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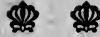
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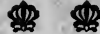


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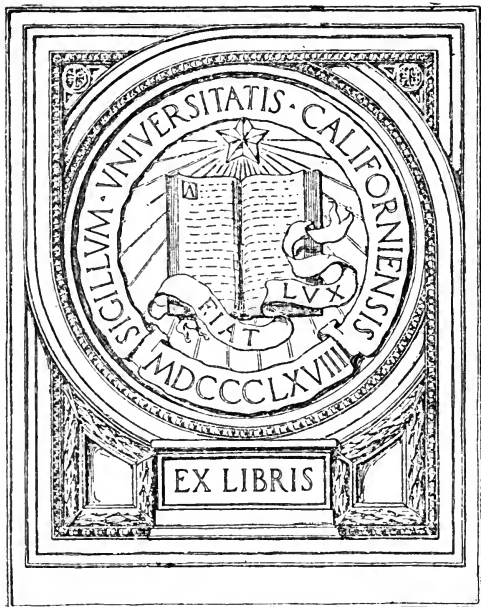
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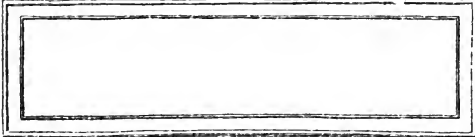


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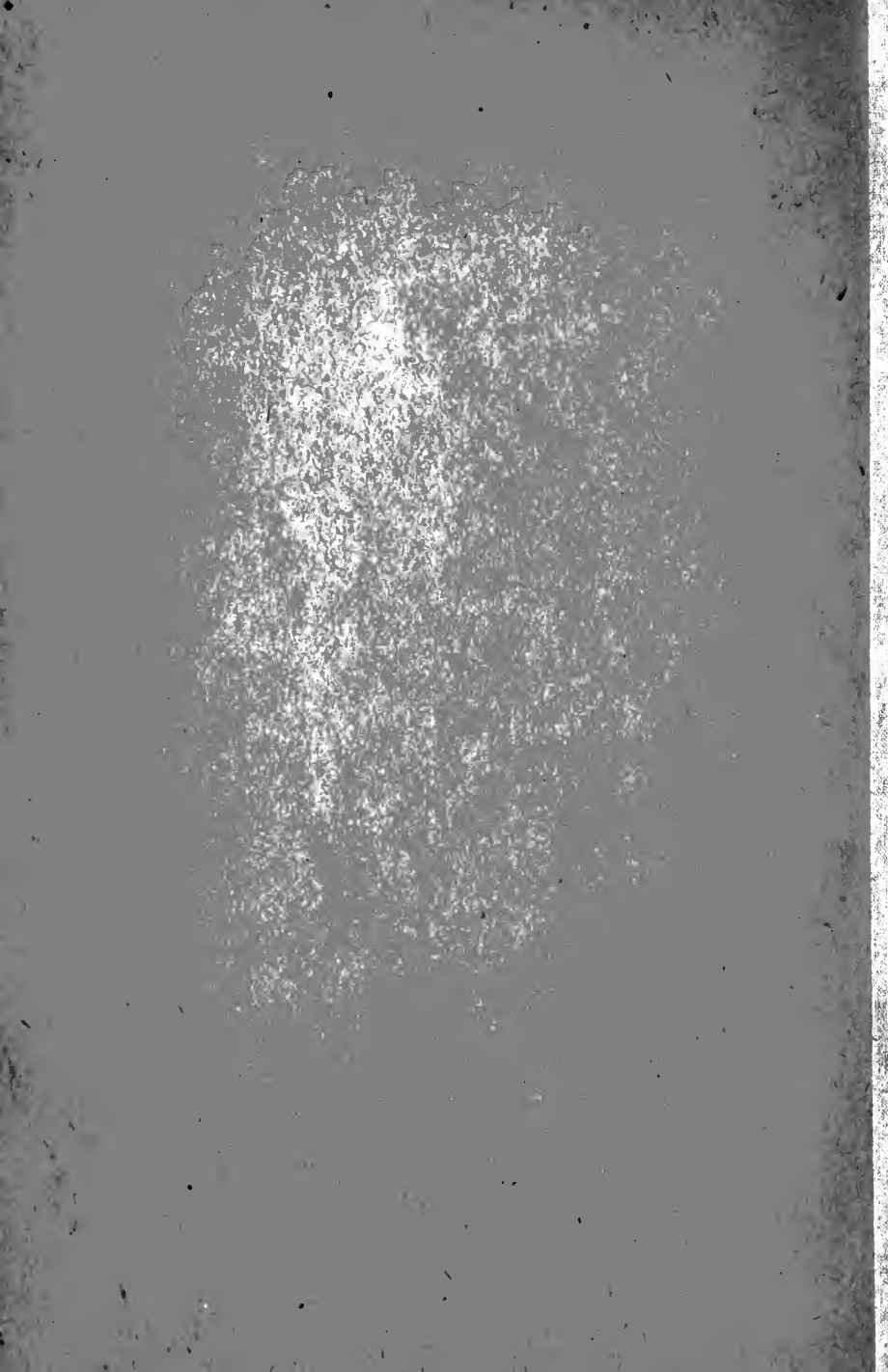
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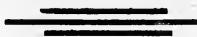
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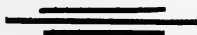




# 1921 Amendments



SUPPLEMENT TO  
NEW JERSEY  
COMMISSION  
GOVERNMENT



PLEASE KEEP THIS IN BOOK

## CHAPTER 104.

An Act respecting cities of the first class and providing for the nomination and election of commissioners elected therein.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Hereafter in every city of the first class in this State there shall be held a primary election for nominations for commissioners required to be elected therein, and the first primary election for such nominations shall be held on the fourth Tuesday in April following the adoption of this act, and thereafter the primary election for such nominations shall be held on the second Tuesday in April in the fourth succeeding year and on the second Tuesday in April in the fourth year thereafter.

2. The election officers conducting the last general annual election shall be the officers of the primary election as well as the officers of the general municipal election, and the primary and municipal elections shall be held at the same places and conducted in the same manner so far as possible, and the polls shall be opened and closed at the same hours as provided by the general election laws.

The names of candidates for commissioners shall, at least ten days prior to the primary election, be filed with the city clerk in the manner and form and under the conditions hereafter set forth, and the petition of nominations shall consist of individual certificates equal in number to at least one-half of one per centum of the entire vote at the last preceding general election, but in no event less than twenty-five, and said petition shall read substantially as follows:

### PETITION OF NOMINATION.

I, the undersigned, a qualified elector of the city of ....., residing at....., certify that I do hereby join in a petition for the nomination

of....., whose residence is at  
....., for the office of commissioner,  
to be voted for at the primary election to be held in  
such city on the.....19.., and I further cer-  
tify that I know this candidate to be a qualified  
elector of said city and a person of good moral  
character, and qualified in my judgment for the  
duties of such office, and I further certify that I  
have not signed more petitions or certificates of  
nominations than there are places to be filled in the  
above office.

(Signed).....

Being duly sworn, deposes and says that he is the  
person that signed the foregoing certificate; that the  
statements contained therein are true and correct.

(Signed).....

Subscribed and sworn to before me.....

It shall be the duty of the city clerk to furnish  
upon application a reasonable number of forms of  
individual certificates of the above character.

Each certificate must be a separate paper and  
must contain the name of but one signer thereto, and  
no more, and shall contain the name of but one can-  
didate, and no more. Each signer must not, at the  
time of filing the certificate, have signed more cer-  
tificates for candidates for that office than there are  
places to be filled in such office, and in case an  
elector has signed two or more conflicting certificates,  
all such certificates shall be rejected.

When such a petition of nomination is presented  
for file to the city clerk, he shall forthwith examine  
the same and ascertain whether it conforms to the  
provisions of this section, and if not found in con-  
formity thereto, he shall designate the defect and  
return the petition forthwith to the person present-  
ing it, which may again be presented forthwith  
when properly amended.

Immediately upon the expiration of the time for filing certificates, statements and petitions for candidates the said clerk shall cause to be published for three successive days in all the daily newspapers published in such city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. The city clerk shall draw lots to determine the order in which the names of the candidates, or group of candidates, shall appear upon the primary ballots. The name of the person, or group of candidates first drawn shall occupy the first place on the ballot and the name of the person, or group of candidates next drawn shall occupy the second place, and so forth. The manner of drawing the lot shall be as follows: Paper cards with the name of each candidate, or group of candidates, written thereon, shall be placed in a covered box with an aperture in the top large enough to allow the said cards to be drawn therefrom. The city clerk in the presence of any candidate, shall draw from the box each card without knowledge on his part as to which card he is drawing.

Any candidate whose name is to be voted on the ballot, by petition addressed to the city clerk, may request that the said city clerk shall print opposite his name on the ballot a designation, in not more than six words, as named by him in said petition, for the purpose of indicating either any official act or board to which he is pledged or committed, *provided*, that such designation shall not indicate political party affiliations. On the filing of any such petition the said clerk shall cause the said designation to be printed opposite the name of the said person upon the ballot. If several candidates for the same office



shall in said petition request that their names be grouped together, and that the one designation to be named by them shall be printed opposite their said names, the said clerk shall group the said names of said persons in a bracket, and opposite the said bracket shall print the said designation as afore-said. Such petition to the said clerk requesting a designation or a grouping of the candidates shall be filed with the city clerk at least eight days before the primary election. If two candidates or groups shall select the same designation the clerk shall notify the candidate or group whose petition was last filed, and the said candidate or group shall select a new designation.

Upon the said ballot arranged in the order in which the names were drawn by the city clerk shall appear the names of the candidates for commissioners with their designation, if any, with a square at the left of each name, and below the names of such candidates shall appear the words "Vote for five." The ballots shall be printed upon plain, substantial white paper, and shall be headed:

Candidates for Nomination for Commissioners of City at the Primary Election. The ballots shall be substantially in the following manner:

(Place a cross X or plus + in black ink or lead pencil in the square preceding the names of the persons you favor as candidates for the respective positions.

Official Primary Ballot.

Candidates for Nomination for Commissioners of City of.....at the Primary Election.

For Commissioner.

(Name of Candidate)

(Vote for five)

Official ballot attest

(Signature.....)

*City Clerk.*

One space shall be left below the printed names of the candidates of each office to be voted for, wherein

the voter may write the name of any person for whom he may wish to vote. Blank space shall be left equal to the number of offices to be filled.

Having caused said ballot to be printed, the said city clerk shall cause to be delivered at each polling place one and one-tenth times as many ballots as there were registered voters in such election district at the last general election. The persons, who are qualified to vote at the general municipal election shall be qualified to vote at such primary election; and the law applicable to challenges made at a general municipal election shall be applicable to challenger at such primary election. The district boards of registry, and election, shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such election district for each of the candidates in the manner now provided by law at the general election for members of the General Assembly, and make return thereof to the city clerk, immediately after the completion of the count of such ballots, upon proper blanks, to be furnished by the said clerk. On the day following the said primary election the said city clerk shall canvass said returns so received from all the election districts, and shall immediately make and file in the office of the city clerk the result thereof. Said canvass by the city clerk shall be publicly made.

#### MUNICIPAL ELECTION

And in every city of the first class in this State, five commissioners, shall be elected, at an election to be held on the second Tuesday in May following the primary election, following the adoption of this act, and on the second Tuesday in May in each fourth year thereafter. The number of candidates equal to twice the number of places to be filled received the highest number of votes at the primary election, shall be candidates, and the names of such candidates shall be printed upon the ballot at the succeeding municipal election, and the number of candidates equal to twice the number of places to be filled re-

ceiving the highest number of votes for commissioners, or all such candidates if less than twice the number of places to be filled, shall be the candidates, and the names of such candidates shall be printed upon the ballot for commissioners at such municipal election, and the ballot at such municipal election shall be in the same general form as for said primary election, so far as possible, and at all elections in such city the election districts, polling places or rooms, methods of conducting election, canvassing the votes and announcing the results, shall be the same as herein provided for the selection of candidates at the primary election, and the number of candidates equal to the number of places to be filled receiving the highest number of votes shall be elected as commissioners, as herein provided.

The registry for elections held under the provisions of this act shall be the official signature copy register containing the names of those persons qualified to vote at the last preceding general election; transfers from one district to another shall be granted as provided by the laws appertaining to general elections in this State.

Qualified voters who did not register or vote at the general election preceding the holding of the primary elections or the election provided for under this act may have their names added to the signature copy register by applying to the county board of elections in counties of the first class, during the week preceding the holding of such election or the primary election, and if upon such application it is made to appear to such board that such person is a qualified elector and is entitled to vote at said election an order shall be made by such board directing the proper district board of registry and election to accept such vote and such order shall be filed with the district board of registry and election and shall be returned by said board to the clerk of the municipality wherein such election is held immediately after the holding of such election, to be kept and filed in the office of such clerk for at least a period of one

year; *provided*, there shall be presented by such voter and there shall be filed with said order an affidavit of said voter containing the information requisite to be given under the election and registry laws of this State.

Official ballots shall not be distributed or used outside of the voting place at any of the elections provided for under this act, and all the provisions of the laws relating to general elections bearing upon the subject of the distribution and use of official ballots shall apply as nearly as may be to the ballots used in the elections held under the provisions of this act, except that there shall be no official distribution of sample ballots.

Any candidate for election as commissioner at the municipal election shall have the right and power to appoint, evidenced by a certificate signed by such candidate two agents or challengers for each and every polling place in each election district in such city. The aforesaid certificate shall be filed with the district board of registry and election, before such agents or challengers shall be allowed to assume the privileges and duties of an agent or challenger. Such agent or challenger shall be vested with all the powers and duties now devolving upon agents or challengers by virtue of "An act to regulate elections (Revision of 1920)", passed May fifth, one thousand nine hundred and twenty, and the various supplements and amendments thereof.

3. The amount which may be spent in aid of the candidacy of any candidate for nomination or election as commissioner at any primary or general municipal election provided for under this act shall be the same as prescribed for candidates for municipal office, under the general election law.

4. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

5. This act shall take effect immediately.

Passed March 30, 1921.

## CHAPTER 176.

An Act to amend an act entitled "A supplement to an act entitled 'An act to amend an act entitled "A supplement to an act entitled 'An act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State,' " approved April twenty-fifth, one thousand nine hundred and eleven,' " which supplement was approved April seventh, one thousand nine hundred and fourteen, which amendment was approved April third, one thousand nine hundred and seventeen, and which supplement was approved April nineteenth, one thousand nine hundred and twenty.

1. Section one of the act of which this act is amendatory be and the same is hereby amended to read as follows:

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever the Federal or State census shall show that any such city which when voting to adopt the provisions of said act had a population of less than ten thousand has increased in population to ten thousand or more, then two additional commissioners shall be elected at an election to be held on the second Tuesday in May following the official announcement of such increase in population, provided that in any city of more than ten thousand population and less than twenty-five thousand population said election shall not be held until a proposed ordinance increasing the number of commissioners from three to five shall be submitted to the board of commissioners by petition signed by electors of the city equal in number to ten per centum of the votes cast at the last preceding general election, requesting that the said ordinance be submitted to the vote of the people, if not passed by the board of commissioners.

The signatures, verification, authentication, inspection, certification, amendment and submission of such

petition shall be the same as for petitions to recall commissioners as now provided by law. Upon the filing of said petition and certification of the same by the city clerk the board of commissioners shall within twenty days thereafter pass said ordinance without change or submit said ordinance without change to the vote of the electors of the city at the next general election. Said petitions must be filed and certified to by the city clerk at least sixty days before the general election at which the proposed ordinance shall be submitted to a vote of the electors.

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

2. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

3. This act shall take effect immediately.

Approved April 7, 1921.

#### CHAPTER 177.

An Act to provide for the assessment of taxes in boroughs that are operating under the commission form of government with a population of over five thousand.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. In all boroughs of this State that are operating under the commission form of government that have a population of over five thousand there may be a board of tax assessors therein composed of one or

more members, but at no time shall the said board of tax assessors exceed three in number, who shall be appointed or elected by the governing body; *provided, however*, that the term of office of the members of said board of assessors shall be fixed by the governing body thereof, not, however, to exceed the term of three years, but such members shall continue in office until their successors are chosen and qualified. Any such officer may be removed from office in the manner now or hereafter to be provided by law; and in the case of death, resignation or removal of any such officer, his successor shall be chosen for the unexpired term only.

2. Said assessors shall each receive such salary as from time to time shall be fixed by the governing body of said borough and each shall give bond for the faithful performance of his duties, in such sum in such form and with such securities as the governing body shall approve.

3. Said board of assessors shall have all the powers and perform all the duties devolving by law upon the assessors of taxes or boards for the assessment of taxes of such borough at the time of the passage of this act; and the offices of such assessors and such boards existing in such boroughs shall be abolished upon the election and qualifying in office of a board of assessors by this act established.

4. Any assessment or report made by a majority of said board shall be deemed the assessment or report of said board of assessors and in case of the death or disability or absence from any cause of one member, the other two may lawfully exercise the powers of the board, but in all cases, before any assessment is finally fixed and determined, it shall be approved by at least two of the members. All reports or returns of tax assessments required to be made to any other board of the borough, county or State shall be made by said board of assessors or a majority thereof.

5. The governing body of any such borough, may

fix the annual salaries of the assessors by ordinance or resolution and all such salaries shall be stated and fixed, and not contingent in anywise and such salaries shall be payable monthly. All fees and allowances of such assessors for any service shall be paid into the borough treasury for the use of the borough. The salary of such officer shall not be diminished during his term of office.

6. All acts or parts thereof inconsistent herewith are hereby repealed.

Approved April 7, 1921.



New Jersey  
Commission Government  
Law

(WALSH ACT)

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FOURTH EDITION

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REVISED AND ANNOTATED

WITH COURT DECISIONS

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BY

LEWIS T. STEVENS

Of the New Jersey Bar

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PUBLISHED BY

ALBERT R. HAND

CAPE MAY, N. J.

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1919

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by

LEWIS T. STEVENS

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## Foreword to Fourth Edition

New Jersey first enacted the Commission Government Law in 1911, the first year of the term of Woodrow Wilson as governor, and the act was prepared by a commission of men who desired an act under which a municipal government could entrust more authority to its officials, and, in which more responsibility could be placed in the hands of fewer men. The object was to place the responsibility where it could be known and to make it practicable to recall the official who should fail in his response to the desires of the electors. The act was the result of a bill introduced in the Assembly by Allen B. Walsh, a member of Mercer county, and the law, after its passage took the name of its sponsor and is known as the "Walsh Act." The original act was signed by Governor Wilson on April 25, 1911, but each succeeding Legislature has altered its sections, and supplements have been enacted, so that of the original law of 1911 but little is left, except that the principles are retained. The act has worked well for being so crudely drawn.

The Legislature of 1914, having greater home rule in such municipalities in view, attempted to place a new first, and new eighth, section to the act but these newly made sections were tested in the Supreme Court and declared unconstitutional, and by such action there has been left the original first

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## **Commission Government Law**

section in force, and the eighth section, as amended in 1912, in effect. The two sections which were declared unconstitutional are placed in the notes following their respective sections.

The act that now exists, with the courts' constructions upon each section as have been carried up in litigation, is here given in orderly succession.

The amendments and supplements include those passed by the Legislature of 1919, and the decisions handed down by the courts, including those for the June term of 1919.

LEWIS T. STEVENS

Cape May, N. J., October 1, 1919.

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## Addenda and Errata

On page 36, in the case of Morris vs Fagen, read :  
“ was not carried” in place of “was not created.”

Since the printing of pages 14 and 15 of this book, the Borough of Avalon in Cape May County (Pop 323) : and the Borough of Avon in Manmouth County (Pop. 707), have adopted the act.

Lyndhurst Township (Bergen County) population 7299, is under commission rule.



# The National Commission Govern- ment Movement

For upwards of thirty years there have been movements on foot to have local, or municipal, government nearer to the control of the people.

But more than the efforts of man had to be first imposed upon one of our fair Southern cities in order to give the movement the impetus required to bring an effect out of it.

Nature, in the great coastal storm and hurricane which lashed the Gulf of Mexico in 1900 and battered down the walls of the city of Galveston, inundated the city and destroyed millions of dollars worth of property and hundreds of lives, was the cause of giving the first commission form of government which attracted the attention of civic scholars throughout the country.

After the great storm it was necessary to cut the red tape of an unwieldy local councilmanic body of 54 members and to act quickly to save that city from further destruction, which could happen in any Gulf storm of lesser furiousness.

The State Legislature of Texas appointed a commission of five persons to supersede the then existing city government, and so well did that commission work, that in 1903, Galveston adopted a commission form with five commissioners, which has since been in existence there.

# Commission Government Law

In New Jersey there were improvement commissions in many municipalities, in which the commission was of greater authority than the town council, but when, in 1875, the State Constitution was amended by prohibiting the State Legislature from passing any "private, local or special laws, \* \* \* regulating the internal affairs of towns and counties; appointing local officers or commissions to regulate municipal affairs," this practice was discontinued.

Judge Thomas M. Cooley, in his "Principles of Constitutional Law," says:

"It is axiomatic that the management of purely local affairs belongs to the people concerned, not only because of being their own affairs, but because they will best understand, and be most competent to manage them. The continued and permanent existence of local government is, therefore, assumed in all the state constitutions, and is a matter of constitutional right even when not in terms expressly provided for.

"Nevertheless there is no constitutional form or model of local government, or standard or measure of local powers, and these need to be different according to the circumstances.

"To determine the local needs in this regard, legislation is requisite and the State, therefore, will create local governments, confer upon them such powers as in its wisdom may seem expedient, and prescribe such safeguards and limitations to their exercise as shall be deemed needful and prudent."

The Galveston commission, then, performed its

## The National Movement

work so effectively that many Texas cities adopted this form of government. The Iowa Legislature in 1916 passed a commission government law, but with broader powers to the people than the Texas law. In Texas, the commissioners had the sole power of government, but Iowa went further, and added three new provisions, i. e., the recall, the initiative and the referendum.

The plan abandons all distinction between executive and legislative powers, and merges all these two functions with that of the judicial in local government. In the place of supposed checks and balances under the old charter governments, it has placed nearer to the people the power to place responsibility on the commissioners by the recall, initiative and referendum. Not all these new checks are found in all the States, but in most of them.

Neither the initiative or referendum has been used to any great extent in the time in which commission government has existed, but the recall has been used in many states. While authorized in New Jersey, by reason of the technicality of that provision, but one commissioner has been recalled up to this time.

Throughout the States seven is the highest number provided for, but in most cases five and three are the number of commissioners fixed for the municipalities. Wisconsin first made the number but three for all cities, and it has now come to be general in the country that a city of over 10,000 population should have at least five commissioners.

One result of the adoption of these commis-

## Commission Government Law

sions is the disappearance of the long ballot, and the substitution of the unpartisan short ballot. In some states the preferential ballot has been adopted with as many as four choices, which was provided for in New Jersey in 1914. It has been shown in actual experience that but a small percentage of the voters express more than a first, and sometimes a second, choice. In a great many instances, however, the few second, third and other choice votes have prevailed over the equal first choice votes received by candidates.

The short ballot has done away with a large lot of relatively unimportant officials slipping to success behind a party designation. The reduction of the number of officials also adds dignity to the office of commissioner, where in the past there was but little thought given to the successful petty candidate for local office.

It is a most excellent government with the personnel of the commissioners being moral, intelligent and gifted with a knowledge of public affairs, but a worse government than the old councilmanic and aldermanic way if the commissioners are scheming politicians and incompetent in public matters. It is human nature that some of the latter class have been elected, and it is here that the recall is useful when invoked.

About four hundred municipalities have adopted the form of government in the United States, notwithstanding that this manner of government is in its infancy. Some of the largest cities of the Union which have adopted this form are:

# The National Movement

	Population in 1910	
Galveston, Tex. ....	1903	36,981
Houston, Tex. ....	1905	78,800
Fort Worth, Tex. ....	1907	73,312
Dallas, Tex. ....	1907	92,104
Des Moines, Iowa ....	1909	86,368
Memphis, Tenn. ....	1910	131,105
Kansas City, Kan. ....	1910	82,331
Tacoma, Wash. ....	1910	83,743
Lynn, Mass. ....	1911	89,339
Trenton, N. J. ....	1911	96,815
Jersey City, N. J. ....	1913	267,779
Cleveland, O. ....	1914	560,663
Newark, N. J. ....	1917	347,469

Of the four hundred cities which have adopted this form of government, none have attempted to go back to its old form of administration, except Denver, Col., which went back to councilmanic government on May 9, 1916

The New Jersey commission government law is known as the Walsh Act, after the sponsor for the bill creating the act in the Legislature. The adoption of this legislation came about with a public meeting held in December, 1910, when representatives of Newark, Jersey City, Trenton, New Brunswick and Passaic met to discuss its adaptability to New Jersey towns. On January 4, 1911, the friends of the movement met in Newark and following this, other meetings were held in Trenton in the last of which nineteen cities were represented. Finally the bill prepared was partially the Iowa law and included generally the provisions which now compose the Walsh Act.

# Commission Government Law

Municipalities of New Jersey which have adopted the Walsh Act are:

	Population 1915
Newark .....	366,721
Jersey City .....	270,903
Trenton .....	103,190
Hoboken .....	67,611
Bayonne .....	64,461
Passaic .....	61,225
Atlantic City .....	51,667
New Brunswick .....	30,019
Orange .....	29,805
Montclair .....	25,029
Irvington .....	20,342
Long Branch .....	14,565
Phillipsburg .....	14,430
Millville .....	13,307
Belleville .....	11,996
Asbury Park .....	10,910
Rahway .....	9,586
Nutley .....	7,987
Ridgewood Township .....	6,729
Collingswood .....	6,600
Vineland .....	6,531
Haddonfield .....	5,077
Lambertville .....	4,600
Bordentown .....	4,095
Hawthorne .....	3,999
Wildwood .....	3,858
Ocean City .....	3,721
Union Twp. (Bergen Co.) .....	2,999
City of Cape May .....	2,513

# The National Movement

Beverly .....	2,450
Bradley Beach .....	2,236
Ridgefield Park .....	1,187
Sea Isle City .....	955
Margate City .....	291
<b>Deal</b> .....	<b>227</b>
Allenhurst .....	203
Cape May Point .....	170
Longport .....	143

## THE WALSH ACT EPITOMIZED

Commission government, as provided for in this act, may be adopted by any municipality of a lesser degree than a county in New Jersey, and the initial step is the presentation of a petition to the clerk of the municipality, signed by one fifth of the total voters registered in the municipality for the preceding election at which a member of the General Assembly of the state was voted for. When such a petition is received by the municipal clerk, he calls an election to be held on the third Tuesday after the filing with him of the petition.

If, at the election, a majority of those voting, decide in favor of the adoption, and that majority is equal to at least thirty per centum of the votes cast in said municipality at the last preceding election for member of the General Assembly, the act becomes the charter of the municipality, and goes into effect on the sixth Tuesday after the election.

If the election fails, then there can be no other election until after the beginning of the last year of the term of the chief executive officer of said municipality elected after the trial election.

On the fifth Tuesday following the adoption of the act the commissioners are elected under the preferential ballot law, which is only used in New Jersey in elections for commissioners under the Walsh act.

Upon the going into effect of the new government the terms of all elective and appointive officers



## Walsh Act Epitomized

expire, but the offices are not, however, abolished, but are filled by the commissioners for the length of terms as provided in the law applicable to such municipality when the Walsh Act is adopted. All other boards and bodies, except boards of education and district courts (when there is a district court in the municipality), are abolished, and the powers are given over to the commissioners.

The commissioners serve until the Third Tuesday in May, of the fourth year following their election. If a vacancy occurs before the beginning of the last year of the term, then the remaining commissioners shall call an election, between thirty and forty days after the creation of the vacancy, to fill it. If the vacancy occurs in the last year of their terms the remaining commissioners may fill it for the unexpired term.

Policemen and firemen and persons under civil service laws, in office when the act is adopted, are exempt from removal from office by the new commissioners, except in the manner prescribed for the removal of officers under proved charges.

In municipalities of 10,000 population and more there are five commissioners, and in those of a less population three commissioners. The commissioners choose the mayor from among themselves and apportion the duties as they deem advisable when they organize their local government.

The commissioners have all the "administrative, judicial and legislative powers" of all other boards existing when they take office, which means, in short, that they are the absolute rulers of the municipality.

## Commission Government Law

The annual compensation of commissioners in municipalities not bordering on the Atlantic Ocean and not known as seaside or summer resorts, are

Population	Commissioners	Mayor
Over 200,000	\$5,000	\$5,500
Over 90,000	3,000	3,500
Over 40,000	2,000	2,500
Over 20,000	1,500	1,800
Over 10,000	1,200	1,500
Over 5,000	750	1,500
Over 2,500	500	750
Over 1,000	350	500
Over 500	200	250
Under 500	50	75

In "fourth class cities," which are under the cities act classification described as cities bordering on the Atlantic Ocean, and known as seaside or summer resorts, the salaries are:

Population	Commissioners	Mayor
Over 90,000	\$5,000	\$5,500
Over 40,000	3,000	4,000
Over 20,000	2,500	3,000
Over 10,000	2,000	2,500
Over 5,000	1,500	2,000
Over 2,500	1,250	1,500
Over 1,000	1,000	1,250
Over 500	500	750
Under 500	250	500

(It has not been judicially settled whether municipalities bordering on the Atlantic Ocean other than cities may take the following salaries for their commissioners.)

## Walsh Act Epitomized

The commissioners may fix the salaries of all other officers and employees.

The commissioners shall meet at least once a week.

The commissioners shall not be interested, directly or indirectly, with any firm or corporation doing business with the municipality, except they may be directors of a bank or trust company, in which the municipality's funds are kept, or from which it borrows money for its temporary needs.

After commissioners have been in office one year, they may be recalled by a vote of the electorate. The manner is so technical, however, that of the many attempts since the act has been in effect, only two have gone so far as to a recall election, and in one case the commissioner sought to be recalled was retained, and in the other a new commissioner was chosen.

The people may initiate the introduction of ordinances to the commissioners, and may also vote upon ordinances adopted by commissioners by proceeding as defined in the act, and thereby the electorate have the recall, the initiative and the referendum in their local government.

If, after the end of six years, the electorate are not satisfied with commission government, they may at the general election preceding the year in which commissioners are to be elected vote to go back to the same form of government in effect in the municipality when commission form of government was adopted.

# COMMISSION GOVERNMENT LAW

An act relating to, regulating and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State. (P. L. 1912, p. 643.)

Approved April 2, 1912.

The original title read as follows:

"An act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State," and was approved April twenty-fifth, one thousand nine hundred and eleven.

## Application Of This Act

1. All cities, towns, boroughs and other municipalities of this State that hereinafter adopt the provisions of this act shall be governed as herein set forth, and wherever the word "city" or "cities" appears in this act it shall be construed to mean "town" or "towns," "borough" or "boroughs" or other "municipality" or "municipalities." (P. L. 1911, p. 462.)

This section was amended by the Home Rule Act, P. L. 1914, p. 254, to read:

1. All municipalities of this State, except counties and school districts, that have heretofore adopted or shall hereafter adopt the provisions of this act shall be governed as herein set forth; and wherever the words "city" or "cities" appears in this act, it shall be construed to mean "municipality" or "municipalities," as the case may be, but shall not be construed to include counties or school districts. Such municipalities shall be, and are hereby declared to be a distinct class of municipalities, and shall not be subject to any laws of this State except laws ap-

## Organization

plicable to all municipalities of this State other than counties and school districts. Approved April 9, 1914.

The Act (Chapter 144, Law 1914) did not divest City of Trenton of the powers conferred upon such city by the Harbor Act of April 15, 1911 p. 233, since the Hennesy act in so far that it provides that all municipalities that have adopted the Walsh Act "shall not be subject to any laws of this state except laws applicable to all municipalities of this state other than counties and school districts" contravenes Article 4, §7, par. 11, of the Constitution, prohibiting special laws regulating the internal affairs of municipalities.—Del. Riv. Trans. Co. vs. Trenton, 85 N. J. Law p. 479; 90 Atl. Rep., p. 731; 91 Atl. Rep., p. 1068; 86 N. J. L., p. 48; 86 N. J. L., p. 679.

## Organization

2. At the first election held in such city next after the adoption of the provisions of this act as herein provided, there shall be elected in such cities, by the duly authorized voters therein, the number of persons as hereinafter provided to be commissioners of such city, each of whom shall have been a citizen and resident of such city for at least two years immediately preceding his election as such commissioner, who shall serve as such commissioners until the third Tuesday of May in the fourth year following such election and until their successors are elected and shall have duly qualified; and every fourth year thereafter, at the regular municipal election in such city, there shall be elected the number of persons as hereinafter provided as commissioners with like qualifications to serve for the term of four years and until their successors have been elected and duly qualified. Should any vacancy occur among such commissioners the remaining commissioners shall, within thirty days thereafter, elect a properly qualified person to fill such vacancy to

## Commission Government Law

serve for the unexpired term. The term of office of such commissioners first elected under the provisions of this act shall commence on the first Tuesday following such election and the term of office of all succeeding commissioners shall commence on the third Tuesday of May next ensuing after their election, at twelve o'clock, noon, and, upon the organizing of the commissioners in any such city, elected under this act, the City Council or other governing body or bodies theretofore acting as governing body or bodies in such city and having any other functions shall be ipso facto abolished, and the terms of all councilmen, or aldermen, and all other officers whether elective or appointive, shall immediately cease and determine; *providing, however,* that nothing herein contained shall be construed to affect in any way the term of office of any policeman, fireman or other employee of any police or fire department, veteran of any war, or other official or employee now protected by any tenure of office act. Wherever heretofore or hereafter the provision of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State and of the various counties and municipalities thereof, and providing for a Civil Service Commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight, and the acts supplementary thereto and amendatory thereof, have been adopted by any county or municipality in this State prior to the adoption of the provisions of this act, then, and in that event, nothing in this act contained shall apply to any

## ORGANIZATION

person holding any position or office coming within the classified service of the civil service law. (P. L. 1911, p. 463.)

Approved April 25, 1911.

See section 7, p. 73, as to filling vacancies for unexpired terms.

This act does not have the effect of abolishing boards of health organized under the general health act of 1887 (2 Comp. St. 1910, p. 2656) in municipalities which adopt it as a governmental scheme. *Istvan vs Naar*, 84, N. J. Law, p. 113; 85 Atl. Rep., p. 1012.

The city clerk of a city adopting this act is not within the protection of that provision of the civil service law which prevents the removal of an officer who is, under civil service, except upon reasons presented to him, and answer made thereto by him. The right of the governing body to appoint to an office when the term of the incumbent, as fixed by law has expired, is not affected by the provisions of civil service law. *Fagan vs. Morris*, 83 N. J. L., p. 3; 86 Atl. Rep., p. 1102. *Salter vs. Burk*, 83 N. J. L., p. 152; 83 Atl. Rep., p. 973.

The language of this act is broad enough and sufficiently clear to include a department of a city created by special act which acted as a governing body having functions for the administration of the affairs of the municipal water works and this department and the water commissioners were abolished as soon as the commissioners for the city organized. *Hirsch vs. Burk*, 83 N. J. Law, p. 146; 83 Atl. Rep., p. 979.

One complaining of the illegality of the election to office of another in his stead must first show that he himself has legal title to it. *Salter vs. Burk*, 83 N. J. Law, p. 152; 83 Atl. Rep., p. 973; *Volk vs. Burk*, 83 N. J. L., p. 204; 83 Atl. Rep., p. 978; *Wilson vs. Burk*, 83 N. J. L., p. 205; 83 Atl. Rep., p. 977; *Zeigler vs. Burk*, 83 N. J. L., p. 207; 83 Atl. Rep., p. 976; *Garey vs. Riddle*, 84 N. J. L., p. 80; 86 Atl. Rep., p. 532; *Barret vs. Atlantic City*, 85 N. J. L., p. 134; 88 Atl. Rep., p. 856; 86 N. J. L., p. 675; 92 Atl. Rep., p. 1086.

On the organization of the commissioners elected under this act the city council or other governing body or bodies theretofore governing in such city shall be ipso facto abolished and the terms of all councilmen or aldermen and all other officers, whether elective or appointive, shall immediately cease and determine; by such provision the incumbency of every office of the city was terminated

## Commission Government Law

by the organization of the commissioners, and the words "all other officers" include a commissioner of the sinking fund, who had no official standing after the organization of the elected commissioners. *Loudenslager vs. Heston*, 86 N. J. L., p. 382; 92 Atl. Rep., p. 54.

Where the law prescribes the term of a municipal officer, it is beyond the power of the board of commissioners of a municipality to elect for a greater or less term, or for an indefinite term, and an attempt to do so will not constitute a valid appointment; and a vacancy, in contemplation of law will still exist in such office. *Salter vs. Burk et al.*, 83 N. J. L., p. 152; 83 Atl. Rep., p. 973.

The incumbent of the office of city clerk created by a charter with prescribed duties and powers, is not entitled on quo warranto to the office of city clerk created by commissioners under this act, on the ground that the adoption of this form of government was not carried by the requisite number of votes; the office created by the commission being of a different character from the charter office. *Morris vs. Fagan*, 90 Atl. Rep., p. 267; 85 N. J. L., p. 617.

The adoption of the Walsh Act and the organization of the city commission does not abolish the character of office of recorder previously existing. The appointment by the commission was for the charter term of three years, dating from such appointment. *Keffer vs. Gaskill*. 95 Atl. Rep., p. 629; 88 N. J. L. p. 77.

The provision of the Walsh Act that the terms of all city officers whether elective or appointive, shall terminate on the organization of the board of commissioners, applied to a health warden, an appointee of the board of health of the City of Hoboken. *Kudlich vs. Griffin et al.*, 96 Atl. Rep. p. 561; 88 N. J. L., p. 574.

Notwithstanding the fact that the Walsh Act indicates an attempt with political considerations in municipal government, by adopting the provisions of that act, a city does not adopt a permanent tenure for its officers, similar to that secured by the civil service act. A municipal officer whose term has expired occupies the status of a holdover, and holds office at the will of the appointing body whether protected by the civil service act or a law tantamount thereto. *Biddle vs Atlantic City*, 91 N. J. L., p. 679; 103 Atl. Rep., p. 386.

### Duties Of Board

3. Every city having by the last preceding State or National census ten thousand population or



## Duties Of Board

more shall be governed by a board of commissioners consisting of five commissioners, and every city having by the last census less than ten thousand population shall be governed by a board of commissioners, consisting of three commissioners, chosen as provided in this act, each of whom shall have the right to vote on all questions coming before the board of commissioners. A majority of the members of the board of commissioners shall constitute a quorum and the affirmative vote of a majority of all the members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless otherwise provided for in this act. Every resolution or ordinance shall be reduced to writing and read before the vote is taken thereon, and the vote upon every motion, resolution or ordinance shall be taken by yeas and nays and entered in the minutes; and the minutes of each meeting so recorded shall be signed by a majority of all the commissioners and the city clerk. At the first meeting after their election, the said commissioners shall choose one of their number to preside at all meetings of the board of commissioners and he shall be designated "mayor." The mayor shall have no power to veto any measure, but every ordinance passed by the board of commissioners shall be recorded and signed in the book in which it is recorded by a majority of all the commissioners before it shall be in force.

After its final adoption, each ordinance shall be published once, in a newspaper published and circulating in the city, if such there be, or, if there be no such newspaper, then in a newspaper published in

## Commission Government Law

the county and circulating in the city, and no publication of any ordinance or resolution, either before or after its final adoption, shall be necessary to make the same effective, except as provided in this act. When any ordinance or resolution is required to be published by any of the provisions of this act, such publication shall include the names of the commissioners who signed such ordinance or resolution. (P. L. 1916, p. 406.)

Approved March 18, 1916.

Under the Walsh Act the office of "presiding officer of the board of commissioners," and as such "mayor" and "director of the department of public affairs," is for a fixed term of four years, and not merely at the will of the board of commissioners. *Woolley vs. Flock*, 92 N. J. L., p. —; 105 Atl. Rep., p. 489.

### Powers of Board

4. The board of commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the mayor and city council and all other executive or legislative bodies in said city, and have complete control over the affairs of the city adopting the provisions of this act. The executive, administrative, judicial and legislative powers, authority and duties in such city shall be distributed into and among five departments, except that in any city having but three commissioners, three departments shall be designated and provided by the consolidation of the first and third departments and the fourth and fifth departments as follows:

1. Department of public affairs.

## Power Of Boards

2. Department of revenue and finance.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

The board of commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all officers and employees and they may assign particular officers and employees to one or more departments and may require any officer or employee to perform duties in two or more departments, provided the work required of such officer or employee in such different departments be similar in character and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

The mayor shall be the director of the department of public affairs, and the board of commissioners shall, at the first regular meeting after the election of its members, designate by majority vote one commissioner to be director of the department of revenue and finance, one to be director of the department of public safety, one to be director of the department of streets and public improvements, and one to be director of the department of parks and public property, except that upon the organization of a board of three commissioners but three departments shall be designated, as above provided, and but three directors voted therefor, and such desig-

## Commission Government Law

nation may be changed whenever it appears that the public service would be benefitted thereby.

The board of commissioners shall at the first meeting, or as soon as may be after organization, create such subordinate boards and appoint such officers as it may be necessary for the proper and efficient conduct of the affairs of the city. Any board created may be abated; or any officer or employee appointed by the board of commissioners may be removed from office by them, at any time for cause, after public hearing, provided their action shall be taken in accordance with the civil service and tenure of office acts in municipalities where such acts have been adopted, and such action shall be subject to review by the courts as heretofore.

The mayor and board of commissioners shall have suitable offices and their total compensation shall, in cities of the first, second and third classes, be as follows: In such cities having, by the last preceding State or National census more than two hundred thousand population, the mayor's salary shall be not more than fifty-five hundred dollars, and that of each commissioner shall be not more than five thousand dollars. In cities having by the last census a population of over ninety thousand and not exceeding two hundred thousand, the mayor's annual salary shall not be more than three thousand five hundred dollars, and that of each commissioner shall be not more than three thousand dollars. In cities having from forty thousand to ninety thousand population, the mayor's annual salary shall be not more than two thousand five hundred, and that of each com-

## Power Of Boards

missioner shall be not more than two thousand dollars. In cities having from twenty to forty thousand population, the mayor's annual salary shall be not more than one thousand eight hundred dollars, and that of each commissioner shall be not more than one thousand five hundred dollars. In cities having from ten to twenty thousand population, the mayor's annual salary shall be not more than one thousand five hundred dollars, and that of each commissioner shall be not more than one thousand two hundred dollars. In cities having from five thousand to ten thousand population, the mayor's annual salary shall be not more than one thousand dollars, and that of each commissioner shall be not more than seven hundred and fifty dollars. In cities having from twenty five hundred to five thousand population, the mayor's annual salary shall be not more than seven hundred and fifty dollars, and that of each commissioner shall be not more than five hundred dollars. In cities having from one thousand to twenty-five hundred population, the mayor's annual salary shall be not more than five hundred and that of each commissioner not more than three hundred and fifty dollars. In cities having from five hundred to one thousand population, the mayor's salary shall be not more than two hundred and fifty and that of each commissioner shall be not more than two hundred dollars, and in cities having less than five hundred population, the mayor's salary shall be not more than seventy-five and that of each commissioner shall be not more than fifty dollars.

The compensation of the mayor and the commis-

## Commission Government Law

sioners shall, in cities of the fourth class, be as follows: In such cities having, at the last preceding State or National census, more than ninety thousand population, the mayor's salary shall be not more than fifty-five hundred, and that of each commissioner shall be not more than five thousand dollars. In cities having from forty thousand to ninety thousand population the mayor's annual salary shall be not more than four thousand and that of each commissioner shall be not more than three thousand dollars. In cities having from twenty thousand to forty thousand population, the mayor's annual salary shall be not more than three thousand and that of each commissioner shall be not more than twenty-five hundred dollars. In cities having from ten thousand to twenty thousand population, the mayor's annual salary shall be not more than twenty-five hundred, and that of each commissioner shall be not more than two thousand dollars. In cities having from five thousand to ten thousand population, the mayor's annual salary shall be not more than two thousand and that of each commissioner shall be not more than fifteen hundred dollars. In cities having from twenty-five hundred to five thousand population, the mayor's annual salary shall be not more than fifteen hundred, and that of each commissioner shall be not more than twelve hundred and fifty dollars. In cities having from one thousand to twenty-five hundred population, the mayor's annual salary shall be not more than twelve hundred and fifty, and that of each commissioner shall not be more than one thousand dollars. In cities having from five hundred to

## Power Of Boards

one thousand population, the mayor's annual salary shall be not more than seven hundred and fifty, and that of each commissioner shall be not more than five hundred dollars. And in cities having less than five hundred population the mayor's annual salary shall be not more than five hundred dollars and that of each commissioner shall not be more than two hundred and fifty dollars. Such salaries shall be payable in equal monthly installments.

The salary or compensation of all other officers and employees of the city shall be fixed by the board of commissioners, and shall be payable monthly, or at shorter periods as they shall determine; provided, however, that the salary or compensation of any member of the police or fire departments shall not be fixed at a less amount than that received by the said member at the time of the adoption of said act; provided, however, that the compensations of the commissioners shall be fixed by an ordinance adopted by the board of commissioners immediately after the organization of the board, in accordance with all the provisions of this act; the compensation so fixed shall not be increased during the term for which the commissioners are elected, unless, after said ordinance shall have been adopted, an increase in the compensation payable in such city shall be authorized by statute. In each city governed by provisions of this act, there shall be a city clerk, who shall be appointed by the board of commissioners for such term as they may fix, and who shall be the clerk of the board of commissioners, and have the custody of their minutes, and of all papers and records of the city not otherwise ex-

## Commission Government Law

pressly provided for. Said clerk shall also have custody of the seal of the city, and copies of all records of the city certified by him under the seal of the city shall be legal evidence in all courts and places in like manner as if the originals were produced.

The corporate existence of any city accepting the provisions of this act shall be continued, and its corporate name and seal shall not be changed by such acceptance, and all acts, general or special, relating to such city, shall except so far as inconsistent with this act, apply to such city, and such city shall have and exercise the powers and duties thereby conferred or imposed.

Whenever in any municipality where the provisions of the act to which this act is an amendment have been or may hereafter be adopted, the commissioners desire to fix the compensation to be paid to them during the terms for which they were elected at a sum greater than that fixed in the act of which this is an amendment, they shall have power so to do; provided, however, the same be done by ordinance duly passed by said board, which ordinance, however, shall not take effect until submitted for the approval of the voters in such municipality in the following manner:

At the general election held the next following the passage of such ordinance the same shall be submitted without alteration to the vote of the electors of the municipality, and it shall be the duty of the official charged with the preparation of the ballots to be used at said election to place thereon these words: "For the ordinance" (stating the nature of the proposed



## Power Of Boards

ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance); with a square at the left of each phrase, and below shall appear the words "Vote for or against; place a cross in one square." If a majority of the qualified voters voting on the proposed ordinance shall vote in favor thereof such ordinance shall become thereupon a valid and binding ordinance of the municipality and the members of the board of commissioners of such municipality and their successors shall be entitled to receive during the term for which they are elected, as compensation for their services, the amount so fixed in said ordinance.

The maximum salaries to be fixed under the provisions of this act shall be as follows:

In cities of the first, second and third classes, having, by the last preceding State or National census, more than two hundred thousand population, the mayor's salary shall be not more than fifty-five hundred dollars, and that of each commissioner shall be not more than five thousand dollars. In cities having by the last census a population of over sixty thousand and not exceeding two hundred thousand, the mayor's annual salary shall be not more than three thousand five hundred dollars, and that of each commissioner shall be not more than three thousand dollars. In cities having from forty thousand to sixty thousand population, the mayor's annual salary shall be not more than two thousand five hundred dollars, and that of each commissioner shall be not more than two thousand dollars. In cities having from twenty to forty thousand population, the mayor's annual sal-

## Commission Government Law

ary shall be not more than one thousand eight hundred dollars and that of each commissioner shall be not more than one thousand five hundred dollars. In cities having from ten to twenty thousand population the mayor's annual salary shall be not more than one thousand five hundred dollars, and that of each commissioner shall be not more than one thousand two hundred dollars. In cities having from five thousand to ten thousand population, the mayor's annual salary shall be not more than one thousand dollars, and that of each commissioner shall be not more than seven hundred and fifty dollars. In cities having from twenty-five hundred to five thousand population, the mayor's annual salary will be not more than seven hundred and fifty dollars, and that of each commissioner shall be not more than five hundred dollars. In cities having from one thousand to twenty-five hundred population, the mayor's annual salary shall be not more than five hundred and that of each commissioner not more than three hundred and fifty dollars. In cities having from five hundred to one thousand population, the mayor's salary shall be not more than two hundred and fifty and that of each commissioner shall be not more than two hundred dollars, and in cities having less than five hundred population, the mayor's salary shall be not more than seventy-five and that of each commissioner shall not be more than fifty dollars.

The compensation of the mayor and commissioners shall, in cities of the fourth class, be as follows: In such cities having, at the last preceding State or National census, more than ninety thousand popula-

## Power Of Boards

tion, the mayor's salary shall be not more than fifty-five hundred and that of each commissioner shall be not more than five thousand dollars. In cities having from forty thousand to ninety thousand population, the mayor's annual salary shall be not more than four thousand and that of each commissioner shall be not more than three thousand dollars. In cities having from twenty thousand to forty thousand population, the mayor's annual salary shall be not more than three thousand, and that of each commissioner shall be not more than twenty-five hundred dollars. In cities having from ten thousand to twenty thousand population, the mayor's annual salary shall be not more than twenty-five hundred, and that of each commissioner shall be not more than two thousand dollars. In cities having from five thousand to ten thousand population, the mayor's annual salary shall be not more than two thousand and that of each commissioner shall be not more than fifteen hundred dollars. In cities having from twenty-five hundred to five thousand population, the mayor's annual salary shall be not more than fifteen hundred, and that of each commissioner shall be not more than twelve hundred and fifty dollars. In cities having from one thousand to twenty-five hundred population, the mayor's annual salary shall be not more than twelve hundred and fifty, and that of each commissioner shall not be more than one thousand dollars. In cities having from five hundred to one thousand population, the mayor's annual salary shall be not more than seven hundred and fifty, and that of each commissioner shall be not more than five hundred dollars.

# Commission Government Law

And in cities having less than five hundred population, the mayor's annual salary shall be not more than five hundred dollars and that of each commissioner shall be not more than two hundred and fifty dollars.

Whenever an ordinance is to be submitted under this act to the voters of the municipality at any election, the city clerk shall cause such ordinance to be published in at least two of the newspapers published in such municipality, such publication to be not more than twenty nor less than five days before the submission of such ordinance to be voted on.

2. If any proviso, clause or section of this act shall be declared invalid or unconstitutional, the rest of the act shall stand and the proviso, clause or section declared invalid or unconstitutional shall be excised from this act. (P. L. 1915, p. 494.)

Approved April 13, 1915; Inconsistent provisions repealed.

The incumbent of the office of city clerk of a city created by the charter thereof, with prescribed duties and powers is not entitled on quo warranto to the office of city clerk created by the commissioners chosen after the adoption of this act, on the ground that the adoption of the commission form of government was not created by the requisite number of votes; the office created by the commission being of a different character from the charter office. *Morris vs. Fagan*, 85 N. J. Law, p. 617; 90 Atl. Rep., p. 267.

The management of municipal affairs under this act is entrusted to a board of commissioners, but it largely leaves the mechanism of the adopting city's government and the provisions of its charter untouched. It does not alter general laws or charter provisions relating to the government of such city, except when inconsistent with the provisions of this act. *Salter vs. Burk*, 83 N. J. L., p. 152; 83 Atl. Rep., p. 973.

The resolution of commissioners removing from office a comptroller for ignoring a supersedeas staying the payment of judgment, and for failure to comply with

## Power Of Boards

provisions of the statutes and ordinances regulating duties of comptroller, it is held that the power of removal is vested in commissioners by section 4, and was legally exercised. *Barrett vs. Atlantic City*, 85 N. J. Law, p. 134; 88 Atl. Rep., p. 856; 86 N. J. L., p. 675; 92 Atl. Rep., p. 1086.

Section 4 (P. L. 1913, p. 836) as now amended vests all judicial powers and duties possessed by the Mayor and common council and other executive or legislative bodies in the city in the board of commissioners, and these powers and duties must be retained by the board, and not be delegated. *Herbert vs. Atlantic City*, 87 N. J. L., p. 98; 93 Atl. Rep., p. 80.

Where the resignation of a commissioner was to take effect on a certain day, it became effective at midnight on the day preceding, since the law takes no account of the fractions of a day. Where a commissioner acted as such on the day on which his resignation became effective, his acts were not those of a de facto officer, since he was acting under no color of right to the office. *Loughran vs. Jersey City*, 86 N. J. L., p. 422; 92 Atl. Rep., p. 55.

The Walsh act empowers the commission to remove employees for cause, after public hearing, in accordance with the Civil Service and Tenure of Office acts, where such acts have been adopted. It is manifest, under paragraph 4, section 4, that removals can be made "for cause only after a public hearing." "Cause," meaning, just cause. *Brokaw vs. Burk*, 89 N. J. L., p. 132; 98 Atl. Rep., p. 11; *Disbrow vs. Burk*, *Ibid*; *Johnston vs. Burk*, *Ibid*.

When a city has adopted this act its comptroller, collector and treasurer are no longer "chief executive officers," since section 4 gives to the commissioners all executive, legislative and judicial powers formerly exercised by all the city officers so that their secretaries or stenographers are not in the exempt class. *Feeney vs. Burge*, 89 N. J. L., p. 359; 98 Atl. Rep., p. 192.

The Legislative did not intend by the provisions for the initiative in the Walsh act to make it possible to change fundamentally the scheme of government with power concentrated in the commissioners therein provided for, and again scatter the powers among different boards. The act to establish an excise department is superseded by the Walsh act in cities which adopt the latter. *Buohl vs. Beverly*, 90 N. J., p. 44; 100 Atl. Rep., p. 328.

A director of public safety, in a city governed under the provisions of the "Walsh Act," has the power, sitting alone, to try a member of the police department on the charges preferred against him, where the board of com-

## Commission Government Law

missioners has, by resolution, and in accordance with the provisions of p. 494, P. L. 1915, amending section 4 of the Walsh Act, conferred upon such director the judicial powers exercised by him. *Crane vs. Jersey City* 90 N. J. L., p. 109; 103 Atl. Rep., pps. 678 and 1051.

The amendment to section 4 of the Walsh Act approved April 3, 1915, takes from the board of commissioners jurisdiction to try charges against a police officer, and vests such jurisdiction in the commissioner of the department of public safety. *Foley vs. City of Orange*. 91 N. J. L., p. 554; 103 Atl. Rep., p. 743.

Under P. L. 1915, p. 495, sec. 4, distributing judicial as well as executive and legislative powers, authorities and duties among the five city departments, the jurisdiction to try delinquent police officers is vested in the commissioner of the department of public safety. The board of commissioners having a police officer, conviction and order of dismissal in no jurisdiction to hear and determine charges against proceedings before such board will be set aside, although the commissioner of public safety who had jurisdiction to try officer dismissed heard testimony and voted for conviction and dismissal. *Apple vs. Atlantic City*. 91 N. J. L., p. 000; 104 Atl. Rep., p. 89. *Brennan vs. Mayor and Alderman of Jersey City*. 92 N. J. L., p.—104 Atl. Rep., p. 90.

### Concerning Salaries

1. It shall be lawful for the board of commissioners of any city in this State which has adopted, or shall hereafter adopt the provisions of the act to which this act is supplemental, to increase, by ordinance the compensation which the Mayor and Commissioners shall receive; *provided*, the amount of such increase shall in no instance exceed fifty per centum of the salary as fixed by the act to which this act is supplemental; *and provided, further*, that no ordinance passed under the authority of this act shall become effective in any such city until after its provisions have been submitted to the electorate and adopted by a majority of the qualified voters voting

## Power Of Boards

thereon at a general or regular municipal election.  
(P. L. 1917, p. 767.)

Approved March 29, 1917.

## Succeed to Power of Certain Former Bodies

1. Whenever the provisions of the act to which this act is supplemental have been adopted by any municipality, either prior or subsequent to the passage of this act, all boards and bodies, whether State or local municipal agencies, then existing in such municipality (except the board of education and the district court or courts) shall be ipso facto abolished, and all the powers and duties devolved by law upon such boards and bodies shall pass to, vest in and be performed by the board of commissioners elected under the provisions of the act to which this act is supplemental; provided, however, that nothing in this act contained shall be construed to prohibit the creation of subordinate boards as authorized by paragraph four of section four of said act to which this act is supplemental.

2. The enacting clause of all ordinances passed by the board of commissioners shall be, "The Board of Commissioners of the (insert name of municipality) do ordain," and all proceedings for the recovery of penalties for the violation of the ordinances of the municipality shall be commenced and prosecuted in the corporate name of the municipality.

## Commission Government Law

3. The board of commissioners shall have, possess and exercise all the power that shall be granted to the boards and bodies supplanted by it, by laws enacted subsequently to the organization of said board, unless such power shall be expressly withheld. (P. L. 1913, p. 581.)

Approved April 9, 1913. —

An ordinance regulating conditions governing the sale of milk or cream (the pure food law), adopted by a city having a commission form of government, invested under the Walsh Act with powers conferred upon a Board of Health under Act of March 29, 1904, (P. L. 1904, p. 344), section 4, is invalid, the commissioners succeeding to the powers of the Board of Health. *Jersey City vs. Hennessey*. 106 Atl. Rep., p. 405.

## Shall Control Places of Amusements Etc.

1. In order to lessen the dangers caused by fire, explosion and panic, the board of commissioners shall have power to regulate the use of dance halls, schools, churches, theatres, opera houses, and all buildings used for public entertainment or amusement; to compel the owners, lessees, or persons operating or controlling the same to provide adequate and sufficient exits and fire escapes therefrom, and to prevent the obstruction thereof; to properly guard all lights and electric wires therein: to regulate the construction, installation and use of moving picture machines, scenery and other apparatus and appliances used in such buildings.

2. Said board shall have power to prescribe penalties for the violation of any ordinance or regulation which they are empowered to make by the act



## Power Of Boards

to which this act is a supplement, or by any amendment thereof or supplement thereto. (P. L., 1913, p. 197.)

Approved March 25, 1913.

### Power Over Excise Matters

1. Whenever the provisions of the act to which this act is supplemental have been adopted by any municipality having within their territorial limits a population of over ten thousand inhabitants, the commissioners elected either prior or subsequent to the passage of this act, under the act to which this act is supplemental shall act as an excise board in said municipality and said commissioners acting as such excise board shall have power within such municipality to make, establish, amend or repeal ordinances and by-laws; to license and regulate the sale of intoxicating liquors in said municipality; to prescribe by ordinance the form of application to be used, and to fix the amount of license fees to be paid for the various licenses that may be used, and when licensed, to revoke or transfer such licenses, and to prohibit all traffic in or sale of intoxicating drink or drinks, to license, regulate or prohibit billiard saloons or bowling alleys and to prescribe and enforce a penalty or penalties either by a fine not exceeding two hundred dollars or imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, not exceeding ninety days or both, for the violation of such ordinances or by-laws, which said penalties shall be enforced and collected by said board of commissioners acting as an excise board in such municipalities in the same manner as other pen-

## Commission Government Law

alties are enforced and collected in any municipality, and that every ordinance or by-law of said commissioners acting as an excise board in said municipality shall be introduced and passed in the same manner that other ordinances are introduced and passed in said municipality except franchise ordinances; and no license for such purposes within said municipality, granted by any other authority, shall be lawful; that all fees for licenses granted by said commissioners acting as an excise board for said municipality shall be paid to the clerk of said municipality who shall, in addition to his other duties, act as clerk of said commissioners acting as an excise board in said municipality, and by him said fees shall be paid over to the treasurer of said municipality; *provided, however*, that nothing in this act contained shall be held to repeal or alter any law of this State concerning any misdemeanor or other crime, and that no license shall be prescribed or issued for any character of business different from that now permitted by law or any license fee fixed for any amount less than the minimum amount fixed by law; *provided, however*, that nothing in this act contained shall be construed to prohibit the board of commissioners in cities adopting the provisions of the act to which this act is supplemental from the creation of a subordinate excise board in the same manner as the creation of other subordinate boards is authorized by paragraph four of section four of said act to which this act is supplemental. (P. L. 1918, p. 1086).

Approved March 6, 1918.

2. Whenever the provisions of the act to which this act is supplemental have been adopted by any

## Power Of Boards

municipality either prior or subsequent to the passage of this act, this act shall abrogate, repeal and annul all acts or parts of acts then existing, whether general or special, in anywise affecting the government of such municipality, which are contrary to or inconsistent with the provisions of this act. (P. L. 1918, p. 1088.)

Approved March 6, 1918

3. If any proviso, clause or section of this act shall be attacked in any court, and it shall be declared invalid or unconstitutional, the rest of this act shall stand and the proviso, clause or section declared invalid or unconstitutional shall be excised from this act. (P. L. 1918, p. 1088.)

Approved March 6, 1918.

4. Nothing contained herein shall be construed to repeal or affect the act entitled "An act to prohibit the sale, or offer, or expose for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this State where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," approved January twenty-ninth, nineteen hundred and eighteen, or the act entitled "An act to regulate the sale, or offer, or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this State, by ordinance, where the legal voters of such municipality shall initiate and vote in favor of such ordinance," approved January

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twenty-ninth, nineteen hundred and eighteen. (P. L. 1918, p. 1088.)

Approved March 6, 1918.

### **Regulate Sale of Liquors**

1. Whenever the provisions of the act to which this act is supplemental have been adopted by any city, either prior or subsequent to the passage of this act, such cities shall be and are hereby vested with power and authority to enact and enforce by imposition of reasonable fines or imprisonment, or both, all ordinances necessary for the protection of life, health and property and for the enforcement of all laws of the State regulating the sale of spirituous, vinous, malt and brewed liquors; to declare and prevent and summarily to abate nuisances, whether caused by the sale of spirituous, vinous, malt, intoxicating and brewed liquors, or otherwise; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the Constitution. (P. L. 1916, p. 306.)

Approved March 17, 1916.

### **Convention and Amusement Halls**

1. The commissioners in every city which has adopted the provisions of an act entitled "An act relating to, regulating and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State," which

## Power Of Boards

act was approved April twenty-fifth, one thousand nine hundred and eleven, the title of which act was amended to read as above set forth by an act approved April second, one thousand nine hundred and twelve, may by ordinance acquire the necessary land and authorize and provide for the construction thereon of a building or buildings suitable for conventions, temporary or permanent exhibitions, entertainments, receptions, lectures, addresses, assemblages and other like purposes, and may lease all of any portion of such building or buildings and premises for such purposes or for any other purpose which in their discretion they may deem advisable, including the sale of merchandise and privileges, and may equip such building or buildings for the purposes herein mentioned, and may by ordinance provide from time to time for the issue of bonds in such amounts as may be necessary for such purposes, provided that the bonds issued for the above purposes shall not be included in the debt limit of such city to the extent that the income from such enterprise shall carry the interest falling due upon the bonds and the sinking fund provided for their payment. (P. L., 1916, p. 372).

Approved March 17, 1916.

## Meetings of Board

5. The board of commissioners shall designate the time of holding regular meetings, which shall be at least once a week, and special meetings may be called from time to time by the mayor or by two commissioners. All meetings of the commissioners, whether regular or special, shall be open to the pub-

## Commission Government Law

lic and any citizen may have access to the minutes upon application to the city clerk.

The mayor shall be president of the board and shall preside at its meetings and supervise all departments and report to the board for its action all matters requiring the attention of the board or any department. Director of the department of revenue and finance shall be vice-president of the board and, in case of vacancy in the office of mayor, shall perform the duties of that office. (P. L. 1911, p. 468).

Approved April 25, 1911.

### Passage of Ordinances & Franchises

6. Every ordinance or resolution appropriating money, or ordering any street improvement, or sewer, or authorizing the making of any contract or granting any franchise, or the right to occupy or use the streets, highways, bridges or public places of the city for any purpose, shall be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least two weeks before the final passage or adoption thereof. No franchise, or right to occupy or use the streets, highways, bridges or public places in any city shall be granted, renewed or extended except by ordinance; and every such ordinance shall be published in said city before being finally passed upon and must receive the approval, by vote, of one more than a majority of all the members before being finally adopted. (P. L. 1912, p. 649.)

Approved April 2, 1912.

Certiorari, and not quo warranto, is the proper remedy to review an ordinance which created a new position or

## Inhibitions Upon Officials

office where the object is to abolish the office, and not to oust the incumbent therefrom. *Laughran vs. Jersey City*, 86 N. J. L., p. 442; 92 Atl. Rep., p. 55.

7. No officer or employee, elected or appointed in any such city, shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the city, and no such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof, or services to be furnished or performed, for any person, firm or corporation, operating interurban railway, street railway, gas works, water works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officers or employee shall accept or receive, directly or indirectly, from any person, firm or corporation, operating within the territorial limits of said city any interurban railway, street railway, gas works, water works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly, from any such person, firm or corporation, any other service upon terms more favorable than is granted to the public generally. And for the violation of these provisions the offender shall be punished as now provided, or may be provided hereafter by law or ordinance.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to city officials heretofore provided

# Commission Government Law

by any franchise or ordinance be affected by this section. (P. L. 1911,p. 469.)

Approved April 25, 1911.

## Bond Restriction

8. All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable fines or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and summarily to abate nuisances; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the Constitution. Provided, however, that no ordinance or resolution increasing the net bonded indebtedness of the city to a sum in excess of fifteen per centum of the assessed valuation of all property within said city shall be valid unless the same shall be first submitted, by a special election, to the voters of the city and receive the approval of a majority of the voters actually voting at such election. The net bonded indebtedness of the city shall be determined by deducting from the total bonded indebtedness of the city all bonds of the city held in its sinking funds, and all cash or authorized investments other than bonds of the city held in such sinking funds, and by further deducting all bonds of the city, the payment of which is provided for in the tax levy of the current fiscal year, and all bonds issued to provide a supply of water.



## Bond Restriction

All ordinances or resolutions heretofore passed in any such cities, not inconsistent with the rights and powers herein granted shall remain in full force and effect until altered or repealed by the commissioners in the manner herein provided. (P. L. 1912 p. 650.)

Approved April 2, 1912.

This section was amended by the Home Rule Act, P. L. 1914, p. 254, to read:

"8. All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable fines or by imprisonment or both all ordinances necessary or proper for the protection of life, health and property; to declare and prevent and summarily to abate nuisance; to secure, advance, preserve and enforce the good government and general welfare, order, prosperity and security of such city; and shall have all powers which it shall deem necessary or convenient for its government or for its welfare and prosperity not in conflict with the laws applicable to all cities of this State or the provisions of the constitution; which powers shall be exercised by the board of commissioners subject to the provisions of this act. Provided, however, that no ordinance or resolution increasing the net bonded indebtedness of the city to a sum in excess of fifteen per centum of the assessed valuation of all property within said city shall be valid unless the same shall be first submitted, by a special election, to the voters of the city and received the approval of a majority of the voters actually voting at such election. The net bonded indebtedness of the city shall be determined by deducting from the total bonded indebtedness of the city all bonds of the city held in its sinking funds, and all cash or authorized investments other than bonds of the city held in such sinking funds, and by further deducting all bonds of the city, the payment of which is provided for in the tax levy of the current fiscal year, and all bonds issued to provide a supply of water.

"All ordinances or resolutions heretofore passed in any such cities, not inconsistent with the rights and powers herein granted, shall remain in full force and effect until altered or repealed by the commissioners in the manner herein provided." Approved April 9, 1914.

Under the decision in Del. Riv. Trans. Co. vs. Trenton, 85 N. J. L., p. 479; 90 Atl. Rep., p. 731; 86 N. J. L., p. 48;

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91 Atl. Rep. p. 1068; 86 N. J. L., p. 679, this section (as amended 1914) is set aside as contravening Art. 4, §7, par. 11 of the State Constitution.

By this act the management of municipal affairs is entrusted to a board of commissioners; but it largely leaves the mechanism of the adopting city's government and the provisions of its charter untouched. It does not alter general laws or charter provisions relating to the government of such city, except when inconsistent with its provisions. *Salter vs. Burke et al.*, 83 N. J. L. p. 152; 83 Atl. Rep., p. 973.

A license granted for an inn and tavern by the commissioners of a city in violation of an ordinance passed by an excise commission in office before this act, was adopted, under the excise act of 1910, p. 238; is void. *Landon vs. Gilbert*, 86 N. J., p. 551; 91 Atl. Rep., p. 1035.

A building code, adopted under a former city government, was confirmed and validated in so far as operative, on the day when the municipality adopted the Walsh act, in view of section 8, providing that all ordinances or resolutions theretofore passed, not insistent with the rights and powers given by the Walsh act, and these ordinances and resolutions remain in full force until repealed by the commissioners. *Ninth St. Improvement Co. vs. Ocean City*, 90 N. J. L., p. 106; 100 Atl. Rep., p. 568.

Under section 8 of the Walsh act, empowering the city to enact and enforce all ordinances necessary for the protection of life, health and property, to declare, prevent and abate nuisances, and to preserve and enforce the good government, general welfare, order and security of the city by the passage of ordinances consonant with the laws applicable to all cities of the state and the provisions of the Constitution, the city has the power by ordinance to regulate the erection and management of garages as a police measure. *Ninth St. Improvement Co. vs. Ocean City*, 90 N. J. L., p. 106; 100 Atl. Rep., p. 658.

## Control of Candidates

9. All officers and employees in any such city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations. It shall be unlawful for any candidate for office, or any officer in any such

## **Publish Financial Statements**

city, directly or indirectly to give or promise any person or persons any office, position, employment, benefit or anything of value for the purpose of influencing or obtaining the political support, aid or vote of any person or persons under the penalty of being disqualified to hold office to which he may have been elected or appointed.

Every elective officer in any such city shall, within ten days after qualifying, file with the city clerk, and publish at least once in a newspaper printed and published in such city, and if no newspaper is printed or published in such city, then a newspaper of general circulation in such city, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed. Any violation of the provisions of this section shall be a misdemeanor, and a ground for removal from office. (P. L. 1911, p. 471.)

Approved April 25, 1911.

## **Publish Financial Statements**

10. The board of commissioners shall each month publish in at least one newspaper in such city, or print in pamphlet form, a detailed itemized statement of all the receipts and expenses of the city and a summary of its proceedings during the preceding month, and shall file and furnish printed copies thereof to all persons who shall apply therefor at the office of the city clerk. At the end of each year the board of commissioners shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of this examination in the manner

# Commission Government Law

above provided for the publication of monthly expenditures. (P. L. 1911, p. 471.)

Approved April 25, 1911.

## Control of Appropriations

11. If, at the beginning of the term of office of the first board of commissioners elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the then current fiscal year have been made, the said board of commissioners shall have power, by ordinance, to revise, repeal or change such appropriations and to make additional appropriations. (P. L. 1911, p. 472.)

Approved April 25, 1911.

## Public Instruction Exempted

12. The system of public instruction in any city adopting the provisions of this act shall in no way be affected by this act. (P. L. 1911, p. 472.)

Approved April 25, 1911.

## Return Requirements

13. (Superseded by P. L. 1914, p. 170 and P. L. 1917, p. 898, see p. 65; post.)

## Municipal Election

14. First paragraphs are superseded by P. L. 1914, p. 170, and P. L. 1917, p. 898, see p. 65; post.

\* \* \* \* \*

The registry for elections held under the provisions of this act shall be the official registry list containing the names of those persons qualified to vote at the last preceding general election; transfers from one district to another shall be granted as provided

## Return Requirements

by the laws appertaining to general elections in this State.

Qualified voters who did not vote at the general election preceding the holding of the primary elections or the elections provided for under this act may have their names added to the registry roll by applying to the judge of the Court of Common Pleas of the county in which such election is to be held at any time during the week preceding the holding of such election for the adoption of the act or the primary election or elections, and if upon such application it is made to appear to such judge that such person is a qualified elector and is entitled to vote at said election, an order shall be made by such judge directing the proper district board of election to accept such vote and such order shall be filed with the district board of election and shall be returned by said board to the clerk of the municipality wherein such election is held immediately after the holding of such election, to be kept and filed in the office of such clerk for at least a period of one year; provided, there shall be presented by such voter and then shall be filed with said order an affidavit of said voter containing the information requisite to be given under the election and registry laws of this State. Names may also be added to registry lists for any of the elections provided for under this act by the order of the county board of elections, in the manner prescribed for adding names to registry lists by the county board of elections for special elections to be held in any city of this State, as provided for in an act entitled "An act to regulate elections (Revision

## Commission Government Law

of 1898), approved April fourth, one thousand eight hundred and ninety-eight," and the acts supplementary thereto and amendatory thereof.

Official ballots shall not be distributed or used outside the voting place at any of the elections provided for under this act, and all the provisions of the laws relating to general elections bearing upon the subject of the distribution and use of official ballots shall apply as nearly as may be to the ballots used at the election held under the provisions of this act, except that there shall be no official distribution of sample ballots. (P. L. 1913, p. 842.)

Approved May 29, 1913.

## Votes of Discharged Service Men

1. Any legal voter of this State, in the military or the naval service of the United States, or who may have been discharged from such service subsequent to the time provided by law for the registration of voters entitled to vote at any election held under any law of this State, who shall satisfy the board of registry and election of the election district in which he resides of his right to vote therein shall be permitted to vote at any such election in the same manner as if he had registered for such election in the manner provided by law. (P. L., 1919, p. 588).

Approved April 17, 1919

## Recall

15. \* \* \* This part of section substituted by P. L. 1915, p. 622 and P. L. 1917, p. 48, see p. 76, post.

No person who has been recalled from elective

## Initiative

office, or who has resigned from such office, while recall proceedings were pending against him, shall be appointed to any office within one year after such recall or resignation.

No recall petition shall be filed against any officer until he has actually held his office for at least one year, and but one recall petition shall be filed against the same officer in any one calendar year during his term of office. (P. L. 1913, p. 844.)

Approved May 29, 1913.

## Initiative

16. Any proposed ordinance may be submitted to the board of commissioners by petition signed by electors of the city equal in number to the percentage hereinafter required. The signatures, verification, authentication, inspection, certification, amendment and submission of such petition shall be the same as provided for petitions under the last section.

If the petition accompanying the proposed ordinance be signed by electors equal in number to fifteen per centum of the votes cast at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people if not passed by the board of commissioners, such board of commissioners shall either—

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

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of commissioners shall call a special election, unless a general municipal

## Commission Government Law

election is fixed within ninety days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted without alteration to the vote of the electors of the city.

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

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

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

The board of commissioners may submit a proposition for the repeal of such ordinance or for amendment thereto, to be voted upon at any succeeding general city election, and should such propo-



# Initiative

sition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in at least one of the newspapers published in said city; such publication to be not more than twenty not less than five days before the submission of such proposition or ordinance to be voted on. (P. L. 1911, p. 478.)

Approved April 25, 1911.

Under section 16 of the Walsh act, and the supplement of 1915, regulating the matter of the presentation and the passage of an "initiative ordinance," the first step in which is the filing of a petition with the city clerk, signed by fifteen per cent. of the voters of city at the last general election, it is the duty of the city clerk to examine the petition to ascertain if it conforms to the requirements of the act, and if he determines that the petition does not so conform, he must return it to the agent who filed it for correction; after which correction it may again be filed within ten days of its return. By section 11 of the said supplement the clerk is required, if he believes a petition is defective, and before returning it, to present his objections of the Justice of the Supreme Court holding the circuit in which the municipality is situated, who is to pass upon such objection summarily and make an order sustaining or overruling the objection. Where a petition for an "initiative ordinance" was filed with the city clerk, signed by the requisite number of voters, and later another petition signed by some of those who signed the original, was filed, asking that their names be withdrawn therefrom, and the city clerk then certified to the commissioners that the petition first filed was insufficient, such action was wholly without authority, and a resolution of the commissioners granting the request of withdrawal and directing the clerk to strike from the original petition on file the names sought to be withdrawn, will be set aside. Ford vs. Gilbert, 89 N. J. L., p. 482; 99 Atl. Rep., p. 621.

## Commission Government Law

When it is sought to have an ordinance passed under this act relative to the initiative, the procedure provided by the Statute for petitioning for such ordinance must be strictly followed. The affidavit, verifying the signatures to the petition, must be distinct from the paper forming part of the petition; the affidavit must be made by one who has signed the petition; each signer must add to his signature his place of residence, giving the street and number; and the ordinance passed or submitted must be the identical one petitioned for, without alteration. *Buhl vs. Beverly*, 89 N. J., L., p. 378; 98 Atl. Rep., p. 270.

### Referendum

17. No ordinance passed by the board of commissioners, except when otherwise required by the general laws of the State or by the provisions of this act, except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency and is passed by a two-third vote of the board of commissioners, shall go into effect before ten days from the time of its final passage; and if during said ten days a petition signed by electors of the city equal in number to at least fifteen per centum of the entire vote cast at the last preceding general municipal election, protesting against the passage of such ordinance, be presented to the board of commissioners, the same shall thereupon be suspended from going into operation, and it shall be the duty of the board of commissioners to reconsider such ordinance; and if the same is not entirely repealed, the board of commissioners shall submit the ordinance, as is provided by subsection "b" of section sixteen of this act, to the vote of the electors of the city, either at the general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become op-

## Adoption Requirements

erative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of said section sixteen, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided. Any ordinance or measure that the board of commissioners or the qualified electors of the city shall have authority to enact, the board of commissioners may of its own motion submit to the electors for adoption or rejection at a general or special municipal election, in the same manner and with the same force and effect as is provided in this act for ordinances or measures submitted on petition. At any special election called under the provisions of this act, there shall be no bar to the submission of other questions to a vote of the electors in addition to the ordinances or measures herein provided for, if said other questions are such as may legally be submitted at such election. If the provisions of two or more measures approved or adopted at the same election conflict, then the measure receiving the highest affirmative vote shall control.

No petition or submission to the vote of the electors shall be necessary to authorize the undertaking or completion of any work, the purchase or construction of any public utility or improvement, which any city may be authorized by law to undertake, purchase or construct, or to authorize the borrowing of money and the issuance of bonds or other obligations for any purpose for which any city may be authorized by law to issue bonds or other obligations, and all acts and part of acts inconsistent here-

## Commission Government Law

with are hereby repealed, so far as they require any such election, the referendum provided for in this act being in lieu of any such election required by any other law or laws. (P. L. 1913, p. 323.)

Approved April 1, 1913.

### Adoption Requirements

18. This act shall take effect immediately, but its provisions shall remain inoperative in any city of this State until assented to by a majority of the legal voters thereof voting at an election to be held in such city, which election shall be called by the city clerk upon the request or petition in writing of twenty per centum of the persons qualified to vote at the last general election as shown by the registry of qualified voters used at said election. Upon such petition or request in writing being filed with the city clerk, the said clerk shall forthwith call an election to be held on the third Tuesday following the date of the filing of such petition with him, and shall cause public notice of the time and place of holding the same to be given by advertisement signed by himself and set up in at least twenty different places in such city and published in at least one newspaper printed and published in such city, and if no newspaper is printed or published in such city, then in a newspaper circulated therein, for at least six days previous to the time of such election; and said city clerk shall provide ballots for each voter at such election, to be printed upon plain, substantial white paper, which shall contain these words:

“For the adoption or the rejection by the city of (here name of city) of the provisions of an act of

## Adoption Requirements

one thousand nine hundred and eleven, entitled 'An act relating to, regulating and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State.' " Upon said ballots shall appear the phrase "for the adoption," and the phrase "against the adoption," with a square at the left of each phrase, and below shall appear the words "vote for or against"; "place a cross in one square."

Such election shall be held at the usual places of holding the annual election in such city. The polls shall remain open during the usual hours, and every such election shall be conducted by the same election officers for the time being in the manner prescribed by law regulating elections, and such officers shall report to the city clerk of such city a true and correct statement in writing under their hands of the results of such election, and it shall be the duty of the city clerk to certify the result of said election to the city council, or other legislative body, of such city or municipality, at its first meeting thereafter, and the same shall be entered at large in the minutes of said body and the said clerk shall also certify the same to the Secretary of State. Whereupon, if it appears by said certificate of the city clerk that the majority of the votes cast are in favor of the adoption of this act, this act shall in all respects become and be operative in such city, and binding upon the inhabitants thereof and upon all persons and property to be affected thereby; *provided, however*, that the votes cast in favor of the adoption of this act be equal to at least thir-

## Commission Government Law

ty per centum of the total number of legal ballots cast in such city at the last general election for members of Assembly immediately preceding the submission of this act, as aforesaid, and, immediately after the election and organization of the board of commissioners provided herein, it shall abrogate, repeal and annul all acts or parts of acts then existing, whether general or special, in anywise affecting the government of such city, which are contrary to or inconsistent with the provisions of this act; *provided, however,* that this act shall not abrogate, repeal or annul an act entitled "An act concerning district courts (Revision of 1898)," approved June fourteenth one thousand eight hundred and ninety-eight, or any supplement thereof or amendment thereto.

If a majority of the votes cast are not in favor of the adoption of this act, then the provisions of this act shall remain inoperative and no further proceedings shall be taken until after the beginning of the last year of the term of the mayor, or equivalent officer, elected at the election following the rejection of this act, after which date, upon the presentation of another petition or request, as provided for herein, the same procedure shall be had and the question of the adoption or rejection of the provisions of this act again submitted in the manner herein set forth and with the same force and effect. (P. L. 1915, p. 12)

Approved February 8, 1915.

Where a city clerk, in the performance of the duty imposed by this act entered upon investigation of whether a petition for an election under this act had the necessary signatures, and having concluded that it did not, refused to call the election, mandamus was not available to review errors alleged to have been committed by the clerk, either in the method of his investigation or in

## Reversion to Charter

furtherance thereof. *Haines vs. Standiven*, 91 Atl. Rep., p. 804.

The Attorney General alone may question the legality of the existence of a city acting under this act, on the ground that the adoption of the act was not carried by the requisite number of votes; and a private relator may not attack the existence of the city, either by a direct preceeding or by an attack on the legality of the title of an incumbent of an office of the city. *Morris vs. Fagan*, 86 At. Rep., p. 1102; 90 Atl. Rep., p. 267; 85 N. J. L., p. 617.

The Walsh act, as originally passed, required that the votes cast in favor of the adoption of the act equal thirty per cent. of the votes cast for members of the general assembly at the general election immediately preceding the submission of the act. The amendatory act of 1915 requires thirty per cent. of the total numbers of assembly, etc. Held, that the number of votes cast in favor of the adoption of the act must equal thirty per cent. or the total number of legal ballots cast in the municipality, regardless of whether or not such votes were cast for a member or members of the assembly, the words "for members of assembly" in the amendatory act being merely descriptive of the particular election referred to. *Schwartz vs. Wachlin*, 89 N. J. L., p. 93; 98 Atl. Rep., p. 252.

Where a majority of the votes were cast in favor of the adoption of the act, it did not become operative because it failed to receive the thirty per cent. of the votes cast at the last general election, the limitation concerning another election did not apply because that condition is only applicable when a majority of the votes are not cast in favor of the adoption. *Vollmer vs. Wachlin*, 89 N. J. L., p. 440; 99 Atl. Rep., p. 394.

## Reversion of the Charter

19. Any city which shall have operated for more than six years under the provisions of this act may at the general election preceding the year in which commissioners are regularly to be elected, abandon such organization hereunder and may resume its charter by proceeding as follows:

Upon the petition of not less than twenty-five

## Commission Government Law

per centum of the electors of such city, the following proposition shall be submitted: "Shall the city of (name of city) abandon its organization under the provisions of an act of one thousand nine hundred and eleven, entitled 'An act relating to, regulating and providing for the government of cities within this State,' and resume or adopt a charter under another act?"

If a majority of the vote casts at such special election be in favor of such proposition, the officers elected at the next succeeding regular municipal election shall be those prescribed by the charter, and upon the qualification of such officers such city shall become a city under the charter, but such change shall not in any manner or degree affect the property, right or liability or any nature of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared generally as provided by Article IV of this act in so far as the provisions thereof are applicable. (P. L. 1917, p. 146)

Approved March 20, 1917.

### Constitutionality of Act

20. If any proviso, clause or section of this act shall be attacked in any court and shall be declared invalid or unconstitutional, the rest of this act shall stand, and the proviso, clause or section declared invalid or unconstitutional shall be excised from this act. (P. L. 1911, p. 483)

Approved April 25, 1911.



## Commission Government Law

(c) If, by the count of either first-choice votes or first and second-choice votes, or first, second and third-choice votes, as above provided, more candidates than there are offices to be filled shall receive a majority, the candidate or candidates equal in number to the number of offices to be filled having the highest vote shall be elected.

(d) If the full number of candidates to be elected do not receive a majority by adding first, second and third-choice votes as above directed, a canvass shall then be made of the other-choice votes received by those candidates for said office who are not elected either by first-choice votes or by adding first and second-choice votes, or by adding first, second and third-choice votes, said other-choice votes shall be added to the first, second, and third-choice votes received by such candidates and the candidate equal in number to the number of offices remaining to be filled who receives the highest number of votes by the said addition shall be elected.

(e) A tie between two or more candidates shall be decided in favor of the one having the highest number of first-choice votes. If they are also equal in that respect, then the highest number of second-choice votes shall determine the result. If they are still equal, then the highest number of third-choice votes shall determine the result.

(f) Whenever the word "majority" is used in this section it shall mean more than one-half of the total number of valid ballots cast at such election.

V. No informalities in conducting said municipal election shall invalidate the same, if they be con-

## Elections of Commissioners

third-choice votes in excess of the number of offices to be filled in vote in the column showing such excess shall be counted. Except as hereinbefore provided all choices shall be counted as marked on the ballot.

On the day following the said election the city clerk shall determine the successful candidates, as hereinafter provided in this section, and shall immediately make and file the result thereof in the office of the city clerk. Said canvass by the city clerk shall be publicly made, in the manner following:

(a) Candidates receiving a majority of first-choice votes for any office shall be elected. If the full number of candidates to be elected do not receive such a majority of the first-choice votes for such office, a canvass shall be made of the second-choice votes received by those candidates for office who are not elected by first-choice votes; said second-choice votes shall be added to the first-choice votes received by such candidates, and candidates who, by such addition, shall receive a majority, shall be elected.

(b) If, after adding the first-choice and second-choice votes of the candidates not elected by first-choice votes, the full number of candidates to be elected do not receive a majority of first-choice and second-choice votes combined, a canvass shall be made of the third-choice votes received by those candidates for said office who are not elected by first-choice and second-choice votes combined; said third-choice votes shall be added to the first-choice votes and second-choice votes received by such candidates, and candidates who, by such addition, shall receive a majority shall be elected.

## Commission Government Law

the purpose of indicating either any official act or policy to which he is pledged or committed; *provided*, that such designation shall not indicate political party affiliations. On the filing of any such petition the said clerk shall cause the said designation to be printed opposite the name of the said person upon the ballot. If several candidates for the same office shall in said petition request that their names be grouped together, and that the common designation to be named by them shall be printed opposite their said names, the said clerk shall group the said names of the said persons in a bracket, and opposite the said bracket shall print the said designation as aforesaid. Such petition to the said clerk requesting a designation or a grouping of the candidates shall be filed with the clerk at least eight days before the election. If two candidates or groups shall select the same designation, the clerk shall notify the candidate or group whose petition was last filed, and the said candidate or group shall select a new designation.

IV. As soon as the polls are closed the election officers shall immediately open the ballot boxes, take therefrom singly and count the ballots in public view, and enter the total number thereof on the tally sheet provided therefor by the city clerk. They shall also carefully enter the number of the first-choice, second-choice, third-choice and other-choice votes for each candidate on said tally sheet and make immediate return thereof to the city clerk. Only one vote shall be counted for any candidate on any one ballot, all but the highest of two or more choices on one ballot for one and the same candidate being void. If a ballot contains either first, second or

## Elections of Commissioners

Do not vote more than one choice for one person, as only one choice will count for any one candidate by this ballot.

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

For Commissioners	First Choice	Second Choice	Third Choice	Other Choice
William Brown,	X			
Louis Coe,		X		
John Doe,			X	
Henry Poe,				X
Richard Roe,				
Charles Smith,				X

II. One space shall be left below the printed names of the candidates of each officer to be voted for, wherein the voter may write the name of any person for whom he may wish to vote. Blank space shall be left equal to the number of officers to be filled.

III. The names of candidates for the same office shall be printed on the ballot in alphabetical order. Any candidate whose name is to be voted for on the ballot may, by petition addressed to the city clerk, request that the said clerk shall print opposite his name on the ballot a designation, in not more than six words, as named by him in said petition, for

# Commission Government Law

tion, which ballots shall not be distributed outside the polling place. (P. L. 1917, p. 900.)

Approved April 3, 1917.

4. The form of ballot and the method of voting at said general or special election shall be as follows:

I. Except that the crosses here shown shall be omitted, and that in place of the names and officers here shown shall be substituted the names of the actual candidates and the offices for which they are respectively nominated, the ballots shall be in substantially the following form:

General or special municipal election, city of  
(inserting date thereof.)

## DIRECTIONS TO THE VOTER

To vote for any person mark a cross (X) in the square in the appropriate column, according to your choice, at the right of the name voted for.

Second, third or fourth choice is not compulsory.

Vote only as many first choices, or second choices, or third choices, as there are officers to elect.

Vote as many fourth or other choices as you wish.

Vote your first choice or choices in the first column.

Vote your second choice or choices in the second column.

Vote your third choice or choices in the third column.

Vote in the fourth column for all the other candidates whom you wish to support.

## Elections of Commissioners

no more, and shall contain the name of but one candidate, and no more. Each signer must not, at the time of signing the certificate, have signed more certificates for candidates for that office than there are places to be filled in such office, and in case an elector has signed two or more conflicting certificates, all such certificates shall be rejected.

When such a petition of nomination is presented for file to the city clerk he shall forthwith examine the same and ascertain whether it conforms to the provision of this section, and if not found in conformity thereto he shall designate the defect and return the petition to the person signing it, which may again be presented when properly amended. (P. L. 1917, p. 898.)

Approved April 3, 1917.

3. Immediately upon the expiration of the time of filing certificates, statements and petitions for candidates, the said clerk shall cause to be published for three successive days in all the daily newspapers published in such city, in proper form, the names of the persons as they are to appear upon the ballots, and if there be no daily newspaper, then in two consecutive issues of any other newspaper that may be published in said city; and the clerk shall thereupon cause the ballots to be printed, authenticated with a facsimile of his signature.

Having caused said ballots to be printed in the form hereinafter prescribed the said city clerk shall cause to be delivered at each polling place a number of said ballots, equal to twice the number of votes cast in such polling precinct at the last general elec-

## Commission Government Law

forth, and the petition of nominations shall consist of individual certificates equal in number to at least one-half of one per centum of the entire vote at the last preceding general election, but in no event less than twenty-five, and said petition shall read substantially as follows:

### PETITION OF NOMINATION

I, the undersigned, a qualified elector of the city of ....., residing at ....., certify that I do hereby join in a petition for the nomination of ....., whose residence is at ....., for the office of commissioner, to be voted for at the election to be held in such city on the ....., 19...., and I further certify that I know this candidate to be a qualified elector of said city and a man of good moral character, and qualified in my judgment for the duties of such office, and I further certify that I have not signed more petitions or certificates of nominations than there are places to be filled in the above office.

(Signed) .....

Being duly sworn, deposes and says that he is the person that signed the foregoing certificate; that the statements contained therein are true and correct.

(Signed) .....

It shall be the duty of the city clerk to furnish upon application a reasonable number of forms of individual certificates of the above character.

Each certificate must be a separate paper and must contain the name of but one signer thereto, and

## Elections of Commissioners

A supplement to an act entitled "An act relating to regulating and providing for the government of cities, towns, boroughs and other municipalities within this State," Approved April twenty-fifth, one thousand nine hundred and eleven.

1. In all cities, as defined in the act to which this act is a supplement, which heretofore have adopted or hereafter may adopt the provisions of the act to which this act is a supplement, commissioners provided for in said act shall be nominated and elected only in the manner hereinafter prescribed.

In every such city of ten thousand population, or more, five commissioners, and in cities of less than ten thousand population, three commissioners shall be elected at an election to be held on the fifth Tuesday following the election at which the voters shall have voted to adopt the provisions of said act, and on the second Tuesday in May in each fourth year thereafter.

The election officers conducting the last general annual election shall be the officers of the general or any special election, and the municipal election shall be held at the same places and conducted in the same manner so far as possible, and the polls shall be open and closed at the same hours as provided by the general election laws. (P. L. 1917, p. 898 )

Approved April 3, 1917.

2. The names of candidates for commissioners shall, at least ten days prior to the general or special election, be filed with the city clerk in the manner and form and under the conditions hereinafter set



## Elections of Commissioners

ducted fairly and in substantial conformity with the requirements of this act. (P. L. 1917, p. 900.)

Approved April 3, 1917.

A defeated candidate for commissioner, in a city having adopted the commission form of government under the Walsh act as amended by act of April 7, 1914, and Act of March 16, 1916 (P. L. p. 216), was properly granted a recount by a Justice of the Supreme Court for errors of election officers in receiving and rejecting votes and in their returns in view of General Election Law, sec. 159, providing that whenever any candidate at any election shall have reason to believe that an error has been made by the board of elections, he may, after such election, apply to any Justice of the Supreme Court, who shall be authorized to order a recount. *Monahan vs. Matthews*, 91 N. J. L., p. 123; 103 Atl. Rep., p. 40.

The Legislature is not required every time it makes a change in the manner of voting, or in the counting of votes, at elections, to expressly declare that former sections of general election law shall apply. *Ibid.*

The provisions of the act of April 7, 1914 (Repealed March 16, 1916), commonly known as the Preferential Voting act, that "all ballots shall be void which do not contain first choice votes for as many candidates as there are offices to be filled," is not separable from the other provisions of the statute, so that it may be rejected and the residue of the statute be permitted to stand; hence, if such provision be unconstitutional the act as a whole fails, and an election held under its terms is incapable of conferring a de jure title to a private relator under section 4 of the Quo Warranto act. *Daly vs. Garven*, 90 N. J. L., p. 512; 106 Atl. Rep., p. 272.

[This opinion was rendered before this section was amended.—Ed.]

7. When any vacancy or vacancies shall occur among the commissioners elected under the provisions of the act to which this act is a supplement, the remaining commissioners shall fix a date for holding an election of a properly qualified person or persons to fill such vacancy or vacancies to serve for the unexpired term, not less than thirty nor more than forty days from the date when said vacancy or vacancies

## Commission Government Law

shall occur. Said election shall be conducted, returned, and the result thereof declared in all respects and by the same officials as hereinbefore prescribed for general municipal elections; *provided, further*, that when such vacancy or vacancies shall occur within one year of the expiration of the term of such office so becoming vacant, then the remaining commissioners shall, within thirty days thereafter, elect a properly qualified person or persons to fill such vacancy or vacancies to serve for the unexpired term, as provided in said act to which this act is a supplement. (L. P. 1914, p. 176.)

Approved April 7, 1914.

8. Whenever the clerk shall, under the provisions of the act to which this act is a supplement, certify to the board of commissioners that a sufficient petition or petitions or the removal of an elective officer or officers and demanding an election of a successor or successors of the person or persons sought to be removed has or have been filed, if the officer or officers sought to be removed shall not resign within five days after the date of the clerk's certificate, said board of commissioners shall order and fix a date for the holding of the said election, not less than thirty days nor more than forty days from the date on the clerk's certificate or certificates to the board of commissioners that a sufficient petition or petitions has or have been filed; *provided*, that whenever a sufficient removal petition or petitions shall be filed, near enough in point of time to prevent the ordering of of separate elections, the elections to fill a vacancy or vacancies and the election on the removal petition,

# Commission Government Law

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(INSERT OPPOSITE PAGE 75)

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Whenever the Federal or State census shall show that any such city which when voting to adopt the provisions of this act had a population of ten thousand, has increased in population to ten thousand or more, then two additional commissioners shall be elected at an election to be held on the second Tuesday in May, following the official announcement of such increase in population. (P. L. 1920, p. 401)

Approved April 19, 1920.

Whenever after the passage of this act at any election held for the purpose of electing the commissioners provided for under this act to which this act is a supplement persons bearing the same name shall be nominated for the office of commissioner, it shall be lawful for any or either of such persons to file with the municipal or city clerk a statement in writing containing not more than six words as a means of identification of such candidate. The statement or designation so filed with the city clerk shall be printed upon the official ballot to be used at such election. (P. L. 1920, p. 440).

Approved April 20, 1920.

The General Election Law (P. L. 1920, p. 615,) in Article I, section 2; Article XXX, section D 5 and 9 also are applicable to Commission Government municipal elections.



## Recall

may be held on the same day; *and provided further*, that if said officer or officers sought to be removed shall resign within said period of five days, an election of his successor shall be ordered and held in the same manner as provided in the next preceding section or an election to fill vacancies.

The board of commissioners shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared in all respects and by the same officials as is hereinbefore prescribed for general municipal elections. (P. L. 1914, p. 176)

Approved April 7 1914.

9. Nominations for candidates for commissioner, whether to fill a vacancy or vacancies as aforesaid, or in an election ordered on the filing of a petition or petitions for the removal of a commissioner or commissioners, as aforesaid, excepting as to the officers sought to be removed, shall be made, certified and published in the same manner and by the same official or officials as hereinbefore prescribed for candidates at a general municipal election. (P. L. 1914, p. 177)

Approved April 7, 1914.

# Commission Government Law

## Recall

1. The holder of the office of commissioner may be removed after a commissioner has been in office one year by means of a recall. The procedure to effect the recall of an "incumbent" of the office of commissioner shall be as follows:

A "recall petition" signed by at least thirty per centum of the electors shall be filed by the "agent" or "agents" designated in the petition with the "city clerk," demanding the recall of the commissioner sought to be removed. The petition shall be as follows:

### RECALL PETITION.

To the Clerk of the City of..... (insert name of "municipality.")

You are hereby requested to call a "Recall Election" for the recall of..... (insert name of "incumbent" to be recalled), a Commissioner of ..... (insert name of "municipality"), for the following reasons..... (insert reasons), and for so doing this "recall petition" shall be your sufficient warrant.

..... (insert name) is hereby designated as our "agent" to file this petition.

Signed:

Name.

Street address

.....

.....

.....

.....

State of New Jersey, }  
County of ..... } ss.

# Recall

....., being duly sworn according to law, says: That he is one of the signers of the above petition, and that he knows that the signatures thereon are in the handwriting of the signers, and to the best of his knowledge and belief are the signatures of the persons purporting to sign the same.

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

(P. L. 1917, p. 48.)

Aproved March 14, 1917.

2. The city clerk shall examine the "recall petition" to ascertain if it conforms with the requirements of this act. He shall complete this examination within ten days from the receipt thereof. In examining the signatures of the electors he may, if in doubt as to the genuineness of any of them, compare them with the signatures contained in the registry books used at the last preceding "general election."

If the clerk shall determine that the petition does not conform with the requirements of this act, then he shall return it to the agent or agents who filed it for the purpose of correction, which correction may be made, and the petition again filed within ten days of its return by the clerk as aforesaid.

If the clerk shall determine that the petition does not conform with the requirements of this section, he shall proceed to call an election for the recall of the "incumbent," as follows:

He shall immediately prepare a "certificate of notice" in the following form:

# Commission Government Law

(1) This is to Certify, That a petition has been filed with the Clerk of.....(name of "municipality"), for the recall of .....(insert name of "incumbent"), a Commissioner of ..... (insert name of "municipality"), for the following reasons: .....(insert reasons contained in "recall petition").

(2) An election to determine if the Commissioner shall be recalled; and if so, to elect his successor, will be held on .....the.....day of..... 19.....

Dated:

.....day of ....., 19....

.....

City Clerk.

A copy of the above certificate shall be served on the commissioner to be recalled and also upon the other commissioners of such municipality, if the aforesaid commissioners can be found. Copies of this certificate shall also be published at least once every week in at least one newspaper circulating in such municipality, and daily (if there be a daily newspaper) on the three days preceding the day of election.

After the "petition of nomination" as herein-after provided shall have been filed with the city clerk, he shall add to the publication certificate a third paragraph, as follows:

(3.) The following persons have filed "petitions of nominations" to succeed.....(insert name of "incumbent"), if he shall be recalled, and



## Recall

are to be voted on as successor to the said Commissioner:

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

(Insert names of persons filing "petitions of nomination.")

Signed,

.....

City Clerk.

(P. L. 1915, p. 623.)

Approved April 15, 1915.

The duty of the clerk of a municipality governed by the statute commonly called the Walsh Act concerning the filling of a petition for the recall of an elective officer, is to ascertain whether or not the petition is signed "by the requisite number of qualified electors," and to make a certificate showing the result of such ascertainment; but he has no power to determine the legal qualifications of the officer sought to be recalled, nor the question whether he has actually held his office for one year. *Poole vs. Lawrence*, 86 N. J. L., p. 90; 90 Atl. Rep., p. 668.

When a commissioner resigns, and is immediately reappointed, such action does not vest him with a new term of office; but in deciding whether he has held office for more than one year, his service prior to such resignation and reelection is to be taken as a part of his service in determining whether he has actually held his office for at least a year. *Poole vs. Lawrence*, 86, N. J. L., p. 90; 90 Atl. Rep., p. 668.

3. The city clerk shall fix a day for holding the "recall election," which day, if convenient, shall be a Tuesday falling between the thirtieth and fortieth days after the date of the "certificate of notice" above provided for.

The city clerk and the board of commissioners shall make or cause to be made all arrangements for holding the "recall election," and shall provide all

## Commission Government Law

necessary funds therefor and the commissioners are hereby authorized to raise funds necessary for this purpose in any convenient manner.

The "recall election" shall be conducted and returned as general elections are conducted at which are voted for members of the General Assembly, and, except as otherwise provided in this section and in so far as they are applicable, the "recall election" shall be governed by the provisions of an act entitled "An act concerning elections" (Revision of 1898), approved April fourth, one thousand eight hundred and ninety-eight, and the amendments thereof and supplements thereto, and according to the provisions of chapter 188 of the laws of 1911, known as the "Corrupt Practices Act." (P. L. 1915, p. 625.)

Approved April 15, 1915.

4. The judge of the Court of Common Pleas shall sit in some public place in the municipality where such "recall election" is to be held on at least one day in the week prior to the day of the "recall election." He shall have power, by order, to grant transfers and place upon the registry books the names of legal voters whose names were not upon the registry books of the last general election, but who would be entitled to be registered if the "recall election" was in fact a general election.

There shall be no primary election for the nomination of candidates, nor shall there be any registry day preceding a "recall election."

Nominations for successors to the commissioner proposed to be recalled shall be by "petition for nomination," which "petition for nomination" shall be signed by at least fifteen per centum of the legal

# Recall

voters of the municipality and filed with the city clerk at least fifteen days before the "recall election," and shall be in form as follows:

(1.) To the Clerk of.....(insert name of municipality): You are hereby requested to place upon the ballot at the recall election to be held on.... the.....day of....., 19...., as provided in your "certificate of notice" dated.....day of ....., 19...., as successor to the commissioner proposed to be recalled the name of ..... (insert name of person to be nominated), of..... (insert address), and for so doing this petition shall be your sufficient warrant.

Signed

Name.

Street address.

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

I accept the nomination.

Dated:

.....  
(Name of Nominee)

.....  
State of New Jersey,

County of .....

} ss.

....., being duly sworn according to law, says: That he is one of the signers of the above petition, and that he knows that the signatures thereon are in the handwriting of the signers, and to the best of his knowledge and belief are the signatures of the persons purporting to sign the same.

## Commission Government Law

Subscribed and Sworn to before me {  
this.....day of....., }  
A. D. 19.... }

(P. L. 1915, p. 625.)

Approved April 15, 1915.

5. If the clerk shall believe the "petition for nomination" to be defective in any particular, he shall return the same to the person accepting the nomination for correction, and the petition for nomination may be corrected and returned within three days after its return by the city clerk.

If the city clerk shall return such petition, he shall give in writing his reasons therefor. (P. L. 1915, p. 627.)

Approved April 15, 1915.

6. If the "incumbent" shall resign within three days after the certificate of notice shall have been served upon him, then these proceedings shall be modified accordingly, and the election for his successor shall proceed as herein provided.

If the "incumbent" shall desire to contest his recall, he shall file with the city clerk at least fifteen days before the "recall election" an "incumbent's petition," which petition shall be signed by at least fifteen per centum of the legal voters of the municipality in form as follows:

To the Clerk of..... (insert name of "municipality"): You are hereby requested to place on the ballot at the "recall election" to be held on ..... the.....day of.....19...., as provided in your "certificate of notice" dated the.....day of....., 19...., the question of the recall of..... (name of "incumbent"), as follows:



# Commission Government Law

7. If the city clerk shall believe the "incumbent's" petition to be defective in any particular, he shall return the same to the "incumbent" with his reasons therefor, and the "incumbent's" petition may be corrected and returned within three days after its return by the city clerk.

If the "incumbent" shall fail to file an "incumbent's" petition within the time limited herein, he shall be deemed to have resigned, and the office of the "incumbent" shall forthwith become vacant, and his term of office as commissioner in such "municipality" shall immediately cease and determine; and the "recall election" shall proceed for the purpose of electing his successor as provided in this act.

The ballot to be used in the "recall election" shall be in form as follows:

Number.....official ballot for recall election.  
.....Ward .....Precinct.

If you ARE in favor of the recall of  
JOHN DOE (name of "incumbent")  
mark an X in the square opposite the word  
"Yes". If you are NOT in favor of his  
recall, mark an X in the square opposite  
the word "No".

YES.

No.

# Recall

(To be inserted if the "incumbent" filed an "incumbent's petition.)

Nominees for successors of JOHN DOE (Name of "incumbent") Vote for <i>one</i> only. Mark an X in the square opposite the name of the candidate for whom you desire to vote:	
<input type="checkbox"/>	RICHARD ROE
<input type="checkbox"/>	WILLIAM GREEN

(To be inserted if one or more petitions for nominations are filed.)

Official ballot attest:

.....City Clerk.

(P. L. 1915, p. 628.)

Approved April 15, 1915.

8. If more than one "recall petition" shall be filed with the city clerk at or about the same time, so that more than one election should be required under the provisions of this act, then the elections shall be consolidated, but the recall of each commissioner shall be a separate transaction and the ballot shall be arranged by repeating the form provided above( except the number) in parallel columns for each commissioner sought to be recalled.

The city clerk shall provide the boards of election with the necessary registry and other books,

## Commission Government Law

ballots and tally sheets necessary to carry out the "recall election." (P. L. 1915, p. 629.)

Approved April 15, 1915.

9. The boards of election shall perform their duties as far as is applicable in the same manner as if they were conducting a general election.

If a majority of the electors voting at the "recall election" shall vote to recall the "incumbent," as evidenced by marking an X in the square upon the ballot opposite the word "Yes" then the office of the incumbent shall forthwith become vacant, and his term of office as commissioner shall immediately cease and determine.

If a majority of the electors voting at the "recall election" shall vote not to recall the "incumbent," as evidenced by marking an X in the square upon the ballot opposite the word "No," then the incumbent shall be entitled to the remainder of his term as commissioner, and shall not be subject to another recall within one calendar year from the date of the previous "recall election." (P. L. 1915, p. 630.)

Approved April 15, 1915.

10. If the office of the "incumbent" shall become vacant either by his resignation, failure to file an incumbent's petition, or by the result of the "recall election," then his successor shall be the "nominee" receiving the highest number of votes at the "recall election," and such nominee shall be deemed to hold the office vacated by the incumbent for the remainder of the incumbent's term of office, and shall succeed to all the rights and duties of the office of commissioner in such municipality.



## Recall

Any person who shall have been entitled to register and vote at the last general election shall be eligible as a "nominee" to succeed an incumbent.

(P. L. 1915, p. 630.)

Approved April 15, 1915.

11. Whenever the city clerk shall believe any petition for recall, petition for nomination, incumbent's petition, or other petition, shall be defective, he shall before returning the petition as provided herein, present his objections in writing to the justice of the Supreme Court holding the circuit in which the municipality is located. The justice shall proceed summarily to examine the objections of the city clerk, and shall forthwith make an order sustaining or overruling any or all of the objections, and such order shall be final and binding on all parties concerned. (P. L. 1915, p. 630.)

Approved April 15, 1915.

Section 12 of the statute providing for a recall election, and the amendments thereof, does not authorize a Justice of the Supreme Court to order the municipal clerk to call such an election until the clerk has made a determination as to the sufficiency or the insufficiency of the petition filed praying for such an election. It is the duty of the municipal clerk to make such a determination. If he determines the petition sufficient, then it is his duty to call an election, and a neglect to perform this duty is enforceable by mandamus, and not by an order of the Justice under section 12. If the clerk finds it insufficient he must report his objections to the Justice of the Supreme Court holding the circuit in the county where the municipality is located, and the Justice then sustains or overrules the objections. If sustained, the petition is returned to the petitioners; if overruled it then becomes the duty of the clerk to call the election. In either of these cases the clerk may be required to perform his duty by mandamus. If the clerk determines the petition to be insufficient, but does not report his objections to the Justice of the Supreme Court, he may be compelled to make such a report; but until the sufficiency of the pe-

## Commission Government Law

tion is determined the Justice of the Supreme Court cannot, by a summary order under P. L. 1915, p. 631, sec. 12, direct the clerk to call the election. *Cornin vs. Lee, et al.*, 91 N. J. L., p. 443; 103 Atl. Rep., p. 401.

12. In order to more fully carry out the spirit of this act and to prevent the failure of the "recall election" by reason of any conflict of laws, inadequacy of law, dispute, misunderstandings, or other cause, the justice of the Supreme Court holding the circuit in which the municipality is located shall have power upon complaint of the "agent," "city clerk," "incumbent," or "nominee," to make any order or regulation which in his judgment is necessary or convenient to enable a fair and impartial "recall election" to be held, and such order or regulation shall be final.

Such proceedings shall be summary and without notice. On the day that the recall election is to be held the said Supreme Court justice shall attend in some public place in the municipality, and then and there make any such additional order as may be necessary to carry out the "recall election." (P. L. 1915, p. 631.)

Approved April 15, 1915.

13. In order to prevent an "incumbent" or other person acting either directly or indirectly in his behalf, from delaying or obstructing the "recall election," and thereby preventing the incumbent's removal, no writ or order issued out of any court in this State shall be allowed whereby the "recall election" is prevented, restrained, or delayed, but the "recall election" shall proceed, notwithstanding any proceedings which may be instituted in any court

## Definitions

in the State whereby the legality of any of the petitions, acts, or elections permitted or authorized in this act are to be reviewed.

Such proceedings for review are not hereby restrained, but may proceed to final judgment, and if as a result thereof, it is determined that the incumbent has not been legally removed, then he shall be restored to his office and his salary for which term he has been removed shall be paid.

All acts of the boards of commissioners done while such incumbent was removed from his office shall be as lawful as if he had been present and participated therein. (P. L. 1915, p. 631.)

Approved April 15, 1915.

## Definitions.

14. Particular words used in this act are to be taken to have the following meanings:

Commissioner—Any person, including the mayor, who shall occupy the office of commissioner under an act entitled “An act relating to, regulating, and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State” approved April twenty-fifth one thousand nine hundred and eleven, the title of which was amended to read as above by act approved April second, one thousand nine hundred and twelve.

Recall petition.—The petition to be filed as provided in this section with the city clerk for the recall of a commissioner.

## Commission Government Law

**Electors.**—Such citizens of the municipality as were registered to vote at the last general election at which were voted for members of the General Assembly.

**Agent or agents.**—A person or persons designated in the “recall petition” to file the petition.

**City Clerk.**—The officer acting under this act as the clerk of the municipality.

**General election.**—The election at which members of the General Assembly are to be voted for.

**Municipality.**—Any city, town, township, borough, or other municipality within this State which has adopted or which may hereafter adopt an act entitled “An act relating to, regulating, and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State,” approved April twenty-fifth, one thousand nine hundred and eleven, the title of which was amended to read as above by act approved April second, one thousand nine hundred and twelve.

**Incumbent.**—The commissioner sought to be removed by recall petition.

**Nominee.**—The person nominated by the petition of nomination.

**Petition of nomination.**—The petition of nomination provided for in this section to place the name of a successor to the incumbent upon the ballot.

**Incumbent’s petition.**—The petition provided for in this section to place the question of the recall of the incumbent upon the ballot.

**Last general election.**—The election at which were voted for members of the General Assembly.

## Recall

last preceding the filing of the "recall petition."

Voters.—Such citizens of the municipality as were registered to vote at the last general election at which were voted for members of the General Assembly. (P. L. 1915, p. 632.)

Approved April 15, 1915.

15. No petition required in this act need be upon a single paper, but may be upon any number of separate papers, for the purpose of more conveniently obtaining signatures. The form of each separate paper shall be in the form provided herein, and there shall be attached thereto an affidavit of one of the signers of each paper, declaring that the signatures thereon are in the handwriting of the signers, and are to the best of his knowledge and belief the signatures of the persons purporting to sign the same.

No petition shall be rejected by the city clerk for any typographical deviation of the form provided herein or for any minor departure therefrom; but such petition shall be accepted if it substantially conforms to the forms provided herein, the said forms being for the guidance of the parties. (P. L. 1915, p. 633.)

Approved April 15, 1915.

16. After the "incumbent" has been recalled and the nominee has succeeded him in the office of commissioner, the commission may recognize and re-assign the various departments as provided in the act to which this act is a supplement. They may also remove from office any person appointed by the commissioner who has been removed provided such

## Commission Government Law

appointment was made within six months from the time of the filing of the "recall petition." (P. L. 1915, p. 633.)

Approved April 15, 1915.

See Woolley vs. Flock, p. 26, ante.

17. All acts or parts of acts inconsistent with the preceding sections of this act are hereby repealed. (P. L. 1915, p. 633.)

Approved April 15, 1915.

18. Any person not an elector who shall wilfully and knowingly sign any petition provided for in this act shall be guilty of a misdemeanor.

Any person or persons advising, aiding, or abetting any such person not an elector to sign any petition provided in this act shall be guilty of a misdemeanor.

Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor. (P. L. 1915, p. 634.)

Approved April 15, 1915.

19. This act shall be liberally construed, and is not to be taken in derogation of the rights of any person holding the office of commissioner. (P. L. 1915, p. 634.)

Approved April 15, 1915.

20. If any paragraph or part of paragraph of this act shall be declared by any court of competent jurisdiction unconstitutional, it shall not thereby affect any other of the provisions of this act. (P. L. 1915, p. 634.)

Approved April 15, 1915.

21. This act shall be binding upon any municipality which has accepted or which shall hereafter

## Registration

accept an act entitled "An act relating to, regulating and providing, for the government of cities towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State," approved April twenty-fifth, one thousand nine hundred and eleven, the title of which was amended as above by act approved April second, one thousand nine hundred and twelve.

(L. P. 1915, p. 634.)

Approved April 15, 1915.

## Registration for Elections

1. Whenever the provisions of the act to which this act is supplemental have been adopted by any municipality having a population of more than five thousand, and less than seventy-five thousand inhabitants either prior or subsequent to the passage of this act, the district boards of registry and election in all districts in the said municipalities shall meet such day as the board of commissioners may designate, not more than twenty nor less than ten days preceding a municipal election of commissioners under the act to which this act is supplemental, at seven o'clock in the forenoon and continue in session until nine o'clock in the evening, for the purpose of registering the names of all legal voters, residents of the election districts for which they are appointed; *provided, however*, that it shall not be necessary for any voter to register who is already properly registered to vote at the next preceding general election under any other act.

## Commission Government Law

2. All acts or parts of acts inconsistent with this act be, and the same are hereby repealed, and this act shall take effect immediately. (P. L. 1917, p. 879.)

Approved March 31, 1917.



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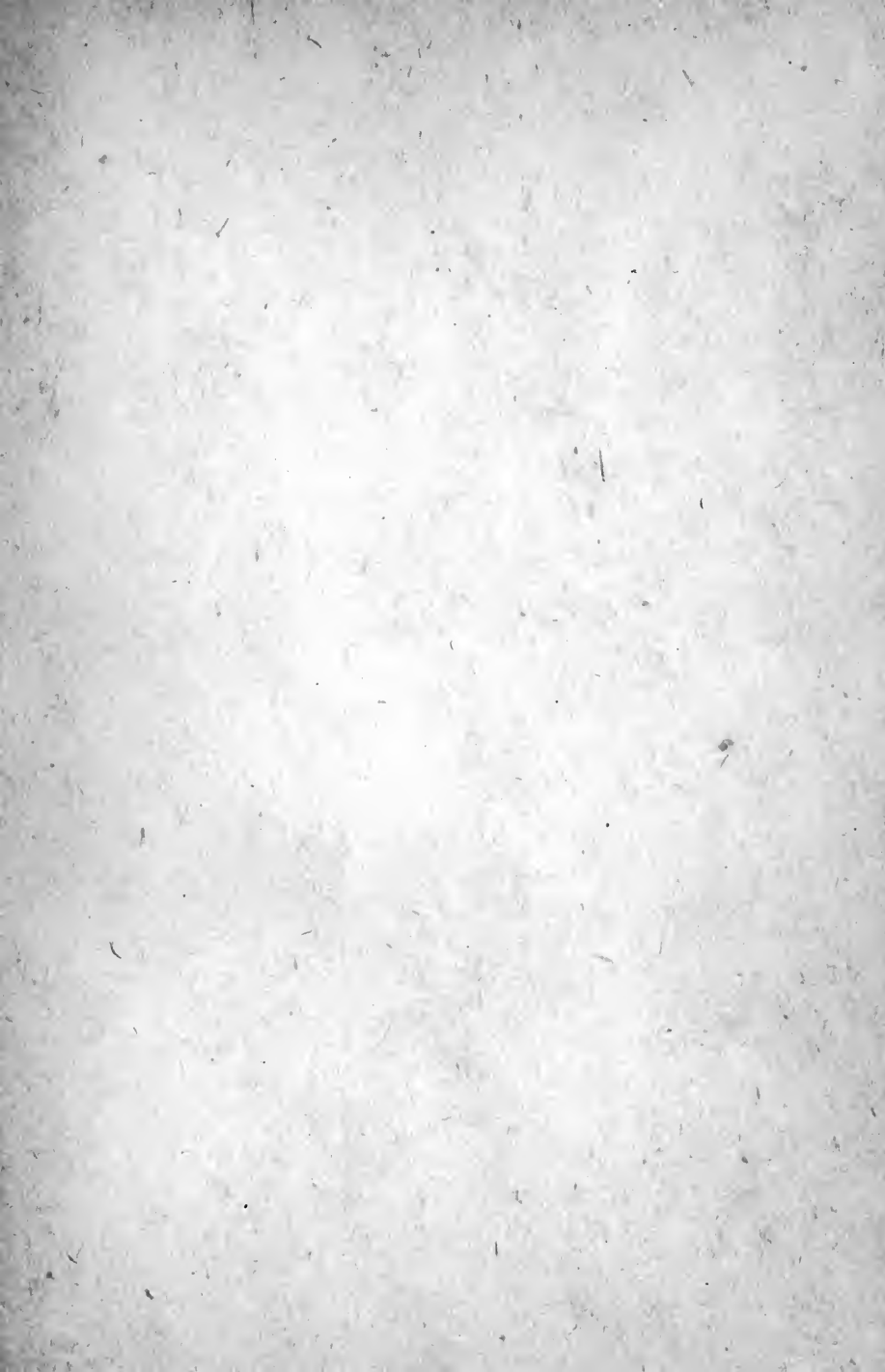
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