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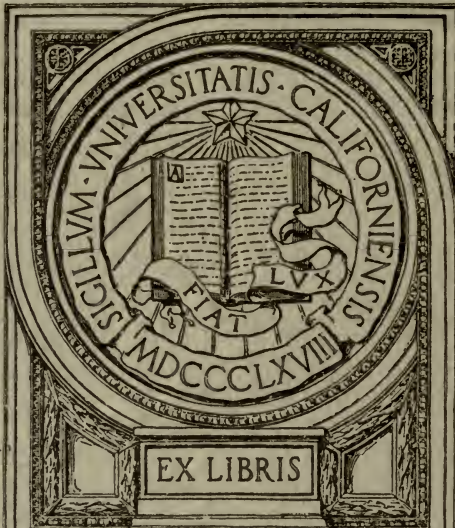


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Election Laws

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THE STATE
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TITLE VI.

OF ELECTIONS AND OFFICERS.

CHAPTER 1.

OF THE ELECTION OF OFFICERS AND THEIR TERMS.

SECTION 1057. 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. [19 G. A., ch. 115; C. '73, § 573; R., § 459; C. '51, § 237.] [31 G. A., ch. 36, § 2.]

See amendment to constitution at end of art. II.

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 first Monday 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.]

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. State officers. The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and superintendent of public instruction shall be chosen at the general election in each even numbered year and their terms of office shall be for two years. [C. '73, § 580; R., § 465.] [31 G. A., ch. 36, § 3.]

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 and the judge whose term of office will soonest expire shall be chief justice and when it occurs that two judges shall be equally entitled, they shall each hold the place of chief justice for one year, and the one who is senior in age shall hold for the first of the two years to which they are each equally entitled; 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. [26 G. A., ch. 72; 25. G. A., ch. 69, § 2; 16 G. A., ch. 7, § 2; C. '73, § 582.] [31 G. A., ch. 36, § 4.]

See Const., art. V. §§ 3, 11.

SEC. 1067. Clerk and reporter of supreme court. The clerk and reporter of the supreme court shall be chosen at the

general election in the year 1898, and each fourth year thereafter, and their terms of office shall be four years. [C. 73, § 583.]

SEC. 1068. Railroad commissioners. 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. [22 G. A., ch. 29, § 2; 17 G. A., ch. 77, § 2] [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. [C. '73, § 587; R., § 470.] [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. [C. '73, § 588; R., § 471.] [31 G. A., ch. 36, § 6.]

See Const., art. III. § 5.

SEC. 1072. County officers. 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, a surveyor, and a coroner, who shall hold office for the term of two years or until their successors are elected and qualified. [23 G. A., ch 37, §2; 21 G. A. ch 73, § 1; C '73, §589; R., § § 224, 472-3; C. '51, § 96.] [31 G. A. ch 39.]

[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. Bermazen*, 61-76.

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.

SEC. 1074. Township trustees. 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. [17 G. A. ch 12, §§ 1, 2; C. '73, §591.] [31 G. A. ch 37.]

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.

CHAPTER 2.

OF THE 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 years, 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. [26 G. A., ch. 62; 22 G. A., ch. 48, § § 5, 12; 21 G. A., ch. 167, § 3.] [31 G. A. chs. 40- 41.]

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:

REGISTER OF VOTERS,.....PRECINCT.....WARD.

Number.	Residence.	Name.	Age.	Nativity.	Color.	TERM OF RESIDENCE.			Naturalized.	Date of papers.	Court.	By act of Congress.	Qualified voter.	Date of application.	Last preceding place of residence.	SIGNATURE.
						Precinct, street, number.	County.	State.								
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The signature of the applicant shall be made at the right hand end of the line under the column "Signature", one of the registers having first administered to him this form of oath: "You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this state"; after which, the registers, or either of them, shall propound questions to the applicant for registration in relation to his name; his then place of residence, street and number; how long he has resided in the precinct where the vote is claimed; the last place of his residence before coming into that precinct; and also as to his citizenship, whether native or naturalized; if the latter, when, where, and in what court, or before what officer, or whether by act of congress; whether he came into the precinct for the purpose of voting at that election; how long he contemplates residing in the precinct; and such other questions as may tend to test his qualifications as a resident of the precinct, citizenship and right to vote at the poll; then, if the applicant appears to have the right to be registered, the registers shall fill out the above prescribed form of statement, which the applicant shall sign and swear to, as above provided. [22 G. A., ch. 48, § 1; 21 G. A., ch. 161, § 5; 28 G. A., ch. 33, § 1.]

Former provisions for registry were held not in conflict with constitution, art. II, § 1 prescribing the qualifications of electors: *Edmunds v. Banbury*, 28-267. And an election without registry, where such was required by law, was held void, the provisions of the law being mandatory and imperative: *Nefzger v. Davenport & St. P. 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 herein 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.]

CHAPTER 3.

OF ELECTIONS.

SECTION 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.]

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. Burlington, C. R. & N. R. Co.*, 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. 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.]

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: *Vanderpoel 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.

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. Co. v. Boone County*, 34-45.

SEC. 1091. Polling places for country precincts. Polling places for precincts outside the limits of a city, but within 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 court-house, or in some other building within the limits of the city, as the board of supervisors may provide. [21 G. A., ch. 161, § 14.]

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.]

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, those two only whose terms shall next expire 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.]

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*, 16-212.

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 opened 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. 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 subdivision thereof for which the same is held, make one such nomination for each office therein to be filled at the election. [Same, § 4.]

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

1. The office to which he is nominated;
2. The party making such nomination, or political principal 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 convention, 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 post-office 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 a ticket is a matter to be determined by the officers making up the ballot: *Lowery v. Davis*, 70 N.W., 190.

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, nomina-

tion 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 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.]

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, objections 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.]

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.]

SEC. 1106. Ballot—form. 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 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.	
No.	

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 *fac simile* 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. [24 G. A., ch. 33, §§ 14, 16] [28 G. A., ch. 35, §1.] [31 G. A., ch 43; ch. 44, § 1.]

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.]

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. [Same, § 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. [Same, § 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 township 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 safe keeping 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, §§ 25-9.]

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 registry 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 inclosed 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 ballot is not to be counted in favor of one whose name is written thereon unless the written name is preceded by a cross in the circle before it. This was a case where no ticket was designated by a cross in the circle. *State v. Hagen*, 91-510.

Under prior provisions, held, that where a ticket was selected by a cross in the circle at the head of it the voter was not authorized to designate individual candidates on that ticket by crosses in the squares where two or more candidates were to be elected to the same office and that it was not practicable in such case to vote for one candidate for such office on another ticket, and have the vote counted for another candidate for that office on the ticket marked with a cross in the circle. The difficulty in such case was that it was impossible to determine who were the opposing candidates on the two tickets, and the ballot could be counted only in favor of the candidate on the opposing ticket whose name was indicated by a cross: *Ibid: Whittam v. Zahorik*, 91-23. [But there is now no provision for voting for a candidate on another ticket when one ticket is marked with a cross in the circle.]

It is only by the form of marking designated by the statute that the intention of the voter can be ascertained and under these statutory provisions the general rule that the ballot will be counted in accordance with the apparent intention of the voter is not applicable: *Whittam v. Zahorik*, 91-23.

As to the effect to be given to the discoverable intention of the voter under prior statutes, see *Wimmer v. Eaton*, 72-374; *Brown v. McCollum*, 76-479.

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.

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.]

Under provisions not now preserved as to the effect of identification marks, see *Whittam v. Zahorik*, 91-23; *Cook v. Fisher*, 69 N. W., 264.

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 a jury, if the case is submitted to a 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.

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

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. *Ibid.*

This section makes the cross in the circle effective as a vote for all names printed upon the ticket below it, and if as 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*, 88, N. W., 1062.

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. [Same, §§ 22, 25.] [31 G. A., ch. 44, § 5.]

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 it 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 the candidate on the official ballots properly furnished to them, *held* not to render the ballots void. *Cook v Fisher*, 69 N. W., 264.

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 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.]

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 election, 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. 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, § 1.]

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 a 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.]

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*, 89 W. 199

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. 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.]

CHAPTER 3-A.

OF ELECTIONS—VOTING MACHINES.

SECTION 1137-a. Use of voting machines authorized. That at all state, county, city, town, 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.]

SEC. 1137-b. 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-c. 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-d. 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-e. Provisions as to 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-f. 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-g. Duties of local authorities. The local authorities adopting a voting machine shall, as soon as practical 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-h. 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.]

SEC. 1137-i 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-j. 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-k. 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-l. 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-m. 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. Where 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. 11 37-n. 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. 11 37-o. 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-p. 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-q. 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-r. 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, § 15.]

SEC. 1137-s. 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-t. 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-u. 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.]

[The above sections 1137-a to 1137-u inclusive are sections 1 to 21 inclusive of chapter 37 of the acts of the 28th G. A. By the title to said act, it was made additional to chapter 3, title VI, of the code, and it is deemed best to insert them here in a chapter by themselves.—Ed.]

CHAPTER 4.

OF THE CANVASS OF VOTES.

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 strong 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.

The poll books and registration lists prepared as provided by law furnish the best evidence as to who cast 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. Frossman*, 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 ballot 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 ballot when properly authenticated affords 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 that 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. *DeLong 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 ballots had been so kept that they might have been tampered with, held that they were not admissible. *Ibid.*

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. 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.]

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..... 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, 631; R., § § 502, 557; 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*, 10-534;

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.]

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. Drorbaugh*, 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*, 1 2-503.

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.

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 congressman, 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 ofA. 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.

CD.....

President of Board of Canvassers.

Witness, EF....., 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, 514; 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.]

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, 304.]

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. Record of canvass. The secretary of state shall file the abstracts when received, and record the same in a book to be kept by him for recording the result of state elections, to be known as the state election book. [C. '73, § 654; R. § 524; C. '51, § 290.]

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. Certificate 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 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, 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.]

CHAPTER 5.

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. 11, § 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 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.]

TITLE XXIV—CHAPTER 8.

OF OFFENSES AGAINST THE RIGHTS OF SUFFRAGE.

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., § 433.]

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; *Harves 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 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.

SECTION 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 provisions 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.]

S C. 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 residence 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 defence 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 a cause voted for or against any one. The casting of a ballot being proved, it would be presumed that it designated the name of some person for some office. *State v. Minnick*, 15—123.

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 of 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.]

CHAPTER 40 OF THE ACTS OF THE THIRTIETH
GENERAL ASSEMBLY.

PRIMARY ELECTIONS.

H. F. I.

AN ACT providing for the election of delegates of political parties by a primary election and for the nomination of officers by a delegate convention system. [Additional to chapters three (3) and four (4) of title six (VI) of the code, relating to elections and canvass of votes.]

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

SECTION 1. Primary elections authorized. That in all counties having a population of seventy-five thousand (75,000) or more, the nomination of candidates for all offices filled by election of voters, except those of incorporated towns and school districts, by all political parties, shall be made by conventions composed of delegates, and the selection and instruction of delegates shall be made and given at primary elections conducted under the regulations herein provided. All delegates chosen and serving as such in convention assembled shall be considered as instructed to vote for, as long as good faith requires, and use their best endeavors to secure the nomination of persons for the various positions to be filled who have received the largest number of votes respectively in the precinct wherein the the delegate was elected. The provisions of chapters three (3) and four (4) title six (6) and of chapter eight (8) title twenty-four (24) of the code, and the law as it appears in sections forty-nine hundred nineteen-a (4919-a), forty-nine hundred nineteen-b (4919 b), forty-nine hundred nineteen-c (4919-c) of the supplement to the code, shall apply to all such primary elections, the same as general elections, when not in conflict with this act.

SEC. 2. When held—polls open. This primary election shall consist of an election by all political parties held on the first Tuesday in May preceding the November general election at the usual voting places of the several precincts, and shall be conducted in the same manner as general elections. In cities where registration is required by law, the polls shall be open from seven (7:00) A. M. to seven (7:00) P. M., and in all other precincts from twelve (12) o'clock noon to six (6:00) P. M. If the boundaries of any voting precinct are changed between the the time of a general election and the time of a subsequent primary election, the boundaries of such precinct for such primary election shall be the same as they were at the last preceding general election. [31 G. A., ch. 45. § 1; ch. 46, § 2.]

SEC. 3 Election officers—expenses. The election officers of the first general election after the primary election shall also be the officers at said primary election. Such judges and clerks of election shall be designated and so notified at least thirty (30) days prior to the primary election day and shall be required to take the same oath as is required by law for judges and clerks

of a general election, and their duties, liabilities and compensation shall be the same. The expense of the primary election provided for in section two (2) of this act, shall be paid by the counties in which said primary election is held, all bills to be audited and passed upon by the board of supervisors.

SEC. 4. Prima facie electors—challenges. Any person is *prima facie* an elector in a precinct who is a qualified elector in such precinct at the time of such primary election and who has designated the political party with which he desires to be affiliated at the general election held in the preceding November (unless challenged, and if challenged then only in the event the challenge is determined in favor of the voter) and shall be entitled forthwith but not later, to receive a ballot of the political party with which it is determined by the poll books of the preceding year, that he declared his affiliation. The elector voting at such primary election, shall be allowed to vote for candidates for nominations on the ticket of only one political party, and that to be the party with which he is registered as affiliated with; provided however, that those who failed to register their party affiliations for any of the reasons enumerated in section five (5) of this act or who become legal voters of the county after the last general election preceding such primary election, who are otherwise qualified electors of such precinct, shall upon complying with the requirements of said section, have their names registered as provided therein and be entitled to vote, when not challenged, and when a challenge is not sustained, but such person shall not be permitted to vote until the provisions of this act are complied with. When an elector has changed his residence within the county after the November election at which he voted and registered his party affiliation and before the primary election following, he may show his party affiliations by a certificate from the county auditor, which certificate shall be issued upon request by such officer. The endorsement of the judges of election shall appear upon the ballots, as provided by law for the ballots issued at the November election. No person shall vote at a primary election who has not registered as herein provided. The judges of election shall instruct the voter that he is to vote for his choice of the candidates for each office, using only the ballot of the party with which he affiliates, and he must return the ballot folded that it may be deposited in the ballot box.

SEC. 5. Registration of voters. In order that none but qualified electors and those affiliating with and who are members of a political party shall participate in any primary election held by such political party, a system for the registration of voters is hereby provided, and such registration shall be conducted in form and manner as follows, to-wit: at the general election held in November of each year there shall be set aside, on the regular poll books used for the purpose of registering the names of persons who are qualified to and do vote, space for the registration of all persons who may desire to take part

in any primary election held thereafter by any political party. Such space shall be provided on the regular election poll books, immediately following the last perpendicularly ruled column in such book, and shall be headed as follows: "Party Affiliation." It shall be the duty of the judges at such general election to ask each person who votes the question, "With what political party do you desire to affiliate?" and the name of the political party given by such person shall be recorded in the column provided on the poll books for that purpose. In case any person does not desire to state his party affiliation he shall not be required so to do nor shall his failure so to do act as a bar to his voting at any but a primary election. Any elector who voted at the last general election whose party affiliation was not recorded at such general election or having declared his party affiliation, desires to change the same may, not less than thirty nor more than forty days prior to the date of the primary election, file an affidavit with the officer charged with the custody of the poll books of the last general election, stating his party affiliation and such officer shall enter a record of the same on the poll books in the proper column opposite the voter's name. Any such person who was necessarily absent from the precinct and for said reason was unable to file his affidavit of party affiliation or change of party affiliation during the ten days provided therefor, or any person or persons who did not vote at the last general election or any person or persons who have moved into such precinct since the date of the last general election, and who is not provided with a certificate from the county auditor of the county as provided in section four (4) of this act, and who is a qualified elector at the time of said primary election, and any person who became a qualified elector of such precinct since such last general election shall be allowed an opportunity to register at the time and in the manner set forth herein, as follows, to-wit: Any such person may apply at the polls of the precinct in which he resides at the time of the primary election, and make affidavit before the officers of said primary election, who are hereby authorized to administer oath or affirmation thereto, and certify to the same, that he was prevented from registering at the regularly appointed time and the cause for such failure, together with his qualifications as a voter and membership in the political party with which he desires to affiliate. In all such cases the person so applying to the officers of the primary election for registration shall, in addition to his own affidavit, produce the affidavit of at least two well known and reputable electors, residents and freeholders of the precinct, setting forth the qualification of such person as an elector. The officers of such primary election shall then register the name of the person so applying in the poll book for the precinct on the page immediately following the last page containing the names of those regularly registered, and opposite each name so registered at such primary election shall be

marked the words "specially registered," and such person if not challenged or if a challenge is not sustained shall thereupon be allowed to vote. Such poll books shall be delivered to the primary election board by the custodian thereof at least one day prior to the day of the primary election, and be returned to such custodian in good condition forthwith after said primary election to be preserved by him as provided by section eleven hundred and forty-five (1146) of the code. [31 G. A., ch. 45, § 2.]

SEC. 6. Challenged voter—affidavit. When the right of any person to vote is challenged, who voted at the last preceding general election and at that time declared and had recorded his party affiliations, or who voted at such general election in some other precinct of the county and there declared and had recorded his party affiliations and has produced the auditor's certificate herein required, or who voted at such preceding general election and declared his party affiliations not less than thirty (30) days before such primary election as herein provided, the election judges shall require of such person his own affidavit showing his qualifications to vote at such primary election.

SEC. 7. Candidates for nomination—affidavit. The names of candidates for nomination for all county offices, also members of board of supervisors and township offices in townships composed of more than one precinct and of candidates for nomination for offices to be determined in representative, senatorial, judicial, congressional or state conventions who are residents of the county if for a county office, or of the district or state when they are candidates for a district or state office, shall be filed with the county auditor at least twenty (20) days before said primary election. And said candidates shall each file therewith an affidavit stating that he is a resident of the county, district or state and that it is his bona fide intention to be a candidate for the nomination upon a stated party ticket for the office specified, as follows:

I, A. _____ being duly sworn, say that I reside at _____ street _____ (city or town) of _____ county of _____ state of Iowa and that the political party with which I affiliate is the _____ party; I am eligible to hold the office for which I am a candidate, and a _____; that I am a candidate for the nomination to the office of _____ to be voted upon at the primary election to be held on _____ and hereby request that my name be printed upon the official primary ballot as provided by law, as a candidate of the _____ party.

(Signed) _____

Subscribed and sworn to (or affirmed) before me _____ by _____ on this day of _____ 190— [31st G. A. ch. 46. §1.]

SEC. 8. Ballot—form. Ten days prior to the primary election day the county auditor shall prepare the primary election ballot for each political party as hereafter provided and a fac simile thereof shall be published at least once in the official

papers of the county prior to the primary election day. The primary election ballot of each political party shall be separately printed upon paper of uniform quality, texture and size and printed in black ink. No two party ballots shall be of the same color or tint of paper. The paper shall be of such quality, thickness and weight and folded in a way that the names of the candidates cannot be seen and the candidate for whom an elector votes cannot be determined,—except by opening the ballot. Across the head of each ballot shall be printed in a plain heavy letter the name of the political party, followed in the next by the words “primary election ballot”. On the next lines and in smaller type shall be printed the words, “lists of candidates for nomination to be voted for at the 19—primary election in———(precinct)———(township or ward)———county.” Next following and separated from the above heading by a light-faced dash shall appear the words: “To vote for a person mark a cross (X) in the square at the left of the name of the person for whom you desire to vote.” The remainder of the ballot shall be made up in the same manner as the ballots used at general elections, except that: Following the name of each office for which nominations are to be made shall be printed in a column the names of all the candidates in alphabetical order preceded by the words “vote for——— (giving the number to be elected).” Each position with names of the candidates for that position shall be separated by a black-faced dash one inch in length, to separate each position clearly. Following the last names upon the ticket and separated from them by a black-faced dash, shall be a group of blank spaces headed by the word, “delegates”. On the next line shall be the words, “vote for——,” designating the number of delegates to which that precinct is entitled. The requisite number of delegates to which each precinct is entitled shall be determined by the county auditor from the written reports of the chairman of the respective county central committees, said reports to be filed with the county auditor on or before April 20th of each year, and setting forth the number of delegates to which each precinct is entitled in the county convention of their party. In case no report is filed by any of said chairmen as herein provided, then the auditor shall determine the requisite number of delegates to which each precinct is entitled, as he may deem just and proportionate. Opposite each blank space on the left shall be placed a square, and the elector voting the ballot may while in the booth write or paste upon the blank spaces his choice of the requisite number of individuals who are bona fide members of that party and qualified residents of the precinct for delegates placing an X in the square opposite the name of each. Following the group of blank spaces for delegates shall be a blank space with a square set opposite to the left, headed by the word, “committeemen.” The elector voting the ballot may likewise write or paste upon this space his choice of an individual who is a bona

fide member of that party and a qualified resident of that precinct for precinct committeeman, placing an X in the square opposite the name. In the right hand column at the bottom shall appear upon each ballot the fac simile of the signature of the county auditor making up the tickets, followed by the words, "county auditor." There shall be no printing upon the back of the ballots, or any mark or distinguishing feature other than the party tint or color of paper excepting the initials of one of the judges.

SEC. 9. Supplies—poll books. The primary election board in each voting precinct shall be furnished by the county auditor with the necessary election supplies, including poll books, which shall contain tally sheet pages with the names of the candidates of the several parties for the different offices, also blank spaces for the lists of delegates voted for and for those voted for committeemen, and blank spaces for recording by the clerks of the names of the electors voting at said primary election; and upon the pages provided for the recording of said voters, there shall be ruled, commencing at the left-hand side of each page, separate columns perpendicularly, and across each line upon which the name of the voter is to be recorded and headed at the top of said page with the word "Republican", "Democrat", or the names of whatever political parties authorized by this act to appear upon the ballots used at said primary election to designate the several parties, the names of said political parties to be placed in the order of their numerical strength at the preceding November election held in the county. It shall be the duty of the clerks of the primary election when registering the name of a voter to place in the poll book a cross thus (X) in the column designating the party ticket which was given to said voter upon his application for a ticket.

SEC. 10. Challengers. The party committeeman for each party in each precinct may appoint in writing over his signature, two party agents or representatives, supporting different candidates for nomination for an office upon which the principal contest at said primary is being made, when there are two or more candidates for such position in the same party, who shall act as challengers for there respective parties, and shall have the same powers as challengers at general elections. The right of a person to vote at a primary election may be challenged upon the same ground and his right to vote be determined in the same manner as at a general election, also upon any ground touching his qualifications to vote under the provisions of this act. The committeeman of such party may represent the party at the polling place during the canvass of the votes or he may appoint another for that duty.

SEC. 11. Canvass of votes. The canvass of the votes after the close of the polls shall begin immediately in each precinct by opening the ballot boxes by the judges who shall proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each party, at the same time

bunching the tickets cast by each party, together in separate piles, and then shall fasten each pile together, at the top of each ticket. As soon as the primary election board shall have sorted and fastened together the ballots of each separate party, then 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 and for delegates and committeeman upon the ticket of each party. They shall then place the counted ballots in a canvas bag furnished for that purpose by the county auditor, but in no case shall they separate them from each other, and the bag shall be securely fastened and sealed. After all have been counted and duly certified to by the judges and clerks, they shall seal the returns for all parties in one envelope provided for that purpose, on the outside of which shall be printed in perpendicular columns the names of the several political parties, with the names of the candidates for the different offices under their respective party heading, together with blank spaces under appropriate headings for names of party delegates and committeemen, and opposite each candidate's name shall be placed the number of votes cast for such candidate in said precinct, and the names of the persons voted for under the head of delegates and committeemen shall be listed and opposite these names shall be placed the number of votes cast for each, and at the bottom the total vote cast for each political party in said precinct, to be returned to the county auditor.

SEC. 12. Delegates—credential certificates—vacancies.

The requisite number of persons for delegates receiving the highest number of votes upon the respective party tickets, shall constitute the delegates from such precinct to the county convention, and a credential certificate shall be issued by the primary election board, upon a blank provided by the county auditor for that purpose, naming said delegates, their precinct, and the party selecting them, which credential shall be placed in the custody of the delegate receiving the highest number of votes, to be delivered to the committee on credentials at the county convention. In case of a tie vote in any precinct upon any delegate or delegates, the selection shall be determined by lot to be cast then and there as the primary board may determine. It shall be unlawful for any delegate to grant or convey his proxy to another person to serve in his place as a delegate, and the members of the precinct delegations duly selected at the primary election and in attendance at the party convention shall have the authority to either fill any vacancies arising upon the precinct delegation or to cast the full number of votes to which their precinct is entitled in the convention.

SEC. 13. Returns. The returns of the vote cast at the primary election together with the canvas bag containing the ballots, shall be made to the county auditor by the primary election

boards, including a separately certified list of the delegates chosen to represent the various precincts in the county conventions, and also the committeemen elected to serve upon the county committees of the various political parties, by twelve o'clock noon of the next day following that upon which the primary election was held, and the county auditor shall certify a tabulated statement of the returns as reported to him from all the precincts of the county, together with the lists of delegates and committeemen and a list of the candidates for district and state offices voted upon and the vote cast for each, indicating the candidates for each office receiving the largest number of votes for district and state offices, to the chairmen of the respective county committees of the several political parties participating in said primary election by ten o'clock, A. M. of the Friday following the first Tuesday in May, which returns shall be delivered by the county chairmen to the county convention of each party hereinafter provided.

SEC. 14. Party conventions—nominations. There shall be held conventions of delegates of the several political parties participating in the primary election on the Saturday following the first Tuesday in May at an hour and place designated by the county committees of the respective parties, and the chairman and secretary of the committee shall issue a call for same which shall be published in a newspaper of general circulation in the county at least ten (10) days preceding the time of meeting, designating the hour and place of holding the party convention. After the party convention shall have been duly constituted and organized, the secretary thereof shall read the detailed certification of returns from the primary election as transmitted by the county auditor through the chairman of the county committee to the convention. If it shall appear that any candidate for any county office shall have a number of instructed delegates sufficient to be a majority of the whole number of delegates constituting the convention, said candidate shall thereupon be declared duly nominated without the formality of a ballot; and for such offices where no candidate shall have a majority of instructed delegates, a roll call shall be had of the various precincts of the county together with the number of votes to which each precinct may be entitled, the delegates announcing by precincts their choice for the particular office called which balloting shall continue until some candidate for each office shall be declared the nominee of the convention for said office. And no person whose name shall not have appeared upon the primary ticket of his party in the primary election shall be entitled to receive votes in said county convention. The county convention shall by its chairman and secretary certify to the auditor of the county wherein same is held the nominees of the party; and no nominee shall be certified to except from among those whose names were printed upon the official ballot of the primary election. The conventions of the supervisorial districts

and of the townships composed of more than one voting precinct shall be held in the forenoon of the same day as the county convention, and the nominees of said convention shall be duly certified to the county auditor as by law provided.

SEC. 15. Nominees for township offices. Candidates for township offices, except in townships composed of more than one precinct, receiving the highest number of votes cast as determined upon by a count of the votes by the primary election board shall be declared the nominee of the party in such townships. The names of candidates for nomination for offices in such townships as heretofore stated, shall be presented to the primary election board of their respective elective precincts and said board shall declare the same to the electors voting at said primary election so that said electors may vote for such candidates for nomination the same as for candidates for the various county and other offices and the nominees for township offices in such townships shall be duly certified to the county auditor by the officers of the primary election as by law provided.

SEC. 16. Names on ballot. There shall not be placed upon any official ballot to be voted in the next general election the name of any candidate of a political party which cast ten (10) per cent or more of the total vote cast at the preceding general election except in the manner hereinbefore provided.

SEC. 17. County committees. The county committees of the various political parties recognized by this act shall consist of one elector, a member of that particular political party from each voting precinct in the county, who shall be a legal voter in the precinct he is elected to represent. He shall be known as precinct committeeman and shall be elected at the primary election as hereinbefore provided.

SEC. 18. Saloons closed. The provision of section twenty-four hundred and forty-eight (2448) of the code, relating to the closing of saloons on election days, shall apply in like manner to the primary election day, under this act.

SEC. 19. Primary elections in cities—conventions—committees. The primary election in cities, as provided in this act, for the selection of delegates to municipal conventions and for voting instructions to delegates for candidates for municipal offices, and for the election of city committeeman, shall be held on the fourth Tuesday preceding the day of the municipal or city election, and all the provisions of this act shall apply to nomination of candidates for elective offices by political parties for municipal elections in such cities so far as applicable, and said municipalities shall pay the expenses of the same, all bills to be audited and passed upon by the city council. The city clerk shall receive the affidavits of candidates, and shall arrange, publish, have printed and furnish to the precinct election officers the party tickets and necessary election supplies; to him shall be made the returns by the primary election boards, and he shall make certification of the

results of the primary election to the chairmen of the city committees of the several political parties participating in said primary election by 1:30 P. M. of the Friday following said primary election, and perform such other duties relative [to] the city primary election, which shall be applicable thereto, as are provided for the county auditor in the primary election. A city convention of the various political parties participating in a primary election shall be held on the Saturday next following the day of holding the primary election, and in a like manner as provided for a county convention by this act. The delegates to the city convention shall nominate the candidates by a majority vote of said delegates from among those whose names were on the printed ballot of that party, and who were voted for at said primary election. The city committees of the various political parties recognized by this act shall consist of one elector, a member of that particular political party, from each voting precinct in the city, who shall be a legal voter in the precinct he is elected to represent. He shall be known as precinct committeemen [committeeman], and shall be elected at the city primary election.

SEC. 20. Official neglect or misconduct—penalty. 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 such duty or who shall wilfully perform it in such a way as to hinder the objects thereof or shall disclose to any one, 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 (100) dollars nor more than one thousand (1000) dollars, or by imprisonment in the penitentiary not less than one nor more than five years or by both fine and imprisonment.

SEC. 21. Agreement to assist candidate for pay or acceptance of pay—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, shall be punished by a fine of not more than three hundred dollars (\$300.00) or be imprisoned in the county jail not exceeding thirty days. But nothing herein shall be construed to include persons making contracts in good faith for the conveyance of voters to and from polling places on the day of the primary election and the payment of any reasonable compensation for such services.

SEC. 22. Bribery—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 any 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 (6) months next preceding said primary election, or who, at the primary election, is not twenty-one (21) 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 the code, as may be hereto applied, and any person knowingly procuring, aiding, abetting such violation, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined a sum not less than one hundred (100) dollars nor more than five hundred (500) dollars, and be imprisoned in the county jail not less than ten (10) days nor more than ninety (90) days.

SEC. 23. When applicable. This act shall not apply to the nomination of candidates or choice of delegates made prior to the next general election.

SEC. 24. In effect. This act shall take effect and be in force from and after its publication in the Register and Leader and the Daily Iowa Capital, newspapers published in Des Moines, Iowa, and the same shall be published in the official newspapers of the county wherein same shall be applicable at the expense of the respective counties.

Approved April 9, A. D. 1904.

I hereby certify that the foregoing act was published in the Register and Leader and the Daily Iowa Capital, April 13, 1904.

W. B. MARTIN,
Secretary of State

March 11
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