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1930 N.J. Commission to Codify and
Revise Election Laws.

Report

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REPORT
to the
Legislature of New Jersey
of the
Commission Created Under
Joint Resolution Number Six
Session of 1929

Authorizing the Creation of a Commission for the
Purpose of Studying Election Laws, Codifying
and Revising the Same

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Trenton, New Jersey

1930

*Assembly Commission
Revised Election Laws*

REPORT

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Commission Created Under
Joint Resolution Number Six

Session of 1969
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REPORT

To the Legislature of the State of New Jersey:

This Commission was organized pursuant to Joint Resolution No. 6, Laws of 1929, to study the election laws, codify and revise the same.

We selected Joseph G. Wolber as Chairman, and Thomas M. Gopsill, as Secretary. We have been attended throughout by D. Frederick Burnett as Counsel.

Besides the many executive sessions, we have held eleven public hearings, and taken 1,900 pages of testimony.

Concurrently with this report, we submit the complete text of an act entitled "An act to regulate elections" (Revision of 1930). This act embodies the conclusions we reached.

To save duplication of expense, our report will be confined to the following comments upon the proposed revision, the full text of which will be printed, of course, upon its introduction as a bill.

Condensation

Unnecessary and overlapping sections have been removed or combined. Redundant and prolix verbiage has been eliminated wherever possible. A few additional definitions have saved thousands of superfluous words. Clarity, however, has not been sacrificed for mere brevity. The revision is a code for practical use by the many persons charged with the administration of the election laws, most of whom are not lawyers. Specific, detailed instructions are, therefore, deemed preferable even though involving some repetition.

Time for Holding Primary Elections

Changed from third Tuesday in June to third Tuesday in May; other dates dependent thereon changed accordingly.

County Committee

Members required to actually reside in the districts which they represent.

Filling Vacancies Among Nominees

Confusing inconsistencies in existing statutes ironed out.

Election Hours of General Election

Revised to 7 a. m. to 8 p. m., instead of 6 a. m. to 7 p. m.—thus corresponding with primary election.

Practical Enforcement of Duties of District Boards

The old act provided that the pay of district boards might be withheld or forfeited for neglect to comply with certain specified duties. In practice, this has proved more effective than the Damoclean terrors of indictment. The revision adds to the specific items, the general clause "or fail to perform any duty provided by this act or imposed by the county board or by the commissioner."

Registering and Voting on Same Day

This has always been permissible in our smaller municipalities, where registration is made by house-to-house canvass. Such canvass is based essentially on hearsay, whence comes human error. Such error gives color, if not cause, to the demand for the extension of permanent registration to those municipalities. Until the proper time arrives for crystallizing that experiment into law applicable to every community, irrespective of size, it is but fair to safeguard the bona fide voter, whose name inadvertently was not registered, by allowing him to register and vote on the same day.

To guard against the abuse of this privilege designed for his protection, the revision enacts that while a person, whose name is not registered, may, in municipalities having a population of less than 15,000, register and vote on the same day as heretofore, nevertheless, such person must first make affidavit that he is eligible to register and vote in that district and set forth the place of his residence, the fact that he actually resides at that place, the length of time of that residence, and all the facts necessary to qualify him as a voter under the Constitution of this State. This applies to both primary and general election.

"One-Day" Primary Voters

The present law is utterly inadequate to prevent or punish one-day voters with one-way ethics casting their ballots in the primary of a party to which they do not belong. The motive is obvious. The effect is destructive of the fundamental principles of any primary. The evil requires no debate. The real question is the remedy. Repeated failure of grand juries to indict and of trial juries to convict cannot, in fairness to their integrity, presumptive or actual, be reasonably construed to be either endorsement or condonation of such fraud. The trouble must be with the law itself.

The Commission have wrestled with this difficult and delicate problem in the effort to evolve a regulation spoiling the fraud and, at the same time, consistent with the reasonable right of any voter to change his mind or party.

The revision substitutes for the futile negative pregnant, "No voter shall be allowed to vote in the ballot box of a political party if the name of such voter appears in the primary party poll-book of another political party as made up at the next preceding primary election," the following restrictions which we believe will prove constructive:

"A member of any organization espousing the cause of a candidate or candidates of any political party shall be ineligible to vote in the primary of another political party while such membership is in force and effect or within one year thereafter; such person shall be deemed for all intents and purposes a member of the political party whose candidate or candidates such organization is espousing.

"A voter who votes in a primary election of a political party shall be deemed to be a member of that party until two full years have elapsed after casting of such party primary vote.

"A voter who has not voted in a primary election of a political party for two years shall not be permitted to vote in any primary election of a political party until he has first signed and filed with the district board an affidavit which shall contain the following declaration:

"I am a member of the..... party (giving name of party) and am not a member or identified with any other political party. I intend to vote for the nominees of the said party at the next ensuing general election. I am not a member of an organization espousing the cause of candidates of any other political party."

"A member of the county committee of a political party and a public official or public employee holding any office or public employment to which he has been elected or appointed as a member of a political party, shall be deemed a member of such political party."

"Any voter who, within one year preceding any primary election, has contributed toward the campaign funds of a political party, shall not be eligible to vote in the ballot box of any other political party at such primary election."

"Any person voting in the primary ballot box of any political party in any primary election in this State in contravention of the election law of this State, shall be guilty of a misdemeanor, and any person or persons who aid or assist any such person in such violation of the law by means of public proclamation or order, or by means of any public or private direction or suggestions, or by means of any help or assistance or co-operation shall likewise be guilty of a misdemeanor."

Registration of Voters

This has been made a new main subdivision instead of a part of "general elections." All provisions for the registration of voters have been brought together. One article deals with house-to-house canvass; one with permanent registration; the third with registration for municipal elections in commissioned governed municipalities.

Transfers in the Smaller Municipalities

Transfers in municipalities not having permanent registration are granted on election day by the district board, it being found by experience that the voter usually resorts to the place where he last voted to get his transfer. Transfers are no longer necessary where he has moved from one house-to-house canvass municipi-

pality to another, because in such case he may register and vote the same day in the district where he then lives. The revision, therefore, confines the necessity of transfers to cases where he moves to a municipality which has permanent registration. Abuse of the privilege is safeguarded by providing that the district board, before allowing him to vote in the latter municipality, must see that he complies with all the requirements of permanent registration.

Summary Proceedings on Disputed Registry

Our investigation disclosed that proceedings in some instances under the old section were somewhat too summary. The valuable features are retained, but to curb politically minded judges, we have provided that full stenographic record of the proceedings is to be taken, transcribed and filed as a public record. That record is to include as well the appearances, the findings of fact and of law, and the court order made pursuant thereto.

Permanent Registration

We approached this difficult subject with an open mind, having no preconceived ideas as to whether it should be retained or abolished. Voluminous testimony has been taken as to its actual operation. Both sides have been fully heard. Its proponents have been enthusiastic as to its merits, and have earnestly advocated its extension to all municipalities. Opponents have, with equal force of conviction, demonstrated its present defects and abuses, and have, therefore, urged that it should be discarded, and the expensive mechanism, heretofore installed in all municipalities having a population in excess of 15,000, abandoned.

We find that permanent registration is sound in principle. We believe that the present defects can be cured. It is not necessary to call in the undertaker when the services of the surgeon may suffice. An operation or two may prove effective. The experiment of permanent registration should be continued until it has had a fair trial.

Since we recognize it is still in studio stage, it follows that it ought not to be applied to other municipalities until the success of the experiment is convincingly demonstrated. Therefore,

and having in mind the Federal census about to be made this very year, we have raised the dividing line to municipalities having a population of 25,000, but to save scrapping the rather expensive mechanism heretofore installed, have provided for the retention of permanent registration in those municipalities which now have it, irrespective of what their population may be under the approaching decennial Federal census.

Commissioner of Registration

We have lodged the full responsibility of permanent registration in the commissioner of registration. He has been given the power to select his own employees instead of having them hand-picked for him by a bipartisan board. Having amplified his powers commensurate with his duties, we have the right to expect performance and to reject excuses for non-performance. The administration of the law is squarely up to the commissioner. There is no longer any divided authority.

Purging Registry Lists

With the constant, almost predictable shift in population in our larger municipalities, provisions for purging the registry lists become imperative. The previous provisions respecting removals of voters, deaths, convictions, etc., have proved inadequate. Mindful that we must be fair to the voter, who relies and has a right to rely on his permanent registration, we are conscious that some effective means must be devised to keep the lists of qualified voters in a given district as close to the actual facts as humanly possible and expedient. We have further tightened these provisions measurably, as will appear by later reference. But more, there must be some omnibus provision, fair to the voter, and at the same time effective to catch all those situations which legal regulations and the natural percentage of error in their administration cannot cope with a full one hundred per cent. We have, therefore, provided that if a registered voter does not vote at a general election four consecutive years, his permanent registration is automatically removed to the inactive file, and he is required to re-register before being allowed to vote in any subsequent election. The duty to vote thus goes hand in hand with the right to vote.

Change of Residence by Voter

Any voter once permanently registered may, upon changing his residence, effect his own transfer on the registry lists, so as to be eligible to vote in the new district, by simply notifying the commissioner by postcard. Few, however, of those who move think of it at the time. The thought more naturally comes upon reading the public prints a month or two preceding election—sometimes not until election day itself. Hence results the usual last-minute rush for transfers.

Grant confusion was caused by the terms of the previous law dealing with this situation, notably in Hudson County, with result that many, eligible to vote, spent hours endeavoring to be heard before one board, only to find when their turn arrived that they had gone to the wrong place, and they would have to spend further time getting in line somewhere else.

This confusion has been removed by making the time of the application for transfer and not the time of the voter's removal the criterion for determining where and to whom he should apply for transfer. The revision provides that all applications for transfer made on or before the fourth Tuesday preceding any election are made to the commissioner; between that fourth Tuesday and including the day of the election, the commissioner makes no transfers, nor does anybody else; if the voter failed to effect his transfer before that fourth Tuesday, he now waits until election day itself, and then goes directly to the district board where he last voted, and in simple manner gets his transfer which he then presents to the district board of the district where he then resides. Such division of labor among the many district boards lightens the labor and eradicates the provocative delays.

Change in Registration Due to Marriage or Divorce

A similar change has been made in this section, which clarifies that in case of change of a woman's name, due to marriage or divorce, the "fourth Tuesday before any election" refers to the time of her application to vote rather than to the time of said change of name. She is in nowise deprived of her right to vote due to such change in name.

Check-Up by Commissioner

To thwart fraudulent voting and to eliminate names improperly registered, we have inserted in the revision a check-up or purging provision whereby the commissioner within ninety days after each general election is to send, by government reply postal card, to each registrant who failed to vote at that election, an inquiry as to whether such registrant still resides at his registered address and, if not, where. In cases where it is found that registrants have moved from one address to another within the same district, or from one permanent registration municipality to another within the same county, the records are to be corrected accordingly, and the transfers made on the books. Where it is found that they have moved from a permanent registration municipality into a house-to-house canvass municipality, the permanent registration forms are to be put in the inactive file, and such person, if perchance he return to any permanent registration municipality, is required to re-register.

To prevent reoccurrence of situations brought to the attention of the Commission, where for unfair motives and merely political advantage, permanent registration forms were transferred from the signature copy register into the inactive file on the very eve of the election without notice to the voter, it is now provided that this cannot be done after the second Tuesday preceding any election until after such election has occurred. And then he gets notice of it. Anyone in doubt as to his status as a voter may, therefore, by simple inquiry from the commissioner any time within the two weeks preceding the election, ascertain in what district he is registered, and what, if anything, is necessary to be done in order to vote.

Notice of Death

The health officer of each municipality in charge of records of death now files with the superintendent of elections in first class counties, and with the commissioner of registration in other counties, once each month, the names and addresses of all persons over twenty-one years of age who have died within the previous month. Identity of the deceased must, of course, be established

with the names on the registry list before the latter can be stricken out. Hence the superintendent or the commissioner, as the case may be, makes investigation for that purpose. In counties of the first class, needless duplication of work was formerly occasioned by the old provision that after the superintendent had determined the fact of identity and so certified to the commissioner, the commissioner nevertheless was allowed and even supposed to make his own independent investigation. Unless the commissioner himself were satisfied, it made no difference what the superintendent had determined. There was not only expense and needless duplication, but until the commissioner personally saw fit to strike the name off the list, the work of the superintendent went for naught, and had to be done all over again in connection with the next election, with the result that lists were clogged up with names of decedents, in spite of the fact that a responsible arm of the law, the superintendent, had determined as a fact that that particular registrant was dead. The revision takes the option away from the commissioner and makes it mandatory that he remove the name of a decedent once it is certified to him by the superintendent. The business of elections should be carried on without overlapping of effort or needless duplication, like any other business.

Convictions of Crime

The situation is similar in effect to death. The present law provides that the county clerk shall furnish information as to convictions which would disfranchise, with the superintendent and commissioner, as in case of deaths. A similar inquiry is then made to establish identity. The revision provides, for the reasons aforesaid, that it is mandatory for the commissioner, in first class counties, to strike out the name of such convicted person once the identity has been established by the superintendent.

Because the information required in cases of crimes is not within the knowledge of the county clerk, and reference must therefore be made by him to the prosecutor of the pleas, the law is changed by providing that the prosecutor shall give the required information each month instead of the county clerk.

Correction of Records by Commissioner

The commissioner is already bound to transfer to the inactive file the permanent registry of such persons as the Justice of the Supreme Court, the judge of the Circuit or Common Pleas Court may order stricken from the signature copy register. The former power of the county board of elections to order this done has been abrogated. It now is provided that the registrant shall be notified by the commissioner by registered mail of any transfer made pursuant to that section, which is but fair.

Signature Copy Registers

These are the duplicate permanent registration forms which are actually used by the district boards on election days, both primary, general, special and municipal elections. They are also used for the purpose of sending out sample ballots. Successive and unnecessary handlings, returns and redeliveries of these books have been eliminated by appropriate changes in the act.

Duty of Commissioner After Election Upon Return of Signature Copy Registers

The law now provides that an entry be made of the fact that a person voted, and in the case of a primary election, what party box he voted in. These entries are required to be made by the district boards. In a presentment by the Hudson County Grand Jury, complaint was made that there was no responsible, supervising officer. This has been met by providing that upon receipt of the registers after election, the commissioner is charged with the duty of inspecting the same, and verifying from the party primary poll books and the general election poll books, as the case may be, that the entries required to be made on the record of voting forms in said registers by the district boards, have, in fact, been made.

If the commissioner shall ascertain that the required entries have not been made or have not been properly made, he shall himself cause such entries and corrections to be made forthwith. And, as a practical deterrent, the revision further provides that the commissioner shall *also* notify the county board of such failure of duty, and that the members of such district board as have thus

failed shall be ineligible for reappointment as members of any district board thereafter.

Sections dealing with the disposition of the poll books after election have been coordinated to this new duty imposed on the commissioner.

Liaison Between Commissioner and Superintendent

Not only is the superintendent to furnish the commissioner certain information as above set out, but the commissioner is required by the revision to certify to the superintendent each month complete lists showing all registrations and transfers made and all registrations placed in the inactive, death and conviction files.

Master Index File

The necessity for this new section is well set out in the aforesaid presentment of the Hudson County Grand Jury, viz. :

"The registration of the voters in an election district is entered upon separate sheets, one sheet for each voter registered. These sheets are contained in loose-leaf binders, a binder for each election district. Upon the removal of a voter from a district the sheet containing that voter's registration and the sheet containing his voting record are taken from the binder of the district in which he formerly voted and transferred, presumably, to the binder for the district to which the voter has removed. But this removal of sheets is done without a trace of what has become of them. There is nothing whatever in the binder which formerly contained the sheets in question to show where they might be found. Nor is there, in fact, anything which so much as shows that it is the removal of the voter that has occasioned the withdrawal of the sheets. The sheets are simply missing."

The revision meets this squarely by providing that the commissioner shall make and maintain a master index file showing on separate cards the full, pertinent data of every person permanently registered in the county. The commissioner must cause notation to be made on these cards as to each registrant whose registration forms have been transferred from one register to another or to the inactive, death or conviction files, concurrently with such

transfer. Such cards with such notations shall show the location of the registration forms of each registrant at all times. All changes of address of registrant, including those within the same district, shall be noted on these cards concurrently with change of address on the permanent registration forms.

Superintendent of Elections

Our first thought was that this office might well be combined with that of the commissioner of registration, thereby eliminating present overlapping of duties and some duplication of work. We found, however, that this was not practicable; that the office should be retained because necessary in first class counties. It is the right arm of the election law. It is the constituted police force and detective bureau. On it is imposed the onus for honest elections.

We found that although the office were consolidated with that of commissioner, there would still have to be an officer and a whole force vested with the powers and charged with the duties now residing or placed upon the superintendent; that the saving of expense, if any, would be negligible; that by whatever name called, the officer and the force would be necessary. We found it of no moment whether the superintendent worked *under* the commissioner. We deemed it imperative that he work *with* the commissioner. We, therefore, kept the offices distinct, deeming that responsibility for this most important work should be definitely fixed and sharply focused upon the one person responsible. The duplication of work has been removed; the overlapping, eliminated. We have previously referred to the articulation we have effected between the two departments. See further under caption purging via peremptory orders.

Challenge Lists

The old act provides that in first class counties, the superintendent must prepare and deliver to each district board a challenge list showing the names and addresses of persons registered in such district who are "not to be entitled to vote." A person challenged may, nevertheless, swear his vote in pursuant to other sections of the statute. This is incongruous *if* the real fact is

that he is not entitled to vote. If the challenge list is an adjudication by a duly constituted tribunal, it is defied and set at naught by the simple device of swearing one's own vote in. Reading all the cognate sections of the old statute together, it must have been the intention that the challenge list was in reality a list of persons suspected rather than determined by the superintendent not to be entitled to vote.

The amendments of 1928, which put teeth into the bite of enforcement by affording the cumulative remedy of a strike-out or so-called black list, was designed to actually prevent persons, not entitled, from voting. A person whose name was so struck out could not swear his vote in. He might, perhaps, review and reverse the act of the superintendent in thus striking his name off, but that was only by court proceedings—subject to cross examination, a hearing the usual due process of law. It was the duty of the superintendent to place names on the strike-out list whenever he "ascertained" or "found" certain specified facts, and generally whenever those persons were found "not entitled to vote at such election."

Those amendments left the challenge sections intact. Yet the operative language was substantially the same. Room was left, apparently, to plausibly contend that the superintendent had an option. Yet the effect on the voter was radically different, depending upon which list his name was placed. In Hudson County the bulk of names questioned went on the strike-out list; in Essex County, on the challenge list.

Both lists serve useful functions. Both should be retained. But whether a registrant's name is to go on one list or the other should be according to the actual facts in each case—according to the status of the proof, not according to the individual preference of the superintendent.

Accordingly, the provisions concerning challenges have been revised so that there is placed on the challenge list those names "whom he (the superintendent) believes or has reason to suspect are not entitled to vote at said election in said district by reason of death, conviction, removal or otherwise, or whose right he otherwise questions and therefore challenges."

The challenge list, therefore, becomes merely a "suspect" list. Where the proof has made the superintendent "sure," then, and then only, may he put the name on the peremptory order striking out the voter's name, thereby putting the voter to the necessity of appealing to the courts if he desires to reverse the adjudication made by the superintendent.

Peremptory Order

The objective and operation of this order has been discussed under the preceding caption. The amendments of 1928 prescribed the duty of the superintendent to issue these orders against names of persons whom, inter alia, the superintendent shall have ascertained "to have removed from the place of registry or have been found to be registered from some place other than the actual residence of the person whose name appears upon said registry." We find this well-intentioned operative language to have been too broad. Persons duly registered at the time of registration, but subsequently moving, found their names on a so-called black list. If they moved to another place in the same county, they were entitled under the law to a transfer entitling them to vote, even on election day itself. If they moved from one place to another in the same election district, in which event not even a transfer would be required, they might lawfully, nevertheless, as the law then stood, be put upon this list. Carrying it to an extreme, the same result if they moved from an apartment on the first floor to one on the second floor of the same building.

The revision, therefore, eliminates the words last quoted, and, in lieu, substitutes that names are to go on this list when the persons registered have been found never to have resided at the place of registry or to be registered from some place other than the actual residence or not possessing the qualifications to vote required by the Constitution of this State, or otherwise not entitled to vote, and follows this by the important proviso that no such order shall be issued against any person who was legally registered at the time of registration merely because he has moved from such registered address, unless it shall be found that such person has moved out of the county.

Purging of Registration by Peremptory Orders

Under the old law, the strike-out operates only as regards the particular election for and at which it is served on the district board. It has to be repeated for each successive election until the name, perhaps, is stricken from the registry list by the commissioner, who may or may not abide by the decision of the superintendent. Thus, there is needless repetition of work, and a division of responsibility, not to speak of the enormous expense inflicted upon the county in publishing unnecessary names from year to year.

The revision makes it obligatory upon the superintendent, concurrently with the delivery of the order to the district boards, to also deliver to the commissioner a true, certified copy, and upon the receipt of such copy, it is mandatory that the commissioner transfer the permanent registration forms of the persons named in the order to the inactive, death or conviction file, as the case may be. From that point on, the matter is solely up to the courts, where it should be.

Partisan Activities of Superintendent or Subordinates

To insure that the office of superintendent of elections is kept free from all partisan activities, we have provided a new section reading:

"Neither the superintendent of elections nor any deputy, clerk, secretary, agent, assistant, or subordinate appointed or acting under the orders of the superintendent of elections, or any person or persons designated by him to act at or in respect to any election, shall engage in or be concerned with any partisan activities whatsoever directly or indirectly. Any person who shall violate this section shall be guilty of a misdemeanor and be punished accordingly."

Salaries of Officials

Complaint was made by some members of district boards that they were not paid for months after they had finished their work on primary and general election days. It is now provided that they shall be paid within thirty days after each general election.

Statutory payments for services by district boards which are performed on the same day as other services for which they are fully paid have been eliminated, effecting a proper saving. Services of election boards in mailing sample ballots for the primary and general election have been raised from \$2 and \$3, which fees are inadequate compensation, respectively to \$5.

The inadvertent unfairness of the amendment, which unwittingly deprived commissioners of registration in second-class counties of compensation for their services as such, has been straightened out.

Voting Machines

We have made a careful study of this subject, devoting the whole of one hearing to an exhaustive exposition and demonstration.

We believe that voting machines should be adopted. The age calls for their speed and their accuracy. No business of any size is without its adding machines and cash registers. Financial commitments of staggering size are made in reliance on ticker-printed tape. Congress insists that the railroads shall install automatic signal devices and no longer rely on fallible human agencies to safeguard train movements. We no longer crank by hand. Our property, our happiness, our business, and our lives themselves are quite dependent on mechanisms of one kind or another. And elections are big business for the public.

The big question is the expense of installation and of subsequent maintenance. This, while reasonable when amortized over a long run, involves the present outlay of amounts which may prove prohibitive to many municipalities. Tax rates climb at an appalling pace. The ultimate consumer in this instance will be the taxpayer. In the last analysis, this is his business. The present unsettled financial outlook is not a propitious time to saddle a staggering expense on the already overburdened taxpayer, unless he himself directly voices his desire.

We, therefore, recommend that this matter be put directly to the voters by way of appropriate referendum. This was the course recently adopted by our neighbor, the State of Pennsylvania. The matter should be thoroughly debated as to the form

the referendum should take. The mistakes of our experiment with machines a quarter of a century ago must be avoided. The public should be fully informed of what it is to decide and the consequences of such decision. The public will decide right and be happy about it. It willingly pays what it orders for itself.

Respectfully submitted,

JOSEPH G. WOLBER,
Chairman;

THOMAS M. GOPSILL,
Secretary;

RALPH W. CHANDLESS,
CHARLES A. OTTO, JR.

We are opposed to permanent registration. We believe in personal registration throughout the State. If retained despite our dissent, we cordially approve the remedial provisions of the revision as being steps in the right direction to cure its many present and patent defects. In that event, permanent registration should be applied to all municipalities.

ALEXANDER SIMPSON,
JOSEPH P. McDERMOTT.

D. FREDERICK BURNETT,
of Counsel.

Trenton, N. J., March 21, 1930.