The statute providing for primary elections in cities adopting the commission form of government is not to be construed as preventing the electors from voting for any candidates of their choice. *Eckerson v. Des Moines*, 137-452.

Sec. 1120. How counted. Ballots marked as provided in the preceding section shall be counted for the candidates designated by the marks in the squares. When only one candidate for any office is to be elected, if the voter marks in squares opposite the names of more than one candidate therefor, such vote shall not be counted for such office. When two or more officers of the same kind are to be elected, if more squares opposite the names of candidates for such office are marked than there are officers to be

elected to such office, the ballot shall not be counted for any such candidates. If for any reason it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office. Any ballot marked by the voter in any other manner than as authorized in this chapter, and so that such mark may be used for the purpose of identifying such ballot, shall be rejected. [24 G. A., ch. 33, §§ 22, 27.] [31 G. A., ch. 44, § 4.]

The law by implication prohibits any person, including the voter, from so marking the ballot that the mark may be used for the purpose of identification, and a ballot so marked should be rejected. The unauthorized marks, to be objectionable as identification marks, must be deliberately made, and not merely accidentally, or as the result of inexperience. Whether the marks in particular cases are identification marks is for the jury. The question is whether there has been a deliberate departure in the marking, and in a way that might enable the marks to be used to identify the ballot. *Voorhees v. Arnold*, 108-77.

What constitutes an identifying mark upon a ballot is generally a question of fact for the trial court, and its finding, or the finding of the jury, if the case is submitted to the jury, is conclusive upon appeal. The unnecessary marking of a cross in the square below the marked circle does not affect the validity of the ballot. *Kelso v. Wright*, 110-560.

Where a ballot had crosses in squares opposite all the names on the republican ticket, except that of the candidate for township trustee, and as to that office had a cross on another ticket in front of a blank space, held that it was properly rejected. *Morrison v. Pepperman*, 112-471.

This section makes the cross in the circle effective as a vote for all names printed upon the ticket below it, and if in front of the name of the candidate to any office there is a blank in such ticket, then a cross on another ticket for such office will authorize the counting of the ballot for the candidate thus designated. *Spurrier v. McLennan*, 115-461.

Whether unnecessary crosses in places where no provision for marking with a cross is made, as for instance in front of the names of the candidates for president and vice-president, constitute identifying marks such as to vitiate the ballot is a question of fact for the trial court. *Ibid.*

Where there is a cross in the circle marked at the head of one ticket, the marking of a cross in the square before the name on another ticket has no effect other than to nullify the vote for the officer thus doubly voted for. This rule is in nowise altered by the marking of the squares below the marked circle. *Ibid.*

Sec. 1121. Voting mark—spoiled ballots. The voting mark shall be a cross in the square opposite to the name of the candidate for whom the voter desires to vote. Any voter who shall spoil his ballot may, on returning the same to the judges, receive another in place thereof, but no voter shall receive more than three ballots, including the one first delivered to him. None but ballots provided in accordance with the provisions of this chapter shall be counted. [24 G. A., ch. 33, §§ 22, 25.] [31 G. A., ch. 44, § 5.]

The provisions of this section are mandatory. *Lehigh Sewer Pipe & Tile Company, v. Town of Lehigh*, 156-386,

Sec. 1122. **Defects in printed ballot.** No ballot properly marked by the voter shall be rejected because of any discrepancy between the printed ballot and the nomination paper or certificate of nomination, and shall be counted for the candidate or candidates for such offices named in the nomination paper or certificate of nomination. No ballot furnished by the proper officer shall be rejected for any error in stamping or writing the indorsements thereon by the officials charged with such duties, nor because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any precinct or polling place, but any ballot delivered by the proper official to any voter shall, if properly marked by the voter, be counted as cast for all candidates for whom the voter had the right to vote, and for whom he has voted.

The act of the judges in correcting the name of a candidate on the official ballots properly furnished to them, *held* not to render the ballots void. *Cook v. Fisher*, 69 N. W., 264. 100-27.

The ballot law is mandatory in the sense that it requires in the preparation of the official ballot strict compliance with all its provisions, but not in the sense that the voter's right to exercise the elective franchise will be lost because of some technical mistake in printing the names of candidates upon the ballot. *Ibid.*

While none but official ballots are to be used or counted, there is no affirmative declaration that the correction of official ballots will render them void. *Ibid.*

The election law was enacted to aid the elector in expressing his free choice and not by technical obstructions to make the right of voting difficult and insecure. When the elector receives a ballot from the proper officials he may rely upon it as genuine and, when properly marked by him, have it counted for all candidates for whom he had the right to vote and did vote. There is a distinction between errors of officers which would have the effect to deprive voters of the franchise and a disregard of the law by the electors themselves. *State v. Bernholtz*; 106-157.

Sec. 1123. **Employes.** Any person entitled to vote at a general election shall, on the day of such election, be entitled to absent himself from any services in which he is then employed for a period of two hours, between the time of opening and closing the polls, which period may be designated by the employer, and such voter shall not be liable to any penalty, nor shall any deduction be made from his usual salary or wages, on account of such absence, but application for such absence shall be made prior to the day of election. Any employer who shall refuse to an employe the privilege, conferred by this section, or shall subject such employe to a penalty or reduction of wages because of the exercise of such privilege, or shall in any manner attempt to influence or control such employe as to how he shall vote, by offering any reward, or

threatening discharge from employment, or otherwise intimidating or attempting to intimidate such employe from exercising his right to vote, shall be punished by a fine of not less than five nor more than one hundred dollars. [24 G. A., ch. 33, § 24.]

Sec. 1124. Persons at polling place. No persons shall, during the receiving and counting of the ballots at any polling place, loiter, or congregate, or do any electioneering or soliciting of votes, within one hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, or stairway, or other means of reaching such room, nor shall any person interrupt, hinder or oppose any voter while approaching or leaving the polling place for the purpose of voting; but any person who is by law authorized to perform or is charged with the performance of official duties at the election, and any number of persons, not exceeding three from each political party having candidates to be voted for at such election, to act as challenging committees, who are appointed and accredited by the executive or central committee of such political party or organization, respectively, or of persons not exceeding three from each of such political parties, appointed and accredited in the same manner as above prescribed for challenging committees, to witness the counting of ballots, may be present at the polling place. [Same, § 26; 22 G. A., ch. 48, § 9; 21 G. A., ch. 161, § 13.]

Sec. 1125. Special policemen. The city council shall detail and employ, on the nomination of the principal political committee of each political party recognized as the two leading parties, from citizens, or the police force of the city, from two to four special policemen for each precinct, and fully empower them for the special occasion of each election, who shall be men of good character and reputation, in equal numbers from each of the leading political parties, to prevent the violation of any of the terms, provisions or requirements of this chapter, or of any other command made in pursuance of any provisions hereof, and no other peace officer than those above named shall exercise his authority for preserving order at or within one hundred feet of such voting places, unless called in by an emergency. If no policeman be in attendance, the judges of election may appoint one or more specially, by writing, who shall have all the powers of such special policeman. [22 G. A., ch. 48, § 9; 21 G. A., ch. 161, § 13.]

Special policemen, appointed by the city council on the nomination of political parties, are not entitled to compensation either from the city or the county, as the statute makes no provision for such compensation. *Mousseau v. Sioux City*, 113-246.

See § 1129.

Sec. 1126. Constables. Except in voting precincts within any city, any constable of the township, who may be designated by the judges of election, shall attend at the place of election; if none attend, the judges of the election may, in writing, specially appoint one or more, who shall have all the powers of a regular constable. [C. '73, § 612; R., § 487; C. '51, § 252.]

Sec. 1127. Preserving order. All special policemen and constables are authorized and required to preserve order and peace at all places of election, and such special policemen, constables, and all other persons are authorized and required to obey the lawful orders and commands of said judges of election given to prevent violations of this chapter. [22 G. A., ch. 48, § 9; 21 G. A., ch. 161, § 13; C. '73, § 612; R., § 487; C. '51, § 252.]

Sec. 1128. Arrest of disorderly persons. If any person conducts himself in a noisy, riotous, tumultuous or disorderly manner at or about the polls, so as to disturb the elections, or insults or abuses the judges or clerks of election, or commits a breach of the peace, or violates any of the provisions of this chapter, the judges or clerks of the election, or any of them, shall order the arrest of any such person, and the constable or any special policeman may forthwith arrest him and bring him before the judges of election, and they, by a warrant under their hands, may commit him to the jail of the county for a term not exceeding twenty-four hours, but they shall permit him to vote. [22 G. A., ch. 48, § 9; 21 G. A., ch. 161, § 13; C. '73, § 613; R., § 488; C. '51, § 253.]

Sec. 1129. Expenses—special policemen—compensation. The special policemen appointed under the provisions of this chapter shall be entitled to receive two dollars (\$2) a day as compensation for their services, which with the expense of providing booths, guard rails, and other things required in this chapter shall be paid in the same manner as other election expenses. The printing and distributing of ballots and cards of instruction to the voters, described in this chapter, for any general election, shall be at the expense of the county, and shall be provided for in the same manner as other county election expenses. The printing and distribution of ballots for use in city elections shall be at the expense of

the city or town in which the election shall be held. [24 G. A., ch. 33, §§ 2, 20.] [30 G. A., ch. 39.]

The provisions of this section do not cover compensation of special policemen appointed under code par. 1125. *Mousseau v. Sioux City*, 113-246.

Sec. 1130. Ballot boxes. The board of supervisors shall provide for each precinct in the county, for the purpose of elections, one box, with lock and key. When any township precinct includes a town or part thereof, together with territory outside the limits of such town, the township trustees shall prepare a separate ballot box to receive the votes for township assessor, which shall be on separate ballots, and only the ballots of persons living outside of the limits of such town shall be placed in said ballot box. The judges of election shall place each ballot in its proper ballot box. The judges of election shall have the right to administer an oath to any voter, and to examine him under oath as to the assessor for whom such elector is entitled to vote. [17 G. A., ch. 71, §§ 2, 3; C. '73, § 614; R., § 489; C. '51, § 254.] [29 G. A., ch. 53, § 2.]

Sec. 1131. Voting by women. At all elections where women may vote, no registration of women shall be required; separate ballots shall be furnished for the question on which they are entitled to vote; a separate ballot box shall be provided in which all ballots cast by them shall be deposited, and a separate canvass thereof made by the judges of the election, and the returns thereof shall show such vote. The right of any citizen to vote at any city, town or school election, on the question of issuing any bonds for municipal or school purposes, and for the purpose of borrowing money, or on the question of increasing the tax levy, shall not be denied or abridged on account of sex. [25 G. A., ch. 39.]

Women have the right to vote at city elections on question involving either the issuance of bonds or increasing of taxation. *Coggeshall v. Des Moines*, 138-730.

These provisions as to women voting at municipal elections in certain cases, are not unconstitutional. *Ibid.*

While these provisions are not unconstitutional, they do not make women qualified electors, within the proper meaning of that term. *In re application of Carragher*, 149-225.

Sec. 1132. Registry and poll books. The county auditor shall prepare and furnish to each precinct two poll-books, having each of them a sufficient column for the names of the voters, a column for the number, and sufficient printed blank leaves to contain the entries of the oaths, certificates and returns; and also all books, blanks and materials necessary to carry out the provisions of the

chapter on registration of voters. [C. '73, § 615, R., § 490; C. '51, § 255.]

It is not required that the poll lists show in what town in the county the voter resides. *Porter v. Butterfield*, 116-725.

Sec. 1133. Penalty. Any person violating or attempting to violate any provisions or requirements of this chapter or failing or refusing to comply with any order or command of an election officer, made in pursuance of the provisions of this chapter, shall be punished by a fine of not less than fifty, nor more than two hundred dollars, or by imprisonment of not less than twenty days, nor more than six months, in the county jail. [22 G. A., ch. 48, § 9; 21 G. A., ch. 161, § 13.]

Sec. 1134. Interference with voters. No person shall on election day do any electioneering or solicit votes within any polling place, or within one hundred feet therefrom, as defined in this chapter, or interrupt, hinder or oppose any voter while approaching the polling place for the purpose of voting; nor shall any voter, except as provided by law, allow his ballot to be seen by any person, or make a false statement as to his inability to mark his ballot; nor shall any person interfere or attempt to interfere with any voter when inside the inclosed space, or when marking his ballot, or endeavor to induce any voter, before voting, to show how he marks or has marked his ballot; nor shall any person mark, or cause in any manner to be marked, on any ballot any character for the purpose of identifying such ballot. Any violation of the provisions of this section shall be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days in the county jail, or by both fine and imprisonment. [24 G. A., ch. 33, §§ 26, 27.]

Sec. 1134-a. Position promised for support. It shall be unlawful for any candidate for any office to be voted for at any primary, municipal or general election, prior to his nomination or election, to promise either directly or indirectly, to support or use his influence in behalf of any person or persons for any position, place, or office, or to promise directly or indirectly to name or appoint any person or persons to any place, position or office in consideration of any person or persons supporting him or using his, her or their influence in securing his or her nomination, election or appointment. [35 G. A., ch. 303, § 1.]

Sec. 1134-b. Influence promised for support. It shall be unlawful for any person to solicit from any candidate for any office to be voted for at any primary, municipal or general election, or any candidate for appointment to any public office, prior to his nomination, election or appointment, to promise directly, or indirectly, to support or use his or her influence in behalf of any person or persons for any position, place or office, or to promise either directly or indirectly to name or appoint any person or persons to any place, position or office in consideration of any person or persons supporting him or her, or using his, her or their influence in securing his or her nomination, election or appointment. [35 G. A., ch. 303, § 2.]

Sec. 1134-c. Violation—penalty. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and punished as provided in section eleven hundred thirty-seven-a-six (1137-a-6) supplement to the code, 1907. [35 G. A., ch. 303, § 3.]

Sec. 1135. Defacing posted lists or cards. Any person who shall, prior to any election, wilfully destroy or deface any list of candidates posted in accordance with the provisions of this chapter, or who, during an election, shall wilfully deface, tear down, remove or destroy any card of instruction or specimen ballot printed and posted for the instruction of voters, or who shall, during an election, wilfully remove or destroy any of the supplies or conveniences furnished to enable voters to prepare their ballots, or shall wilfully hinder the voting of others, shall be punished by a fine of not less than ten nor more than one hundred dollars, or imprisonment for not less than ten nor more than thirty days, or by both fine and imprisonment. [Same, § 28.]

Sec. 1136. Forgery of papers or ballots. Any person who shall falsely make, or wilfully destroy, any certificate of nomination or nomination papers, or any part thereof, or any letter of withdrawal, or file any certificate of nomination, or nomination papers, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination, or nomination papers, or any part thereof, which have been duly filed, or forge or falsely make the official indorsement on any ballot, or substitute therefor any spurious or counterfeit ballot, or make, use, circulate, or cause to be made or circulated as an official ballot, any paper printed in imitation or resemblance thereof, or wilfully destroy or deface any ballot, or wilfully delay the delivery of any ballots,

shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years, or by both fine and imprisonment. [Same, § 29.]

Sec. 1137. Official neglect or misconduct. Any public officer upon whom a duty is imposed by this chapter, who shall wilfully neglect to perform such duty, or who shall wilfully perform it in such a way as to hinder the object thereof, or shall disclose to any one, except as may be ordered by any court of justice, the contents of any ballot, as to the manner in which the same may have been voted, shall be punished by a fine of not less than five nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one nor more than five years, or by both fine and imprisonment. [Same, § 30.]

PART IV

DIVISION 2.

JUDGES OF ELECTION TO SELECT JURORS.

Section 332. **Competency to act.** All qualified electors of the state, of good moral character, sound judgment, and in full possession of the senses of hearing and seeing, and who can speak, write and read the English language, are competent jurors in their respective counties. [26 G. A., ch. 61, § 1; 25 G. A., ch. 70, § 1; C. '73, § 227; R., § 2720; C. '51, § 1630.]

Under certain facts, *held*, that a juror was incompetent as not being a qualified elector; also *held*, that an objection to the competency of a juror should be interposed when he is sworn, but, if not then known, may be interposed after verdict. *State v. Groome*, 10-308.

As to who are electors, see Const., art. II, § 1.

A judgment rendered upon a verdict by a jury, some members of which are disqualified, is erroneous, but not void; it might be reversed upon appeal, but it cannot be disregarded as a nullity. *Foreman v. Hunter*, 59-550.

The former requirement that jurors be chosen from the body of the county was intended to prevent the selection of jurors resident out of the county, and did not require that jurors should be taken from all parts of the county; therefore, *held*, that a statute authorizing the holding of the district court in two places in a county, and providing that when held at one of these places the jurisdiction should be limited to certain townships, and the jurors should be selected from only these townships, did not interfere with the right of trial by jury. *Trimble v. State*, 2 G. Gr., 404.

Inability to read and write the English language is a ground of challenge, but the mere fact that the juror is shown to have signed his name by a mark on several occasions, does not prove his inability to write. *State v. Greenland*, 125-141.

The discretion of the trial court in passing upon the competency of a person to act as a juror on challenge will not generally be interfered with on appeal. *Harris v. Moore*, 112 N. W., 163.

The fact that a juror has a slight defect in one eye which does not deprive him in any degree of his sight does not render him incompetent. *State v. Norman*, 135-483.

Sec. 333. **Who exempt.** The following persons are exempt from liability to act as jurors: All persons holding office under the laws of the United States or this state; all practicing attorneys, physicians, registered pharmacists, dentists and clergymen; all acting professors or teachers of any college, school or other institution of learning; and all persons disabled by bodily infirmity, or over sixty-five years of age; active members of any

fire company; and any person who is conscientiously opposed to acting as a juror because of his religious faith. [26 G. A., ch. 61, § 2; C. '73, § 228; R., § 2721; C. '51, § 1631.] [33 G. A., ch. 19.]

If the jury list is made up from persons competent to serve as grand jurors and there is no showing of prejudice to defendant in the exclusion of any particular class of persons the failure to consider persons as competent who might have been selected will not be a ground of challenge to the grand jury. *State v. Pell*, 140-655.

The exemption is a personal privilege, which may be waived, and is not a ground for challenge. *State v. Adams*, 20-486; *State v. Edgerton*, 69 N. W., 280. See § 3692. 100-63.

Sec. 334. Who may be excused—false statements punished. Any person may also be excused from serving on a jury when his own interests or those of the public will be materially injured by his attendance, or when the state of his own health, or the death or sickness of a member of his family, requires his absence from court. Any person who knowingly makes any false affidavit, statement or claim, for the purpose of relieving himself from serving as a juror, OR ANY PERSON WHO REQUESTS THE JUDGES OF ELECTION TO RETURN HIS NAME AS SUCH JUROR, shall, upon conviction, be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days, or the court may punish such persons as for contempt. [26 G. A., ch. 61, § 3; 25 G. A., ch. 70, § 4; C. '73, § 229; R., § 2722; C. '51, § 1632.]

That jurors have been excused on their own statements, not under oath, is not ground of objection by the defendant in a criminal case, and he cannot have an attachment issued to compel the attendance of those so excused. *State v. Ostrander*, 18-435, 448.

Sec. 335. List to be made biennially. At the time of holding the general election in A. D. 1912, and biennially thereafter, lists shall be made from which to select persons to serve as grand and petit jurors and talesmen for the biennial period commencing with the first day of January next thereafter, as follows: One hundred fifty (150) persons in each county from which to select grand jurors; the number equal to one-fourth ($\frac{1}{4}$) of the whole number of qualified electors in said county, who voted in the last preceding general election as shown by the poll books of said election, from which to select petit jurors; and the number equal to thirty per cent (30%) of the whole number of qualified electors, who voted at the last preceding general election, as shown by the poll books of said election, in the city or town in which the district court is held and the township, or townships, in which

said city or town is located, from which to select talesmen; provided, however, that in no case shall such list for talesmen contain more than six hundred (600) names. [26 G. A., ch. 61, § 4; C. '73, § 234; C. '73, § 244; R., § 2738.] [33 G. A., ch. 20.] [34 G. A., ch. 17, § 2.]

Sec. 335-a. Talesmen list—how made. The talesmen list shall be made from names of persons who reside in the city or town in which the district court is held and the township or townships in which said city or town is located. [34 G. A., ch. 17, § 3.]

Sec. 335-b. How selected in counties holding court in more than one place. In counties where court is held in more than one place, the persons shall be selected from the qualified electors of the separate divisions of the county, giving to each division the number of grand jurors and petit jurors and talesmen to which it would be entitled, if it were a separate county. [34 G. A., ch. 17, § 4.]

Sec. 335-c. Length of service. No person on the list of grand jurors shall be eligible to serve as a grand juror except for one calendar year of the biennial period for which the list is made, and no person on the list of petit jurors shall be eligible to serve as a juror at more than one term of court during such biennial period. [34 G. A., ch. 17, § 5.]

Sec. 335-d. Validity of 1910 jury list not affected. Nothing herein shall be construed to affect the validity of the jury list, made at the time of holding the general election in A. D. 1910 in accordance with the provisions of chapter twenty (20) of the acts of the thirty-third (33d) general assembly for the biennial period commencing January 1st, 1911. [34 G. A., ch. 17, § 6.]

Sec. 336. Auditor to apportion. On or before the first Monday in September in each year, the county auditor shall apportion the number of grand and petit jurors to be selected among the several election precincts, and the talesmen among the precincts from which the same are to be drawn, in each case as nearly as practicable in proportion to the number of votes polled in such precincts at the last general election. [26 G. A., ch. 61, § 5; C. '73, § 236; R., § 2725; C. '51, § 1635.]

A substantial compliance with such provisions *held* sufficient. *State v. Edgerton*, 69 N. W., 280; *State v. Pierce*, 58 N. W., 891, 90-506.

Sec. 337. Judges of election to return names—if they fail, supervisors supply names—certain names to be omitted. The

auditor shall, at the time of furnishing the poll-books to the judges of election, furnish them also a statement of the number of persons apportioned to their respective precincts to be returned for each of the said jury lists, together with the names of all persons who have served as grand or petit jurors since January first preceding, which latter names shall be furnished to him by the clerk of the district court. The judges shall thereupon make the requisite selection, and return lists of names so selected to the auditor with the returns of elections; and in case the judges of election shall fail to make and return said lists as herein required, the board of supervisors shall, at the meeting held to canvass the votes polled in the county, make such lists for the delinquent precincts, and the auditor shall file such lists in his office, and cause a copy thereof to be recorded in the election book. Should no general election be held in the year one thousand nine hundred and five, the board of supervisors shall meet on the first Monday in December of said year and prepare the grand and petit jury lists from the poll-books returned from the various voting precincts of the county in the year one thousand nine hundred and four. Such lists shall be composed only of persons competent and qualified to serve as jurors; and the judges of election or boards of supervisors shall omit from said lists the name of any person who has served as a grand or petit juror in a court of record since January first preceding and shall also omit the name of any person who has served as judge or clerk of the general election in the year in which said jury list is prepared. And if the name of any such person is returned, the fact that he has requested to be so returned, or has served as such juror in a court of record during the jury year, as defined in this chapter, or has served as such judge or clerk of election as herein stated, shall be a ground for challenge for cause. THE MEMBERS OF THE ELECTION BOARD, OR THE BOARD OF SUPERVISORS, WHEN CERTIFYING TO SUCH LISTS, SHALL STATE THAT THE LISTS DO NOT CONTAIN THE NAME OF ANY PERSON WHO REQUESTED, DIRECTLY OR INDIRECTLY, THAT HIS NAME APPEAR THEREON AND THAT IT DOES NOT CONTAIN THE NAME OF ANY ONE WHO SERVED AS JUDGE OR CLERK OF THE GENERAL ELECTION IN THE YEAR IN WHICH THE LIST IS PREPARED. If the boundaries of any voting precinct shall be changed, it shall be the duty of the auditor, in making the apportionment of grand and petit jurors and talesmen to assign to the new voting

precincts the total number of grand and petit jurors and talesmen to which all the former precincts affected by the change were entitled, giving to each new precinct an equal number as nearly as possible. [26 G. A., ch. 61, § 6; C. '73, § 238; R., §§ 2727-8; C. '51, §§ 1637-8.] [29 G. A., ch. 20, § 1.] [33 G. A., ch. 21.]

A failure to record the names returned on the grand jury list does not invalidate proceedings of the grand jury drawn therefrom. *State v. Knight*, 19-94; *State v. Howard*, 10-101.

Where the judges of election and county canvassers each failed to make out and return names of jurors for one election precinct, but two names were supplied by the board of supervisors, which two jurors, however, were not drawn upon the grand jury, *held*, that the irregularity did not vitiate an indictment. *State v. Brandt*, 41-593.

No formal certificate of the judges to the lists so returned is necessary, though it would be proper. Where the record in the record book shows due and proper selection, the presumption is that such record was the result of the list duly made. When the law has been substantially complied with, an indictment should not be set aside for slight irregularities in such matters. *State v. Ansaleme*, 15-44.

It is not required that the records of the board of canvassers shall show that the selection of jurymen was made for precincts from which no returns were sent in. *State v. Carney*, 20-82.

A substantial compliance with the provisions of the law relating to the selection of jurymen is all that is required. *Ibid.*

Objections to a juror because he was the officer at the election required to return names of jurors, and requested a return of his own name, can not be made after the examination of the jurors, although the fact is not known until after verdict. *In re Goldthorp's Estate*, 115-430.

The act relating to selection of grand jurors which took effect July 1, 1895, did not render illegal grand jurors which had already been selected for the year under the old law. *State v. Wiltsey*, 103-54.

While the law requires grand jurors to be electors of the county, it does not require that a person must have voted or that his name be found upon the poll books, to make him eligible. Therefore a showing that the sheriff was unable to find a person of the name in the ward or city from which he was drawn, or that the county auditor could find no such name on the poll books does not show that the juror was not properly selected. *State v. Harris*, 122-78.

An order of the district court setting aside the jury list for irregularities is not binding on persons not parties to the proceedings. *Polk County v. District Court*, 133-710.

It is a ground for challenge that the juror has expressly requested that his name be placed on the list returned and the fact that the names of all the members of the election board in any precinct are placed on the list and returned as qualified jurors suggests that such names have been returned by mutual agreement or acquiescence which in law would amount to a request and such practice is to be condemned; but where it appeared that only two persons were returned who are members of election boards and those were from different districts and each testified that his name was placed on the list and returned against his express wish *held* that there was no ground to complain that the statute had been violated. *State v. Anderson*, 140-445.

Under this section as amended the fact that the name of a member of an election board appears upon a jury list does not invalidate an in-

dictment returned by the grand jury selected from such list. The burden is upon one who objects to the legality of the jury to show that such person sought or solicited appointment. *State v. Clark*, 141-297.

The district court has no doubt inherent power to set aside a list or panel of jurors on its own motion whenever it shall appear that a legal grand or trial jury cannot be drawn therefrom. *State v. Carter*, 144-371.

PART IV

DIVISION 3.

THE ELECTION OF PRESIDENTIAL ELECTORS.*

Section 1173. Election of. At the general election in the years of the presidential election, or at such other times as the congress of the United States may direct, there shall be elected by the electors of the state, one person from each congressional district into which the state is divided, as elector of president and vice-president, and two from the state at large, no one of whom shall be a person holding the office of senator or representative in congress, or any office of trust or profit under the United States. Such election shall be conducted, and the canvass of the votes and the returns thereof made, in the same manner as for state officers and representatives in congress. [16 G. A., ch. 23; C. '73, §§ 659, 660; R., §§ 535-6; C. '51, §§ 301-2.] [28 G. A., ch. 38, § 1.]

See U. S. Const., Art. II, § 1.

Sec. 1174. Meeting—certificate. The presidential electors shall meet in the capitol, at the seat of government, at noon of the second Monday in January after their election, or so soon thereafter as practicable. If, at the time of such meeting, any elector for any cause is absent, those present shall at once proceed to elect, from the citizens of the state, a substitute elector or electors, and certify the choice so made to the governor, and he shall immediately cause the person or persons so selected to be notified thereof. [22 G. A., ch. 50; C. '73, §§ 665-7; R., §§ 542-4; C. '51, §§ 308-10.]

Sec. 1175. Certificate of governor. When so met, the said electors shall proceed, in the manner pointed out by law, with the

*Chapter 111, Acts of Thirty-fifth General Assembly, provides for a primary election for the election of delegates and alternates to the national convention for party national committeeman and for election of delegates to county conventions. [See §§ 1087-a36 to 1087-a47, Primary Election Law.]

election and the governor shall duly certify the result thereof, under the seal of the state, to the United States secretary of state, and as required by act of congress relating to such elections. [22 G. A., ch. 50; C. '73, § 668; R., § 545; C. '51, § 311.]

Sec. 1176. Compensation. The electors shall each receive a compensation of five dollars for every day's attendance, and the same mileage as members of the general assembly. [C. '73, § 669; R., § 546; C. '51, § 312.]

PART IV

DIVISION 4.

USE OF VOTING MACHINES.

Sec. 1137-a7. Use of voting machines authorized. That at all state, county, city, town, primary and township elections, hereafter held in the state of Iowa, ballots or votes may be cast, registered, recorded, and counted by means of voting machines, as hereinafter provided. [28 G. A., ch. 37, § 1.] [33 G. A., ch. 72.]

Voting by a machine is voting by ballot within the constitutional provisions, and a court of equity has no authority to enjoin the use of a voting machine at an election, the right to vote being only a political and not a civil right. *United States Standard Voting Mch. Co. v. Hobson*, 132-38.

A tax payer cannot invoke the jurisdiction of a court of equity to restrain the performance of a contract by the board of supervisors for the purchase of voting machines on the ground that they are inefficient. *Shoemaker v. Des Moines*, 129-244.

A voter has no right which a court of equity will intervene to protect, with reference to the right to cast his ballot. *Ibid.*

Sec. 1137-a8. Board of supervisors to purchase, etc. Hereafter the board of county supervisors of any county, or the council of any incorporated city or town, in the state of Iowa may, by a two-thirds vote, authorize, purchase, and order the use of voting machines in any one or more voting precincts within said county, city, or town, until otherwise ordered by said board of county supervisors or city or town council. [28 G. A., ch. 37, § 2.]

Sec. 1137-a9. Commissioners—term—removal. Within thirty days after this act goes into effect, the governor shall appoint three commissioners and not more than two of whom shall be from the same political party. The said commissioners shall hold office for the term of five years, subject to removal at the pleasure of the governor. [28 G. A., ch. 37, § 3.]

Sec. 1137-a10. Examination of machine—report of commissioners—compensation. Any person or corporation owning or being interested in any voting machine may call upon the said commissioners to examine the said machine, and make report to the secretary of state upon the capacity of the said machine to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the secretary of state and shall state whether in their opinion the kind of machine so examined can be safely used by such voters at elections under the conditions prescribed in this act. If the report states that the machine can be so used, it shall be deemed approved by the commissioners, and machines of its kind may be adopted for use at elections as herein provided. Any form of voting machine not so approved cannot be used at any election. Each commissioner is entitled to one hundred and fifty dollars for his compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination. No commissioner shall have any interest whatever in any machine reported upon. Provided, that said commissioner shall not receive to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned into the state treasury. [28 G. A., ch. 37, § 4.]

Sec. 1137-a11. Provisions as to the construction of machine approved. A voting machine approved by the state board of voting machine commissioners must be so constructed as to provide facilities for voting for the candidates of at least seven different parties or organizations, must permit a voter to vote for any person for any office although not nominated as a candidate by any party or organization, and must permit voting in absolute secrecy. It must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is lawfully entitled to vote for more than one person for that office; and it must afford him an opportunity to vote for any or all persons for that office as he is by law entitled to vote for and no more, at the same time preventing his voting for the same person twice. It may also be provided with one ballot in each party column or row containing only the words "presidential electors" preceded by the party name, and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors.

Such machine shall be so constructed as to accurately account for every vote cast upon it. [28 G. A., ch. 37, § 5.]

Sec. 1137-a12. Experimental use. The board of supervisors of any county, the council of any city or town, may provide for the experimental use at an election in one or more districts, of a machine which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted. [28 G. A., ch. 37, § 6.]

Sec. 1137-a13. Duties of local authorities. The local authorities adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order, and shall thereafter keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election district or districts within the county, city, or town as the officers adopting the same may direct. [28 G. A., ch. 37, § 7.]

Sec. 1137-a14. Bonds, certificates of indebtedness, etc. The local authorities, on the adoption and purchase of a voting machine, may provide for the payment therefor in such manner as they may deem for the best interest of the locality, and may for that purpose issue bonds, certificates of indebtedness, or other obligations which shall be a charge on the county, city, or town. Such bonds, certificates, or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. [28 G. A., ch. 37, § 8.]

The county is given authority to issue bonds in the purchase of voting machines, with or without interest, payable at such time as may seem best. Impliedly it has the power to make such bonds negotiable in form and effect. *Security Trust Company v. Des Moines County*, (C. C.), 198 Fed., 331.

Sec. 1137-a15. Ballots—form. All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such party. The order of the list of candidates of the several parties or organizations shall be arranged as provided in section eleven hundred and

six (1106) of the code, except that the lists may be arranged in horizontal rows or vertical columns. [28 G. A., ch. 37, § 9.]

Sec. 1137-a16. Sample ballots. The officers or board charged with the duty of providing ballots for any polling-place shall provide therefor two sample ballots, which shall be arranged in the form of a diagram showing the entire front of the voting machine as it will appear after the official ballots are arranged for voting on election day. Such sample ballots shall be open to public inspection at such polling-place during the day of election and the day next preceding election day. [28 G. A., ch. 37, § 10.]

Sec. 1137-a17. Two sets of ballots. Two sets of ballots shall be provided for each polling-place for each election for use in the voting machine. [28 G. A., ch. 37, § 11.]

Sec. 1137-a18. Delivery of ballots. The ballots and stationery shall be delivered to the election board of each election district before ten o'clock in the forenoon of the day next preceding the election. [28 G. A., ch. 37, § 12.]

Sec. 1137-a19. Duties of election officers—*independent* ballots. The judges of election and clerks of each district shall meet at the polling-place therein, at least three-quarters of an hour before the time set for the opening of the polls at each election, and shall proceed to arrange within the guard-rail the furniture, stationery, and voting machines for the conduct of the election. The judges of election shall then and there have the voting machine, ballots, and stationery required to be delivered to them for such election; and, if it be an election at which registered voters only can vote, the registry of such electors required to be made and kept therefor. The judges shall thereupon cause at least two instruction cards to be posted conspicuously within the polling-place. If not previously done, they shall arrange in their proper place on the voting machine, the ballots containing the names of the offices to be filled at such election, and the names of the candidates nominated therefor. If not previously done, the machine shall be so arranged as to show that no vote has been cast, and the same shall not be thereafter operated, except by electors in voting. Before the polls are open for election, each judge shall carefully examine every machine and see that no vote has been cast, and the same shall be subject to inspection of the election officers. Ballots voted for any person, whose name does not appear on the machine as a nominated candidate for office, are herein referred to as *independent* ballots. When two or more persons are to be elected

to the same office, and the machine requires that all independent ballots voted for that office be deposited in a single receptacle or device, an elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. With that exception, and except for presidential electors, no independent ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any independent ballot so voted shall not be counted. An independent ballot must be cast in its appropriate place on the machine, or it shall be void and not counted. [28 G. A., ch. 37, § 13.]

Sec. 1137-a20. Voting machine in plain view—guard-rail. The exterior of the voting machine and every part of the polling-place shall be in plain view of the election officers. The voting machine shall be placed at least three feet from every wall and partition of the polling-place, and at least three feet from the guard-rail, and at least four feet from the clerk's table. A guard-rail shall be constructed at least three feet from the machine, with openings to admit electors to and from the machine. [28 G. A., ch. 37, § 14.]

Sec. 1137-a21. Method of voting. After the openings of the polls, the judges shall not allow any voter to pass within the guard-rail until they ascertain that he is duly entitled to vote. Only one voter at a time shall be permitted to pass within the guard-rail to vote. The operating of the voting machine by the elector while voting shall be secret and obscured from all other persons except as provided by this chapter in cases of voting by assisted electors. No voter shall remain within the voting machine booth longer than one minute, and if he shall refuse to leave it after the lapse of one minute, he shall be removed by the judges. [28 G. A., ch. 37, § 15.]

Sec. 1137-a22. Additional instructions. In case any elector after entering the voting machine booth shall ask for further instructions concerning the manner of voting, two judges of opposite political parties shall give such instructions to him; but no judge or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such elector shall vote as in the case of an unassisted voter. [28 G. A., ch. 37, § 16.]

Sec. 1137-a23. Injury to the machine. No voter, or other person, shall deface or injure the voting machine or the ballot thereon. It shall be the duty of the judges to enforce the provisions of this section. During the entire period of an election, at least one of their number, designated by them from time to time, shall be stationed beside the entrance to the booth and shall see that it is properly closed after a voter has entered it to vote. He shall also, at such intervals as he may deem proper or necessary, examine the face of the machine to ascertain whether it has been defaced, or injured, to detect the wrong-doer and to repair any injury. [28 G. A., ch. 37, § 17.]

Sec. 1137-a24. Canvass of vote. As soon as the polls of the election are closed, the judges of the election thereat shall immediately lock the voting machine against voting and open the counting compartments in the presence of all persons who may be lawfully within the polling-place, and proceed to canvass the vote. [28 G. A., ch. 37, § 18.]

Sec. 1137-a25. Judges to lock machine. The judges of election shall, as soon as the count is completed and fully ascertained as in this act required, lock the machine against voting, and it shall so remain for the period of thirty days. Whenever independent ballots have been voted, the judges shall return all of such ballots properly secured in a sealed package as prescribed by section eleven hundred and forty-two (1142) of the code. [28 G. A., ch. 37, § 19.]

Sec. 1137-a26. Written statements of election. After the total vote for each candidate has been ascertained, and before leaving the room or voting-place, the judges shall make and sign written statements of election, as required by the election laws now in force, except that such statements of the canvass need not contain any ballots except the independent ballots as herein provided. [28 G. A., ch. 37, § 20.]

Sec. 1137-a27. What statutes apply. All of the provisions of the election law now in force and not inconsistent with the provisions of this act shall apply with full force to all counties, cities, and towns adopting the use of voting machines. Nothing in this act shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures. [28 G. A., ch. 37, § 21.]

PART V

THE CANVASS OF VOTES.

DIVISION I.

CANVASS BY THE JUDGES OF ELECTION.

Section 1138. By judges. When the poll is closed, the judges of election shall forthwith, and without adjournment, canvass the vote and ascertain the result of it, comparing the poll lists and correcting errors therein. Each clerk shall keep a tally list of the count. The canvass shall be public, and each candidate shall receive credit for the number of votes counted for him. The candidate receiving the highest number of votes, if for an office in that precinct alone, shall be declared elected, and judges shall issue certificates accordingly. [C. '73, §§ 622-3, 626; R., §§ 496-7, 501; C. '51, §§ 261-2, 266.]

Sec. 1139. Defective ballots. If two or more marked ballots are so folded together as to appear to be cast as one, the judges shall indorse thereon "rejected as double." Such ballots shall not be counted, but shall be folded together and kept as hereinafter directed. Every ballot not counted shall be indorsed "defective" on the back thereof. Every ballot objected to by a judge or challenger, but counted, shall be indorsed on the back thereof, "objected to," and there shall also be indorsed thereon, and signed by the judges, a statement as to how it was counted. All ballots indorsed as required by this section shall be inclosed and securely sealed in an envelope, on which the judges shall indorse "disputed ballots," with a statement of the precinct in which, and date of the election at which, they were cast, signed by the judges. [24 G. A., ch. 33, § 25; C. '73, § 623; R., § 497; C. '51, § 262.]

Sec. 1140. Excess of ballots. If the ballots for any officer exceed the number of the voters in the poll lists, such fact shall be certified, with the number of the excess, in the return, and if the vote of the precinct where the error occurred would change the result as to a county officer, if the person appearing to be elected were deprived of so many votes, then the election shall be set aside as to him in that precinct, and a new election ordered therein; but no person residing in another precinct at the time of

the general election shall be allowed to vote at such special election. If the error occurs in relation to a township officer, the trustees may order a new election or not, in their discretion. If the error be in relation to a district or state officer, it, with the number of the excess, shall be certified to the state canvassers, and if the error would affect the result, a new vote shall be ordered in the precinct where the error happened, and the canvass be suspended until such new vote is taken and returned. When there is a tie vote and such an excess, there shall be a new election. [C. '73, § 627; R., § 498; C. '51, § 263.]

The meaning of the word "error" as here used would be more accurately expressed by the use of the word "excess." The supervisors should not order a new election for a county officer unless it appears that there is an excess of ballots as to that office. *Rankin v. Pitkin*, 50-313.

Evidence as to a mistake in a count of the ballots as to one candidate is immaterial upon the question as to whether there was a mistake in the count as to another candidate. *McIntosh v. Livingston*, 41-219.

Sec. 1141. Return of ballots not voted. Ballots not voted, or spoiled by voters while attempting to vote, shall be returned by the judges of election to the officer or authorities charged with their printing and distribution, and a receipt taken therefor, and they shall be preserved for six months. Such officer shall keep a record of the number of ballots delivered from each polling place, the name of the person to whom, and the time when, delivered, and enter upon such record the number and character of the ballots returned, with the time when and the person by whom they are returned. [24 G. A., ch. 33, § 25.]

Sec. 1142. Proclamation of result—preservation of ballots. When the canvass is completed, the clerks shall announce to the judges the total number of votes received by each candidate. One or more of their number shall then proclaim in a loud voice the total number of votes received by each of the persons voted for, and the office for which he is designated, as announced by said clerks, and the number of votes for, and the number of votes against, any proposition which shall have been submitted to a vote of the people. Immediately after making such proclamation, and before separating, the judges shall fold in two folds, and string closely upon a single piece of flexible wire, all ballots which have been counted by them, except those indorsed "rejected as double," "defective," or "objected to," unite the ends of such wire in a firm knot, seal the knot in such a manner that it cannot be untied without breaking the seal, inclose the ballots so strung in an envelope, and securely seal such envelope. The judges shall at once return all the ballots to the officer from whom

they were received, who shall carefully preserve them for six months. [Same, C, '73, § 630.]

Where the ballots are preserved as here required they are *prima facie* admissible in evidence in a contest as to the result of the election, but the opposite party may overcome this *prima facie* showing by proof of the alteration of the ballots after they were counted and it is not necessary that such alteration be pleaded in the proceedings under the contest. *Ferguson v. Henry*, 64 N. W., 292. 95-439.

The poll books and the registration lists prepared as provided by law furnish the best evidence as to who casts ballots at the election. So held where the question was as to the sufficiency of the petition of consent under the mulct tax law. *State v. Pressman*, 103-449.

The law provides for the strictest vigilance in the care and preservation of the ballots, and where it appears that these precautions have not been observed and there has been opportunity to tamper with them they will not be considered in an election contest for the purpose of overthrowing the result of the canvass by the proper officers. *Davenport v. Olerich*, 104-194.

The duty of preserving the ballots is not a negative one of non-interference, but a positive requirement to do whatever may be necessary in order to accomplish the purposes of the law in keeping them inviolate. *Ibid.*

The ballots when properly authenticated afford the very best evidence of who has been chosen by the electors to an office, but in order that the result of the canvass shall be overturned by the evidence of such ballots it must appear that they have been preserved with the care which precludes the suspicion of having been tampered with and the opportunity of alteration or change, and in a particular case, held that it appeared that there had been such opportunity for tampering with the ballots that they should not be considered for the purpose of overturning the result as announced by the canvassing board. *Ibid.*

The ballots should be preserved in such way as not to afford a reasonable possibility of their having been changed or tampered with by unauthorized persons. *Mentzer v. Davis*, 109-528.

As the manner and mode of preservation of ballots has been enjoined by statute, a substantial compliance therewith must be shown preliminary to the introduction of the ballots in evidence. This preliminary proof, unless waived, is essential to the competency of the ballots as evidence for any purpose as against the official count, and no averment in the pleading is required as a basis for an objection to their competency. *De-Long v. Brown*, 113-370.

The question of the competency of the ballots as evidence is one of fact to be determined by the trial court. *Ibid.*

Where it appeared that the ballots had been so kept that they might have been tampered with, held that they were not admissible. *Ibid.*

The fact that the ballots are in the custody of one acting as deputy auditor *de facto*, but not *de jure*, will not prevent their being received in evidence in an election contest. *Murphy v. Lentz*, 131-328.

The provisions as to the folding, wiring and sealing of the ballots by the election officers are directory in character, and mere irregularities will not prevent such ballots from being admissible in evidence in an election contest. *Ibid.*

The provisions of the statute with reference to the conduct of election officers upon whom duties are enjoined, are mandatory; but as to the particular methods of preserving the ballots they are directory only. *Ibid.*

Before the ballots are admissible as evidence in a case of contest it must be made to appear affirmatively by the contestants that they have

been preserved in the method required by statute; and where it appears that the custodian of ballots was personally interested in the result of the election his interest is a proper matter of consideration in determining whether they have been properly preserved. *Doak v. Briggs*, 139-520.

Sec. 1143. Destruction of ballots. The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the judges in counting or refusing to count ballots corrected by such court or tribunal. If at the expiration of six months no contest is pending, the officer having the ballots in custody, without opening the package in which they have been inclosed, shall, in the presence of two electors to be designated by the chairman of the board of supervisors, one each from the two leading political parties, or, in municipal elections, by the mayor of the city or town in which they are kept, destroy the same by burning, provided, however, that the ballots cast at a primary election shall, where no contest is pending, be destroyed ten days prior to the holding of the general election following the primary election at which said ballots were cast. If a contest is pending, the ballots shall be kept until the same is finally determined, and then so destroyed. [24 G. A., ch. 33, § 25.] [33 G. A., ch. 73.]

Sec. 1144. Return of board. A return shall be made in each poll book, giving, in words written at length, the whole number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office; which return shall be signed by the judges, and be substantially as follows:

At an election at the house of.....in.....township, or in....precinct of.....township, in.....county, state of Iowa, on the...day of....., A. D....., there were.....ballots cast for the office of (governor), of which

A.....B.....had.....votes.
C.....D.....had.....votes.

(And in the same manner for any other officer.)

A true return L——M—— }
N.....O..... } Judges of election.
P.....Q..... }

Attest: R.....S..... }
T.....U..... } Clerks of Election.

[19 G. A., ch. 163, § 14; C. '73, §§ 628, 661; R., §§ 502, 537; C. '51, §§ 261, 303.]

It is not fatal to the certificate that it does not contain full particulars of time and place. The caption and the certificate may be taken together. *Dishon v. Smith*, 10-212.

While the canvassers cannot adjudicate upon the sufficiency of returns, where the case comes into a court of justice the court or jury trying it may go behind the returns and even behind the ballot-box in some cases. *Ibid.*

Sec. 1145. Poll books returned and preserved. One of the poll books containing such return, with the register of election attached thereto, shall be delivered by one of the judges of election, within two days, to the county auditor. In township precincts, the other of said poll books, with the register of election attached, shall be delivered by one of the judges of election to the township clerk. In city precincts, the other of said poll books, with register of election attached, shall be delivered by one of the judges of election to the city clerk. In town elections, the other of said poll books, with register of election attached, shall be delivered by one of the judges of election to the town clerk. In each case, the receiving officer shall file said books, and the registry books and lists and other papers pertaining to registration, in his office, and preserve the same for eighteen months, or until the determination of any contest then pending, after which they shall be destroyed. [22 G. A., ch. 48, § 6; C. '73, §§ 503, 629; R., §§ 333, 503, 1131; C. '51, § 268.]

Previous to the time when the poll books are directed to be destroyed they may be used by the board of supervisors in determining whether the number of signers to a petition of consent for the sale of intoxicating liquors is sufficient. *Cameron v. Fellows*, 109-534.

Where the poll books have not been destroyed, by reason of the commencement of some legal proceeding, involving their use in evidence, they are admissible in evidence after the expiration of the time when, in the usual course, they would have been destroyed. *Reed v. Jugenheimer*, 118-610.

In determining the sufficiency of signatures to a statement of consent for the sale of intoxicating liquors as provided in code sec. 2448, the poll books filed with the auditor and not those filed with the township, city, or town clerk are to be considered. *In re consent to sell intoxicating liquors; De Board v. Williams*, 155-149.

In the case of a city election one of the poll books is to be delivered within two days by one of the judges to the county auditor and the other to the city clerk. *Jackman v. Board of Supervisors*, 156-620.

PART V

DIVISION 2.

CANVASS BY TOWNS AND TOWNSHIP OFFICERS.

Sec. 1146. Canvass of returns from precincts. If there are two or more precincts in any township, city or ward, the trustees and clerk, or the mayor and clerk, as the case may be, shall, on the day after the election, meet and canvass the returns from all precincts for votes cast for officers to be elected by such township, city or ward. The returns shall be opened in the presence of all the canvassers, and an abstract of votes made and signed by them, and the result declared, and a certificate of election signed by them given the candidates elected. If the mayor shall have been a candidate at such election, a justice of the peace of the county, selected by the clerk, shall act with him in making the canvass. [C. '73, §§ 502-3, 631; R., § 1131.]

The board of supervisors and not the township trustees have authority to canvass the ballots for justice of the peace (see § 1150). *Lynch v. Vermazen*, 61-76.

Sec. 1147. Township, city and town officers notified. Notice of the result of the election of the township, city and town officers shall be given by the township, city or town clerk, as the case may be, within five days thereafter, by posting, in three public places in the township, town or city, notices containing the names of persons declared elected, and requiring each of them to appear before the proper officer and qualify according to law. [C. '73, § 633; R., § 548; C. '51, § 317.]

PART V

DIVISION 3.

CANVASS BY BOARD OF SUPERVISORS.

Sec. 1148. Returns from precincts secured. If the returns from all the precincts are not made to the county auditor by the third day after the election, on the fourth he shall send messengers to obtain such of them as are wanting, the expense of

which shall be paid by the county. [C. '73, § 634; R., § 505; C. '51, § 270.]

Sec. 1149. Canvass by board of supervisors. At their meeting on the Monday after the general election, at twelve o'clock, noon, the board of supervisors shall open and canvass the returns, and make abstracts, stating, in words written at length, the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office. [19 G. A., ch. 163, § 14; C. '73, §§ 632, 662; R., §§ 335, 506, 538-9; C. '51, §§ 271, 304-5.]

Returns: The action of the board in canvassing returns is ministerial rather than judicial. Nor is there any discretion to be exercised. The board has no authority to judge of the validity of returns or of votes. Its duty is to receive the returns and count them, provided they are sufficiently proved to be such, although irregular. (*So held* in regard to the canvass of votes at special election as to the relocation of a county seat under 5 G. A., ch. 46.) *State ex rel v. County Judge*, 7-186; *State v. Bailey*, 7-390.

The canvassers may reject improper returns, such as are not properly signed, or have not been in the proper custody, or have been mutilated or changed; and after they have declared the result they may, by *mandamus*, be compelled to re-assemble and re-canvass the vote to correct a mistake in improperly rejecting returns. *Price v. Harned*, 1-473; or in counting improper returns. *State ex rel v. County Judge*, 13-139.

Where an officer was authorized to examine the returns of an election for a county seat, and, on being satisfied that either place voted for had a greater number of votes than the other, the record of such result was to be made, *held*, that he had no authority to inquire into the legality of the votes cast, but was bound by the returns as made to him. *United States ex rel v. Commissioners*, Mor., 31.

In a case involving the validity of votes cast at an election the court is not precluded by the return, but may receive evidence as to the compliance with the law on the part of the officers of election and may therefore receive evidence that the officers were duly sworn, although such fact does not appear on the face of the return. *Dishon v. Smith*, 10-212.

Where two corresponding returns were made out by the judges of election, one of which was on its face informal and unauthenticated and the other was formal and on its face duly authenticated, *held*, that the county board of canvassers could not refuse to receive evidence *aliunde* to establish the former, and yet receive such evidence to defeat the latter, but must count the votes as returned. *State v. Cavers*, 22-343.

Mandamus is the proper remedy to compel the canvassers to declare elected and certify to the election of the party receiving the highest number of votes. *Bradfield v. Wart*, 36-291.

A writ of *mandamus* will not issue to compel a canvassing board to re-assemble and canvass the return of the votes for an office and declare the candidate receiving a majority of the votes cast therefor to be elected, after the expiration of the term for which he was elected. *Potts v. Tuttle*, 79-253.

Where the canvass of votes at an election was to be made by county judge, calling to his assistance two justices of peace, and an action by *mandamus* was instituted to compel a re-canvass, *held*, that such *mandamus* properly issued to the judge alone and not to the board as originally constituted. *State ex rel v. County Judge*, 7-186; *Rice v. Smith*, 9-570.

Where a writ of *mandamus* was granted to compel a re-assembling of the canvassing board of the county by the county judge for the purpose of re-canvassing the returns, *held*, that the primary writ should issue to such county judge in his individual name, and that upon failure of the other members of the board summoned by him, in pursuance of law, to constitute such board and canvass such returns to comply with the writ, an alias writ might be directed to such other members and a proper canvass compelled. *State ex rel v. Smith*, 9-334.

The duties imposed upon the members of the board of supervisors in relation to canvassing votes cast at elections may be enforced by *mandamus*, but an action of damages for their non-performance will not lie. *Jayne v. Drerbaugh*, 63-711.

The judges of election who have made defective returns may correct such returns so as to authorize the board of supervisors to canvass the same. *Rummel v. Dealy*, 112-503.

Injunction: Although *mandamus* may have issued to compel a board of canvassers to count and record the votes contained in certain returns, yet an injunction restraining any action under the count as thus recorded will not be improper or inconsistent with the *mandamus* if it appears that the votes which the board is directed to canvass should not be counted owing to matters existing outside of the returns. *Dishon v. Smith*, 10-212.

Certificate: It is not fatal to the certificate that it does not contain full particulars as to the time and place of the election. The caption and the certificate may be taken together. *Ibid*.

Where it is required that a certificate of the election, at which a railroad aid tax was voted, should be certified by the clerks of the election, *held*, that a certificate signed by the judges and attested by the clerks was sufficient. *Casady v. Lowry*, 49-523.

The twenty days for filing statement of contest as to the election of a county officer commences to run from the date when the board of supervisors determined the result as here provided and not from the date of the counting of the ballots by the judges of election. *Clark v. Tracy*, 64 N. W., 290; *Ferguson v. Henry*, 64 N. W., 292. 95-439.

The board is required to make an abstract of the election returns as canvassed and received from the various precincts and such abstract should be published as a part of the proceedings of the board under the provisions of code § 441. *Clark v. Lake*, 146-109.

The proceedings of the county board of canvassers are the proceedings of the county board of supervisors and as such are to be published as provided under the provisions of code § 441. *Index Printing Company v. Board of Supervisors*, 150-411.

Sec. 1150. Abstracts. The abstract of the votes for each of the following classes shall be made on a different sheet:

1. Presidential electors;
2. Governor and lieutenant-governor;
3. All state officers not otherwise provided for;
4. Representatives in congress;
5. Senators and representatives in the general assembly for the county alone;
6. Senators and representatives in the general assembly by districts comprising more than one county;

7. Judges of the district court;

8. County officers. [C. '73, §§ 636, 662; R., §§ 507, 538-9; C. '51, §§ 272, 304-5.]

Sec. 1151. For congressmen, electors and state and district officers. Abstracts of all the votes cast for congressmen, presidential electors, state or judicial district officers, shall be made in duplicate, and signed by the board of county canvassers, one of which shall be forwarded to the secretary of state, and the other filed by the county auditor. [C. '73, §§ 637, 662; R., §§ 507, 538-9; C. '51, §§ 272, 304-5.]

Sec. 1152. Declaration of election. Each abstract of the votes for such officers as the county alone elects shall contain a declaration of whom the canvassers determined to be elected, except when two or more persons receive an equal and the greatest number of votes. [C. '73, § 639; R., § 509; C. '51, § 275.]

Sec. 1153. For senator or representative for district. When a senator or representative in the general assembly is elected by a district composed of two or more counties, the several boards of canvassers therein shall, after the canvass of the vote, make and certify as many copies of the abstract of the votes for such office as there are counties in such senatorial or representative district, and one additional, and the auditor in each county shall seal up, direct and transmit one copy to the secretary of state, and one to the auditor of each other county in the district, who shall file the same in their respective offices, and he shall preserve one in his office. [C. '73, § 646.]

Sec. 1154. Returns filed. When the canvass is concluded, the board shall deliver the original returns to the auditor, who shall file the same, and record each of the abstracts above mentioned in the election book. [C. '73, § 640; R., §§ 335, 510; C. '51, § 276.]

Sec. 1155. Certificate of election. When any person is thus declared elected, there shall be delivered him a certificate of election, under the official seal of the county, in substance as follows:

State of Iowa, }
..... County. }

At an election holden in said county on the.....day of.....
A. D....., A.....B.....was elected to the office of.....
of the said county for the term of.....years from the.....
day of.....A. D..... (or if he was elected to fill a

vacancy, say for the residue of the term ending on the.....day of....., A. D.....), and until his successor is elected and qualified. C.....D.....

President of Board of Canvassers.

Witness, E.....F....., County Auditor (clerk). which certificate shall be presumptive evidence of his election and qualification. [C. '73, § 641; R., §§ 511, 514; C. '51, § 277.]

Sec. 1156. Of senators and representatives. The certificate of election of senators and representatives shall be in duplicate, and substantially in the form given, with such changes only as are necessary, one of which shall be delivered to the person entitled thereto, and the other forwarded to the secretary of state. [C. '73, § 642; R., § 512; C. '51, § 278.]

Sec. 1157. Abstracts forwarded to secretary of state. Within ten days after the election, one of the abstracts of votes for governor and lieutenant-governor shall be sealed up by the auditor, indorsed "Abstract of votes for governor and lieutenant-governor from.....county (naming the county)" and be by him forwarded to the speaker of the house of representatives; those for presidential electors, representatives in congress, and all other state and district officers, shall be separately sealed up, indorsed in like manner, with necessary changes, and then all placed in one package and forwarded to the secretary of state. Abstracts of votes cast at special elections to fill vacancies in office shall be forwarded as soon as canvassed. [C. '73, §§ 645, 662; R., §§ 517, 518, 538-9; C. '51, §§ 283-4, 304-5.]

PART V

DIVISION 4.

CANVASS BY EXECUTIVE COUNCIL.

Sec. 1158. Returns procured from counties. If the abstracts from any county are not received at the office of the secretary of state within fifteen days after the day of election, he shall send a messenger to the auditor of such county, who shall furnish him with them, or, if they have been sent, with a copy thereof, and he shall return them to the secretary without delay. [C. '73, §§ 649, 662; R., §§ 519, 538-9; C. '51, §§ 285, 304-5.]

Sec. 1159. Abstracts opened. The abstracts received by the secretary of state shall be kept by him until the day fixed for their opening, and shall then be opened only in the presence of the state board of canvassers. [C. '73, § 650; R., § 520; C. '51, § 286.]

Sec. 1160. State board of canvassers. The executive council constitutes a board of canvassers for the state, but no member thereof shall take part in canvassing the votes for any office for which he himself is a candidate. [C. '73, § 651; R., § 521; C. '51, § 287.]

Sec. 1161. Time of state canvass. On the twentieth day after the day of election, the board of state canvassers shall open and examine all of the returns. If they are not received from all the counties, it may adjourn, not exceeding twenty days, for the purpose of obtaining them, and, when received, shall proceed with the canvass. Returns of elections to fill vacancies in office shall be canvassed as soon as received. [C. '73, §§ 652, 663; R., §§ 522, 540; C. '51, §§ 288, 306.]

Sec. 1162. Canvass by state board. The board of state canvassers shall open the abstracts for state senators and representatives transmitted to the secretary of state, and canvass the votes therein returned, at the time and in the manner of canvassing the state vote, or at such other time as they may fix, at least twenty days prior to the time fixed by law for the meeting of the next general assembly, and in case of a special election, within five days after the receipt of such abstracts, and shall immediately make out, certify, and transmit by mail to the county auditor of each county in the district, to be by him filed in his office, a copy of the abstract of such canvass required in the next section, which shall be recorded by him in the election book. [C. '73, § 647.]

Sec. 1163. Abstract of result. It shall make an abstract stating, in words written at length, the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom they declare to be elected; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed. [19 G. A., ch. 163, § 14; C. '73, §§ 653, 663; R., §§ 523, 540; C. '51, §§ 289, 306.]

Sec. 1164. State election book. The secretary of state shall file the abstracts when received and shall have the same bound in book form to be kept by him as a record of the result of said state election, to be known as the state election book. [32 G. A., ch. 52.]

Sec. 1165. Certificate of election. Each person declared elected by the state board of canvassers shall receive a certificate thereof, signed by the governor, or, in his absence, by the secretary of state, with the seal of state affixed, attested by the other canvassers, to be in substance as follows:

STATE OF IOWA:

To A.....B....., Greeting: It is hereby certified that, at an election holden on the.....day of....., you were elected to the office of.....of said state, for the term of.....years, from and after the.....day of..... (or if to fill a vacancy, for the residue of the term, ending on the...day of.....). Given at the seat of government this...day of.....

If the governor be absent, the certificate of the election of the secretary of state shall be signed by the auditor. The certificate to members of the legislature shall describe, by the number, the district from which the member is elected. [C. '73, §§ 655, 657; R., §§ 524, 527; C. '51, §§ 290, 293.]

Sec. 1166. Representatives in congress. The certificate of the election of a representative in congress shall be signed by the governor, with the seal of the state affixed, and be countersigned by the secretary of state. [C. '73, § 658; R., § 528; C. '51, § 291.]

Sec. 1167. Certificates mailed. The secretary of state shall deliver or mail certificates of election to the persons declared elected. [C. '73, §§ 648, 656, 658; R., §§ 526, 528; C. '51, §§ 291-2.]

Sec. 1168. Certificates to electors. The governor, at the expiration of ten days from the completed canvass, shall issue to each presidential elector declared elected a certificate of his election, under his hand and the seal of the state, the same, in substance, as required in other cases, and shall notify him to attend at the seat of government at noon on the second Monday in January following his election, reporting his attendance to him. If there be a contest of the election, no certificate shall issue until it is determined. [22 G. A., ch. 50; C. '73, § 665; R., § 542; C. '51, § 308.]

Sec. 1169. Tie vote. If more than the requisite number of persons, including presidential electors, are found to have an equal

and the highest number of votes, the election of one of them shall be determined by lot. The name of each of such candidates shall be written on separate pieces of paper, as nearly uniform in size and material as possible, and placed in a receptacle so that the names cannot be seen. In the presence of the board of canvassers, one of them shall publicly draw one of such names, and such person shall be declared elected. The result of such drawing shall be entered upon the abstract of votes and duly recorded, and a certificate of election issued to such person, as provided in this chapter. [C. '73, §§ 632, 643-4, 664; R., §§ 515, 516, 541, 547; C. '51, §§ 281-2, 307, 316.]

Sec. 1170. Canvass public—result determined. All canvasses of returns shall be public, and the persons having the greatest number of votes shall be declared elected. [C. '73, §§ 623, 638, 664; R., §§ 497, 508, 541; C. '51, §§ 262, 273, 307.]

Sec. 1171. Special elections—canvass and certificate. In case a special election has been held, the board of county canvassers shall meet at one o'clock in the afternoon of the second day thereafter, and canvass the votes cast thereat. The county auditor, as soon as the canvass is completed, shall transmit to the secretary of state an abstract of the votes so canvassed, and the state board, within five days after receiving such abstracts, shall canvass the returns. A certificate of election shall be issued by the county or state board of canvassers, as in other cases. All the provisions regulating elections, obtaining returns, and canvass of votes at general elections, except as to time, shall apply to special elections. [C. '73, §§ 791-3; R., § 673.]

Sec. 1172. Messengers for election returns. Messengers sent for the returns of elections shall be paid from the state or county treasury, as the case may be, ten cents a mile going and returning. [C. '73, § 3827; R., § 529; C. '51, § 296.]

PART VI

OFFENSES AGAINST THE RIGHTS OF SUFFRAGE.

DIVISION 1.

GENERAL PROVISIONS.

Section 4914. Bribery of electors. Any person offering or giving a bribe to any elector for the purpose of influencing his vote at any election authorized by law, or any elector entitled to vote at such election receiving such bribe, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding one year, or both. [C. '73, § 3993; R., § 4333.]

It does not constitute bribery at an election to relocate a county seat for persons interested in the location at a particular place to agree to give certain facilities for the convenience of the whole county, such as offering a building for courts and officers, conveying real estate to the county, paying money toward the erection of a bridge, subscribing toward a high school, etc. *Dishon v. Smith*, 10-212; *Hawes v. Miller*, 56-395.

A promise by a candidate to pay into the public treasury, if elected, a part or all of his compensation, is an offer of a bribe to electors, and disqualifies the person making it, if elected, for holding the office. *Carrothers v. Russell*, 53-346.

Giving or offering a bribe to an elector is a ground for contesting an election. See § 1198 and note.

Sec. 4915. To refrain from voting—to work for candidate. If any person shall make an agreement with another to pay him any sum of money or other valuable thing in consideration that such other person shall refrain from voting at any election, or shall induce other qualified electors to refrain from voting, or that such other person shall perform any service or labor on any election day in the interest of any candidate for any office who is to be voted for at such election, or in the interest of any measure or political party, he shall be fined in any sum not less than fifty nor more than three hundred dollars, or be imprisoned in the county jail not exceeding ninety days. [25 G. A., ch. 59, § 1.]

Sec. 4916. Accepting. Any person who shall, in consideration of any sum of money or other valuable thing, agree to refrain from voting at any general or municipal election, or to induce or attempt to induce others to do so, or agree to perform on

election day any service in the interest of any candidate, party or measure in consideration of any money or other valuable thing, or who shall accept any money or other valuable thing for such services performed in the interest of any candidate, political party or measure, shall be punished as provided in the preceding section. [Same, § 2.]

Sec. 4917. Contracts to convey voters. Nothing in the two preceding sections shall be so construed as to punish individuals or committees of any political party from making contracts in good faith for the conveyance of voters to and from polling places and the payment of any reasonable compensation for such service. [Same, § 3.]

Sec. 4918. Voting more than once. If any elector unlawfully vote more than once at any election which may be held by virtue of any law of this state, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year. [C. '73, § 3994; R., § 4334; C. '51, § 2692.]

Sec. 4919. When not qualified. If any person, knowing himself not to be qualified, vote at any election authorized by law, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding six months. [C. '73, § 3995; R., § 4335; C. '51, § 2693.]

In an indictment for this offense it is not necessary to show that the election was held by the proper and legal officers, or to state the manner in which defendant was disqualified. *State v. Douglass*, 7-413.

Sec. 4919-a. Illegal voting—penalty. Whenever any political party shall hold a primary election for the purpose of nominating a candidate for any public office or for the purpose of selecting delegates to any convention of such party, it shall be unlawful for any person not a qualified elector, or any qualified elector not at the time a member in good faith of such political party, to vote at such primary election. Any person violating the provision of this section, and any person knowingly procuring, aiding, or abetting such violation, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [27 G. A., ch. 111, § 1.]

Sec. 4919-b. Prima facie evidence. It shall be prima facie evidence of the violation of the preceding section, for any person who has participated in any primary election of one political

party, to vote at a primary election held by another political party, to select candidates to be voted for at the same election; or to select delegates to any convention of the party holding such primary election. [27 G. A., ch. 111, § 2.]

Sec. 4919-c. Authority to administer oaths. Any judge of such primary election shall have power to administer oaths to, and to examine under oath, any person offering to vote at such election, touching his qualifications to participate in such primary election, and it shall be the duty of such judge of election to so examine or cause to be examined any person challenged as to his right to vote. Any person testifying falsely as to any material matter, touching his qualifications to participate in such primary election, shall be deemed guilty of perjury and punished accordingly. [27 G. A., ch. 111, § 3.]

Sec. 4919-d. What excepted. Nothing in this act shall be construed to apply to conventions held under the caucus system. [27 G. A., ch. 111, § 4.]

Sec. 4920. Residence in county. If any person go or come into any county of this state, and vote in such county, not being a resident thereof, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year. [C. '73, § 3996; R., § 4336; C. '51, § 2694.]

Sec. 4921. Residence in state. If any person wilfully vote who has not been a resident of this state for six months next preceding the election, or who, at the time of the election, is not twenty-one years of age, or who is not a citizen of the United States, or who is not qualified, by reason of other disability, to vote at the place where and time when the vote is to be given, he shall be fined in a sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding one year. [C. '73, § 3997; R., § 4337; C. '51, § 2695.]

It is no defense under this section that defendant consulted others (not persons learned in the law) as to his right to vote, and was advised that he was qualified. *State v. Sheeley*, 15-404.

Voting in a township other than that of the voter's residence is an offense under this section, and it is not necessary to charge or prove that accused voted for or against any one. The casting of a ballot being proved, it would be presumed that it designated the name of some persons for some office. *State v. Minnick*, 15-123.

To constitute wilfulness in voting where not qualified, there must be something more than the intentional act of voting without legal qualification; and advice of counsel or persons qualified to give advice in such matters may be shown as negating the wilful intent to illegally vote. But proof of casting a ballot where the elector is as a matter of law not entitled to vote is *prima facie* evidence of guilt. *State v. Savre*, 129-122.

Sec. 4922. Counseling to vote when not qualified. If any person procure, aid, assist, counsel or advise another to give his vote, knowing that such person is disqualified, he shall be fined not exceeding five hundred nor less than fifty dollars, and be imprisoned in the county jail not exceeding one year. [C. '73, § 3998; R., § 4338; C. '51, § 2696.]

Sec. 4923. Deceiving voter as to ballot. If any judge or clerk of election furnish an elector with a ticket or ballot, informing him that it contains a name or names different from those which are written or printed therein, with an intent to induce him to vote contrary to his inclination, or fraudulently or deceitfully change a ballot of any elector, by which such elector is deprived of voting for such candidate or person as he intended, he shall be imprisoned in the county jail not exceeding two years, and be fined not exceeding one thousand dollars nor less than one hundred dollars. [C. '73, § 3999; R., § 4339; C. '51, § 2697.]

Sec. 4924. Preventing from voting by force or threats. If any person unlawfully and by force, or threats of force, prevent, or endeavor to prevent, an elector from giving his vote at any public election, he shall be imprisoned in the county jail not exceeding six months, and fined not more than two hundred dollars. [C. '73, § 4000; R., § 4340; C. '51, § 2698.]

Sec. 4925. Bribing clerks, judges, etc. If any person give or offer a bribe to any judge, clerk or canvasser of any election authorized by law, or any executive officer attending the same, as a consideration for some act done or omitted to be done contrary to his official duty in relation to such election, he shall be fined not exceeding seven hundred dollars, and imprisoned in the county jail not exceeding one year. [C. '73, § 4001; R., § 4341; C. '51, § 2699.]

Sec. 4926. Procuring vote by influence or threats. If any person procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself, or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing any civil or criminal action, or any other threat of injury to be inflicted by him or by his means, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year. [C. '73, § 4002; R., § 4342; C. '51, § 2700.]

Sec. 4927. Judges or clerks making false entries, etc. If any judge or clerk of any election authorized by law knowingly make or consent to any false entry on the list of voters or poll books; or put into the ballot box, or permit to be so put in, any ballot not given by a voter; or take out of such box, or permit to be so taken out, any ballot deposited therein, except in the manner prescribed by law; or by any other act or omission designedly destroy or change the ballots given by the electors, he shall be fined not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding five years. [C. '73, § 4003; R., § 4343; C. '51, § 2701.]

Sec. 4928. Illegally receiving or rejecting votes. When any one who offers to vote at any election is objected to by an elector as a person not possessing the requisite qualifications, if any judge of such election unlawfully permit him to vote without producing proof of such qualification in the manner directed by law, or if any such judge wilfully refuse the vote of any person who complies with the requisites prescribed by law to prove his qualifications, he shall be fined not more than two hundred nor less than twenty dollars, or be imprisoned in the county jail not exceeding six months. [C. '73, § 4004; R., § 4344; C. '51, § 2702.]

An election officer will not be criminally liable for refusing to receive the ballot of an elector unless the elector, being qualified by compliance with the law to vote, tenders his ballot within the time within which it is the duty of the election officer to receive ballots. *State v. Clark*, 102-685.

The refusing of a ballot by the election officer may be wilful if it is purposely and deliberately done, without regard to whether the officer had just grounds for believing the ballot to be lawful. *Ibid.*

Sec. 4929. Misconduct to avoid election. If any judge, clerk or executive officer designedly omit to do any official act required by law, or designedly do any illegal act, in relation to any public election, by which act or omission the votes taken at any such election in any city, town, precinct, township or district be lost, or the electors thereof be deprived of their suffrage at such election, or designedly do any act which renders such election void, he shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both. [C. '73, § 4005; R., § 4345; C. '51, § 2703.]

Sec. 4930. Not returning poll books. If any judge, clerk, or messenger, after having been deputed by the judges of the election to carry the poll-books of such election to the place where by law they are to be canvassed, wilfully or negligently fail to deliver them within the time prescribed by law, safe, with the seal

unbroken, he shall, for every such offense, be fined not more than five hundred nor less than fifty dollars. [C. '73, § 4006; R., § 4346; C. '51, § 2704.]

Sec. 4931. Improper registry. Any person who causes his name to be registered, knowing that he is not or will not become a qualified voter in the precinct where his name is registered previous to the next election, or who shall wrongfully personate any registered voter, and any person causing, or aiding or abetting any person in either of said acts, shall be, for each offense, imprisoned in the penitentiary not less than one year. [C. '73, § 4007.]

PART VI

DIVISION 2.

CANDIDATES' ELECTION EXPENSES.

Sec. 1137-a1. Candidates to make sworn statement of election expenses—where filed. Every candidate for any office to be voted for at any primary, municipal or general election shall, within ten days after the holding of such primary, municipal or general election, file a true, correct, detailed, sworn statement showing each and all sums of money or other things of value disbursed, expended or promised directly or indirectly by him, and to the best of his knowledge and belief by any other person or persons in his behalf for the purpose of aiding or securing his nomination or election. If the person be a candidate for a municipal or a county office, such statement shall be filed with the county auditor; if for a state office, or any other office to be voted for by the electors of more than one county, such statement shall be filed with the secretary of state. Such statement shall show the dates, amounts, and from whom such sums of money or other things of value were received; and the dates, amounts, purposes and to whom paid or disbursed, and shall include the assessment of any person, committee, or organization in charge of the campaign of such candidate. [32 G. A., ch. 50, § 2.]

Sec. 1137-a2. Testimony—immunity from prosecution. In prosecutions under this act, no witness shall be excused from giving testimony on the ground that his testimony would tend to render him criminally liable or expose him to public ignominy, but any

matter so elicited shall not be used against him, and said witness shall not be prosecuted for any crime connected with or growing out of the act on which the prosecution is based in the cause in which his evidence is used for the state, under the provisions of this section. [32 G. A., ch. 50, § 3.]

Sec. 1137-a3. Statements by committee chairman. The chairman of each party central committee for the state, district or county, shall file a statement of receipts and expenditures within ten days after the general election. The chairmen of state and district central committees shall file said statements with the secretary of state; and the chairmen of county central committees, with the county auditor. Such statements shall contain all the information required to be filed by candidates as set forth in section two (2) of this act and in addition thereto shall state the amounts or balances remaining on hand. The person filing the same shall make oath that it is a full, true and correct statement. [32 G. A., ch. 50, § 4.]

Sec. 1137-a4. Statements open to public inspection. The statements provided for in this act shall be open at all times to the inspection of the public, and remain on file and become a part of the permanent records in the office where filed. [32 G. A., ch. 50, § 5.]

Sec. 1137-a5. Treating near the polls. It shall be the duty of the judges and clerks of all municipal, general and primary elections to prohibit the placing, keeping, and giving to the voters, by any person of any cigars, food or other refreshments or treats, in or about the polling place. [32 G. A., ch. 50, § 6.]

Sec. 1137-a6. Penalty. Any person violating any of the provisions of the last five preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50) nor more than three hundred dollars (\$300), or by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months. [32 G. A., ch. 50, § 7.]

PART VI

DIVISION 3.

POLITICAL CONTRIBUTIONS BY CORPORATIONS.

Sec. 1641-h. Political contributions by corporations prohibited. It shall be unlawful for any corporation doing business within the state, or any officer, agent or representative thereof acting for such corporation, to give or contribute any money, property, labor or thing of value, directly or indirectly, to any member of any political committee, political party, or employe or representative thereof, or to any candidate for any public office or candidate for nomination to any public office or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever, or to any person, partnership or corporation for the purpose of influencing or causing such person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office or to any public officer for the purpose of influencing his official action, but nothing in this act shall be construed to restrain or abridge the liberty of the press or prohibit the consideration and discussion therein of candidates, nominations, public officers or political questions. [32 G. A., ch. 73, § 1.]

Sec. 1641-i. Solicitation from corporations prohibited. It shall be unlawful for any member of any political committee, political party, or employe or representative thereof, or candidate for any office or the representative of such candidate, to solicit, request or knowingly receive from any corporation or any officer, agent or representative thereof, any money, property or thing of value belonging to such corporation, for campaign expenses or for any political purpose whatsoever. [32 G. A., ch. 73, § 2.]

Sec. 1641-j. Testimony—immunity from prosecution. No person, and no agent or officer of any corporation within the purview of this act shall be privileged from testifying in relation to any thing herein prohibited; and no person having so testified shall be liable to any prosecution or punishment for any offense concerning which he is required to give his testimony, provided that

he shall not be exempted from prosecution and punishment for perjury committed in so testifying. [32 G. A., ch. 73, § 3.]

Sec. 1641-k. Penalty. Any person convicted of a violation of any of the provisions of this act shall be punished by imprisonment in the county jail not less than six months or more than one year and in the discretion of the court, by fine not exceeding one thousand dollars (\$1,000.00). [32 G. A., ch. 73, § 4.]

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