



STATE OF NEW JERSEY.

ELECTION LAW REVISION COMMISSION.

FINAL REPORT  
TO THE  
GOVERNOR AND LEGISLATURE.

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ELECTION LAW REVISION COMMISSION

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Title 19 has been aptly described as a "relic of the days of horse carts, which has been modernized up to the days of trolley cars". And although trolley cars have vanished, Title 19 continues to creak along, repaired on a piecemeal basis from time to time, but never receiving the overhaul it requires. The Election Law Revision Commission (hereinafter referred to as the Commission), pursuant to its charge from the Governor and the Legislature, herewith submits a complete revision of Title 19, designated Title 19A.

The proposed new Title 19A is a product of several year's work of the Commission, including public hearings, special meetings, extensive work sessions, and thoughtful recommendations from many sources, including elected officials. The goal of the revision has been to assure a fair and open electoral process, with full participation by the electorate and clear lines of responsibility for election officials. The revision is the first comprehensive change of the statute in decades.

The Commission recommends that the entire existing Title 19 be repealed, and that the revision be enacted in its

place. It further recommends that companion bills enacting the revision be introduced in both the Senate and General Assembly.

The Commission was surprised by the revelations of administrative variation in the election process from county to county. This variation, which was unfortunately fostered by Title 19 itself, permitted overlapping jurisdiction and artificial distinctions among counties and municipalities. Such variation led inevitably to confusion in the enforcement of the election laws, and unnecessary costs attributable to the duplication of effort.

It was concluded that the basic problems of Title 19 required material changes in both the structure and operations of the electoral process. The structural changes on the county level include the elimination from the electoral process of the county clerk, the commissioner of registration, and the superintendent of elections. On the state level, the secretary of state and the attorney general have been removed from the electoral process. Each of the 21 county boards of election is now directly under the supervision and control of the Election Law Enforcement Commission.

As for electoral operations, the Commission has vested virtually all decision making power in the Election Law Enforcement Commission. It is felt that the time has now come for the Election Law Enforcement Commission, which was created

in 1973 as a result of prior recommendations of the Commission, to be granted complete authority over the entire electoral process, not merely enforcement of the "New Jersey Campaign Contributions and Expenditures Reporting Act". With such expansion and strengthening of the Election Law Enforcement Commission, the urgently needed uniformity will have been achieved.

During the Commission's deliberations, Title 19 was frequently amended, sometimes in major respects. The Commission therefore continually updated its analysis of the Title and included in proposed Title 19A amendments as recent as Chapter 11, Laws of 1975 (see proposed 19A:28-12). However, two specific 1974 amendments to Title 19 are not included in proposed Title 19A, since the Commission did not reach a consensus on them. These sections are R.S.19:31-6.1 and 19:44A-3 et seq. dealing, respectively, with voter registration by mail and the public financing of gubernatorial elections.

The major areas of change can be grouped under the following categories.

1. ELECTORAL SUPERVISION AND CONTROL.

At the heart of the entire draft is the creation of a state Election Law Enforcement Commission, composed of four members\* appointed by the Governor, with the advice and consent of the Senate. This Election Law Enforcement Commission has authority over and control of the entire electoral process, maintains its own staff and counsel and is completely free from

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\* A five member body had been previously recommended by the Commission.

and independent of any other state agency or official. It has broad investigatory powers, including the power of subpoena, the power to hold public hearings, the power to grant or withhold certificates of election, and the authority to refer apparent violations of the Title to prosecutorial agencies.

All election responsibilities previously exercised by the secretary of state have been transferred to the Election Law Enforcement Commission. The office of the county superintendent of elections has been abolished. Election responsibilities previously shared by the county clerks and county boards have all been consolidated within the county boards. The Commission acknowledges the thoughtful suggestions submitted by the county clerks during its deliberations, and recognizes the considerable expertise of many of the county clerks in the interpretation of Title 19, particularly in ambiguous areas. Nevertheless, it has concluded that with the updating and reform of the statute, the administration of the law can be best achieved within the proposed administrative chain of command.

The Commission has studied the National Municipal League's model statute for election administration and voting registration, specifically the "Tentative Proposals" of January, 1973. While the Commission agrees with the two reforms which the National Municipal League believes "underlie responsive and efficient institutional framework" (structure of election administration and conduct of voter registration), the Commission has concluded that an Election Law Enforcement

Commission on the state level, rather than a State Director of Elections with a state advisory board on elections, is a more efficient and responsive supervisory agency. In the area of voter registration, the Commission has charged the Election Law Enforcement Commission with the responsibility to foster and promote the registration of all eligible voters.

On the county level, the so-called model statute provides for a county administrator appointed by the state director, who serves as the deputy of the state director in that county. The Commission's proposals are analogous to this recommendation, in that proposed Title 19A provides for the appointment of a full-time executive director in each county, said appointment to be by the Election Law Enforcement Commission. However, the draft of the Commission provides for retention of the 21 county boards of election, which will now function under the supervision and control of the Election Law Enforcement Commission. In turn, the executive director of each county board operates under the supervision of the county board.

Specifically with respect to the structure and function of county boards of election, two ambiguities in the existing statute have been removed. Now, the chairmanship of county boards must be rotated yearly between the two major political parties, and in the event of failure to elect a chairman, the senior member in point of service on the board is declared to be the chairman. On the local level, the dis-

trict boards have been retained, but training sessions for all members have been required.

## 2. FINANCIAL DISCLOSURES.

In its "Interim Report" to the Governor and Legislature, dated September 1, 1970, which included a New Jersey Campaign Contributions and Expenditures Reporting Act, the Commission stated:

Stringent disclosure requirements on every aspect of political financing must be imposed and enforced at every election level. This applies not only to candidates disclosing the identity of contributors of money and services and recipients of expenditures, but also to political organizations, informal or ad hoc fund raising committees and to testimonial dinners or functions where the funds are to be used for political purposes.

The Commission reiterates and underscores these views and notes that a similar version of the Commission's proposed legislation became law in New Jersey in 1973. This act as passed has been substantially included in proposed Title 19A, in somewhat re-arranged form.

## 3. PARTY ORGANIZATION.

The prohibition against party endorsements in primary elections, which was more often honored in devious breaches rather than forthright observance, has been abolished. It has been replaced with a system whereby, as a result of duly held meetings and an equitable system of voting, including use of secret ballots, the political parties may endorse candidates in primary elections. Moreover, even candidates who

enjoy a certain amount of support falling short of endorsement are permitted to have their names appear in the same line or column on the primary ballot as the endorsed candidate or candidates. However, notwithstanding endorsement by political committees, no state committee, county committee or municipal committee of the political parties may spend or disburse any moneys to or on behalf of any endorsed candidate prior to the primary election.

The terms of office for municipal, county and state committee officials of the political parties have been set at two years. The adoption and filing of constitutions and by-laws by all such committees are mandatory. Meetings of the county committee must be noticed in writing at least seven days in advance and "unit rule" and "proxy" voting are proscribed, thereby encouraging maximum participation at party meetings.

The revision abolishes the vague phrase "unit of representation", substitutes therefor the phrase "election district", and requires that each county committeeman and committeewoman be elected from each election district in the state. Where vacancies occur in county committees, voting to fill those vacancies is restricted only to those who were members on the day preceding the occurrence of the vacancy. All persons appointed to fill vacancies on the county committee must have the same qualifications as if they were to be elected to such position.

With respect to nominating petitions for statewide offices, the requirement is now that the petition contain 5,000 signatures, of which no more than 15% shall be from any one county.

The Commission is aware of current thought and judicial decision with respect to less rigid strictures on the right to be affiliated or non-affiliated with political parties. It has concluded that there should be a reasonable and affirmative method whereby entry into, or departure from, a political party is accomplished. Accordingly, the draft provides that a voter who votes in the primary election of a political party shall be deemed to be a member of that party until one subsequent annual primary election has elapsed unless, within eight weeks following the general election, he shall have filed with the county board a certificate of disaffiliation stating that he is not affiliated with any political party, or stating that he is now affiliated with another political party. It is the Commission's view that such a provision provides ample flexibility for the coming and going of party members, but avoids the unseemly colonization of certain primaries by political nomads.

On the question of party primaries, the Commission notes that part of New Jersey's former statute on party primary "cross-overs" (19:23-45) was declared unconstitutional in Naqler v. Stiles, 343 F. Supp. 415 (1972). It is the

Commission's conclusion that the proposed new section (19A:15-18) meets the constitutional tests implicit in the Nagler case, and those more recently applied by the United States Supreme Court in Rosario v. Rockefeller, 410 U. S. 752, 93 S. Ct. 1245, 36 L. Ed. 2nd 1 (1973).

4. THE RIGHT OF FRANCHISE.

It is noted that following the decision in Stephens v. Yeomans, 327 F. Supp. 1182 (1971), which declared the distinctions in the then existing R.S. 19:4-1 as a denial of the equal protection of the law, and therefore unconstitutional, the New Jersey Legislature amended R.S. 19:4-1 in two important respects. First, the current statute, rather than attempting to distinguish among those persons eligible to vote and those not eligible to vote, prohibits voting by all persons serving sentences, or on parole or probation as a result of convictions for indictable offenses. Second, the current statute has removed references to age and duration of residence, and has substituted a clause requiring voters to meet the age and residence requirements prescribed by the Constitution of this State and the laws of the United States. (The Commission notes that the New Jersey Constitution, specifically Article II, paragraph 3, was amended by referendum at the general election on November 5, 1974).

The Commission itself had also concluded that no residential duration test for voter eligibility was necessary,

and that a thirty day period to permit election officials adequate time to investigate registrants was reasonable. See Dunn v. Blumstein, 405 U. S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

The Commission's proposed revision of R.S. 19:4-1 has substituted the language "who has been adjudged mentally incompetent" for "who is an idiot or is insane" in the current statute. The Commission recognizes that its substituted language may not be a complete solution to this troublesome problem, where a fine constitutional balancing of individual rights with a significantly free exercise of the franchise is necessary. Indeed, the final answer may have to await changing judicial conclusions of constitutional construction. In any event, it was decided that the existing language was so imprecise as to require its removal.

An addition to the Title is R.S. 19A:4-3 (Voting Residence Defined), which gives to the election officials administering the statute guidelines for determining questions of residence.

##### 5. VOTING SYSTEMS AND THE PROBLEM OF PAPER BALLOTS.

It is the unanimous consensus of the Commission that the abolition of paper ballots in New Jersey is a prerequisite for significant electoral reform. The proposed revision contemplates such abolition. However, the Commission takes no position as to what precise method of voting should be utilized.

in New Jersey. The language of the revision is such that any modern voting system with adequate ballot security, whether existing voting machines, development of existing voting machines, or so-called electronic voting processes, may qualify and be utilized, subject to approval by the Election Law Enforcement Commission. The present "punch-card" system is acceptable to the Commission for absentee balloting.

6. ELECTION RECOUNTS.

The abolition of paper ballots provided the Commission with an opportunity to streamline the procedures for rechecks, recounts and contests and to combine the statutory methods now covered in R.S. 19:28-1 and 19:52-6. In addition, the overall costs of the recount and recheck procedures have been made more reasonable.

7. EXPENSES.

While retaining basically the requirement that county government shall finance the administration of elections, the Commission is cognizant of the burden thrust upon the county boards of elections as a result of Title 19A. The Commission proposes, therefore, minimum and maximum salaries to be approved by the Board of Freeholders, with additional increments available to the chairman and secretary of the county boards. The proposed minimum as set by R.S. 19A:29-7 is \$2,000, and the proposed maximum is \$10,000. The Commission concludes that

the elimination of overlapping responsibility and duplication of work effort will reduce the overall administrative costs of the election process.

8. PRESIDENTIAL BALLOT LAW.

As a result of recent changes under the Federal Voting Rights Act and the necessity for Title 19A to conform to these changes, the Presidential Ballot Law has been rewritten, eliminating the "new resident" category. This section applies to those persons in New Jersey who move to another county or state, territory or possession, within the 30-day period preceding the Presidential election. The Commission has further expanded this section to include persons who were formerly residents of one of our counties but who have removed to a foreign country on a temporary basis.

9. ABSENTEE BALLOT LAW.

The Absentee Ballot Law has been substantially retained, with all of the forms to be prescribed by the Election Law Enforcement Commission. However, certain material changes, including the residency requirements for a military service voter, have brought it into conformity with the requirements of the Federal Voting Rights Act. The provisions for mailing of civilian absentee ballots have been amended to require the use of air mail beyond a distance of 250 miles to insure the right of franchise to all eligible voters.

Due to the frequent confusion surrounding the attempted challenges to absentee ballots and the varied practices

encountered by the Commission from county to county, proposed 19A:36-23 now provides that the county boards of elections shall not detach or separate the certificate on the voted absentee ballot from the inner envelope prior to 7 A.M. on election day.

#### 10. PENALTIES.

Chapter 34 of Title 19 contains a catalogue of offenses with their definitions and assigned punishments. Most of them are misdemeanors; i.e., indictable crimes. A few other offenses, with their attached punishments, are also scattered elsewhere in the Title, particularly in Chapter 32 (which deals with enforcement by superintendents of elections--a class of officials superseded in this revision).

The Commission has decided against retaining this catalogue-type approach. Rather, in the interests of both simplicity and consistency, a short chapter dealing with the manner and degree of punishing any offense or failure of compliance, in accordance with its degree of seriousness, has been inserted. The substance of every such offense, where it is not already clearly and unmistakably implied by the positive injunctions of the law, has been inserted in the appropriate sections dealing with the area in which the offense may be committed; for example, contributions and polling places.

The new penalty section is modeled upon the system which the Election Law Enforcement Commission has found to work so well in the enforcement of "CAMPAIGN CONTRIBUTIONS AND EXPENDITURES REPORTING ACT" (R.S. 19:44A-1). Essential to

that system is the distinction between administratively enforced civil penalties appropriate to minor infractions and failures of compliance arising from ignorance, oversight or other non-criminal intention, and criminal penalties, which should be invoked against any offense which strikes at the integrity of the electoral process. Criteria for discriminating this latter class of criminal offenses are to be found in the fundamental declaration of the Title's public policy and intent incorporated in the penalties section.

Title 19A provides a civil penalty for offenses which under Title 19 could only be proceeded against by indictment. The Commission concluded that under Title 19 some infractions went unpunished altogether; first, because of the very high standard of proof required in the criminal process, and second, because in many cases the provable facts may seem to a jury (and perhaps also to a prosecutor) insufficiently grave to warrant placing the stigma of "crime" upon the defendant. In such cases now, the greater certainty and swiftness of a civil penalty will prove a more potent deterrent than the theoretical but infrequent imposition of criminal sentences.

The civil penalty section of Title 19A provides for a penalty of up to \$5,000 for the first offense and up to \$10,000 for any subsequent offense. The criminal penalty section specifically defines the misdemeanor as a crime

punishable by a prison sentence of up to three years or a fine up to \$3,000, or both. A subsequent conviction provides for a prison sentence of up to five years or a fine up to \$5,000, or both. Finally, the criminal penalty section now includes a provision voiding the nomination or election of any candidate who is guilty of any violation of the criminal penalty section.

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Besides the foregoing major areas of change in the statute, many other sections have been significantly amended, as shown by the "Commentary" relating to each section changed. The Commission has concluded that dual office holding presents real or apparent conflicts of interest. Thus, R.S. 19A:3-4 has been broadened to prohibit any such dual office holding.

All dates for filings, notices, etc. have been revised to reflect a period of time before the event they relate to, so that if the primary election date is changed, these sections need not be amended.

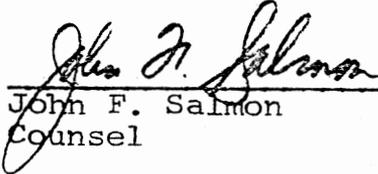
Title 19 is replete with various provisions which can most charitably be described as special concerns for particular areas. There are, for example, references to cities of certain classes and counties of certain classes. Since no

apparent reason exists to retain these arbitrary distinctions, they have been discarded in the revision.

While recognizing that its responsibility does not extend to school board elections under Title 18A, the Commission recommends that the Legislature might well scrutinize that Title also, towards the end of tightening procedures therein and assuring uniformity, clarity and public understanding throughout the state.

In closing, the Commission notes that a variant of its proposed legislation with respect to campaign financing became law in New Jersey in 1973. Aside from specific questions on some particulars of the new law, the Commission is convinced that the "Campaign Contributions and Expenditures Reporting Act" should be viewed as just the first step on the path to a revision of our entire election laws.

FOR THE COMMISSION:

  
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