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THE ELECTION LAWS OF
MISSOURI

by

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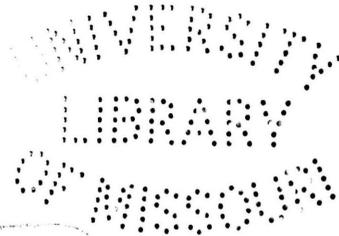
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ELECTION LAWS OF MISSOURI.

CHAPTER ONE

The Territorial Period

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The principle of election to public office by the people made its first appearance in what is now Missouri at that period in its history when it was known as the Territory of Louisiana and when a large portion of the population was of French descent.

Conditions of life were primitive in the extreme. Facilities for commerce were few and crude and the possibilities of inter-communication among the widely scattered settlements of pioneers could hardly have been more limited. The entire popu-

lation did not exceed fifteen thousand. St. Louis, the capital and metropolis, was a city of not more than two thousand souls. Those who lived outside the capital were gathered largely in small towns which lay along the banks of the Mississippi and Missouri rivers.

The effect of these conditions upon the development of the elective principle must be apparent. The early predominance of the French, unaccustomed to republican institutions, accounts for the absence of demand in the beginning for democratic government and the sparsely settled character of the country, with the consequent difficulties of communication, prevented the adoption of the political institutions of the eastern states, even when the Anglo-Saxon element of the population became more numerous.

When the elective principle does appear it is first, as would naturally be supposed, in connection with the government of the towns.

On June 18, 1808, (1) the Legislative Council provided for the election of five trustees in incorporated municipalities and a survey of this first election law reveals the general principles which will be found to underlie most of the succeeding laws of the Territorial and early state-hood periods. We shall consider it, first, from the standpoint of the qualifications which it prescribes for the possession of the franchise and, secondly, with reference to the regulations which it lays down governing

(1) Territorial Laws, Vol. I., p. 185.

the exercise of the right to vote, for it is in these two respects that a study of the development of election laws logically divides itself.

We find that the law of June 18, 1808 granted the right to vote to free white male inhabitants, residents for at least one year next preceding the election day, who had their names on the district list of taxables.

In these qualifications is a recognition of four important principles: (1) That the franchise should vest in males alone; (2) That only free white men should be allowed to vote; (3) That residence is necessary qualification for the possession of the franchise; (4) That the possession of property is a desirable franchise qualification, at least for voters in municipal elections.

The following election regulations were prescribed. The voting was to be by ballot; The election was to continue from 10:00 a. m. to 5:00 p. m.; The election judges, who were appointed by the Court of Common Pleas, which was the general county authority, were at the close of the election, to examine the ballots and declare the five persons receiving the greatest number of votes, were to certify the results of the election to the Clerk of the Court by which they were appointed, and this Court was to decide all contests. In case an election was set aside a new election was to be held.

It was, however, with the change in the form of the terri-

torial government from the third to the second class of territories that the elective principle became of more than local consequence. On June 4, 1812 the President approved an act (1) which provided for the government of the Territory of Missouri, including the creation of a General Assembly with an elected House of Representatives. The members of this lower house were to be elected by the people every second year. The qualifications of electors were fixed by the act as follows: "All and every free white male person, who on the twentieth day of December in the year one thousand eight hundred and three, was an inhabitant of the territory of Louisiana, and all free white male citizens of the United States, who, since the said twentieth day of December in the year one thousand eight hundred and three, emigrated, or who hereafter may emigrate to said territory, who are above the age of twenty-one years, who have resided in the said territory twelve months next preceding an election, and who shall have paid a territorial or county tax, assessed at least six months previous thereto shall be entitled to vote for representatives in the General Assembly." These qualifications of electors as thus prescribed by act of Congress, remained unchanged during the territorial period.

The method of conducting elections of representatives was fixed by an act of the Territorial Legislature adopted on the 4th of January, 1814. (2) The election was to be by ballot. Each township was to constitute an election precinct, the Court of Common Pleas designating some house as the polling place. All

(1) Territorial Laws, Vol. I., p. 5.

(2) Territorial Laws, Vol. I., p. 296.

general elections were to be held on the first Monday in August of even years, between 8:00 a. m. and 6:00 p. m. At least fifteen days before each regular election, and at least ten days before each special election, the sheriff of the county or, the sheriff failing, the coroner, was required to make proclamation in each township of the time and place of the election and the officers to be voted for.

Under this law, the officers of elections were, at each precinct, three judges and two clerks. The judges were appointed by the Court of Common Pleas and were to be discreet householders with the qualifications of electors in the townships where they were to serve. The clerks were to be appointed by the judges. In case a person refused to serve as an election judge his place was to be filled by one of the justices of peace of the township or, if there were no justice of the peace, the vacancy was to be filled by a qualified person chosen by the other judges, and if there were no judges the voters present at the polling place were empowered to choose three persons to act as judges. Both clerks and judges were required to take oaths for the faithful performance of their duties in the offices which they held. The clerks were required to keep poll books in which were written the name of every voter and in a separate column the name of each and every person whose vote was rejected by the judges. The judges of election had power to examine on oath persons desiring to vote touching their qualifications as

electors. Judges and election clerks refusing properly to perform their duties were liable to be fined in an amount not exceeding \$200.

Judges, clerks, constables, and electors were free from arrest in civil matters, while going to, attending, and returning home from elections. Order around the polling places was preserved by investing the election judges with authority to arrest persons guilty of riotous and unlawful conduct and to impose fines or sentences of imprisonment in the county jail.

A qualified voter in the Territory was permitted to vote for delegate in Congress in any other county than the one in which he was a resident and for representative in the General Assembly in any other township of the county than the one in which he was a resident on taking oath that he had not voted and would not vote in any other place at that election.

The results of the election in each township were cast up in two poll books which were then countersigned by the clerks and judges. One of the poll books, under seal, was carried, either by a judge or clerk, to the County Clerk. The officer to whom this duty was assigned was liable in the amount of \$11 for failure to perform it. Upon receiving the poll books from the township it was the duty of the county clerk, assisted by two judges of the Court of Common Pleas, or by two justices of the peace, or by one judge and one justice, to make an abstract of the votes cast for delegate in Congress and, on a separate sheet, of the votes cast

for representative in the General Assembly, and to send copies of such abstracts to the governor. The clerk informed the person receiving the greatest number of votes for representative in the General Assembly of his election, and the governor, within thirty days after the time limited for the receipt of returns from counties, proclaimed the person receiving the greatest number of votes elected delegate in Congress.

✓ Provision was made for special elections in case of tie votes for or vacancies in the offices of either delegate in Congress or representative in the Legislature. It was the duty of the governor to issue writs of election to the sheriff, or sheriffs in case of a vacancy in the office of delegate or representative and in case of a tie in the votes for delegate in Congress. In the case of a tie in the votes for representative it was the duty of the county clerk of the proper county to issue writs for a special election to the sheriff. Special elections were held in the same manner as regular elections.

There were no changes of importance in these election laws until the adoption of the Constitution of 1820. (1).

(1) An act was passed January 29, 1817 prescribing the form of poll book to be used by election clerks. See Territorial Law, Vol. I., p. 513.

CHAPTER TWO

From 1820 - 1835.

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In this period the elective principle was extended to the choice of the governor and lieutenant governor and, in the counties, to the choice of the sheriffs and coroners. It was extended also, of course, so as to include the members of the upper house of the General Assembly, a body that, during the territorial period, had been composed of members appointed by the president.

Together with this widening in the application of the elective principle, came considerable changes both in the qualifications prescribed for the exercise of the franchise and in the manner and methods of elections. In this chapter, I propose to set out the nature of this development and to explain, so far

as possible, the reasons for the changes which occurred. To that end I shall discuss, in order: (1) Legislation effecting the qualifications required for the possession of the franchise, and; (2) regulations governing the manner of its exercise.

The Constitution of 1820 contained the following provision fixing the qualifications of voters: (1) "Every free white male citizen of the United States who may have attained the age of twenty-one years, and who shall have resided in this state one year before an election, the last three months whereof shall have been in the county or district where he shall offer to vote, shall be deemed a qualified elector for all elective offices; provided, that no soldier, seaman, or mariner in the regular army or navy of the United States, shall be entitled to vote at any election in this state" and (2) "Any person who shall give or offer any bribe to procure the election or appointment of any other person, shall, on conviction thereof be disqualified as an elector."

The most pronounced change to be observed in these provisions from the qualifications prescribed in the Territorial Period is the abolition of the property qualification which never again appears as necessary to the possession of the franchise in any general election in this state. Indeed, the territorial laws did not demand for the exercise of the franchise the ownership of a definite and fixed amount of property. The recognition of the principle of the property qualification was in the require-

(1) Constitution 1820, Laws of Missouri, Vol. I., p. 25.

(2) Constitution 1820, Laws of Missouri, 1825., Vol. I., p. 46.

ment that no person should be allowed to vote without having paid a county or territorial tax. The abandonment of this principle is to be ascribed to a widespread growth of democratic ideas and to the fact that, in this early period in the history of the state, there was little disparity in the wealth of the inhabitants, all having some property, and therefore little justification for the enactment of a property qualification into law. But it is to be noted that the property qualification was continued in municipal elections.

Besides this change, three others were introduced by the first constitution of the state. Formerly persons who had been inhabitants of the Territory of Louisiana at the time of the purchase, and who had the other qualifications of voters, were given the franchise whether citizens or not. 1. This provision disappeared with the constitution of 1820. Moreover, 2, the disqualification of soldiers and marines and, 3, of those convicted of offering or giving bribes for the election or appointment to office of another did not affect the right of suffrage in the Territorial period. (1) These changes, however, effected but few citizens of the state.

The principle of woman's suffrage was recognized in a special act of the first General Assembly after the adoption of the Constitution. It was an act passed December 14, 1822,

(1) Constitution of 1820, Laws of Missouri, 1825, p. 25.

providing for the incorporation of St. Genevieve. (1) It provided "that all free white males and females over the age of twenty-one years, owning land in said Big Field (the territory incorporated) or their legal representatives, shall be entitled to vote at all elections for trustees under this act." The General Municipal Elections Act of December 18, 1824, however, restricted the suffrage to free white males. (2).

II Manner of Elections.

The Constitution required that elections should be conducted according to existing laws (3) until the General Assembly should otherwise provide, and they were thus conducted until the passage of the general elections act of December 18, 1822. (4)

Preceding the adoption of this law voting at all general elections had been by ballot. It is remarkable, therefore, to find, in the act of 1822, a requirement that thereafter votes given at all elections in the state should be viva voce or by a ticket handed to the judge and then read.

Strange as this provision seems and different as it is from the present system, still it is not to be distinguished greatly from the ballot system which it followed and by which it itself was followed in 1835. The secret ballot had not as yet been introduced into the United States. Under the territorial ballot system the voter handed his ticket to the election judges

(1) Territorial Laws. Vol. I., p. 961.

(2) P. S. 1825. Vol. II, p. 678.

(3) Constitution 1820. Laws of Missouri 1825, p. 64.

(4) Territorial Laws. Vol. I., p. 960.

who read it, whereupon the clerk recorded in his poll book the name of the voter and the names of the persons for whom he voted. And it is probable that, in practice, those who were illiterate, by no means so small a proportion of the population as now, gave their votes orally to the judges, the clerks recording them as in other cases. Nor was this difficult when the number of persons and measures to be voted for were not so great that it would have been impracticable either to record a vote when given or to give it with reasonable celerity. It was really an economy of time to the officers of election and to the voters to employ the viva voce system. At the same time the viva voce system did not lessen the comparative freedom of elections, and even if it might have done so, the privilege of voting by ballot as before, which under this law the individual might still exercise if he chose, made impossible such a consequence. The viva voce system continued for a period of thirteen years. In municipal elections ✓ the ballot system was never discontinued.

The general elections for state and county officers and for representatives in Congress continued to be held on the first Monday in August between 8 a. m. and 6 p. m., with the provision that the County Courts might continue the elections for another day in such townships as they thought desirable. When, in 1828 presidential electors came to be chosen directly by the people, the General Assembly set the date for such elections on the first

Monday in November. (1) Municipal elections were held annually on the first Monday in April between 10 a. m. and 6 p. m.

As the number of officials to be elected became greater, the provisions regulating contested elections became naturally more extensive. At this point, therefore, a brief survey of the laws governing contests will not be out of place.

A territorial law, passed January 4, 1814, governed contests in elections to the lower house of the General Assembly. (2) This act required the contesting party, within twenty days after the clerk had received the election returns of the county, to send due notice to the contestee covering all the points upon which he would seek to justify his claims and setting forth the time and place for hearing testimony and the names of the justices of the peace before whom it would be heard. The justices were required to issue subpoenas to all persons whose testimony was sought by either party, and these persons were required to appear under a penalty of fifty dollars. The results of the testimony, which was allowed to be given only on the points set out in the notice, were transmitted with the notice to the Speaker of the House of Representatives by the justices. The contest was then decided by a vote of the House. Following the adoption of the Constitution the procedure in contested elections for membership in the body continued to be the same as it had been in the terri-

(1) Territorial Laws, Vol. II, p. 133.

(2) Territorial Laws, Vol. I., p. 296.

torial period and was extended to contests over elections to the Senate. (1)

Shortly after the state government was inaugurated and before the election of the second governor the legislature passed a law governing contests in the elections of governors and lieutenant governor. (2) Persons desiring to contest these elections were required to present petitions to the General Assembly requesting that body to hear the evidence upon which the contest was based. If a majority of the total number of voters in the two houses, voting separately, favored the petition, a joint committee was appointed for hearing witnesses and gathering evidence. It was required that reasonable notice be given by party in whose favor depositions were to be taken to the opposite party of the time and place of taking testimony. Both parties were entitled to examine the witnesses who had been summoned, but only upon the points set forth in the petition. The result of such contests were determined by a joint vote of the members of the two houses meeting in the Hall of Representatives, the president of the senate presiding. The time of the vote was fixed by joint resolution had immediately on the report of the committee of investigation.

The Constitution of 1820 provided that the Circuit Court

(1) Constitution 1820, Laws of Missouri, Vol. I., p. 46.

Territorial Laws, Vol. I., p. 912.

(2) R. S. 1825, Vol. I., p. 353.

should decide all contested elections for sheriff and coroner. (1) Statutes later enacted provided for carrying this provision into effect, requiring the contesting party to give fifteen days notice to his opponent before the next term of the Circuit Court, setting forth in the notice grounds upon which contest was brought and the names of voters whose qualifications were challenged. (2) As in all other contests, both parties were allowed compulsory process in summoning witnesses.

The Constitution of 1820 provided for the determination of tie votes for governor, lieutenant governor, sheriffs and coroners. Ties for governor and lieutenant governor were to be decided by joint vote of the two houses of the General Assembly. (3) The Circuit Court was given power to choose between candidates for sheriff or coroner who received an equal number of votes. (4)

A territorial law provided that in case of a tie in the election of a member in the House of Representatives the Court of the County should issue an order that the sheriff make proclamation of a special election. (5) This law was reenacted with the beginning of the state period and was extended so as to include ties in elections to the State Senate. (6) In 1825 it was extended also to the offices of sheriff and coroner, an extension

- (1) Constitution 1820, Laws of Missouri, Vol. I., p. 53.
- (2) Territorial Laws, Vol. I., p. 912.
- (3) Constitution 1820, Laws of Missouri, Vol. I., p. 50.
- (4) Constitution, 1820, Laws of Missouri, Vol. I., p. 53.
- (5) Territorial Laws, Vol. I., p. 296.
- (6) Territorial Laws, Vol. I., 958.

clearly in violation of the constitution of the state.

In the case of a tie in the election of member of Congress it was the duty of the governor to call a special election. As in the case of elections to the General Assembly this was the same rule as obtained in the territorial period.

CHAPTER THREE

From 1835 - 1865.

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This chapter deals with the period beginning with and including the revising session of 1835 and extending to the revising session of 1865. In the development of election laws this was an important period, as it was also an important period in many other ways,- a time of transition from comparatively primitive methods to conditions more nearly resembling those of the present time.

I. Franchise Qualifications.

Naturally this period saw no essential changes in the qualifications of voters prescribed by the Constitution of 1820, and there were few minor alterations. The following may be noted: 1. The imposition by an act of March 18, 1835 (1) of a penalty for voting fraudulently; 2; A provision passed at the revising session of 1845 (2) that when any person offered to vote with whose qualifications the judges were not familiar, he should be allowed to vote under oath (In case the person offering to vote was a foreigner the judges were not required to demand his naturalization papers, the oath being sufficient, (3) but by an amendment to this provision adopted by the Legislature in December 1855 (4), the judges were allowed to require the production of naturalization papers as evidence of his right to vote); 3. In case an individual was excluded from voting by the judges, these officers, by a law passed March 28, 1845 (5) and re-enacted December 8, 1845 (6), were required to enter his name in the poll books together with the names of persons for whom he desired to vote. A law similar to the last mentioned act was first adopted on the 24th of December, 1824 and appears in the Revised

- (1) R. S. 1845, p. 447.
- (2) R. S. 1855, p. 698.
- (3) Laws of Mo. 1847, p. 50.
- (4) R. S. 1855, p. 698.
- (5) R. S. 1845, p. 447.
- (6) R. S. 1855, p. 698.

Statutes of 1825 (1), but it is not to be found in the revised laws of 1835. Through the entire period the provision, first adopted in 1822, that one might vote in another than his own township under oath that he had not and would not vote but once continued to be the law.

II. Manner of Holding Elections.

The time of voting at general elections for the choice of governor and lieutenant governor, representatives in congress, senators and representatives in the General Assembly, sheriffs and coroners, continued to be the first Monday in August (first Monday in August, 1824 and every four years thereafter in the case of governor and lieutenant governor and every two years thereafter in the case of the other officials named). The election was in even years except that, for some reason, the elections of members of Congress were held in odd years from 1830 to 1835 (2). Municipal elections, likewise, continued to be held on the first Monday in April, yearly, and presidential elections on the first Monday in November of every fourth year. (After March 10, 1845, presidential elections were held on the first Tuesday after the first Monday in November (3).)

(1) R. S. 1825, and Vol. I, p. 345.

(2) Territorial Laws, Vol. II, p. 191. R. S. 1835, p.

(3) R. S. 1845, p. 458. R. S. 1855, p. 698.

The hours of municipal elections were from 10 a. m. to 6. p. m. for one day only (1). After 1835 the hours of general elections were from 9 a. m., to 6. p. m. (2) instead of between 8. a. m. and 6. p. m. as before. After 1835 the County Court of any county, other than St. Louis, was permitted to keep open the polls as long as three days in any township in which, in the opinion of the county court, such an extension of time was necessary (2). In the preceding period the maximum extension of time allowed was two days (3). As will be seen later, however, with the introduction of the ballot system, the elections in all counties were restricted to one day. The requirement of proclamation by the sheriff of an approaching election does not appear in this period after 1845 except when special elections were ordered by the governor or by a clerk of a county court. This was true of general elections only. In case of municipal elections the judges were required to make proclamation by advertisement in some newspaper or by handbills set up in at least six places in the city not less than ten nor more than twenty days before the election day.(4).

Townships continued to be the election districts, the

(1) R. S. 1835, p. 601.

(2) R. S. 1835, p. 238. R. S. 1845, p. 447.

(3) Territorial Laws, Vol. I. p. 345.

(4) R. S. 1845, p. 552.

county court designating the polling places, failing which they were indicated by the sheriff. The revised statutes of 1855 allowed county courts to divide townships into two or more election districts if such division was deemed necessary, and innovation due to a growing density of population (1). This was done for St. Louis in 1845 (2).

Officials, clerks and judges were selected as in the preceding period. Their qualifications, privileges and duties, except as their duties were changed by the introduction of the ballot system, were the same as in the territorial and early state period, and the penalties prescribed for failure to perform these duties continued essentially unchanged. Judges were appointed by the County Courts and were required to be discreet voters of the townships in which they were to serve. As before, if not elected by the Court, they were chosen by assembled electors from among their number. They were required to take an oath for the faithful performance of their legal duties. While engaged in the performance of these duties and while going to and returning from the polls they were immune from arrest except for felony or breach of the peace, an immunity extended also to clerks and voters. Failing to perform their duties clerks and judges were liable to a penalty amounting to a maximum fine of \$200.

(1) R. S. 1855, p. 698.

(2) R. S. 1845, p. 447.

The clerks, two in number for each voting precinct, were appointed by the judges. They also were required to take an oath and it was their duty to record the names of all voters and, except in the city of St. Louis, the names of persons for whom they voted. Neither clerks nor judges received compensation for their labors, the only exception to this general rule being found in a special act applying to Pike County, passed March 3, 1851, allowing clerks and judges \$1.00 a day each (1).

Order at the polls was preserved by the constable, acting under the direction of the judges. The judges were empowered to impose a fine of not exceeding \$20 on disorderly persons. In this there was no change from the laws of the earlier period aside from the withdrawal from the judges of the right to impose on disorderly persons a sentence of imprisonment as well as a fine although they could still commit to prison for failure to pay the fine.

Introduction of the Ballot System. The most important change to be observed in the election laws of this period is the adoption of the ballot system. This system, as we have seen, was in use in the territorial period but was abandoned in 1822, when a law was passed providing that votes given at all elections should be viva voce or by a ticket handed to the judges and then read. The requirement for viva voce voting reappeared in the

(1) Laws of Mo. 1851, p. 452.

revised statutes of 1825, 1833, 1845, and 1855. (1). Through the greater part of the entire period under discussion, therefore, it continued to be the general method used, although in the latter part of the period it was modified extensively by special laws and was finally abandoned altogether. While the viva voce system lasted the method of voting remained essentially unchanged. Each vote was given orally or by a ticket handed to the judges and then read. One slight change appeared in 1835 when it was enacted that each vote after being given should be cried aloud (2). The object of this regulation was doubtless to insure greater freedom from attempts by officers to tamper with the votes when cast, though the fact that the voting was viva voce practically meant that the votes were ~~cried~~ ^{read} aloud even before the enactment of this law.

The first change to the ballot system was in the provision that all elections in St. Louis and in St. Louis County should be by ballot (3). This law was passed March 28, 1845. Follow-
in this act special election laws applying to certain counties and instituting the ballot system were enacted in rapid succession.

(1) R. S. 1835, p. 238. R. S. 1845, p. 447, R. S. 1855, p. 698.

(2) R. S. 35, p. 239.

(3) R. S. 1845, p. 447.

Dec. 17, 1842. See S. A. 1842/3, p. 206.
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This was done for Greene County February 11, 1847 (1); for Lafayette County, June 24, 1848 (2); for Andrew, Holt, Barry, Ozark, Wright, Laclede, Cedar, Dallas, and Henry counties, April^{Feb.?} 27, 1849 (3); for Taney and Stone counties February 11, 1851; for Shelyby and Gentry counties, March 1, 1851 (4); for Pike County, March 3, 1851 (5); and for Lawrence and Dunklin counties, February 19, 1852 (6). On April 23, 1863 a general law was passed providing that all elections in the state should thenceforth be by ballot (7). Each of the special acts as well as the general act provided also that elections should continue only for one day.

Neither the special act applying to St. Louis, nor the act applying to Greene County, nor the act applying to Lafayette County, beyond providing that elections should be by ballot made any provision as to the character of the ballot to be employed, as to the methods to be used in voting under the new system, or as to the methods to be used in casting up the totals. The first detailed regulations in these respects appeared in the act of January 24, 1849, applying to the ten counties of Andrew, Holt,

Feb. 27,

- (1) Laws of Mo. 1847, p. 51.
- (2) Laws of Mo. 1848, p. 467.
- (3) Laws of Mo. 1848, p. 467.
- (4) Laws of Mo. 1851, p. 539.
- (5) Laws of Mo. 1851, p. 452.
- (6) Laws of Mo. 1852, p. 100.
- (7) Laws of Mo. 1863, p. 17.

Barry, Ozark, Wright, Laclede, CCDar, Dallas, and Henry (1).

This act provided that the ballot should be a single piece of paper on which should be written or printed the names of the persons voted for, together with the offices they were intended to fill. Whether blank ballots were or were not furnished by the election officers does not appear. It is probable, however, that they were provided either by the voters, by the candidates or by political organizations. They must have been of all shapes and sizes and they were, as the law suggests, either written or printed. Such a method, although it would now be utterly impracticable, when a multitude of officers are to be filled as well as numerous measures to be voted upon, was satisfactory at a time when the number of offices subject to elective tenure was comparatively few. The ballots employed were probably similar to those which the voter had the option of using during the time of the viva voce system.

After having prepared his ballot, which was done either at the polls or elsewhere, the voter was required to deliver it openly and in full view of one of the judges of the election. The judges upon receiving the ballot was required to pronounce in an audible voice the name of the voter and, if the judges were satisfied that he was a legal voter, his ballot, without being inspected, was placed in the ballot box, the clerks at the same

(1) Laws of Mo. 1848, p. 467.

time entering the voter's name and number in the poll books.

It will be noted that these regulations made it possible, for the voter, if he desired, to cast a secret ballot. As the ballots were not numbered it was impossible for even the election officials to determine how any person had voted. But by an act passed January 29, 1853, it was provided that in all elections by ballot it should be the duty of the judge in receiving the ballots and registering the name and number of the voters to place, on the ballot, the number which was recorded opposite the voter's name on the list, before depositing the ballot in the box (1),

The ballot boxes were provided, one for each township, by the sheriff at the expense of the county. They were delivered by the sheriff to the constables, whose duty it was to preserve them, to have them ready at the time and place of elections, and to transfer them safely to their successors, under a penalty of a fine of \$10 for failure so to do.

When the polls were closed the poll books were signed by the judges and attested by the clerks. The names contained in the books as the names of persons who had voted were counted and the number set down. When this had been done, the ballot boxes were opened, the ballots taken out, one at a time, by one of the judges, whose duty it was to distinctly read it, to deliver it to a second judge by whom it was examined, and passed to the third

(1) Laws of Mo., 1803, p. 101.
1853

judge who strung it on a thread and preserved it. As the ballots were read the clerks were required to enter in separate columns under the names of all persons voted for the votes cast. For this purpose forms were provided in the poll books.

When two or more ballots were rolled together, the law was that they should be rejected as fraudulent. When a ballot was found to contain a greater number of names for any office than the number of persons required to fill such office it was to be considered fraudulent as to the whole number of names designated for that office but not as to other offices, nor was any ballot to be considered fraudulent because it contained a less number of names than might have been voted for.

After the examination of the ballots was completed it was required that the total number of votes cast for each person should be enumerated and set down in the poll books, being attested by the clerks and judges, and that the result should be publically proclaimed to the people present.

Subsequent special acts and the general act of 1863 were copies of this act of January 24, 1849, except that the special act applying to Shelby and Gentry counties made all ballots remaining in the boxes after a number had been taken out corresponding to the number of names entered in the poll books, fraudulent (1). Moreover the general act of 1863 (2) contained the following ad-

(1) Laws of Mo., 1851, p. 539.

(2) Laws of Mo., 1863, p. 17.

ditional provisions: 1. That the ballots, after being counted, should be sealed up in a package and delivered to the clerk of the county court, by him to be kept for twelve months, to be used in contested elections or when necessary as evidence, but not otherwise to be inspected; 2. That any judge or clerk disclosing the names of candidates voted for by any voter should be liable to a fine of \$100, and; 3. That any judge or clerk opening the ballot boxes before the polls were legally closed, should, on conviction, be fined not less than \$100 nor more than \$300.

When first adopted the ballot system was not everywhere satisfactory and a number of counties in which it was instituted by special acts of the legislature in 1840 returned to the viva voce system by other special acts in 1851 (1). These counties were Holt, Barry, Cedar, Henry, Ozark, and Dallas. On the whole, however, the advantages of the new system over the old were generally recognized and the feeling in favor of election by ballot grew stronger until it was made the universal rule in all general elections in the state. As was stated in the previous chapter it had always been the rule in municipal elections.

This period saw no change in the matter of determining election results or of issuing certificates of election.

The rules governing contested elections to the office of governor and Lieutenant Governor remained wholly unchanged.

(1) Laws of Mo., 1851, pp. 537 - 539.

Some slight changes are to be observed in the laws regulating contested elections to the two houses of the General Assembly. The time within which the contestant was required to give notice to the contestee was extended from 20 to 40 days after the election returns were in (1). The law in the period from 1820 to 1835, which gave the contestant authority to select both justices before whom witnesses were examined was so changed as to give each party the right to choose one justice, whereupon the two justices thus chosen selected a third. But if the contestee did not name a justice, then the contestant was permitted to name two and in that case a third justice was not selected. The provision that in case either of the justices failed to attend, for any reason, then another should be chosen by the same party who had selected the absentee, was also new. It was a new provision likewise which empowered the contestee to challenge votes cast for his opponent. If this counter-attack was sought by the person having the certificate of election he was required to give to his opponent, within 20 days after notice from the contestant, a notice similar to that to which the contestee, himself, was entitled and the procedure, also, following the notice was the same as if the contestee were contestant. Aside from these

(1) R. S. 1845, p. 447.

alterations the rules continued as before.

The only other cases provided for in the period covered in the second chapter, were contests in the elections of sheriffs and coroners. The Consitution of 1820 provided that such contests should be decided by the Circuit Court of the county where the election was held and the revised statutes of 1825 prescribed the manner in which these contests should be conducted. So far as the sheriff was concerned the contests continued to be conducted in the same way in the period covered by this chapter. This was not true in the case of the coroner (1). In 1845 a law was passed providing that all contests of elections to the office of coroner should, thereafter, be determined by the County Court of the county where the election was held and the manner of the contest was the same as prescribed for certain other officers of the county government. This law, however, was clearly unconstitutional and it was never reenacted. The revised statutes of 1855 put the office of coroner once more in the same class with the office of sheriff (2).

The first office in the county, aside from the offices of sheriff and coroner, to be filled by election was that of constable. Before 1835, as was noted in Chapter II, the county court was given jurisdiction of contested elections to this office.

(1) R. S. 1845, p. 447.

(2) R. S. 1855, p. 698.

With the extension of the elective tenure to other county offices the jurisdiction of this tribunal was extended to cover all contests to such offices. Thus a law of March 28, 1845 gave the county court jurisdiction over contests in elections to the offices of coroner (see above), constable, assessor, justice of the peace, county surveyor, and "all other county offices." (1).

In case a person desired to contest an election to any of these offices he was required to give notice to the opposite party ten days before the term of the court at which the contest was to be tried, specifying in the notice the grounds upon which he intended to rely, together with the voters challenged and the reasons therefor. The contestee, if he desired, could serve a similar notice on the contestant, but he must do this, if at all, within six days of the term of court when the contest was to be tried. The contest was to be determined at the first term of court succeeding the election, provided that term began at least 15 days after the close of the election. Both parties were allowed process for witnesses to appear before the court and both parties were allowed to take depositions to be read in evidence.

Contests in elections to the county court were determined by the Circuit Court and the procedure was the same as in the case of other county offices. (2).

(1) R. S. 1845, p. 447.

(2) R. S. 1845, p. 447.

In the case of all county offices the contestee was permitted to take office, pending the decision of the contest. Costs of contests were, in the discretion of the court, assessed against the unsuccessful party. A special election, with five days notice, might be ordered by the court, if both parties consented to such an election.

Elections of clerks of record, when contested, were decided by the courts to which such clerkships belonged. The procedure was the same as for county offices. (1)

The period from 1835 to 1865 saw a remarkable extension of the principle of elective tenure, not only in the counties, but in the case of many state offices as well as in the judicial system. With this growth came also a necessity for additional laws regulating contested elections.

It was provided in 1845 that all contested elections for judges of the Circuit Court should be heard and determined by the Supreme Court (2). Persons desiring to contest such an election were required to present a petition to the Supreme Court at the first term after the election or to some Judge of the Supreme Court in vacation within 40 days after the election setting forth the points of contest and the facts to be proved in support of such points. The contestant was required to serve the contestee with a copy of this petition 10 days before its presentation to

(1) R. S. 1845, p. 447.

(2) R. S. 1855, p. 696.

the Court and at the time of presentation the contestee was allowed to set forth any reasons he chose why his election should not be contested. It was then the duty of the Court, or the Judges in vacation, to appoint a commissioner to take testimony on the part of both parties, the Court specifying the time and place of taking testimony and the points upon which testimony should be taken. The commissioner had the power to summon witness and to compel them to testify. Both parties were allowed to attend the examination of witnesses and to cross-examine. The examination, however, was allowed only on the points indicated in the order to the commissioner. Upon the commissioner's report the Court took such action as it saw fit.

The Senate had jurisdiction over all contested elections for judges of the Supreme Court, superintendent of public schools, secretary of state, auditor of public accounts, state treasurer, attorney-general and register of lands (1). The procedure was the same except that the Senate acted alone, as in the case of contested elections for governor and lieutenant governor.

The Circuit Court of St. Louis was given jurisdiction over contests for judge of the St. Louis court, judges of the criminal court of St. Louis, judges of the court of common pleas of St. Louis, judges of the probate court of St. Louis county,

(1) R. S. 1855, p. 696.

and law commissioner of St. Louis County (1). The procedure was the same as in the case of contests for circuit judge.

Beginning with 1835 and continuing throughout the period under discussion in this chapter contests for presidential electors were decided by a joint vote of the General Assembly, and procedure being the same as in case of contests for Governor (2).

Determination of Tie Votes. In the case of ties in the election of governor, lieutenant governor, sheriff, or coroner the period from 1835- 1865 saw no change. Nor was there any change in the case of tie votes for members of Congress after 1835 ties in elections to the General Assembly were decided by the respective houses. In the case of all other officers elected in the county, excepting sheriff and coroner, the clerk of the county court ordered special elections in case of tie votes. When presidential election came to be done by the people the General Assembly was given power to decide ties. With the extension of the elective tenure to state officers and officers of the judicial system, laws were passed requiring the governor to issue proclamation of special elections to decide any tie that might occur.

(1) R. S. 1855, p. 696.

(2) R. S. 1835, p. 235.

CHAPTER FOUR.

Under the Constitution of 1865.

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I. Franchise Qualifications.

The Constitution of 1865 and the laws enacted under it produced considerable modification in the right of suffrage. In the same period also fundamental changes in this regard were effected by amendments to the Constitution of the United States. These new regulations grew out of the Civil War, which came to a close in the beginning of the period treated by this chapter.

While the most striking change was the extension of the suffrage to all persons born or naturalized in the United States, which meant especially the enfranchisement of the negro race, this change came after the adoption of the Constitution of 1865.

The changes wrought by the Constitution itself were rather in the nature of restrictions on the right to vote than otherwise.

The general qualifications of voters were little different than those prescribed in the Constitution of 1820.

By the Constitution of 1820 the suffrage was extended only to white male citizens of the United States. By the Constitution of 1865 it was extended also to white male persons of foreign birth who had declared their intention to become citizens not less than one nor more than five years before offering to vote (1). Another change was the decrease of the period of residence required in the district or county from three months to sixty days. (2). The Constitution of 1865 provided also that no person should be allowed to vote except in the district where he resided (3). Before 1865 a person might vote in another than his own township on taking the proper oath.

The Constitutional Convention of 1865 provided for an educational qualification for the exercise of the franchise, to go into effect January 1, 1876, after which date no person not at that time a qualified voter was to be allowed to vote, unless he could read and write or was physically unable to do so (4). Before this provision could go into effect, however, it was repealed

- (1) Constitution 1865, Art. II, sec. 1
- (2) Constitution 1865, Art. II, sec. 1
- (3) Constitution 1865, Art. II, sec. 1
- (4) Constitution 1865, Art. II, sec. 1.

by the Constitution of 1875. But the fact that it was contemplated by the Convention of 1865, together with the fact that that Convention refused to give the suffrage to the liberated slaves, refused even to submit the question to the voters of the state (1), tend at least to show, despite frequent expressed opinions at the present time, that the leaders of that element of the population which had remained loyal to the flag were, on the whole, not only free from prejudice at a time when prejudice would have been excusable, but were guided by unusual wisdom. It is doubtful if anything in Missouri history is more unfounded than the efforts of a certain class of partisans today to blacken the reputation of the framers of the Constitution of 1865 and to bring that instrument itself into disrepute. Even if unnecessary restrictions were imposed by this Constitution on the right to vote, and that is doubtful, it is certain that it contained many improvements over the Constitution of 1820, and many excellent provisions omitted from the Constitution of 1875.

Some of the restrictions on the exercise of the suffrage introduced by the Constitution of 1865 have been continued to the present time. The provision that no officer, soldier, or marine in the regular army of the United States should be entitled to vote at any election was taken from the first Constitution of the state. To this provision were added regulations disqualifying

(1) See Journal Constitutional Convention.

persons making wagers on the outcome of elections, persons offering bribes to promote their election to public office, and persons convicted of bribery, perjury and other infamous crimes (1).

The regulation which provoked the greatest opposition and which was one of the causes of the short duration of the Constitution was that which sought to temporarily prevent the exercise of the franchise by citizens who had been in armed rebellion against the national government or who had given aid and comfort to the public enemy (2). It was this regulation which imposed the oath of loyalty upon all who sought to hold office or to vote (3).

Under this provision no person was allowed to vote unless he should first take oath that he had been loyal to the union, that he would bear true faith and allegiance to the national government, and that in the late rebellion he had not in any way assisted those who were undertaking to overthrow the authority of the Constitution of the United States.

This regulation doubtless worked occasional hardships. It probably resulted in the temporary disfranchisement of a few individuals eminently deserving of the right to vote. But that does not justify the condemnation of the regulation. No good law was ever passed that did not work occasional hardships. Was

(1) Const. 1865, Art. II, sec. 1.

(2) Const. 1865, Art. II, sec 1.

(3) The Convention of 1861 adopted a test oath, but this was never embodied in the state laws.

the law just in principle ? That is the only question deserving consideration and to that question there is but one answer. If there was ever a cause justifying disfranchisement, certainly open war upon the government and long continued attempts to destroy that government must have been regarded as such a cause in any country or at any period in the history of the world. And when, as in this case, such a regulation was accompanied by a provision for its repeal by the legislature within the short period of six years, it must be said that it was not only justified in its inception but at the same tempered time by a generous magnanimity (1).

It was largely to make effective the restrictions thus imposed on the right to vote that the Constitution of 1865 made provisions for the registration of voters (2). Acts passed November 16, 1865 (3) and March 12, 1866 (4), provided detailed methods for carrying this provision into effect. The Constitution provided that after such laws should be adopted no person not registered should be permitted to vote. As soon as registration was introduced the oath of loyalty was administered not at the time of election but at the date of registration.

The Fourteenth amendment to the Constitution of the United States, proclaimed July 4, 1868, made all persons born or

(1) It is to be noted that the Missourian who participated in the Rebellion was not even justified by the idea of state loyalty, as was true in the seceding states.

(2) Const. 1865, Art II, sec. 1.

naturalized in the United States and subject to the jurisdiction thereof citizens of the United States. The Fifteenth amendment proclaimed January 1, 1879, provided that no citizen of the United States should be denied the right to vote on account of race, color, or previous condition of servitude. The effect of these amendments upon the right to vote in the states of the American union was the enfranchisement of the colored races, chiefly the former slaves, in all those states where they had formerly been denied the suffrage. Some had already given negroes the right to vote, but this was not true of Missouri nor was it true of a majority of the commonwealths. So far as these states were concerned the Fourteenth Amendment produced the most fundamental change that had ever taken place in laws governing elections.

II. Registration.

As has already been intimated universal registration was introduced by the Constitution of 1865. A law passed December 16, 1865 provided for carrying the constitutional requirement (1).

This law provided for the election of a supervisor of registration in each county in the state and in each senatorial district in St. Louis County for a term of two years. The first election of such officials was to be held at the general election of 1866, until which time supervisors appointed by the Governor

(1) Laws of Mo., 1865, p.

were to serve. These supervisors in turn appointed one qualified voter in each election district as an officer of registration to serve as such until the next biennial election of registration officials. Supervisors received three dollars per day and officers of registration two dollars per day for each day necessarily occupied in the discharge of their duties. These and other expenses incurred by the system were paid out of the county treasury.

To the officers of registration books for registering the votes were supplied by the clerk of the county court, the form of book used being authorized by the Governor. Having been thus supplied it was the duty of the officer of registration in each election district to be present for the purpose of registering voters at the usual place of voting between 8 a. m., and 6 p. m., (in the cities until 9 p. m.) on every Saturday between the 20th day of September in each year of a general election and the fifteenth day prior to such election, and on other days also if, in the opinion of the Supervisor of the county, necessary.

In all the books of registration, as furnished by the clerks of the county courts, there was printed the oath of loyalty. Following the oath, the voters subscribed their names and place of residence, including, in cities, street addresses. Taking the oath did not always insure the registration of the voter. The officer of registration had power to examine citizens under oath for the purpose of ascertaining whether they had done any of the

things specified by the constitution as causes of disqualification.

If as a result of this examination or as a result of his personal knowledge he was satisfied that the citizen was disqualified it was the duty of the officer to enter the name in a separate list together with the grounds of the rejection. If a person should make an appeal from his decision it was the duty of the officer to enter such person's name on the list of disqualified citizens together with the fact of the appeal. The names of citizens, who, though not qualified at the date of registration, would yet be qualified before the date of the election were required to be entered in the list of qualified voters. Provision was made also for entering additional names before any special election.

While discharging their duties all officers of registration were given the power of a judge of a circuit court which powers they were to exercise for the preservation of order and for the summoning and examination of witnesses, if witnesses were required for ascertaining the qualifications of voters.

In each county all the officers of registration together with the supervisor met as a board of appeals and revision on Tuesday, Wednesday, Thursday, and Friday preceding the tenth day before each general election. In this capacity they passed upon the claims of persons who had been unable to appear for registration, and upon protests against the registration of certain individuals, but the name of no person previously registered could

be stricken from the list of qualified voters unless such person had had two days notice of the time and place when such objections would be heard and considered.

After the Board of Appeals had completed its work it was the duty of the registration officer for each district to make out two lists of the names of the qualified voters of his district, the names being alphabetically arranged.) One of these lists the officer delivered to the clerk of the county court, the other list he delivered to one of the judges of election in his district. If the officer of registration failed to deliver a list to the election judges the judges were required to notify the clerk of the county court of that fact and it was thereupon the duty of the county clerk to furnish the judges with a new list, copied from the one in his office. The original registration books were to be delivered by the officers of registration to the county clerk by him preserved among the records of the county court. (After the election the list of voters used was again delivered by the judges to the officer of registration).

At the election, after any person had voted the judges were required to write opposite his name on the list of voters for the district the word, "voted". If any person whose name appeared on the list as that of a rejected voter, offered to vote, the judges were required to mark his ballot as rejected and to keep it separate from the ballots of qualified voters. Should they willfully deposit the ballot of such a person or willfully

refuse to receive the ballot of a person whose name appeared on the list as that of a qualified voter (unless the refusal was on the ground that the person had made or was interested in a wager depending on the outcome of the election) they were liable to a fine of not less than one hundred nor more than five hundred dollars and were hereafter disqualified for any office in the state. The same punishment was prescribed for any clerk of a county court who should make an alteration in a list of voters and for any officer of registration who should knowingly enter upon the registry of qualified voters the name of a person not entitled to registration or should willfully and corruptly exclude the name of any person lawfully entitled to registration. A punishment of not less than two years in the penitentiary was prescribed for any person who should destroy, mutilate, deface, or take by violence any book of registration or list of voters from the person at the time legally entitled to its possession.

The law of December 16, 1865 was supplemented by another law approved March 12, 1866 (1). This law provided that the supervisor of registration for each county and for each senatorial district in the city of St. Louis should make out and forward to the Secretary of State, immediately after the completion of the registration in their respective counties and districts, a certified copy of the registration thereof, containing the names of all qualified voters. These certified copies in the office of the Secretary of State were for use as evidence in con- (Laws of Mo., 1867, p.

tested elections or other legal proceedings in which they might be needed.

This supplementary law also gave additional protection to the officers of registration by requiring the sheriff to furnish them on demand sufficient posse to enable them to proceed with the discharge of their duties and by making any person who by threats, intimidation or violence resisted or impeded such officers liable, on conviction, to a fine of not less than fifty nor more than five hundred dollars and imprisonment not to exceed sixty days in the county jail.

Important changes were made in 1868 by an act approved January 30th of that year (1). This act gave the governor almost complete control of all elections in the state. Abolishing the registration machinery which had been provided in 1865, by which the county superintendents of registration were elected, it provided that the governor should biennially appoint in every senatorial district of the state (but only one in the county of St. Louis) a superintendent of registration. This superintendent of registration in turn appointed in every county in his senatorial district a board of registration, consisting of three qualified voters of the county. This board conducted the registration of voters, going for that purpose from election district to election district until the completion of the registration.

(1) Laws of Mo., 1868, p. 131.

This board also appointed the judges of the judges of election in each district. Together with the supervisor of registration for the county, who was an elected official with unimportant powers, the board of registration acted as the final board of revision (1).

A law was enacted on March 25, 1870, providing that no person should be prohibited from registering as a qualified voter on account of race, color, or previous condition of servitude (1).

The last act dealing with registration in this period was passed March 10, 1871. This act made two important changes: It re-established local government in the matter of election, providing for the election of a register in each election district and the appointment of election judges by the county courts and it abolished the oath of loyalty as a prerequisite either of registration or voting and substituted therefor the following,-
"We the undersigned, do solemnly swear of affirm that we will support the constitution of the United States and of the state of Missouri." (2)

Method of Conducting Elections..

Time and Place. Since March 10, 1845 elections of Presidential Electors had been held on the first Tuesday after the

- (1) Laws of Mo., 1870, p. 112.
(2) Laws of Mo., 1877, p. 67.

first Monday in November, although the general elections continued to be held on the first Monday in August. The Constitution of 1865 provided that all general elections should be held on the first Tuesday after the first Monday in November, the date already used for the election of Presidential Electors (1). The Constitution also provided that in case Congress should change the date of presidential elections, the General Assembly might change the date of general elections to correspond to the date selected by Congress.

Several causes united to bring about a union of the elections of state officials and presidential electors. Perhaps the most important of these causes was the desire to economize, both in the matter of the time required and in the matter of pecuniary expenses. This cause became particularly potent when the parties within the state began to divide along national lines. If there was to be the same division of forces in state as in national elections, there was no longer any reason for separate elections, whereas there was a very strong argument, that of economy, for a union of the two. It is to be noted in this connection that as a division along national lines in state politics was one of the causes of a union of the state and national elections, so it was also a result of that union, for there can be no doubt that the fact that state and national elections are held on the same day has a strong ten-

(1) Const. 1865, R. S. 1865, p. 24.

dency toward holding voters to the candidates of the party whose national policies they espouse.

The probable explanation for the change of the time of election from Monday until Tuesday is that it was thought desirable to make all necessary preparations for conducting elections on the day before they were held and such preparations could not well be made on Sunday. After 1865 no elections, not even special elections, were held on Monday. With respect to the date of special elections the Constitution of 1865 provided that "no special election, state, county, or municipal, shall be appointed to be held on Monday." Regular municipal elections, however, continued to be held on the first Monday in April of every year.

The law requiring the sheriff to give notice of approaching general elections had been donogated before the adoption of the Constitution of 1865. The only instances in which the sheriff continued to give notices were special elections, when not less than five days notice was required. In the case of municipal elections the election judges were required to give not less than ten nor more than twenty days notice. In this there was no change over the preceeding period.

Municipal elections were held from 8 a. m., to 6 p. m., during this decade, rather than from 10 a. m., to 6. p. m., as had been the practice from 1835- 1865. At all general elections the polls were kept open after 1865, from 7 a. m. until sunset, in which also there was a slight change from the preceding per-

iod (1).

The township continued to be the election district, but the county courts had power to divide any township into two or more election districts, if such division was deemed desirable.

(2). If such division were made, however, the sheriff was required to post up a notice of that fact in each district created.

The Constitution provided that no person should be permitted to vote except in the district wherein he resided.

The period from 1865 to 1875 saw no change in the kinds of election officials, in their tenure, term or qualification, nor in their duties or privileges. In addition, however, to the ordinary oath which judges and clerks were required to take before this period, they were now required to take the oath of loyalty and the judges were required to take oath that they would not receive the vote of any person whose name was not duly registered according to law. (3).

In the revised statutes of 1865, for the first time in the legislation of the state, provision was made for the compensation of election officials (4). All judges and clerks of elections were to be allowed such compensation for their services as the county courts of their respective counties should deem reasonable.

(1) R. S. 1865, p. 60.

(2) R. S. 1865, p. 60.

(3) R. S. 1865, p. 60.

(4) R. S. 1865, p. 60.

But the amount allowed was not to exceed \$1.50 per day, except in St. Louis where it might be as much as \$5.00 a day. In all cases the amount was to be appropriated from the county treasuries.

The penalties imposed on election officials and for illegal acts and the authority of judges in the matter of preserving order at the polls continued as before. Nor was there any change made in the ballot used at elections, in the casting of the ballots, or in the manner of recording the votes.

There were few changes, also in the steps taken to determine the results of elections. Indeed this was still done practically as it had been done in the territorial period. It may be well, however, at this point, to describe again briefly the method used.

Within two days after each election it was the duty of the judges in each election district to transmit one of the poll books used, by an election clerk, to the clerk of the county court. If the judges did not so transmit the poll book within two days, it was the duty of the county clerk to send for it by the sheriff or a special messenger. Within eight days after each election it was the duty of the county clerk to take to his assistance two justices of the peace or two justices of the county court and examine and cast up the votes given for each candidate and to give to the person receiving the highest number of votes certificates of election. In comparing the votes from the several townships

it was the duty of the clerks to do so publicly, in the county court house, after having made proclamation at the court house door that he was about to cast up the returns. In the election of senators in the general assembly, returns were certified by the clerks of the counties composing the senatorial districts to the clerks of the counties first named, whose duty it was to cast up and examine the returns, to certify the results to the Secretary of State, and give certificates of election to the successful candidates. Within two days after the expiration of the time for examining returns, it was the duty of the clerks of the various counties to send by mail to the Secretary of State abstracts of the vote for members of congress, governor, lieutenant governor, state senators and representatives, judges of the supreme court, judges of the circuit courts, secretary of state, state auditor, state treasurer, register of lands, attorney general and superintendent of public schools. These abstracts were to be mailed in closely sealed envelopes, not to be opened until the day fixed for the counting of votes. If the Secretary of State failed to receive such returns within one mail after they were due, unless longer delay was justified, it was his duty to dispatch a messenger for him. If the failure to receive the returns were due to the neglect of the clerk he was liable to a forfeiture of \$100. Within fifty days after a general election, or sooner if the returns were all in, it was the duty of the Secretary of State in the presence of the Governor, to open the returns and cast up the votes,

to give to the person receiving the highest number of votes for member of congress a certificate of election, and to certify to the governor the names of the candidates receiving the highest number of votes for the offices of secretary of state, state auditor, state treasurer, register of lands, judges of the supreme and circuit courts, attorney general, and superintendent of public schools, whereupon such persons were to be commissioned by the governor. Within two days after the meeting of the general assembly it was the duty of the Secretary of State to lay before each house a list of the members elected to that house. After each election of a governor and lieutenant governor it was the duty of the Secretary of State to lay before the general assembly a complete abstract of the votes given for such officers, whereupon it was the duty of the two houses to meet in the hall of representatives, when the president of the senate and speaker of the house were to cast up the votes and declare who were elected.

In case two or more persons received an equal number of votes for member of congress, state senator, representative, secretary of state, state auditor, state treasurer, register of lands, attorney general, judge of the supreme court, superintendent of public schools, judge of the circuit court, judge of the criminal court of St. Louis, circuit attorney, assistant circuit attorney, or judge of the probate court of St. Louis county, it was the duty of the governor to issue proclamation of special election. In case two or more candidates for the office of governor or lieutenant

ant governor received an equal number of votes, it was the duty of the two houses of the general assembly by joint ballot to determine the election. In all other cases than those mentioned, in the case of a tie of the votes for any two candidates it was the duty of the clerk or justices casting up the vote, to order the sheriff to issue proclamation of a special election, specifying in the order the date of such election.

As before special elections were held in the same manner and under the supervision of the same officials as general elections.

Contested Elections.

In the laws regarding contested election this period saw no change whatever.

CHAPTER FIVE.

General Election Laws under the Constitution of 1875.

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The Franchise.

The Constitution of 1865 was short lived. It was regarded as the source of many of the evils, which followed the Civil War, a fact that served to prevent a general recognition of its real virtues and brought about a more or less widespread demand for its repeal. Particularly did the provisions governing the exercise of the franchise and the conduct of elections excite deep animosity on the part of a large element of the population, notwithstanding the fact that these provisions were on the whole salutary and justifiable under the circumstances and that some of them were distinctly an advance over any election laws that

the state had before had. Indeed some of them represented a higher type than the state has since been able to attain. These highly desirable features, however, could not prevent the repeal of the Constitution. This repeal occurred shortly after the Democratic party regained control of the state government.

The provision in the Constitution of 1865 which provoked the greatest opposition was that providing for the temporary disfranchisement of such persons as would not take the oath of loyalty. But this provision had become inoperative several years before the new constitution was adopted. The only other important change which was made by the Constitution of 1865 with respect to the qualifications of voters was the introduction of an educational qualification, which was to take effect January 1, 1876. For some reason the Constitutional Convention of 1875 abandoned this eminently desirable reform, probably for no better reason than that it was endorsed by the Republican party and the Drake Convention. Not only was this a backward move from the standpoint of the general welfare, but, inasmuch as it would have chiefly effected enfranchised negroes, it would seem that it was inexcusable even from the standpoint of party advantage. The educational qualification which was thus abandoned has never been readopted since.

In one other respect did the Constitution of 1875 make an important change in the election laws from those of the pre-

ceding period and that was in the abandonment of universal registration. Universal registration had been introduced by the Constitution of 1865. One of the reasons for its adoption was to make more effective the disenfranchisement laws and so far as the country districts were concerned that was probably its only justification. It was eminently desirable in the cities as an almost necessary means of preventing illegal voting, but with the repeal of the disenfranchisement laws there was little excuse for continued registration in the country districts, where it only added to the expense of elections without accomplishing any considerable good. Hence we find no provision for universal registration in the Constitution of 1875. It was left to the Legislature to make provision for registration in the cities (1). The Constitution required the General Assembly to make provisions for registration in cities having more than 100,000 inhabitants and permitted it to provide for registration in cities having between 25,000 and 100,000. In what manner this authority has been exercised will be seen in succeeding chapters.

The general qualifications for the exercise of the franchise as they were adopted in the Constitution of 1875 are as follows and they represent the present law.

1. Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become

(1) Const. 1875, Art. VIII, Sec. 5.

a citizen not later than one year nor more than five years before he offers to vote, who is over twenty-one years old, who has resided in the state one year next preceding the election and in the county, city, or town in which he offers to vote not less than sixty days next preceding the election shall have the right to vote (1).

2. No officer, soldier, or marine in the regular army or navy of the United States shall be entitled to vote at any election in this state (2).

3. No person, while kept in any poor house or other asylum at public expense, nor while confined in any public prison shall be entitled to vote at any election under the laws of this state (3). A statute passed in 1897 provided that this disqualification should not apply to the inmates of the Soldiers Home at St. James nor the Confederate Home at Higginville (4).

4. No person shall be deemed to have gained a residence by reason of his presence nor to have lost it by reason of his absence while employed in the civil or military service of the United States or this state nor while engaged in the navigation of the waters of this state or the United States, nor while a student in any institution of learning (5).

- (1) Const. 1875, Art VIII, sec. 2.
- (2) Const. 1875, Art. VIII, sec. 11.
- (3) Const. 1875, Art. VIII, sec. 8.
- (4) L. M. 1897, p. 109.
- (5) Const. 1875, Art. VIII, sec. 7.

5. Finally, the General Assembly was given power to enact laws excluding from the right to vote all persons convicted of felony or other infamous crimes, or misdemeanors connected with the exercise of the right of suffrage (1). This power was soon exercised by the legislature which in 1879 passed a law to the effect that no person convicted of felony or other infamous crimes or of a misdemeanor connected with the exercise of the right of suffrage should be allowed to vote unless granted a full pardon and not after a second conviction under any circumstances (2).

Method of Conducting Elections.

Time and Place of Elections. The time of the general elections has not been changed since the adoption of the Constitution of 1865. The present Constitution provided that they should continue to be held on the first Tuesday after the first Monday in November in 1876 and biennially thereafter (3). The General Assembly was given authority to change the time to a different day, provided that two-thirds of the members of each house concurred in the choice. This authority has never been exercised.

The duration of the election is limited to one day (4). The hours are from 7 a. m., to 6 p. m., unless sunset occurs after 6 p. m., in which case the polls will not be closed until sunset.

(1) Const. 1875, Art. VIII, sec. 10.

(2) R. S. 1879. Vol. I, p. 1076.

(3) Const. 1875, Art. VIII, sec. 1.

(4) R. S. 1899, Vol. II, p. 1638.

In cities of over 25,000 inhabitants the polls must be kept open until 7 p. m.

The township remains the election district, but the County Court has authority to divide the township into two or more election precincts to suit the convenience of the people. If, however, the County Court makes an order in anyway changing a district it must within twenty days deliver a copy of the order to the sheriff whose duty it is to post the same in each district affected and this he must do within six days after receiving the notice. It is the duty of the County Court to designate the polling place within the election district, but if the court fails the duty falls upon the sheriff.

Officials. Under the present law, there must be six election judges, three from the majority party and three from the next largest party, for each election precinct and four clerks (1). It is the duty of the county court to appoint the judges for each polling place, but if at any election the county court has not appointed such judges, then judges may be chosen by the voters who are present at the time for opening the polls. If any person who has been chosen by the county court to act as a judge fails to appear at the time for opening the polls ten or more electors present may select a judge to act in his stead. The clerks are appointed by the judges.

(1) Until 1889 there were only four judges and they all might belong to one party.

No person can be appointed a judge or a clerk at an election unless he is legally entitled to vote at the election and unless he is able to read and write.

Judges are required, before entering upon their duties to take the following oath: "I do solemnly swear that I will faithfully discharge the duties of the present election, according to law, to the best of my ability, and that I will not disclose how any voter shall have voted, unless I am required to do so in the proper judicial proceeding, so help me God." A similar oath is required of the clerks.

Judges and clerks are entitled to compensation for their services, the amount being fixed by the county court, but it must not exceed \$1.50 per day.

Judges and clerks are free from arrest, except for felony or breach of the peace, in going to, attending on, or returning from the place of election.

Equipment (1). Before the voting begins all the necessary equipment for carrying on the election must be in the hands of the election officials. This equipment consists of polling booths, a copy of the election laws, cards containing printed instructions to the voters, ballot boxes, poll books, and blank ballots.

It is the duty of the sheriff to provide two ballot boxes for each voting precinct. These boxes are to be deposited with

(1) R. S. 1899, Vol. II, pp. 1639 ff.

the constable by whom they are delivered to the judges of election at the opening of the polls.

Ten days before each general election it is the duty of the Secretary of State to furnish county clerks with copies of the election laws. Copies of these laws must then be distributed among the election judges of the various precincts. At the close of the election they must be returned to the county clerks together with the poll books.

It is the duty of the county clerk to provide the clerks and judges of election with proper poll books before the day of election.

A statute enacted in 1889 (being the present law) provided that it should be the duty of the person who is required by law to designate the polling places to provide them with voting booths and other necessary supplies (pencils, etc), one or more booths being provided for each hundred voters.

It is the duty of the county clerk to have instructions to electors printed in large type on stiff cards. Not less than one of these cards must be posted in each voting booth and not less than three must be posted about the polls.

From 1879- 1899, it was the duty of the County Clerk to provide 200 ballots for each fifty voters, or fraction thereof, who voted at the next preceding election. One-half of these ballots were to be delivered to the judges to be used, the other

half to the constable to be employed in emergency. The law at present requires the delivery to the judges of only 100 ballots for each fifty voters at the election next preceding. The change from the law of 1889 occurred in the session of 1891.

Having discussed the provisions as to the officials of the election and the equipment and supplies with which these officials are to hold the election, it is desirable, before discussing the method of casting votes to understand the general regulations by which peace and order are maintained at the polls, safeguarding the rights of electors.

The Constitution of 1875 provides that all elections shall be free and open and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage, and that voters shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom. (1). By statute the judges of election are required to preserve good order at the polls and are empowered to punish any disorderly person by fine not exceeding \$20 and imprisonment pending payment of the fine. It is the duty of the constable to attend elections and maintain order under the direction of the judges (2).

The Australian Ballot. Coming now to the method of voting, the most important change to be noted is the introduction

(1) Const. 1875, Art. VIII, sec. 4.

(2) R. S. 1899, Vol. II, Art. 7025, 7025.

of the Australian ballot system. This was done in 1889 (1). The object of the change was to guarantee in a more effective manner than had been possible before the right of the elector to cast a secret ballot, free from duress or intimidation of any kind. Undoubtedly it has done much toward accomplishing that result.

In the first place it was provided that all ballots used in the election of all public officers should be furnished at public expense. (At the expense of the county except where the officers to be elected were exclusively city officials). Hitherto all ballots had been printed either by private individuals or by political parties, usually the latter.

It is the duty of the county clerk to have the ballots printed for every election of public officers in which the electors or any of the electors of the county participate, printing upon such ballots the names of candidates which have been properly certified to him. (The nomination and certification of candidates is discussed in Part II).

The form of every ballot is as follows: There is a separate ballot for each political party. At the head of the ballot is the party name. Following this caption are the names of persons nominated for the various offices to be filled. Underneath each name is left a blank space large enough for writing in a name. Errors in the ballot may be corrected by the circuit

(1) L. Mo. 1889. 106.

court, or the circuit judge in vacation, or the judge of the county court upon application accompanied by the affidavit of any elector in the county, unless cause for not making the change is shown.

Voting (1). The first step in the actual process of voting is the receiving by the elector of ballots from the judges of election. Each elector is entitlee to one ballot of each plitical party. Before delivering the ballot to the elector it is the duty of the two judges having charge of the ballots to write their names or initials in ink or with indelible pencil upon the back of all ballots delivered. There must be no other writing on the ballot. Without these names or initials no ballot will be counted.

After having received his ballots it is the duty of the elector to repair to one of the booths which have been provided. These booths must be surrounded by a railing or other guard so that no person other than the officers of election and electors engaged in receiving, preparing or depositing their ballots may approach within five feet of an elector engaged in voting.

Within the booth the voter is screened from observation, since only one person is allowed in one booth at a time. The

(1) R. S. 1899, Vol. II, p. 1637. Detailed refernces to the following summary of the method of conducting elections are not given, for the reason that it shows no important changes. References are made, however, to such changes as actually occurred.

voter has not more than five minutes in which to prepare his ballot. This he does by crossing out all candidates for whom he does not desire to vote and by writing in the names of such candidates as he desires to vote for, if such names are not printed on the ballot. Having thus prepared his ballot the elector must fold it so as to conceal the face, showing only the names or initials of the judges which are on the back of the ballot. He must also fold all other ballots received by him in the same way. Then, without leaving the polling place, he must hand the ballot he desires to vote to one of the receiving judges and the ballots he rejects to the other receiving judge, by whom they shall be put in a separate box provided for that purpose, after ascertaining that all have been returned. The first receiving judge, who has the ballot which the elector desires to cast, must then call out the voter's name audibly. If the judges are satisfied that the elector has a right to vote the receiving judge numbers the ballot (without such number the ballot can neither be received or counted) the clerk enters the name and number in the poll book and the ballot is deposited without inspection by any person. Before depositing the ballot any outside party has the right to challenge any voter whom he suspects of being an illegal voter and it is the duty of the judge of election to thereupon determine the right of the person to vote.

If any elector declares upon oath that he cannot read or write or is physically unable to do so he may have his ballot

made out by one of the judges giving charge of the ballots. The judge making out the ballot however must do so without leaving his position or entering a booth.

Counting the Votes. After the expiration of one hour from the opening of the polls it is the duty of the receiving judge to deliver over to the counting judges ballot box No. 1, receiving from them box No. 2. Ballot box No. 1 is then immediately opened by the counting judges and the tickets taken out, one by one, by one of the counting judges who must read distinctly while the ticket remains in his hands the name or names written or printed thereon and the offices intended to be filled by the person voted for. The ticket is then passed over to the second counting judges who strings it on a thread or string. This procedure is continued until all the tickets in the box have been counted when the box is returned to the receiving judges and box No. 2 is received from them. No person is admitted to the room where the votes are being counted other than the judges and election clerks, except that any political party is entitled to one representative as a witness to the counting. All judges, clerks and witnesses present must make oath that they will not reveal the number of votes any candidate has received until the polls close. It is, however, the duty of one of the judges to state to those present at the close of each hour the number of votes cast up to the time of the announcement.

In counting the votes when two or more ballots are found folded together they must be rejected as fraudulent, so also if two or more ballots appear corresponding with the same number. In all cases where two or more ballots have the same number it is the duty of the judges to have the party called and the question determined upon his evidence given under oath. If a ballot is found containing a greater number of names for an office than the persons required to fill such office it shall be considered fraudulent as to all the names designated for that office, but no further. If there is a less number of names than the number of persons required to fill an office, however, the ballot will not be considered fraudulent either in whole or in part.

After the counting has been completed the results are set down in the poll books on the proper form therein and at the same time the results are publicly proclaimed to the persons present. The poll books must be signed by the judges and attested by the clerks.

Casting up the Results. One of the poll books must be retained in the possession of the judges open to the inspection of all persons. The other poll book must be transmitted by one of the clerks of the election to the county clerk within two days after the close of the election. If this is not done the county clerk has the right to send the sheriff or a special messenger after the poll book. Having in this manner secured control of the poll books the county clerk, within five days after the close

of the election, must take to his assistance two judges of the county court or two justices of the peace of the county and cast up the votes given for various candidates. To the successful candidates for county office the clerk must then give certificates of election. The certificates given to the successful candidates for member of the General Assembly must contain a statement that the candidate has paid a state and county tax within one year next preceding his election providing such candidates presents the receipt of the tax collector. If such receipt is not presented then that fact must be stated in the certificate.

In casting up the returns the election of a state senator the following method is employed: The county clerk of each county in the district, within twelve days after the election transmits to the clerk of the county first named in the law creating the district a certificate of the number of votes given for each candidate in the county. The clerk of the county in which the candidate resides must also certify to the clerk of the county first named whether or not the candidate has presented a receipt for state and county taxes, paid by him in the year preceding the election. The clerk of the county first named then counts up the votes given by the various counties, certifies the result to the Secretary of State, and gives a certificate of election to the successful candidate, this certificate of election, stating whether or not a tax receipt has been exhibited as required

by law.

All county clerks, within two days after the expiration of the time allowed for examination of the polls, must transmit to the Secretary of State an abstract of the votes given in their respective counties, by precincts, for members of congress, governor, lieutenant-governor, state senators and representatives, judges of the supreme court, judges of the Kansas City and St. Louis court of appeals, judges of the circuit court, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners and superintendent of public schools. These abstracts must be delivered to the nearest postoffice on the most direct route to the capital after having been inclosed in a strong envelope closely sealed. They must not be opened until the day fixed for the counting of votes contained in them. If the secretary of state does not receive such returns after they are overdue by one mail, it is his duty, unless circumstances justify a longer delay, to send a messenger with directions to bring up the abstract of returns. If the failure to send up the returns is due to the neglect of the county clerk he is liable to a forfeiture of \$100 together with the expenses of the messenger, to be recovered in a civil action instituted by the prosecuting attorney of his county.

Within fifty days after the day of election, or sooner if all the returns are in, it is the duty of the secretary of state in the presence of the governor, to open and cast up the returns

for all candidates for any office, except governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners, and superintendent of public schools. Having cast up the returns in this manner it is the duty of the secretary of state to give certificates of election to the persons having the highest number of votes for members of congress and to certify to the governor the names of candidates receiving the highest number of votes for the offices of judges of the supreme court, courts of appeal and circuit courts.

Within two days after the meeting of each general assembly it is the duty of the secretary of state to lay before each house a list of members elected thereto as is shown by the returns in his office together with a statement as to which members did and which members did not produce tax receipts as required by law. And after each election of a governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, railroad and warehouse commissioners and superintendent of schools, the secretary of state must deliver the returns for such offices to the speaker of the house of representatives. This is done immediately after the organization of the house. The speaker must then notify the senate that the returns are in his hands and that the house is ready to receive the senate in joint session. In the presence of a majority of the members elected to each house, assembled in the hall of representatives, the speaker must

then open and publish the returns. If there is an alleged mistake in any return or where there are two or more returns from one county, the two houses must correct the mistake and decide which is the proper return. It is the duty of the speaker of the House to declare the person who has received the highest number of votes for any office to have been duly elected.

Tie Votes. The Constitution of 1875 provided that in case of a tie for the votes for governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney-general, and state superintendent of schools the General Assembly in joint session should make a choice (1). A tie for the office of railroad and warehouse commissioner is determined in the same way (2). "If two or more persons have an equal number of votes for member of congress, state senator, representatives, judge of the supreme court, judge of a court of appeals, judge of a circuit court, court of common pleas, criminal or probate court, circuit attorney or assistant circuit attorney, and a higher number than any other person, the governor shall issue his proclamation, giving notice of such fact and that an election will be held at the places for holding elections for such officers, in which shall be mentioned the day of election, which election shall be conducted and returned agreeably to the provisions of law"(3). In

(1) Const. 1875, Art. V, sec. 3.

(2) R. S. 1889, sec. 4696.

(3) R. S. 1899, Vol. II, sec. 1004.

case of a tie vote for county offices it is the duty of the county clerk or justices casting up the votes or a majority of them to order a special election, stating the day and requiring the sheriff to issue his proclamation that such election will be held.

Special Elections. Aside from the special elections provided for by law to be held in case of ties in votes for certain offices, the constitution and laws provided for special elections to fill vacancies. The Constitution provides that in all cases of vacancies in either house of the general assembly the Governor shall order a special election (1). The Constitution also provides that if there is a vacancy in the office of sheriff more than nine months prior to the time of holding a general election, the county court must order a special election to fill such vacancy, but that a vacancy at any time in the office of coroner must be filled by the county court (2). all other vacancies in state or county offices, except a vacancy in the office of lieutenant-governor, are filled by appointment by the Governor, so that there is no necessity for special elections. In case of a vacancy in the office of member of congress it is the duty of the governor to order a special election (3). All special elections are conducted in the same manner as is provided by law for regular elections.

(1) Const. 1875, Art. IV, sec 14.

(2) Const. 1875, Art. IX, sec. 11.

Contested Elections (1).

County Offices. The Circuit Court has jurisdiction of all contests for county offices. It is the duty of this court to determine such contests in a summary manner, without formal pleadings, and this must be done at the first term occurring fifteen days after the election and notice of contest by the contestant to the contestee, unless the parties agree to a continuance.

A person desiring to contest the election of any candidates to a county office must give due notice thereof to the contestee within twenty days after the official counting of the votes. This notice must set out the grounds of the contest together with the names of voters who will be objected to. It must be served upon the contestee at least fifteen days before the term of the court at which the contest is to be heard by being delivered to the contestee personally or by being left at his home with some member of his family over fifteen years of age. If the contestee cannot be found and if notice cannot be left at his home as provided it is sufficient if notice is posted in the office of county clerk in the county in which the contest arises.

If the contestee, after having received notice of the contest, desires to turn to contest votes given for his opponent he must give notice to that effect, giving the names of voters objected to and these notices must be delivered in the same way as

(1) R. S. 1879, Vol. II, sec. 7030 f.

in the case of notice served by the contestant on the contestee. This notice must be served within twenty days after the contestee has received notice of the contest.

Both parties are allowed process for witnesses and either party may take depositions to be read in evidence at the trial and such depositions may be read although the witnesses reside within forty miles. These depositions must be filed with the circuit clerk before the trial commences. The cost of the trial may be adjudged against the unsuccessful party and payment enforced as in civil cases.

In every case of a contested election, if the parties consent, the court may order a special election to determine the controversy. The court, however, is under no obligation to order such an election, but if ordered, five days notice must be given.

While the contest is pending the contestee, that is, the party holding the certificate of election, may occupy the office and perform the duties of the office. If the contest is decided against him the circuit court must order him to surrender the office together with the books and records pertaining to it.

Members of the General Assembly. Notice of contest of membership in the General Assembly differs from the notice of contest of a county office only in that it must be made within forty days after the official counting of votes, instead of in twenty days, and that it requires a statement of the name of a justice of a peace who will take the depositions and when and where he will

take them. Having received this notice it is the duty of the contestee to name another justice of the peace to assist in the taking of depositions. The two justices, thus selected, must choose a third, unless the parties otherwise agree. If the contestee does not select a justice, then the contestant may select both justices and these to have full authority to proceed.

If the contestee desires to contest the legality of any votes cast for the contestant he may do so by giving the contestant notice within twenty days after he has received notice of contest from the contestant. This notice must conform to the requirements of the notice of contest and the procedure following the notice is the same.

In taking of depositions by the justices must be commenced within forty days after the day of election. Both parties have a right to process to compel the attendance of any person at the time and place mentioned. The testimony taken must be relevant to the points set out in the notices served between the parties. After having been taken it must be certified to the president of the senate or the speaker of the house as the case may be. Thereupon the contest is determined by the vote of that house of the General Assembly membership in which is being contested.

Governor and Lieutenant Governor. The Constitution provides that all contests for Governor and Lieutenant Governor shall be decided by a joint vote of the two houses of the General

Assembly meeting in the hall of representatives, the president of the senate presiding.

If a person desires to contest the election of one of these officials he must first petition the General Assembly setting forth in his petition his grounds and the facts which he will prove in support thereof and asking permission to submit his proof.

In a majority of the whole number of houses vote vote to grant the permission prayed for, a joint committee must be appointed to take testimony on the part of both parties. The Committee thus selected has authority to issue warrants to any judge or justice of the peace requiring him to take deposition on the points submitted in the warrant at the time and place specified by the warrant. Both parties are allowed to attend any examination of witnesses and are allowed to crossexamine them. No testimony is allowed to be taken unless relevant to the points set out in the petition. The facts thus found must be reported by the Committee to the house after which, by joint resolution, a day must be fixed for the final vote.

Other State Officials. All contested elections for judge of the supreme court, judge of the St. Louis and Kansas City court of appeals, superintendent of public schools, secretary of state, state auditor, state treasurer and attorney general must be heard and determined by the Supreme Court or any three judges of that court in vacation. It is provided, however, that no judge may sit in such a contest when he is himself the contestant

or contestee.

The procedure in these cases is the following. The person desiring to contest an election must first petition the supreme court (or three judges in vacation) setting forth the points on which he relies and the facts which he will produce and praying for leave to produce his evidence. The contestant must serve the contestee with notice of the time and place of presenting the petition together with a copy of the petition ten days before it is to be presented and the contestee may then file his answer to the petition.

If the Supreme Court decides to permit the election to be further contested it appoints a commissioner with full authority to take and hear evidence for both parties touching the points set out in the petition. On the report of this commissioner the supreme court makes its decisions.

Circuit Judge. All contests for the office of Circuit Judge are decided by the Circuit Judge of an adjoining circuit when place of residence is nearest the residence of the contestee. A person desiring to contest election to the office must file a petition in the office of the clerk of the circuit court in the county in which the contestee resides, within forty days after the election. In this petition he must set forth the facts on which he bases his right to contest and pray for leave to submit his proof. Thereupon it is the duty of this clerk to issue summons

to the contestee returnable at the first term of the circuit court held more than thirty days thereafter. This summons must be served on the contestee together with a copy of the petition. Within thirty days after the contestee receives this notice he must answer. Upon receiving this answer it is the duty of the circuit clerk to notify the circuit judge who is to try the contest, who will then appoint a commissioner to take and hear testimony in the same manner as is provided for state officers. Upon the report of this commissioner the judges make his decision which is subject to review by the Supreme Court.

CHAPTER SIX.

Elections in Cities under Constitution of 1875.

Contents.

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The Constitution of 1875, as was noted in Chapter 4, made no provision for general registration. It did require, however, that the General Assembly should provide by law for registration in all cities and counties having a population of 100,000 or more inhabitants (1). The Constitution also allowed the Legislature to provide for registration in cities having between 25,000 and 100,000 inhabitants (1). The Constitutional provisions there enacted resulted in the adoption of extensive registration regulations in cities of above the minimum population stated. That fact together with the general complexity of city life have produced considerable differences in the election laws as applied to cities from the general election laws of the state. Therefore, it is necessary that a separate chapter be devoted to the treatment of these laws.

The first General Assembly meeting after the adoption of the Constitution passed a law providing for and regulating regis-

(1) Const. 1875, Art. VIII, sec. 5.

tration and elections in cities of the first class, that is, cities having 100,000 or more inhabitants. When adopted it applied only to the city of St. Louis. It has since been substantially modified by amendments and alterations of importance. In its present form it applies only to St. Joseph and Kansas City, a special law having been adopted for St. Louis City (1).

Elections in Cities of the First Class,
under the Law of 1877 (2).

Qualifications for the Exercise of the Franchise. The only requirement for the exercise of the franchise to cities of the first class additional to the requirements proscribed by the general election law was that the voter must have resided in the district where he offered to vote for the ten days next preceding the day of election and that he must have been registered as a voter in that district.

Registration. The officer having charge of registration was the recorder of votes. This officer was appointed by the mayor, with the approval of the council, for a term of four years. During this term he was ineligible to hold any elective office. His compensation was fixed by city ordinance. If the business of the office required it the recorder was allowed, fifty days before every election, to appoint as many as three deputies for

(1) This special St. Louis Law, being almost identical with that of 1895, applying to cities of this first class, is not discussed.

(2) L. Mo., 1877, p. 49.

a period of fifty days. The recorder was allowed no other assistance.

This recorder was required to have his office in the city hall and there to be present at all time between 9 a. m. and 5 p. m., for the purpose of recording the names of qualified voters.

The names of voters were recorded by the recorder in books forwarded by the register of the city, one book purchased for each election district in the city. Each book contained the following oath:- "We, the undersigned, do solmenly swear (or affirm) that we will support the Constitution of the United States and the State of Missouri; and we do furthrmore sweaV (or affirm) that we have not registered in any other election district; that we and each of us have given one true name and place of residence as hereto subscribed." Every qualified voter was entitled to have his name entered in the registration book of the district in which he lived, provided he presented himself to the recorder at least thrity days before the date of election. An additional period of twenty days was allowed to those who, on account of sickness or for other good and sufficient reason, was unable to register within the time prescribed.

Severe penalties were provided for those convicted of fraud in connection with the registration. Imprisonment in jail for a time not exceeding one year was prescribed for any person who registered as belonging to any other registered district than the

one in which he was resident, for any person registering under an assumed name or name other than his own, for any person willfully registering in more than one district or as living at a place are number where he did not live, and for any person causing his name to be placed upon the election register without being entitled thereto. The same punishment was prescribed for the recorder of votes on conviction of having corruptly registering any person not entitled thereto or having maliciously and corruptly refused to register one who was entitled to be registered. A fine of not less than \$500 or imprisonment in the city jail of not less than six months or both such fine and imprisonment was prescribed for any person convicted of willfully mutilating or destroying or of stealing any registration book or list of voters. The recorder of votes was made liable to the same penalty in addition to removal from office on conviction of having permitted any book of registration to be taken from his office or out of his authority.

Board of Revision. Provision was made for a revising board. It was to consist of one citizen from each city ward, possessing the qualifications of a member of the house of delegates of the city, appointed by the mayor. It was the duty of this board to meet with the recorder of votes thirty days before each election for the purpose of examining and correcting the registration. The mayor was made ex officio chairman of this board and a majority was necessary to transact business.

The board of revision was empowered, by a majority vote, to strike from the register the names of all persons who have removed from the election district or who have died. The board was required to note the fact opposite the name of any person charged with having registered in a wrong name so that he might be challenged by the judges at the election. It was also the duty of the board to place on the list the names of such persons as, in the opinion of a majority of the board's members, had been improperly registered by the recorder of votes.

The board of revision was required to sit from day to day, but not for more than ten days. For their services the members were allowed three dollars a day. Their proceedings were printed daily in the paper doing the city printing.

Physicians, managers of public and private hospitals, and the coroner were required by this law to report all deaths of adult males, together with their residence, to the Health Commissioner. It was then the duty of the clerk of the board of health to make a weekly report of such deaths to the recorder of votes, who was thereupon required to enter such information upon the registration books.

When any registered voter removed from one place to another in the city he was required to notify the recorder of that fact at least six days before the next election in order that the proper change might be made in the books.

Changes Effected by the Law of 1883 (1).

Under the statute of 1877 elections in cities of the first class were conducted, except for the provisions as to registration, in accordance with the general election laws. The very different conditions, however, which obtained in the large cities from those prevailing in the smaller cities and country districts developed a necessity for important differences in the laws. We find therefore, in 1883, a general statute providing for elections in cities of the first class and at the same time effecting considerable and important changes in the registration hitherto adopted. The changes in registration were doubtless brought about by a more or less unsatisfactory experience with the registration law of 1877.

The most fundamental change effected by the new law was the introduction of state control of elections. This resulted through the provision that the recorder of votes, hitherto appointed by the mayor, should be appointed by the governor by and with the advice and consent of the senate. Practically complete control of the electoral machinery of the city was entrusted to these state appointed officers.

The term of the recorder remained unchanged. His compensation was fixed at \$2500 a year, except in the city of St. Louis where it was to be \$3000 annually. To the former qualifications was added the requirement that the recorder should possess the

(1) L. M. 1883, p. 38.

qualifications of a state senator. The recorder continued to be ineligible to any appointive or elective office during the term for which he was appointed.

The recorder was allowed the following assistants: a principal dupty recorder and as many subordinate deputies and clerks as he deemed necessary. The principal deputy redorder was appointed by the recorder with the consent of the upper house of the municipal assembly. He held at the pleasure of the recorder and his salary was fixed at \$1500 a year. The subordinate deputies and clerks were also appointed by the recorder with the approval of the mayor. The deputies received \$3.00 a day and the clerks \$2.50 a day while actually employed.

The only important change in the manner of registration was the requirement that five days before the close of the period limited for registration an office for registration should be opened in each ward of the city, at a place to be designated by the recorder. Here were to be recorded such voters of the respective wards as applied and were entitled to registration.

Under this law the members of the board of revision were appointed by the recorder. They were required to have the qualifications of a member of the house of representatives. One member was appointed from eacy ward. It was priveded that not more than one-half of the membership of the board should be members of the same political party. The recorder of votes was the

exofficio president of the board of revision. The powers and functions of the board remained essentially unchanged.

Conduct of Elections in Cities of the First Class
under the law of 1883.

Detailed regulations of the conduct of elections were enacted in this law. In discussing them, however, it will be only necessary to point out in what way they differed from the general laws governing elections in the state.

Time and Place. The time of holding general state elections in the cities was of course the same as elsewhere. The election precincts were determined by the municipal assembly, but it was provided that in the creation of a precinct due regard should be had for ward lines and that each precinct should be made up of compact and contiguous territory and so regulated as not to contain more than one thousand registered voters. The polling place within each precinct was to be fixed by the recorder, whose duty it was to provide a suitable room for the clerks and judges.

Officials . For each precinct four judges and two clerks were appointed by the recorder. A regulation not appearing at this time in the general election laws, though, later adopted, was that no more than two of the judges and no more than one of the clerks should belong to the same political party. The object of this regulation was, of course, to prevent fraud on the part of the dominant political party.

Judges and clerks were to be notified of their appointment by written certificates from the recorder at least five days before the election. On the day before election the judges were required to attend at the office of the recorder, to take the usual oath prescribed for election judges and to receive from the recorder two copies of the corrected registration list for that precinct, together with a copy of the law governing elections.

The recorder was given power to revoke the appointment of any election judge, upon presentation of an affidavit at least five days before the date of election signed by ten qualified voters of the precinct for which such judge was appointed, stating that such person was unfit for the position. Any person, however, who having been appointed a judge or clerk without a good excuse, was made liable to a fine of not less than \$5.00 nor more than \$50.00.

The compensation of judges and clerks was fixed at \$3.00 per day each, except that in the city of St. Louis judges were allowed \$5.00 per day.

Casting Votes, Counting the Votes, and Casting up the Results. The general election laws governed the casting of the votes and the determination of the results, except that all reports from precincts went to the recorder who performed the same functions in this relation as a county clerk. If the city was in a county the recorder, after having cast up the results of the

election, reported to the county clerk, who then performed the usual functions required of him by law. In the city of St. Louis, which was not in any county, the recorder performed all the duties required elsewhere of county clerks.

Under the Present Law.

The present law governing elections in cities of 100,000 inhabitants or over was adopted in large part at the extra session of the Legislature held in 1895.⁽¹⁾ It covers thirty-six pages of the statutes and includes one hundred sections regulating to the minutest detail registration and elections in first class cities. And inasmuch as it is very largely an amendment of the laws already discussed and contains a multitude of addition to those laws it will be necessary to consider it somewhat at length. In discussing it the same outline will be followed as has been hitherto employed.

The Board of Election Commissioners. The complete control of elections, including registration, is by this law assigned to a board of election commissioners, this board succeeding to all the powers which had before been exercised by the recorder of votes and at the same time being invested with many additional powers and duties.

This board consists of three men, appointed by the governor for a term of three years, the governor indicating when making the

(1) L. M. 1895, p. 5. R. S. 1899, Vol. II, p. 1700.

appointment which one of the three is to be chairman of the board, and which one shall be its secretary. The governor is required to select the ^{four} third member of this board, other than the chairman and secretary, from a list three ~~names~~ submitted to him by the city central committee of the opposite party to which the other two members of the board belong.

The qualifications prescribed for membership on this board are that a citizen to be appointed must be a legal voter and have resided five years in the state and at least two years next preceding the appointment in the city wherein he is appointed. He must be of approved integrity and capacity. He is not allowed to hold any other office during his incumbency nor to be a candidate for any elective office while acting as commissioner.

Each commissioner is, of course, required to take the usual oath and to give a bond for \$10,000 for the faithful performance of his duties.

The board is required to keep open an appropriate office building on all days except Sundays and holidays and is entitled to the possession of all books belonging to the city which are connected with the registration of voters or the election.

The board is allowed whatever assistants may be necessary and the third commissioner is required to appoint two assistants to serve for thirty days preceding and thirty days following each election. All of such assistants are subject to the same re-

restrictions and are required to take the usual oath of members of the board.

There was no change in the qualification necessary for registration.

The law of 1895 marked the abandonment of a central place of registration and the adoption of precinct registration, at a suitable place in each precinct selected by the Board of Election Commissioners.

In each precinct a Board of Registry, consisting of the four election judges previously selected for that precinct, had charge of registration. They were assisted by the election clerks.

Provision is made for registration during every year in which there is a presidential election. The registration days are Tuesday, four weeks before the election, the following Saturday and the following Tuesday, from 8 a. m. to 9 p m.

The Board of Election commissioners is required to furnish the Board of Registry in each ward district with lists of all such criminals and deceased persons as formerly resided in that ward. The Board of Commissioners is also required to give ten days notice through the press of the time and place of registration in each precinct.

Each Board of Registry was provided with three duplicate registration books, containing forms prescribed by law. (See

Appendix for registration form).

Concerning every applicant who personally presented himself for registration information is secured under oath and written down in the registration books as to his name, residence, nativity, color, term of residence, whether a natural born or naturalized citizen, whether a qualified voter or not. The applicant was required to write his signature in one of the registers. At the close of each day each of the judges is required to sign his name at the end of the list of names on each page, to prevent the unlawful adding of new names.

Provision is made for challenging applicants for registration, for appeals from the decisions of the Boards of Registry to the Board of Election Commissioners. Still further appeal is provided for to the Circuit Court and ultimately to the Supreme Court of the State.

When the registration has been completed the lists are verified by hanging one of the three registry books in a public place where it will be available to the examination of all voters, by a personal canvass of the precinct by the election clerks, and by a final revision in each precinct by the board of registry acting as a revising board. The action of this revising board is subject to review by the Board of Election Commissioners, and finally by the courts. At the completion of the final revision the registration books are delivered to the Board of Election Commissioners, by which Board they are carefully preserved.

Provision is made for supplemental registration before each election other than the presidential election. For that purpose the board of registry is required to meet in each precinct on Tuesday three weeks preceding each and hold one session from 8 am to 9 p. m.

Conduct of Election under the
Present Law.

Time and Place. The law of 1895 made no change as to the time or hours of elections in first class cities. The election precincts, which under the law of 1883 were determined by the Municipal Assembly, are now fixed by the Board of Election Commissioners. They have been reduced in size so as to contain now not more than 300 voters, whereas formerly they contained one thousand voters. The Board determines the polling place within the precinct.

Officials. The judges and clerks are appointed by the Board of Election Commissioners. The commissioners belonging to the majority party appoint two judges and one clerk of the same political faith and the commissioner belonging to the minority party appoints the two remaining judges and the remaining clerk. Service as judge or clerk is compulsory and law requires the Board of Commissioners to prosecute any person who, being qualified, refuses to serve. The appointments are subject to the confirmation of the circuit court made after an examination into the qualifications of the appointees. The Board of Com-

missioners has the authority to fill vacancies, but it does not have authority to remove judges or clerks except for incapacity or official misbehavior.

5 *Duties*

Judges and clerks receive three dollars per day while actually engaged in the performance of their duties as compensation for their services (1).

At the day of election judges and clerks are required to be present promptly at the polls, subject to a penalty for failure to appear. During the course of the election no judge or clerk is permitted to absent himself from the polls for longer than five minutes.

During the election the judges are required to keep the ballot box constantly exposed to public view, having first shown that it is empty. If it is not kept constantly in public view the judges are subject to a fine of \$1,000. Any barricade or other obstruction that might screen the ballot box from public view is prohibited during the hours of the election. If there is such an obstruction and the judges do not remove it on request they are liable to a fine of \$1,000 and imprisonment in the city jail not less than six months nor more than one year.

There is only one ballot box for each precinct and it must be kept under lock and key until the close of the election.

(1). Increased to \$5.00 by General Assembly, 1909. L. M. 1909, p. 499.

Casting Votes, Counting the Votes and Casting up the Results.

No person, unless he is registered as a qualified voter, is allowed to vote.

The judge who receives the ballot from the voter announces his residence and name. He then writes on the back of the ballot its number in order in which it was received, the same number being placed opposite the voter's name in the poll book. The ballot is then placed in the ballot box and at the same time the judge who has charge of the registry is required to place the word voted or the letter "V" after the voters name in the registration, book.

Any voter may be challenged either by any person present or by the official challenger of a party, each party being allowed challenger with the polling place. In addition to the challengers each party is entitled to have two watchers in the room where the ballots are to be canvassed, to watch such canvass.

Immediately following the closing of the polls the judges are required to proceed to count the votes, in the presence of the challengers and watchers of the various parties. The ballots are first counted and if they exceed the number of names entered in the poll books, the ballots which may be folded inside other ballots are rejected. If the number of ballots still exceed the number of names in poll books all ballots which have not been numbered are rejected. The rejected ballots are placed in an

envelope, marked "rejected ballots" and returned with the ballot boxes to the election commissioners.

In counting the votes the votes on unscratched ballots are first counted by tens. Votes on ballots which have been scratched are then counted. The total number of votes cast for each candidate is then calculated and announced.

Following the proclamation of the result all ballots which have been counted are strung on a flexible wire, the ends of which are tied in a knot sealed. The ballots thus strung are then enclosed in an envelope which, after having been marked with the number of the precinct and the date of the election is firmly tied and sealed. Two of the judges then convey these and all other ballots to the election commissioners by whom they are carefully preserved for a period of twelve months under lock and key, at the end of which time they must be destroyed.

At the close of each election the judges of each precinct are required to send certificates of the result in the precinct to the city comptroller and the circuit clerk and the poll books, each of which shall contain a similar statement of the result to the board of election commissioners. Elaborate provisions are made for safeguarding these various statements and the poll books which in transit to their destination.

The Board of Election Commissioners is constituted the canvassing board and as such is required to perform substantially the

same functions as under the law of 1883 were performed by the recorder of voters.

Elaborate provisions are made for punishment offenders in connection with registration and elections.

Registration in Cities Having
25,000- 100,000 Inhabitants..

As has been seen the Constitution of 1875 required the General Assembly to provide for registration in first class cities and made it optional with the legislature to provide for registration in cities having from 25,000 to 100,000 inhabitants (1). The privilege of providing for registration in cities of this size was exercised in 1881 and from that date registration of votes has continued in all cities in the state of over 25,000 inhabitants (2). The constitution prohibits registration in cities of less size.

The supervisor officers of registration in these cities as provided by the law of 1881 was registrar for each election district, who was elected biennially at the general November elections. He was required to be a duly qualified voter of the district and to be an owner of real estate within the state. Vacancies were filled by the county court of the county in which the city was located.

(1) Const. 1875, Art. VIII, sec. 5.

(2) L. M., 1881, p. 63.

The registrars were provided with blank books for the registration of voters by the clerk of the county court. In these books were blanks to be filled out with the names, residences and peculiar marks of voters.

Every qualified voter in each election district was entitled on personally appearing before the proper registrar to be registered as a voter.

The days of registration are fixed by the county court. They must be not more than five in number and must be within the forty days preceding the tenth day before every biennial election. At least ten days before any special or municipal election the county court is required to appoint not exceeding three days, for supplemental registration. All registration is to be held at the regular place of voting in each election district. The county court is required to give at least ten days notice of the time and places of registration in some paper published in the city. The hours of registration were from 8 a. m. to 9 p. m.

The board of revision for each city consists of the registrars of all the districts. This board is required to meet at the court house on the Friday and Saturday preceding each general election for the purpose of correcting the lists. At that time they are required to pass upon the claims of all who were not registered and also upon all objections to voters who have been permitted to register. The board of revision is not allowed,

however, to remove the name of any person from the lists who has not had two days notice that his right to registration has been questioned. But if objection was made at the time of his registration no notice will be required. The registrar of any district may grant a certificate of removal to any person registered in his district, provided the removal is not less than ten days previous to an election. Upon presentation of this certificate to the board of revision the board is required to register him in the proper district.

The county clerk is required to deliver the registration books and the copy thereof to the election judges of each precinct on the day before election, and to take a receipt from one of the judges therefor. At the election no person not registered was allowed to vote. As every person votes the clerks are required to enter upon the lists the word voted, or if his vote is rejected the word rejected must be entered. At the close of the election the total number of votes cast and the total number of votes rejected must be set. The registration books are then required to be returned to the county clerk.

This law has remained substantially unchanged.

ELECTION LAWS OF MISSOURI

PART II.

Laws Governing Primary Elections.

CHAPTER ONE

Contents.

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2. Law of 1889 Applying 16 Counties of 100,000,- p. 102.
3. The Special St. Louis Primary Law of 1893,- p. 103.
4. Supplementary Laws of 1897 and 1901,- p. 104.

The primary, as an officially recognized method of making nominations for public offices, was introduced in Missouri by the General Assembly of 1889 (1). Before that date the state had not attempted in any manner to regulate the choice of political candidates. The institution of the Australian ballot system necessitated some provision regulating their selection in order that the officials charged with the duty of printing and distributing the ballots, which the new system required the state to furnish, might know with certainty who were the party candidates. Consequently the same act which introduced the Australian ballot recognized and legalized various methods of choosing candidates. Of these there were three, namely a convention of delegates, a

(1) L. M. 1889, 106. III

Law of 1889 p. 54 Special Law for Counties of over 100,000 population.



petition by voters, and the primary election system. Each of these nominating systems had already been employed to a certain extent, but the act of March 16, 1889 was their first official recognition.

This act defined the primary as "an election held within the state, county, district, or other subdivision of the state by members of any political party or political faith for the purpose of nominating candidates." The system which thus received official recognition continued to be used for a period of eighteen years. It was never, however, extensively employed and was probably never employed at all except in the choice of candidates elected wholly within a county. The facts that the people of the state were more familiar with the convention system, that it was a less expensive method, and that it was deemed less likely to lessen party efficiency caused it to be preferred. Nevertheless it is of value to study the laws that were enacted governing this optional primary since they were largely incorporated in the laws regulating the compulsory primary which, as a nominating system, has almost entirely supplanted the convention system.

The general primary law of 1889 was extremely brief and contained few provisions. It restricted the privilege of employing this method of nomination to parties which at the next preceding general election cast as much as three per cent of the total vote in the state, county or other district in which it was desired

to employ the primary. The election was almost wholly within the control of the political party using it. No time was fixed by law, except that it was required that all certificates of nomination for other than county offices should be filed with the secretary of state not less than twenty days before the day of election and that certificates of nomination for county offices should be filed with county clerks not less than fifteen days before the day of election. The party had control also of polling places, election hours, and the selection of officials. The officials were required to take the oath prescribed for judges and clerks of general elections and they were subjected to punishment for returning fraudulent statements as to the results. The determination of who should vote rested apparently with the election judges without any restrictions whatsoever, beyond a provision that a person attempting to vote who was not entitled to vote at the next general election was guilty of a misdemeanor and punishable by a fine not exceeding \$100 or imprisonment not exceeding thirty days or both such fine and imprisonment. The same penalty was prescribed for such persons as were found guilty of procuring illegal voting. No provision was made for casting up returns or for certifying the results to the proper officers. Two years later, however, it was enacted that the results should be certified by the president and secretary of the political committee under whose direction the primary was held (1). In 1893 this pro-

(1) L. M. 1891, p. 136.

vision was amended so as to enable either of these officers, in case of the disability or death of the other, to testify the results to the secretary of state or the county clerk as the case might be (1).

The ~~same~~ General Assembly ^{in 1875 had} adopted a special primary law applying to counties having a population of 100,000 inhabitants (2). This act provided that any party might hold a primary in such counties upon the decision of the party committee of the district wherein the primary was to be held and proper public notice by that committee. This notice, which it was required should be published in some newspaper or newspaper of general circulation printed in the district and posted in at least three places in each voting precinct, was to include statements of the time, manner, conditions, and place of the election, the authority of the committee making the call, and the names of three qualified persons to act as judges in each precinct.

The judges were required to take an oath that they were legal voters of the precinct, district, or county in which the election was held and that they would conduct the election fairly and truthfully canvass the votes cast thereat. Five qualified voters were allowed to fill vacancies among the judges, if there were any such vacancies at the hour provided for the election to begin. It was the duty of the judges to select two clerks, who

(1) L. M., 1893, p. ¹⁵³ 165.

(2) L. M., 1875 p. 54

were also required to take an oath for the faithful discharge of their duties. Violations of the act by the judges and clerks were made misdemeanors. The judges were required to examine any person offering to vote whose right to vote was challenged by any qualified voter touching his qualifications or the charges made against him. If after such examination they were satisfied that he had no right to vote his ballot was to be rejected. If he was allowed to cast a ballot the word "sworn" was to be noted after his name in the poll book.

It was specifically provided that none of the expenses of primary elections held under his act should be borne by the public.

In the legislative session of 1891 a law was passed regulating in considerably greater detail the optional primary election method of making party nominations (1). It applied, however, only to ~~counties~~ ^{Cities} having a ~~city~~ of 300,000 inhabitants, therefore only to St. Louis, and was there restricted to parties which cast one-fourth the total vote at the preceding general election. Under this law the authority of the party was very greatly decreased and to a corresponding degree public officials exercised increased control.

The party still fixed the date of the election but the managing committee of the party was compelled to give notice of the date determined upon to the recorder of votes of the city,

(1) Laws of Mo., 1891, p. 136.

whose duty it then became to publish, at least one week before the election, the date and polling places in at least two daily newspapers. The recorder fixed the polling places, but was required to have two in each ward. He selected the officials from lists submitted to him. He had printed and distributed the ballots to be used, providing one ballot for each elector in the district. He provided poll books and voting booths. At the close of the election he received from the judges and clerks statements of the results and he issued certificates of election to the successful candidates. The hours of the election were fixed at from 1 p. m. to 8 p. m. The compensation of officials was fixed at not more than \$5.00 for each official. The expenses of the election were paid out of a fund made up of deposits which candidates were required to make before their names were placed on the ballots. (The candidates was required to make a deposit of \$10 for each ward in which his name was to be voted upon). These were the usual penalties for illegal voting and fraud on the part of the officials.

The next Legislature, that of 1893, extended the application of the act of 1891 to cities with 100,000 inhabitants, thereby including Kansas City (1). At the same time a few unimportant and minor alterations were made in the provisions of the act.

In 1897 this act was repealed in so far as it extended to St. Louis and a new act (2) was adopted which differed from the

(1) Laws of Mo., 1893, p. 163.

(2) Laws of Mo., 1897, p. 117.

act of 1891 in the following particulars: It substituted the board of election commissioners for the recorder of votes; it made it a misdemeanor to vote or to offer to vote without being affiliated with the party holding the primary or to have voted in the primary or another party prior to the same election; it increased the number of polling places to three wards with 6,000 inhabitants; it provided for party challengers; it provided that the compensation of no official should exceed three dollars; it provided that the general election laws not in conflict with the primary law should be in force and that the election commissioners should so formulate their instructions to the judges and clerks to insure a fair election and prevent fraud.

In 1901 control of the primary election in Kansas City, also, was placed largely in the hands of the election commissioners. The law applied to Jackson County as a whole and election, whether for the choice of candidates or for the choice of delegates to conventions, were called by the party central committee of the county. Petitions were filed with the commissioners, the Commissioners determined districts, results were certified to them and by them ballot boxes and poll books were furnished to the judges (1).

The same Assembly enacted more detailed regulation of the primary in St. Louis. The most important change effected by this

(1) Laws of Mo., 1901, p. 165.

act was the provision for the registration of voters for primary elections. This was done at the time and places of general registration and in separate books provided for the purpose by the election commissioners of the city. Under this law almost complete control of the primaries was assumed by the commissioners. Assessments against delegates and candidates paid expenses. (1).

(1) Laws of Mo., 1901, p. 149.

CHAPTER TWO

The Compulsory Primary.

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The compulsory primary law was adopted in Missouri, March 18, 1907 (1). Similar laws had already been enacted in a number of western states. They are a result of the strong reform tendencies which have been recently in evidence throughout the United States. The idea has been to strike at governmental abuses by securing a more exact expression of the popular will both as to the men who shall occupy public offices and as to the laws they shall enact after their election. The direct primary and the initiative and referendum are manifestations of the doctrine that the remedy for the evils of democracy is more democracy.

(1) Laws of Mo., 1907, p. 263.

The peculiar evil which the primary was intended to remedy was the boss dominated convention, putting into the field as party candidates, not the choice of the people, but the favorites of special interests. That this evil existed in Missouri and in every state to a certain extent there can be no doubt. Whether it will be remedied by the primary is still an open question. It is also an open question whether the primary will not itself introduce peculiar evils. At present, in the opinion of the writer, the weight of opinion is on the side of the primary as the best method of nominating candidates for public office and as the method most accord with the fundamental conceptions of democratic government.

The primary law of 1907 provided that the primary should be use in nominating all candidates for elective offices excepting candidates in special elections or elections to fill vacancies, and excepting candidates for the office of county superintendent of schools, for city offices, not filled at the general state election, and for town, village, and school district offices. The primary election did not extend to the election of candidates for presidential electors.

The time of the primary was fixed at the first Tuesday in August 1908 and biennially thereafter for the nomination of all candidates to be elected at the next November election. The hours and polling places were those of the regular general election.

The secretary of state was required to notify the county clerks of the various counties at least ninety days before the day of the election for what offices candidates were to be nominated at the ensuing primary and so much of that notice as applied to the county the clerk was required to publish within ten days in at least two and not more than four papers of general circulation in the county.

To enable a person who desired to be a candidate to have his name placed on the official ballot he was required to have a nominating petition signed by a fixed percentage of qualified voters, unless he was a candidate for a county office, in which case a mere declaration, giving his name, residence, the office for which he was a candidate, and the party to which he belonged, was sufficient.

For state offices at least 1% of the voters of the party in at least six counties and not less than 1% nor more than 10% of the total number of party voters in the state were required to sign a candidate's petition. Candidates for the office of member of congress were required to have petitions signed by at least 2% of the party vote in at least one-tenth of the precincts in each of three counties in the district and not less than 2% nor more than 10% of all the party voters in the district. For offices filled by smaller subdivisions of the state than congressional districts, and larger than counties, the petition was required to be signed by at least ^{3%}~~three-fourths~~ of the party voters in at least one-sixth of the precincts of the district and by not

less than 3% nor more than 10% of the total party vote. No person was allowed to sign more than one petition for any one office and every signer required to declare that he would support the candidate thus favored by him at the primary. All the signers on a single sheet of a petition were required to reside in one precinct unless the candidate was seeking a nomination for a state office, when it was sufficient if all signers on a single sheet were residents of a county. The nomination papers were received and filed when accompanied by the affidavits of qualified electors that the above regulations as to signers had been complied with. Candidates were required to file with the nomination papers a declaration that if elected they would accept office.

The basis for determining the number of voters necessary to satisfy the requirements as to percentages was the vote cast for the party candidate for presidential elector who at the last presidential election received the largest vote.

Any party was allowed to have a separate ticket at the primary if any one of its candidates at the next preceding election had received as much as 1% of the total votes cast. Nomination papers could also be filed for nonpartisan candidates. Such papers were required to have signers to the extent of not less than 2% more than 10% of the total vote cast at the last preceding election in the state or subdivision wherein the candidate sought election.

Nominating papers were required to be filed with the secretary of state, except for officers elected wholly within a county. In the latter case they were filed with the county clerk.

The General Assembly of 1909 abolished all the requirements as to the filing of nominating petitions and substituted therefor a provision to the effect that any person can be a candidate for any office on filing a declaration of his candidacy and paying a fee as an evidence of good faith (1). Under this law candidates for state offices will be required to pay to the treasurer of the state central committee of their party the sum of \$100, candidates for congress, \$50, candidates for circuit judge and state senator, \$25. Candidates for county offices will be required to pay to the treasurer of the county committee of their party \$5.00 each. These sums must be used in the campaign in the advocacy of the party interests. Non-partisan candidates will be required to pay like fees into the general revenue fund of the state.

Following the filing of declarations of candidacy with the secretary of state, it is the duty of that official, at least fifty-five days before the date of the primary, to transmit a list of candidates to county clerks, together with designation of the office for which each is a candidate and the party or principle which he represents. Having received this list it becomes the

(1) Laws of Mo., 1909, p. 483.

duty of each county clerk to publish it for three consecutive weeks before the election in at least two and not more than four county papers. One of these papers must represent the interests of the majority party in the county and one the interests of the next largest party. If the county has no party publication it is sufficient if the notice is printed in a paper having a general circulation in the county. In addition to the list of nominees the notice must contain a statement of the date of the primary and a statement to the effect that the election will be held at the regular polling places.

The election is by ballot. The ballots are provided at public expense. The law provides that there shall be a separate ballot for each party and one non-partisan ballot. Upon these ballots under each office the names of the candidates are to be arranged alphabetically by surnames, except that in counties having cities with more than 100,000 inhabitants and in cities having 500,000 inhabitants a non-alphabetical order is to be followed, each name occupying the top, bottom, and middle and each other place of the ticket an equal number of times. The law of 1907 provided for an alphabetical arrangement on all tickets, but the supposed advantage thus given to candidates whose names began with a letter near the first of the alphabet induced the change indicated. The modification was confined to the cities because the evil seemed to be greater in the cities than in the country districts. If a person is nominated on more than one ticket he

is required to file a written declaration as to what party he desires to represent. No name is printed on the tickets of more than one party.

Twenty days before the primary the county clerk is required to have printed a sample ballot for each party on colored paper, to submit a copy to the county chairman of each party and to each candidate and he is required to post one in his office. On the tenth day before the primary the county clerk is required to correct errors, to print and distribute the ballots in the manner provided for general elections. Twice as many ballots are to be furnished each precinct as there were votes cast at the next preceding general election.

At the election, under the law as it was enacted in 1907, any qualified voter was^s entitled to receive the ballot he desired. This was modified by the law of 1909 so as to require the voter before he can receive a ballot, unless he is known to vote the ticket called for, if challenged, to obligate himself under oath to vote such ticket at the general election. The object of the change was to prevent cross voting between the parties. Before delivering the ballot to the voter the judge or judges having charge of the tickets must place their names or initials on the back of the ballot.

When the polls close it is the duty of the judges and clerks to count the ballots and votes cast for each candidate in

the same manner as in the case of a general election. Within twenty-four hours they must cause to be delivered one copy of the results to the county chairman of each political party and one copy to the county clerk. At ten o'clock on the Friday following the election the county returns are to be cast up in the same manner as in general elections. Candidates receiving a plurality of votes are to be declared elected. The canvassers are to decide this by lot. Duplicate copies of the result of this canvass are then forwarded to the county chairman and duplicate copies of lists of nominees for other than county offices are to be sent to the chairman of state committees and to the secretary of state. The secretary of state having cast up the returns for other than county offices is required to notify the state committees of the various political parties of the result and within fourteen days of the November election is required to certify to the county clerks names and descriptions of persons nominated at the primary election.

The primary law of 1907 provided for the organization of party committees. This provision was re-enacted in 1909.

Each voter is entitled to vote for one ^{qualified voter} ~~citizen~~ of his ward or township committeeman of his party. The township committeeman thus chosen meet at the county seat on the first Friday following the election to organize the county committee. The member elected chairman of this committee is ipso facto a member of the

congressional, senatorial, and judicial committees. The congressional committee thus formed is to meet on the second Tuesday in August after the primary at a place to be designated by the chairman of the former committee. Having met and organized the committee is to name two electors of the District as members of the state committee. The state committee thus formed is to meet on the second Tuesday in September in the state capitol when it shall organize. After the committee has organized it becomes its duty to meet with the party nominees for state offices, congress, state senators, and representatives, and form a state platform. This platform the committee must make public not later than 6 p. m. of the afternoon of the day following the organization of the committee. The state committee may also call a convention to nominate presidential electors, to elect delegates to the national convention, and to elect members of the national party committee.

The Senatorial Primary.

For a number of years the sentiment in favor of the popular election of United States Senators has undoubtedly been growing stronger throughout the country. This sentiment has not only found expression in the public utterances of the great leaders of the two prominent political parties of the nation and in several of the national platforms of one of these parties but attempts have been made by some of the states to practically realize this

end, even before an amendment to the Constitution can be secured. At least one state, Oregon, by a senatorial election law has initiated what fully amounts to the popular election of senators. (Although, of course, the Legislature of Oregon need not legally be bound by the popular mandate.) Most states, however, which have taken steps in the direction of the popular choice of senators have as yet done no more than provide for a senatorial primary by means of which the senatorial nominee of each party is determined by the people. Missouri is one of these states. X

The Missouri senatorial primary law was adopted March 15, 1907 (1). It provided that at each general election held in Missouri at which a legislature is chosen whose duty it shall be to elect a United States Senator the names of the candidates of each political party for the office of Senator shall be placed upon the ballots of the political party to which the candidate belongs to be voted on at the general election. The person receiving the highest number of votes in each party, the two provided, shall be the caucus nominee, shall be the caucus nominee of his party in the General Assembly.

Under this law any person might have his name placed on the ticket to be voted upon by complying with the prescribed conditions. He was required, at least 60 days before the date of the election, stating his full name, residence and postoffice

(1) Laws of Mo., 1907, p. 262.

address, also the political party to which he belongs, and upon whose ticket he wishes his name entered as a candidate. The secretary of state was required to make out, for each ticket, an alphabetical list of such names and to certify a true copy thereof to the county clerk of each county and to the proper officer in the city of St. Louis. After having received these lists it was the duty of the county clerks to have the names, in the same order as they were received from the secretary of state, printed on the ballots, under the heading "Candidates for United States Senator", immediately following the copy of the ticket.

On receiving his ballot the voter, if he desired to vote for one of the candidates, might do so by scratching out the names of the rest. If he desired to vote for some person whose name did not appear he could do that by writing in the name of such person. However, a person whose name appeared on one ticket could not be voted upon another ticket.

The Legislature of 1909 did not change the Senatorial Primary Law. It is still, therefore, in full force and effect.

Appendix.

The compulsory primary law, adopted by the General Assembly in 1907, has as yet had but a single trial and it is consequently almost impossible to correctly judge it at this time. A few general operations may, however, be made.

First with respect to the effect of the primary upon the majority party.

The only direct primary thus far held in Missouri undoubtedly had the effect of disrupting to a certain extent the majority party in the state. This result proceeded almost entirely from the race for the gubernatorial nomination.

Three of the four candidates for the Democratic nomination for governor had large followings. The fourth, who was unknown and who expoused the open saloon, received no support and was hardly a factor in the campaign.

One of the candidates for the nomination, Hon. W. S. Cowherd, of Kansas City, a distinguished lawyer and formerly a prominent member of Congress, was the choice of the more intelligent and respectable element of his party. He was a graduate of the state university and took occasion during the campaign to publicly endorse that institution and the cause of higher education generally.

His chief opponent was a country lawyer, who had been president pro tem. of the state senate, and who was a public speaker

of some wit and eloquence. This man, Hon. Dave Ball, was something of a demagogue. Having had no education himself, he made the state university his paramount issue and as the champion of the "little red schoolhouse" made a vigorous canvas. By juggling statistics and by the baldest misrepresentation of facts, he persuaded thousands of people that by taking away from the revenues of the university, opportunities for the education of the common people could be greatly improved.

Both Cowherd and Ball stood by the local option method of regulating the sale of liquor. On this ground they were opposed by the third candidate, Hon. Wm. Wallace, a distinguished lawyer and judge, widely known through the state as an advocate of temperance and the so-called "blue laws." He was a man of unquestioned courage and integrity, but was generally regarded as a fanatic. He advocated the submission of a constitutional amendment prohibiting the sale of liquor and although he made only a brief canvass secured a surprisingly large vote. By accentuating the differences of opinion in the party on the liquor question he encouraged a discontent that seriously hampered the party at the election.

The result of the primary was for some time in doubt, proving a neck and neck race between the two leading candidates. It was finally announced that Cowherd had won, but Ball immediately asserted, certainly with some grounds, that he had been defeated

by fraudulent voting and by being counted out at the polls. A bitter controversy followed, with the result that thousands of Democrats were persuaded that Cowherd was the willing recipient of a stolen nomination.

This disaffection in the Democratic ranks would probably have died out had not the leaders of the Republican party kept it alive. The Republican candidate for Governor, Attorney-General Hadley, a young man of great ability and of national reputation as an efficient public officer, was one of the shrewdest and most skilful politicians in the state. He made great capital out of the differences in the Democratic party. He called attention on all occasions to the fact that Cowherd was charged by leading Democrats with being the beneficiary of stolen votes and the representative of interests which made a practice of resorting to fraud and illegality in elections. This turned hundreds of Ball men to his support. Hundreds of Wallace men were secured by representing that Cowherd was the candidate of the liquor interests. Moreover, by skilful but perfectly honest methods, Hadley secured considerable support from those followers of Ball, who believed that Cowherd was honestly nominated but who were caught by the idea of improving the common schools and this he did without antagonizing the supporters of the University.

Hadley was elected by a plurality of about 12,000 votes over Cowherd, although, with the exception of the candidate for

Lieutenant Governor, the remainder of the Democratic state ticket was chosen. While his majority was so great as to indicate that he probably would have been elected in any case, there can be no doubt that the disruption of the Democratic party as a result of the primary campaign and election added greatly to the vote that would otherwise have been cast for him.

To a certain extent also the senatorial primary campaign had a tendency to disrupt the Democratic party. In this campaign the contest was clearly between the reform element and the old machine and the bitterness of the struggle between the leaders of the two factions produced no little division in the ranks. While the effect of this contest was not seen in the number of Democratic ballots cast, for the reason that the senatorial primary and the general election were held at the same time, yet the discussion that it engendered caused many reform Democrats to vote for the Republican candidate for governor, who was generally regarded as much more of an advocate of reform than the Democratic nominee.

Effect on A Minority Party.

In some state, where the compulsory primary is in effect, it has had a tendency to handicap the minority party.

In Missouri it has had the contrary effect. The Republican party, which is the minority party probably in this state, was generally thought to be so much in the minority that nominations on the state ticket were naturally not sought with much earnestness.

The fact moreover that the Roosevelt landslide had filled the state house with Prpublicans, all of whom had made good, provided logical candidates for most of the offices, to whom there was no opposition. The result^o was that in only one or two cases were there two candidates or more for any office. Consequently little bitterness was engendered in the primary contest and the Republican party went into the campaign with no disaffection in its ranks. In this regard it had a very great advantage over the majority party, in which there were several candidates for every place on the ticket.

Defeat of Men Affiliated with
Special Interests,- of Good Men.

In the single election thus far held in Missouri there was no conspicuous interest of a candidate by repute affiliated with special interests.

The only striking example in Missouri of a good man having been defeated for nomination in a primary election was the defeat for nomination in a primary election was the defeat of former Governor Joseph W. Folk by Senator William J. Stone for the Democratic nomination for United States Senator. The writer believes that in the defeat of Governor Folk, who, although in some respects he was a man of small calibre and little more than an ordinary politician, was yet nationally famous as a enemy of dishonesty in government and justly so famous and had performed inestimable ser-

vice for his state and country, the reputation of Missouri suffered severely. Particularly was this true in view of the fact that Folk was defeated by a politician whose connection with many things disreputable in the recent history of Missouri has been glaring, a man whose shortcomings have been almost as widely advertized as the virtues of Governor Folk.

It must be admitted, however, that Folk came much closer to election to the United States Senate than he would have come had there been no senatorial primary.

Breaking Party Lines.

While it was charged in many places that Republicans voted the Democratic ticket in the primary there is no evidence that such was the case and it is very probable that the charge was without foundation. A very few Republicans cast Democratic ballots at the general election in order to vote for Folk for Senator, scratching all other names on the ticket and writing in the names of Republicans nominees.

Tendencies to Form Slates.

In the first primary to be held there was little attempt at forming slates or at holding caucusses. In the Democratic party, so far as the state offices were concerned, it was clearly a free-for-all fight. While this was true of the state as a whole the election results in the cities indicated that in certain

wards a slate had been fixed. Indeed in some wards in St. Louis a ticket was prepared by the organization of the Democratic party and circulated among the voters.

The disastrous result of the first primary to the Democratic party has caused a widespread demand for a change of some kind. Among other things it is proposed by some of the leading organs of the party in the state that a pre-primary convention be called, which convention shall select the party ticket. It is thought that this ticket will then receive the approval of the voters at the primary election. It is improbable, however, that such a palpable violation of the spirit of the primary law will be attempted, although a general informal Democratic Convention has actually been called, and steps will undoubtedly be taken to prevent a recurrence of the bitter fights of the last primary campaign.

By some it was charged that the Republican party had arranged a slate before the primary was held. The only ground for this charge was the fact that the man who was the unanimous choice of the Republican voters of the state for Governor, indicated a personal preference for certain associates on the ticket. This expression of preference unquestionably had great influence with the organization as well as the rank and file of the party. No attempt was made by the Republican organization to prevent any person from becoming a candidate.

Objections to the Primary.

So far as there is objection to the primary it comes almost wholly from the Democratic party and is attributable largely to the results of the first trial of the system. Within the Democratic party the objection to the primary is confined largely to individuals and publications which are notoriously allied with the machine. Of course there are exceptions to this statement.

There is no general objection to the primary among the people and little or no probability that the primary law will be repealed. Certainly no attempt has yet been made to repeal it.



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